

Town Planning Committee Meeting

Minutes

Monday 6 September 2021

Commenced at 7:00 PM

**Council Chambers
20 Siding Avenue, Officer
Victoria**

Members: Cr Brett Owen Mayor
Cr Jeff Springfield Deputy Mayor
Cr Kaye Cameron
Cr Stephanie Davies
Cr Jack Kowarzik
Cr Graeme Moore
Cr Collin Ross
Cr Tammy Radford
Cr Carol Ryan

Officers: Carol Jeffs Chief Executive Officer
Doug Evans Manager Governance
Jack Coogan Governance Officer

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1 Opening And Prayer

Meeting opened at 7:00pm.

I would ask those gathered to join us now for a few moments of silence as we reflect on our roles in this chamber. Please use this opportunity for reflection, Prayer or thought, to focus on our shared intention to work respectfully together for the well-being of our whole community.

2 Acknowledgements

Cardinia Shire Council acknowledges that we are on the traditional land of the Bunurong and Wurundjeri people and pay our respects to their elders past, present and emerging.

3 Apologies

Nil.

4 Declaration Of Interests

Cr Moore declared a material Conflict of Interest for item 5.1 due to Cr Moore's daughter residing near the relevant property. Cr Moore will remove himself from the meeting during the discussion and voting of the item.

5 Ordinary Business

5.1 T210071PA - Development of the land for four (4) Dwellings on a lot and to end restrictive covenant P601136V at 6 Bridle Place, Pakenham VIC 3810

Responsible GM: Kristen Jackson
 Author: Julie Bowyer

Recommendation(s)

That Council refuse to grant Planning Permit T210071 for the development of the land for four (4) Dwellings on a lot and to remove restrictive covenant P601136V at L283 LP212290, 6 Bridle Place, Pakenham VIC 3810 on the following grounds:

1. Council cannot be satisfied that the removal of the restriction will be unlikely to cause any beneficiary of the restriction any detriment of any kind (including any perceived detriment) as a consequence of the removal of the restriction.
2. The removal of the restriction will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The removal of the restriction is inconsistent with the orderly planning of the area.

Attachments

1. Locality Map [5.1.1 - 1 page]
2. Current Plans and Documents [5.1.2 - 33 pages]
3. CONFIDENTIAL - Copy of Objections - Circulated to Councillors only [5.1.3 - 5 pages]

Executive Summary

APPLICATION NO.:	T210071
APPLICANT:	Ms Racquelyn Isip of RHAX Architecture Studio
LAND:	L283 LP212290, 6 Bridle Place, Pakenham VIC 3810
PROPOSAL:	Development of the land for four (4) Dwellings on a lot and to end restrictive covenant P601136V
PLANNING CONTROLS:	General Residential Zone – Schedule 1 Development Contributions Plan overlay – Schedule 1
NOTIFICATION & OBJECTIONS:	Pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , the application was advertised by sending notices to the owners and occupiers of

	<p>adjoining land; placing a sign on site; and placing a notice in the Pakenham Gazette newspaper, dated Wednesday 23 June 2021, page 58.</p> <p>Two (2) objections were received during advertising and have been considered in this assessment.</p>
KEY PLANNING CONSIDERATIONS:	<ul style="list-style-type: none"> • The requirements of Section 60 (5) of the Planning and Environment Act (1987); • The actual and/or perceived detriment to adjoining land-owners and listed beneficiaries of P601136V, 05/01/1990; • Neighbourhood character; • Amenity.
RECOMMENDATION:	That the proposal be refused.

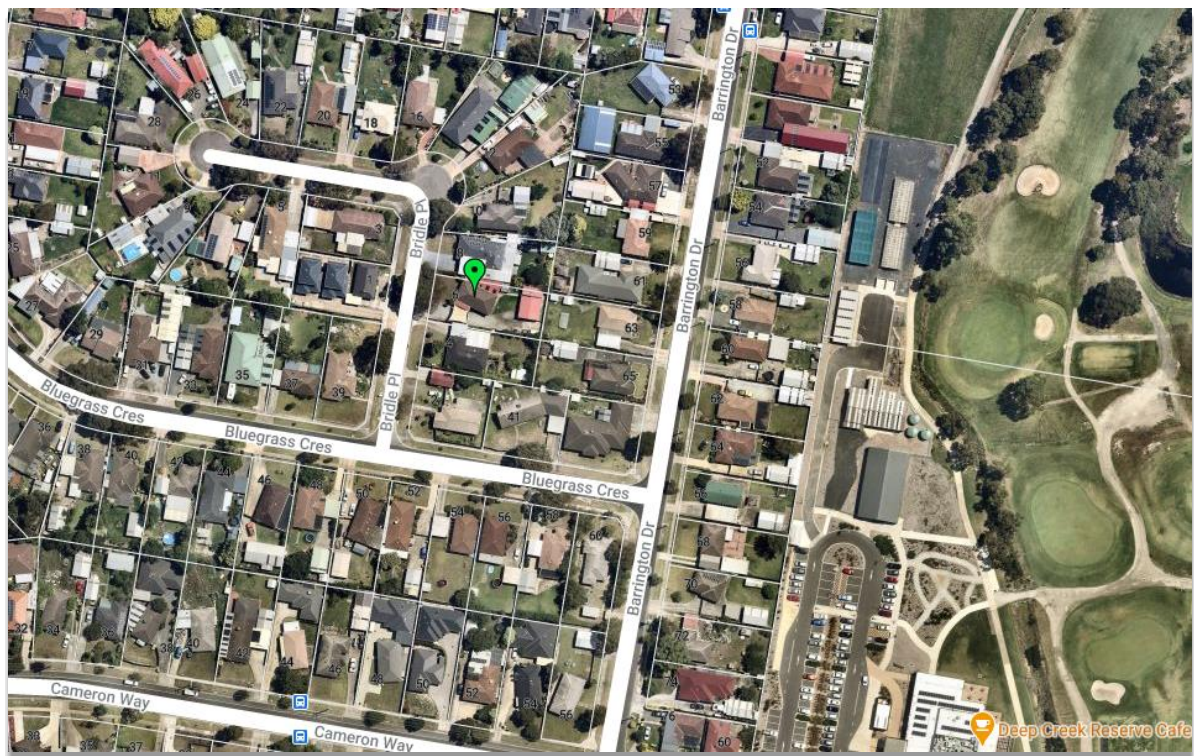
Background

The site is located in an established residential area of Pakenham where development largely consists of detached single dwellings. The allotment is on the eastern side of Bridle Place, within 2 kilometres of Pakenham's commercial centre and train station. Princes Freeway is located approximately 1,300 metres to the north west, with reserves and public open space within approximately 200 metres.

The Title is subject to a restrictive covenant P601136V, dated 05/01/1990 which restricts the registered proprietor or proprietors of each of the lots on Plan of Subdivision PL212290W and every part thereafter transferred, to the development of one private dwelling house; and not less than 70% of the external walls of said dwelling to consist of brick, brick veneer, stone or like materials.

There is no Planning Permit history for the site.

Subject Site



The Site is a regular-shaped rectangle allotment measuring 783.02sqm and is located on the eastern side of Bridle Place. The site has a frontage measuring 18 metres and a depth of 43.6metres.

Currently the allotment is developed with a single dwelling. The site has an existing crossover to Bridle Place and features vegetation in the road reserve, otherwise is cleared of vegetation.

The Topography of the site is flat.

There are restrictions registered to the title:

- Covenant P601136V, 05/01/1990. Covenants the registered proprietor or proprietors of each of the lots on Plan of Subdivision PL212290W and every part thereafter transferred, will not erect or build more than one private dwelling house; and not less than 70% of the external walls of said dwelling consist of brick, brick veneer, stone or like materials.
- Agreement Section 173 Planning and Environment Act 1987, AK379238Q, 03/06/2013 between Cardinia Shire Council and D.J. & C.A. O’Driscoll provides Council consent to build over the easement (E-2 Drainage and Sewer easement located parallel to the rear eastern boundary).

The allotment is burdened by an E-2 easement that is 2 metres in width and runs parallel with the rear (eastern) boundary for a length of 18 meters for the purpose of drainage and Sewerage.

The characteristics of the surrounding area can be described in the following ways:

<p>North</p>	<p>Abuts No. 8 Bridle Place which features a single dwelling with built form abutting the shared boundary and a setback from Bridle Place measuring approximately 6.3 meters. Further north are similarly sized and zoned allotments with single dwellings.</p>
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East	Abuts No. 63 Barrington Drive, which features a single dwelling. Further east are similarly sized and zoned residential allotments.
South	Abuts No. 4 Bridle Place, which features a single dwelling with a setback from the street of approximately 8.8 meters. Further east are similarly sized and zoned residential allotments.
West	Addresses Bridle Place. Further west are similarly sized and zoned residential allotments. Opposite the subject allotment is No. 1 Bridle Place, which is developed with three dwellings and featuring a minimum setback from Bridle Place of approximately 4.8 meters.

Relevance to Council Plan

5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Proposal

The proposal contemplates the removal of restrictive covenant P601136V (05/01/1990) to enable the development of the land for four (4) dwellings.

Restrictive covenant P601136V (05/01/1990)

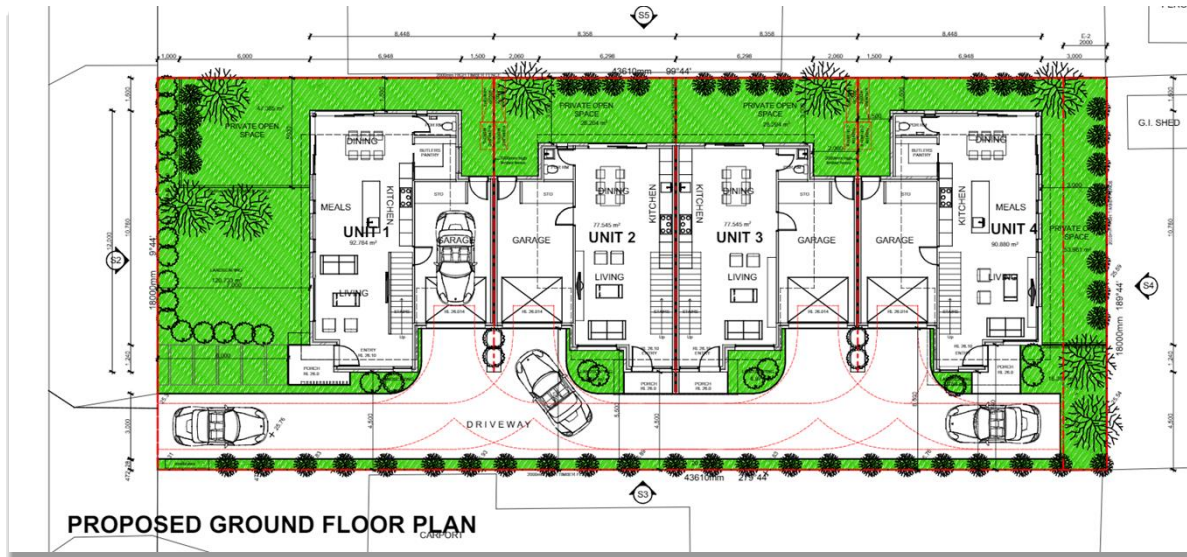
P601136V, 05/01/1990 covenants that the registered proprietor or proprietors of each of the lots on Plan of Subdivision PL212290W and every part thereafter transferred, will not erect or build more than one private dwelling house; and not less than 70% of the external walls of said dwelling consist of brick, brick veneer, stone or like materials.

The proposal seeks to remove the restrictive covenant.

Proposed development

Location: The dwellings will be positioned adjacent to the northern side boundary with the common driveway running parallel to the southern side boundary as per the proposed site plan below.

The unit developments will have a minimum setback of 6 metres from the western boundary adjacent to Bridle Place; a minimum side setback from the northern boundary of 1.5 metres (Unit 1 and 4); Unit 4 will have a minimum setback from the rear eastern boundary of 2.6 metres; and a 3.5 metre setback from the southern side boundary (units 2 and 3).



Measurements:

	Ground Fl area	1st Fl area	Total Fl area	POS	Car parking
Unit 1	92.7sqm	65.7sqm	158.4sqm	47.3sqm	1
Unit 2	77.5sqm	60.63sqm	138.13sqm	28.2sqm	1
Unit 3	77.5sqm	60.63sqm	138.13sqm	28.2sqm	1
Unit 4	91sqm	65.7sqm	156.7sqm	54sqm	1

GARDEN AREA ANALYSIS:

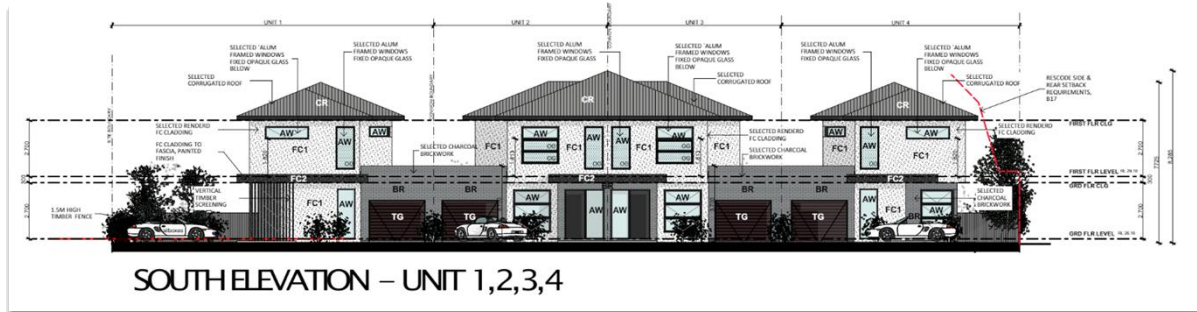
UNIT 1	
SITE AREA	213.5 SQM
TOTAL GARDEN AREA	120.7 SQM
UNIT 2	
SITE AREA	110.7 SQM
TOTAL GARDEN AREA	33.1 SQM
UNIT 3	
SITE AREA	110.7 SQM
TOTAL GARDEN AREA	33.1 SQM
UNIT 4	
SITE AREA	163 SQM
TOTAL GARDEN AREA	72 SQM

Currently the garden area equates to 40% over the entire site. The General Residential Zone requires a minimum of 35% of the site to be set aside for garden area.

Internal configuration: Each Unit features an open ground floor configuration where the kitchen and butlers pantry, powder room, living and dining area are located. There is internal access

from the ground floor to the garage spaces. The first floor features two bedrooms (one master suite with WIR and ensuite), a bathroom, study nook and powder room.

Height and form: The centrally located apex of Units 2 and 3 measures 8.3 meters from the natural ground level to the apex of the roof. The units each feature two storeys and are within the maximum height and storey requirements of clause 32.08-10.



Materials and Finishes: The proposal features a combination of materials and finishes; The ground floors will employ brickwork (Black) and fibre cement finished in Dulux Terrace white. The first floors will feature Fibre cement finished in Dulux Terrace White. The roofs will be clad in Corrugated iron finished in Shale Grey with garage doors finished in Monument.

Access: Provided by a common driveway measuring 3 meters at the crossover. A car manoeuvrability plan has been provided.

Landscaping: A landscaping plan has been provided that indicates the inclusion of trees, shrubs and groundcover plants.

Earthworks: The topography is flat, avoiding the necessity for earthworks in excess of a surface scrape.

Car Parking: Four Dwellings on a lot, each with two bedrooms (and no study that can be closed off) requires 1 car space each dwelling. The plans indicate one garage space for each dwelling. No visitor parking is required as there are only four dwellings to the lot.

Planning Scheme Provisions

Zone

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

Overlays

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

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 15.01-1S Urban Design
- Clause 15.01-2S Building Design
- Clause 15.01-5S Neighbourhood character
- Clause 16.01-1S Housing supply
- Clause 16.01-2S Housing affordability
- Clause 19.03-2S Infrastructure Design and Provision

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.03-1 Housing
- Clause 21.03-2 Urban Established Areas – Beaconsfield and Pakenham

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.02 Easements restrictions and reserves
- Clause 52.06 Car Parking
- Clause 53.18 Stormwater management in Urban Development
- Clause 55 Two or more dwellings on a lot and Residential Buildings
- Clause 65 Decision Guidelines;
- Clause 66 Referral and Notice Provisions;
- Clause 71.02-3 Integrated Decision Making
- Cardinia Shire's Liveability Plan 2017-2029

Planning Permit Triggers

- Pursuant to Clause 32.08-6 of the General residential Zone a permit is required construct two or more dwellings on a lot; and
- Pursuant to Clause 52.02 a permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

Public Notification

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

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site.
- Placing a notice in the Pakenham Gazette newspaper, dated Wednesday 23 June 2021, page 58.

The notification has been carried out and the statutory declaration has been submitted to Council on Monday 5th July 2021.

Council has received two (2) objections to date (27 July 2021).

The key issues that were raised in the first objection are as follows:

- The first objection was received by Council on 13 February 2021 (predating the advertising period) drawing Council's attention to the restrictive covenant P601136V, which covenants the owner to not erect or build more than one private dwelling house; and not less than 70% of the external walls of said dwelling consist of brick, brick veneer, stone or like materials. This objection pre-dated the receipt of the Further Information requested of the applicant, which included a copy of P601136V.
- An additional objection from the same objector was subsequently received by Council on 25 May 2021 identifying the *perceived* and *actual* detriment to the beneficiaries of the covenant including:
 - Financial loss (reduction in property values);
 - Loss of amenity (overshadowing, visual bulk, increased demand for on street car parking, increase in traffic);
 - Density (2-3 bedrooms for each block [sic]);
 - Change of character (due to increase of density);
 - Increased demand on infrastructure;
 - Supreme Court findings re EAPE (Holdings) Pty Ltd that the beneficiaries would experience *actual* injury.

The key issues that were raised in the second objection made by an owner of a lot listed as a beneficiary of P601136V are as follows:

- Hardship experienced as a result of increased noise;
- Loss of privacy;
- Loss of a feeling of safety and security;
- Increased demand on and inability of the existing infrastructure to cope with the demand;
- Increased risk of flooding;
- Consequences of increase human inhabitants (16 in total), and cats and dogs;
- Financial loss (reduction in property values).
- Loss of neighbourhood character.
- Loss of amenity.

A copy of the objections has been provided to the applicant to respond to and their response has been provided, albeit a redacted version, to the objectors providing them with an opportunity

to withdraw or revise their objections (dated 29/7/2021). Council has not received any requests to withdraw or revise objections to date (6/8/2021).

Referrals

External Referral/Notices

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	NA	-
Section 52 Notices	NA	-

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Engineering	No objection (subject to conditions)
Traffic	No objection (subject to conditions)

Discussion

The proposal for the Development of the land for four (4) Dwellings on a lot and to end restrictive covenant P601136V fails against the objectives of the Cardinia Planning Scheme and the tests of Section 60(5) of the *Planning and Environment Act 1987*.

The main issues for consideration in assessing the proposal are as follows:

- Compliance with the relevant policies in the Planning Policy Framework and Local Planning Policy Framework / strategic justification for the proposal;
- Compliance with the requirements of GRZ1, including the standards and objectives of Clause 55 of the Cardinia Planning Scheme;
- Whether the proposal to remove the restrictive covenant meets the requirements of Section 60 (5) of the *Planning and Environment Act 1987* and decision guidelines of Clause 52.02;
- Whether the proposal poses actual and/or perceived detriment to adjoining land-owners and listed beneficiaries of P601136V, 05/01/1990;
- Whether the proposed development is acceptable in the context of the existing or preferred neighbourhood character; and
- The impact of the development on the amenity of the adjoining sites.

It is considered that the removal of the restrictive covenant cannot be supported, prohibiting the proposed four-unit development. The following discussion first addresses the requirements of the *Planning and Environment Act 1987*, and then deliberates the development proposal.

Restrictive Covenants and Clause 52.02 - Easements, Restrictions and Reserves

A permit is required under clause 52.02 (Easements, Restrictions and Reserves) to enable the removal of restrictions registered to the Title, which must consider the interests of affected people, who are defined as beneficiaries of covenant P601136V.

P601136V, 05/01/1990 covenants the registered proprietor or proprietors of each of the lots on Plan of Subdivision PL212290W and every part thereafter transferred, will not erect or build more than one private dwelling house; and not less than 70% of the external walls of said dwelling consist of brick, brick veneer, stone or like materials.

For covenants that predate 25 June 1991, the requirements of Section 60 (5) of the *Planning and Environment Act 1987* apply. Section 60 (5) requires that the Responsible Authority (hereafter RA) must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that:

- (a) *The owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and*
- (b) *If that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.*

First, it is worth noting the benefits intended to be conferred by a single dwelling covenant which have been succinctly expressed by Associate Justice Mukhtar in *Re Morihovitis* ([2016] VSC 684 at paragraph 17) as follows:

..the manifest purpose or benefit of a single dwelling covenant is to maintain the building density in an area, variously put by saying that single dwellings keep the peace and tranquillity or ambience of an area, as the presence of multiple dwellings on land brings with it added use, more people (maybe tenants), more cars, more movement, reduction in land values and space, more noise or general hustle and bustle, more rubbish and waste collection, so on and so forth.^[17]

The test under Section 60(5) presents a high bar for an applicant to surmount. As pointed out by Member Whitney in *Bulalino v Darebin CC* [2019] VCAT 237, there must be satisfaction of a negative: “namely, that any beneficiary will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction”, at paragraph 15 (P1534/2018). In the application before Council, the applicant has provided development plans that indicate four dwellings each of two storeys. The development proposal is dependent on the ending of the restrictive covenant and provides Council with a real basis upon which to assess possible detriment. Again, Member Whitney provides direction here; “*detriment* for the purposes of Section 60(5) can take various forms and includes direct physical amenity impacts (perhaps of the nature experienced by an adjoining land owner) as well as non-physical amenity impacts ‘including perceptions of neighbourhood character or an appeal to aesthetic judgement’”, at paragraph 18.

The proposed removal of the restrictive covenant P601136V, 05/01/1990 was advertised in accordance with the requirements of clause 52.02 and Section 60(5) *Planning and Environment Act 1987*. The advertising included every lot identified by the restrictive apparatus LP12290W, which includes lots 266 – 284 (19 LOTS), and surrounding and adjoining lots,

Council has received two (2) objections with both objectors listed as beneficiaries of the covenant.

Salient to the application currently before Council, the tribunal determined in *Castles v Bayside CC* [2004] VCAT 864 at paragraph 41 that an objection citing detriment must be shown as “a detriment consequent on the variation of the covenant. There may be all sorts of detriments

related to a possible development, but if they are unrelated to the covenant, then they are not relevant from the point of view of Section 60(5)(a)". The concerns of both objecting parties reference the development of four dwellings should the ending of the restrictive covenant be supported and will be discussed below.

Response to Objections

Two objections have been received in relation to this application, both of which are located in Bridle Place. The objector concerns are summarised and addressed below:

- ***Financial loss as a result of reduced property values:***

In *Castles v Bayside CC* [2004] VCAT 864 at paragraph 33 the Tribunal stated: "Property value is not, in itself, a planning consideration. Amenity questions are, and if values are affected by adverse amenity effects, then it is the amenity questions that must be considered, not their ramifications in terms of property values".

As above, Clause 52.02 does not require any consideration of economic interests and property values are not a planning consideration. A common argument regarding the increasing population of Melbourne driving housing demand and property prices upward could be relied upon to justify multi-dwelling development however, this argument also supports the retention of single dwelling covenants that are "a property law right that limits development and so contributes to people's expectations as to what level or extent of density and development will occur in this area" and this contributes to creating neighbourhood character and is highly valued by residents, as observed in paragraph 43, *Bulalino v Darebin CC* [2019] VCAT 237. It is just as likely therefore that multi-unit development contributes to the erosion of property values in the area.

- ***Loss of amenity associated with overshadowing and bulk:***

Despite the fact that:

- The proposal complies with the requirements of B21 (overshadowing Open Space) with Shadow Diagrams identified as TP06, TP07 and TP08 indicating that sunlight to the secluded private open space of neighbouring allotments will not be reduced by more than 75%, or 40sqm with a minimum 3 meter width and the adjacent allotments will each receive a minimum of 5 hours of sunlight between 9am and 3pm on the 22 September; and
- The proposal also indicates that light to habitable room windows on adjoining allotments will not be compromised, in accordance with the requirements of B19; and
- The proposal complies with the setback requirements of clause 55.03 and standards B6 (Street setback), B7 (Building height), B8 (site coverage), B17 (side and rear setbacks), and avoids walls on any boundaries; and
- That a single dwelling covenant does not prohibit the development of a single large dwelling that would result in the same loss of amenity associated with overshadowing and bulk,

The grounds of objection cite planning considerations and the applicant in response to the concerns of the objectors has not satisfied the high bar required by Section 60(5) of disproving the negative. Subsequently, the objections regarding the loss of amenity associated with overshadowing and bulk have not been suitably addressed or withdrawn, and the risk of detriment remains.

- ***Loss of amenity associated with compromised privacy, safety and security:***

The applicant has provided boundary fencing on the northern side boundary measuring 2 meters in height, and north-facing, first floor windows feature opaque glass to a height

of 1.8m, both of which would likely contribute to the preservation of privacy on the adjoining allotment.

It should also be noted that a single dwelling covenant does not protect against the development of a large -storey dwelling that is conceived to compromise privacy, safety and security.

While the perceptions of compromised safety and security associated with new inhabitants of development is not a matter that can be assessed by the planning scheme, the perception of compromised safety of a beneficiary of the restrictive covenant must be considered as a detriment suffered as a consequence of the ending of the covenant and the subsequent development of four two-storey dwellings. The provision of opaque glass and boundary fencing, while laudable, will not insure against any detriment, real or perceived, being experienced by the objector.

- ***Increased traffic:***

The proposal contemplates the development of four two-bedroom units and provides one dedicated car parking space for each unit, as is required for a development of this nature. The proposal has been assessed by Council's Traffic Department, who have not raised concerns regarding the increase of traffic on Bridle Place or surrounds as a result of this development. However, there is the potential for the proposed development resulting in an additional eight (8) cars if both bedrooms of each dwelling was occupied by the owner of a vehicle, which would represent a discernible increase in traffic and the demand for on-street parking in a small cul de sac such as Bridle Place.

- ***The proposal is not consistent with the existing character of the street:***

The proposal was assessed against the requirements of the Planning Policy Framework and Clause 55 – two or more dwellings on a lot. Clause 15.01-5S of the Cardinia Planning Scheme addresses neighbourhood character and has the objective to support and protect neighbourhood character, cultural identity and sense of place through the support of development that respects the existing, or contributes to the preferred neighbourhood character. While the four dwelling development supports elevated housing densities in the vicinity of existing infrastructure and services, the proposed built form contrasts with the existing single storey detached dwellings pattern of development in Bridle Place. An assessment of the proposal against Standard B1 Neighbourhood Character has been undertaken. While the proposed double storey dwellings are modest in scale, feature an average front setback and reflect an emerging character of the surrounding Pakenham area. The proposed development will present built form extending 34.4 meters along the length of 43 metre-long site, which has been specifically referred to by an objector as causing a loss of amenity.

- ***Increased demand on existing infrastructure (causing increased street flooding):***

The proposal has been assessed against the requirements of Standard B4 (clause 55). There is existing infrastructure within the street and the proposal will not overload this infrastructure. Additionally, a Water Sensitive Urban Design Report for the development of four dwellings has been provided to satisfy the requirements of clause 53.18.

Claims by Objector 2 regarding increased flooding events in the street are more likely due to blocked drainage, as opposed to the increased load associated with the additional dwellings on 1 Bridal Street.

- ***Increased density:***

Increased density is supported by the General Residential Zone, which encourages diversity of housing types and moderate housing growth in areas that have good access to services and transport. It is also supported by state and local planning policy (clauses 15.01-1S, 15.01-4S, 16.01-1S, 16.01-2S and 18.02-1S, 18.02-2S). Sustainable urban development implies increased residential densities and is an objective of clause 9 of

Plan Melbourne though contradicts the purpose of the one dwelling on a lot covenant that applies to the lot. The sequence of events is salient here given the four dwelling development can only proceed as a result of the ending of the restrictive covenant, to which increased density is identified as the basis of perceived detriment.

- ***Increased noise:***

There are no unreasonable noise sources proposed within the development (e.g. inappropriately located air conditioning units). Future occupiers are not a planning consideration however, if we cite those benefits intended to be conferred by a single dwelling covenant expressed by Associate Justice Mukhtar, 'the peace and tranquillity or ambience of an area' is likely to be eroded by 'more people (maybe tenants), more cars, more movement...more noise or general hustle and bustle, more rubbish and waste collection, so on and so forth', and is a detrimental consequence of the proposal.

- ***The proposal is incompatible with the requirements of restrictive covenant P601136V, 05/01/1990:***

Objector 1 has cited Councils perspective employed in VCAT P1877/2016 (refusal to grant a permit to vary a restrictive covenant) and VCAT P1120-2016 for the cancellation of the Development Permit T140723 as the basis of the objection to Council contemplating the application currently being assessed. These issues have been discussed previously.

Conclusion

While the development component of the application has been assessed against the requirements of the Planning Policy Framework and Local Planning Policy Framework, and standards and objectives of Clause 55 of the Cardinia Planning Scheme, the assessment is mute as the application fails to satisfy the 'tests' of Section 60(5)(a) and Section 60(5)(b).

The concerns of the objectors address the multi-dwelling development that would be the consequence of the proposal to end the restrictive covenant P601136V, 05/01/1990, highlighting the detriment to the neighbourhood character of the area, as well as some physical amenity issues, possible traffic consequences and general privacy and safety concerns. Given the very high bar of the statutory test in Section 60 (5) Council cannot be satisfied that the owner of any land benefited by the restrictive covenant will not suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal of the restrictions. Further, Council cannot be satisfied that the objections to the application were made to cause annoyance or vexation to the applicant.

Therefore, it is recommended that the proposal for the Development of the land for four (4) Dwellings on a lot and to remove restrictive covenant P601136V be refused on the following grounds:

1. Council cannot be satisfied that the removal of the restriction will be unlikely to cause any beneficiary of the restriction any detriment of any kind (including any perceived detriment) as a consequence of the removal of the restriction.
2. The removal of the restriction will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The removal of the restriction is inconsistent with the orderly planning of the area.

Cr Moore left the meeting before discussion of the item (7:03pm).

Resolution

Moved Cr Stephanie Davies, seconded Cr Jack Kowarzik.

That Council refuse to grant Planning Permit T210071 for the development of the land for four (4) Dwellings on a lot and to remove restrictive covenant P601136V at L283 LP212290, 6 Bridle Place, Pakenham VIC 3810 on the following grounds:

1. Council cannot be satisfied that the removal of the restriction will be unlikely to cause any beneficiary of the restriction any detriment of any kind (including any perceived detriment) as a consequence of the removal of the restriction.
2. The removal of the restriction will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The removal of the restriction is inconsistent with the orderly planning of the area.

Carried

Cr Moore reentered the meeting at the conclusion of the item.

Ordinary Business**5.2 T210005 Use and development of the land for Domestic Animal Husbandry (Dog Breeding)**

Responsible GM: Kristen Jackson
Author: Mary Rush

Recommendation(s)

It is recommended that a Notice of Decision to Grant Planning Permit T210005 be issued for the use and development of the land for domestic animal husbandry at L1 TP310627, 150 Settlement Road, Caldermeade VIC 3984 subject to the following conditions:

1. Before the use and development starts, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must show:
 - a) An amended site plan showing a two (2) metre wide landscaping strip between the boundary and dog exercise yard;
 - b) A landscaping plan of the landscaping strip showing species and planting density to Council's satisfaction;
 - c) Amended elevations of the proposed kennel building showing a maximum height of 4.5 metres;
 - d) Amended fencing design of the dog exercise yard to comply with Melbourne Water's condition 20;
 - e) Detailed construction plans of the proposed kennels showing acoustic materials utilised to ensure compliance with the Environment Protection Regulations 2021 and relevant Environment Reference Standards relating to noise generated by rural industry;
 - f) That the building design has been certified by a qualified member of the Association of Australian Acoustical Consultants or the Australian Acoustics Society which confirms that the buildings design and fenced external exercise yards will comply with the relevant Environment Protection Regulations 2021;
 - g) A detailed kennel plan to show:
 - i. Provision for visitors and staff to have access to hot and cold hand washing facilities on site.
 - ii. One-third of animal pens to be weatherproof with a raised bed.
 - iii. Pens to be a minimum size of 10sqm with a minimum dimension of 1.8 metres by 1.8 metres.
 - iv. Pens to be separated by solid partitions, galvanised wire or weld mesh.
 - v. All pens constructed with concrete floors.
 - vi. A separate mating area that is physically separate from other animals.
 - vii. An isolation area which must have impervious barriers or 10 metres away from other animals.

- h) A Land/Animal Management Plan to show:
- i. How effluent disposal will be managed, which may include:
 - Until the Responsible Authority is satisfied that water supply and waste treatment facilities can operate effectively under full load conditions, all dog faeces must be collected at least once a day, and then be stored in an appropriate compost installation for periodic disposal to the satisfaction of the Responsible Authority.
 - Liquid waste including dog urine and wash down water from the Domestic Animal Husbandry use must be disposed of on the subject land via an EPA approved treatment plant.
 - ii. How drainage and stormwater will be managed, including:
 - No polluted stormwater must be discharged directly or indirectly into the drainage easement (E-1) which runs perpendicular to the southern boundary to the subject site or otherwise cross the boundaries of the subject site;
 - iii. Safety measures to be actioned in the event of flood, bushfire or other emergency.
 - iv. How the animals will be supervised.
 - v. How animals will be prevented from escaping, including construction details for the perimeter fencing that ensures that dogs are not able to dig below that fence or jump a fence and escape.

Use:

2. The use as shown on the endorsed plan/s must not be altered without the written consent of the Responsible Authority.
3. No more than fifteen (15) dogs may be kept on the property at any one time. This includes:
 - a) No more than nine (9) fertile female dogs (entire female 12 months or older);
 - b) No more than three (3) entire males; and
 - c) Any dog sixteen (16) weeks or older.
4. All dogs kept at the property over twelve (12) weeks of age must be registered with Cardinia Shire Council.

Compliance:

5. The permit holder must remain a member of any applicable organisation (required by legislation) as well as remain compliant with all other relevant legislation and codes of practice at all times.
6. Compliance must be maintained at all times (as appropriate to each individual activity) with the following documents/ legislation (and if there is a conflict between any document and the permit or between documents, the more restrictive provision must apply) to the satisfaction of the Responsible Authority:
 - a) The Land/ Animal Management Plan as approved under this permit.
 - b) *Environment Protection Regulations 2021* and relevant Environment Reference Standards relating to noise generated by rural industry.
 - c) Any other relevant legislation and codes of practice.
7. At all times during the operation of the use hereby approved, the following requirements must be met to the satisfaction of the Responsible Authority:

- a. A responsible person must be present on the site at all times when dogs are present and reasonably available 24 hours per day.
- b. The dogs must not leave the subject land unless in the company of an owner, trainer or responsible person and be appropriately restrained by a rope, cord or leash and/or in a vehicle from which they are unable to escape.
- c. The dogs must not be allowed within the subject land outside the enclosures shown on the endorsed plans unless in the company of an owner, trainer or responsible person and be appropriately restrained by a rope, cord or leash and/or under the effective control of an owner, trainer or responsible person.
- d. Unless with the prior written consent of the responsible authority, feeding of the dogs must only occur within the day time hours of 6.00 am to 6.00 pm and any exercise of dogs outside the fenced enclosure must only occur between the hours of 7.00am and 5.00pm, or unless in unforeseen circumstances whereby the dogs would otherwise go unfed or exercised to the satisfaction of the responsible authority. The permit holder or nominated responsible person must document any such unforeseen circumstances in writing, with times, dates and reasons.
- e. All deliveries and collections, including of dogs and waste associated with the Domestic Animal Husbandry (Dog Breeding) Facility must occur between 7.00 am and 6.00 pm unless with the prior written consent of the responsible authority.
- f. The buildings and works hereby approved must be maintained so that dogs are enclosed at all times and so that buildings and works continues to be visually screen stimuli such as other animals and traffic.

Amenity:

8. Waste products from the proposed animals must be stored and disposed of in a manner that minimises odour and littering issues. Waste products from the animals cannot be disposed of in a domestic septic tank system.
9. Offensive odours must not be discharged beyond the boundaries of the premises.
10. Noise emitted from the premises must not exceed the recommended levels as set out in *Environment Protection Regulations 2021* and relevant Environment Reference Standards relating to noise generated by rural industry or as amended).
11. All feed is to be stored in vermin-proof structures to the satisfaction of the Responsible Authority
12. The use must be managed to the satisfaction of the responsible authority so that the amenity of the area is not detrimentally affected, through the:
 - a) Transport of materials, goods or commodities to or from the land.
 - b) Appearance of any building, works or materials.
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash dust, waste water, waste products, grit or oil.
 - d) Presence of vermin.
 - e) Or in any other way.

Development:

13. The layout of the site and the size of the proposed buildings and works, as shown on the approved plan/s, must not be altered or modified without the consent in writing of the Responsible Authority

14. Once the development has commenced, it must be continued and completed to the satisfaction of the Responsible Authority.
15. The exterior colour and cladding of the kennels must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the outbuilding must be of a non-reflective nature in accordance with the endorsed plans.
16. All stormwater must be conveyed by means of drains to satisfactory points or areas of discharge approved by the Responsible Authority, so that it will have no detrimental effect on the environment or adjoining property owners.
17. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
18. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.

Melbourne Water:

19. The Building be constructed with finished floor levels set 900mm above natural surface levels.
20. All open space within the property (including setbacks) must be set at existing natural surface level so as not to obstruct the passage of overland flows.
21. Any new fencing/gates must be of an open style of construction (minimum 50% open) to allow for the passage of overland flows.
22. No fill outside of the proposed building footprint except for minimal ramping into the building kennels.
23. Prior to the commencement of works, a separate application direct to Melbourne Water (Asset Services Team) must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

Expiry:

24. A permit for the development and use of land expires if—
 - a) the development does not start within **two (2) years** after the issue of this permit; or
 - b) the development is not completed within **four (4) years** after the issue of this permit;
or
 - c) the use does not start within **two (2) years** after the completion of the development;
or
 - d) the use is discontinued for a period of **two (2) years**.

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

Notes:

- A Building Permit may be required for this development. To obtain a building permit you must contact a Registered Building Surveyor.
- The permit holder must hold a current Domestic Animal Business permit for Dog Breeding with the relevant Council.
- The permit holder must maintain a membership with an applicable organisation.

Attachments

1. T 210005 P A-plans assessed [5.2.1 - 4 pages]
2. CONFIDENTIAL - Copy of Objections - Circulated to Councillors only [5.2.2 - 58 pages]

Executive Summary

APPLICATION NO.:	T210005
APPLICANT:	Elena Kutukoff
LAND:	L1 TP310627, 150 Settlement Road, Caldermeade VIC 3984
PROPOSAL:	Use and development of the land for domestic animal husbandry (dog breeding)
PLANNING CONTROLS:	Rural Conservation Zone - Schedule 1 Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	Pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , the application was advertised by the placing of one (1) sign on site and notices in the mail to 8 property owners within the vicinity potentially affected by the proposal.
KEY PLANNING CONSIDERATIONS:	Land use compatibility Amenity impacts Proposed use of green wedge land Potential impact of flooding
RECOMMENDATION:	That a Notice of Decision to Grant a Permit be issued.

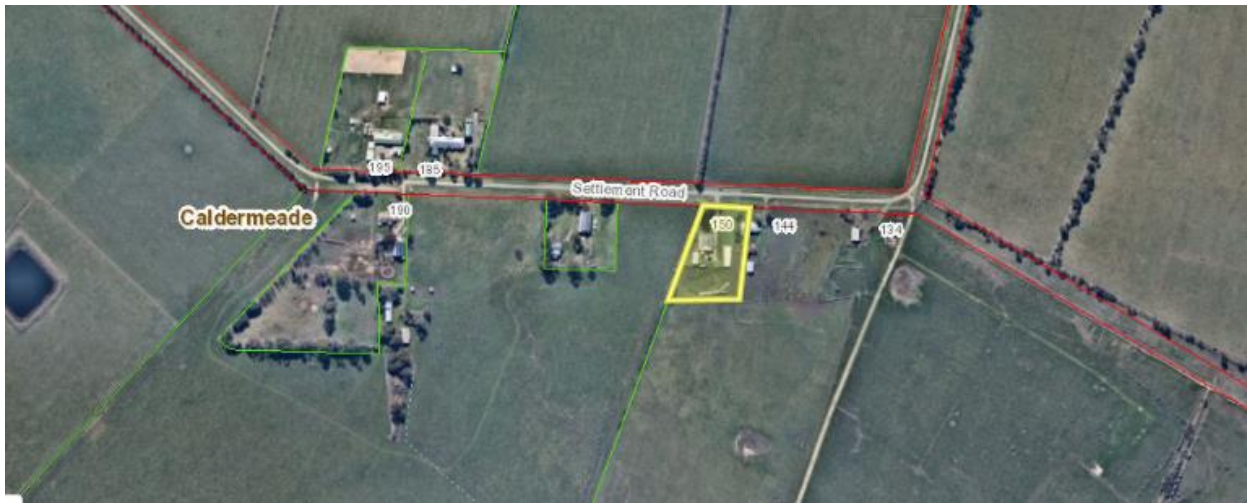
Background

In November 2020 Council received a written complaint from a nearby landowner that a dog had escaped from the subject site and allegedly killed one of their chickens. The complainant also wanted Council to confirm that the dog breeding activity being carried out on the land was approved. Upon investigation by Council's compliance officers, it was determined that the existing use for animal husbandry did not have planning approval.

Council's compliance officers wrote to the landowner and requested that the activity cease or that they apply for a planning permit. An application was subsequently received by Council on the 6 January 2021 for the use and development of the land for animal husbandry (dog breeding).

There is no other relevant planning history on the land. The applicant purchased the land in January 2020.

Subject Site



The site is located on the southern side of Settlement Road.

A crossover is located towards the middle of the lot. There are no easements within the title boundaries.

The site currently contains a single dwelling, shedding, free standing dog kennels and exercise yard and measures 0.5ha in area.

The topography of the land is flat.

The site is clear of vegetation.

The main characteristics of the surrounding area are:

- North: Cleared rural land used for grazing.
- South: Cleared rural land used for grazing.
- East: Cleared rural land used for grazing.
- West: Cleared rural land used for grazing.

Relevance to Council Plan

Nil

Proposal

The application proposes to keep a maximum of 15 adult dogs consisting of:

- 3 entire males consisting of 1 entire Doberman guard dog and 2 entire males used for breeding,
- 4 entire female American staffordshire terriers,
- 5 entire female staffordshire bull terriers,
- 3 retired dogs.

The applicant has advised that each fertile adult female will have approximately one (1) litter per year on average.

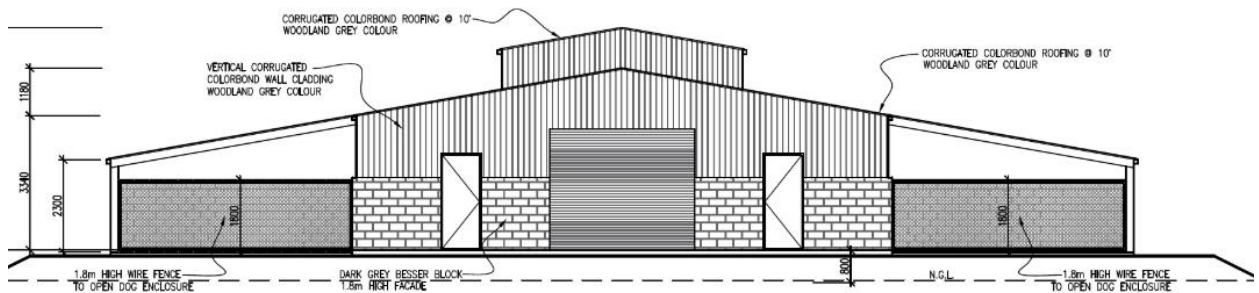
The puppies are advertised for sale online and the owner meets the purchaser either at a nominated veterinary clinic or at an agreed location. On very rare occasions the purchaser will attend the subject site on agreement with the owner.

The application does not constitute commercial dog breeding under Agriculture Victoria legislation as the proposal does not intend to breed from more than 11 fertile females.

The applicant proposes to construct a purpose-built dog kennel to house all animals.



EAST ELEVATION



SOUTH ELEVATION

The proposed building measures 25 metres by 24 metres (600 square metres) and will have a barn style construction with a maximum height of 5.5 metres. The kennel is proposed to be constructed in a mix of brick and steel cladding.

The building will be located 5 metres from the southern and eastern boundaries, 23 metres from the western boundaries and 65 metres to the front boundary.

The internal layout shows 20 individual caged enclosures with an individual area of 14.4 square metres indoor shelters that are 9.36 square metres. Whilst the Code of Practice for the Operation of Breeding and Rearing Businesses is not mandatory, the application should meet

the majority of its requirements. As the Code requires enclosures to be 10 square metres, a condition will be placed on any permit requiring the enclosures to be 10 square metres.

Planning Scheme Provisions

Zone

The land is zoned Rural Conservation Zone - Schedule 1.

Overlays

The land is subject to the Land Subject to Inundation Overlay.

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.01-1R – Green Wedges – Metropolitan Melbourne
- Clause 12.01-1S - Protection of biodiversity
- Clause 13.03-1s – Floodplain management
- Clause 13.05-1S – Noise abatement
- Clause 13.07-1S – Land use compatibility
- Clause 14.01-1S – Protection of agricultural land
- Clause 14.01-2s – Sustainable agricultural land use
- Clause 15.01-6S – Design for rural areas

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 – Cardinia Shire key issues and strategic vision
- Clause 21.04-2- Agriculture
- Clause 22.05 - Western Port Green Wedge Policy

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 65 - Decision Guidelines
- Clause 66 - Referral and notice provisions.
- Cardinia Western Port Green Wedge Management Plan (May 2017)

Planning Permit Triggers

A planning permit is required under the following provisions of the Cardinia Planning Scheme:

- Pursuant to Clause 35.06-1 of the Rural Conservation Zone, a planning permit is required to use the land for Domestic Animal Husbandry (more than 2 animals).
- Pursuant to Clause 35.06-5 of the Rural Conservation Zone, a planning permit is required for buildings and works associated with a Section 2 Use, and for a building with a setback of less than 100 metres from a dwelling not in the same ownership and exceeding 120 square metres in floor area;
- Pursuant to Clause 44.04-1 of the Land Subject to Inundation Overlay, a planning permit is required for the buildings and works

Referrals

The application was referred to Melbourne Water who raised no objections subject to permit conditions.

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 and nearby land; and
- Placing a sign on site.
- A total of eight (8) nearby residents received notice of the application by mail.

The notification has been carried out correctly, and Council has received 32 objections.

The key issues raised by the majority of objections are:

- Animal rights and animal welfare concerns; and
- Compliance with current legislation around animal (dog) breeding.

In addition, a total of three (3) objections raised concerns regarding the following planning considerations. These three objections are the first 3 objections in the

- Loss of property value;
- Loss of view;
- Traffic;
- Impact on agriculture;
- Inappropriate use in a green wedge;
- Amenity of neighbours (noise and visual impacts);
- Environmental protection (impacts on vegetation and flora and fauna waste management); and
- Land use not compatible with Rural Conservation Zone.

Discussion

Planning Policy Framework (PPF) and Municipal Planning Strategy (MPS)

A number of state and local policies are relevant to this application that aim to ensure that land uses such as domestic animal husbandry (dog breeding) are allowable (where located in appropriate locations), as well as ensuring that potential conflicts with sensitive land uses can be appropriately managed and mitigated.

Clause 11.01-1R (Green Wedges – Metropolitan Melbourne) seeks to protect green wedges from inappropriate uses and development.

Clause 12.01-1S (Protection of biodiversity) seeks to assist in the protection and conservation of Victoria's biodiversity by identifying important areas of biodiversity, including key habitat for rare or threatened species and communities by ensuring the use and development avoids impacts to important areas of biodiversity.

Clause 13.05-1S (Noise abatement) seeks to assist the control of noise effects on sensitive land uses by ensuring that development is not prejudiced and community amenity is not reduced by

noise emissions, using a range of building design, urban design and land use separation techniques as appropriate to the land use functions and character of the area.

Clause 13.07-1S (Land use compatibility) seeks to protect community amenity, human health and safety, while facilitating certain land uses by ensuring that development of land is compatible with adjoining and nearby land uses and avoiding the location of incompatible uses in areas that would be impacted by adverse off-site impacts.

Clauses 14.01-1S (Protection of agricultural land) and 14.01-2S (Sustainable agricultural land use) seek to encourage sustainable agricultural land use by ensuring that the use and development of land for animal keeping or training is appropriately located and does not detrimentally impact the environment, the operation of surrounding land uses and the amenity of the surrounding area.

Clause 15.01-6S (Design for rural areas) seeks to ensure development respects valued areas of rural character by ensuring that the siting, scale and appearance of development protects and enhances rural character.

Clause 21.01 (Cardinia Shire key issues and strategic vision) supports the PPF listed above by ensuring the continued protection of agricultural land for compatible land uses and protection of environment through considered planning at a local level.

Clause 21.04-2 (Agriculture) provides local context to Clause 14.01 (Agriculture) to provide for the protection of agricultural land for agricultural and other compatible land uses.

Clause 22.05 (Western Port Green Wedge Policy) provides a plan for the management of agricultural land within the southern portion of the Shire and encourages non-soil based agricultural activities within the areas shown as 'Railway Precinct'.

The proposal is considered to align with the policies listed above. 'Domestic Animal Husbandry' is nested under the broader land use definition of 'Agriculture' under the Cardinia Planning Scheme and therefore, is inherently considered an 'agricultural' type land use.

The policies listed above support the facilitation of agricultural land uses within the Green Wedge where the off-site amenity impacts can be maintained and the natural environment protected.

The proposal is compatible with the rural and agricultural character of the area, and given its strategic location (away from sensitive residential areas). The proposal is not considered to cause any major disruption to the surrounding agricultural properties and their residents (where applicable).

It is considered that the proposal adequately responds to the above and therefore, it is considered that the proposal is consistent with the PPF and MPS as it appropriately balances the objectives of the policy that will not result in a detrimental impact on the amenity of the surrounding area.

Rural Conservation Zone

One of the key purposes of the Rural Conservation Zone is to implement the MPS and PPF. It also seeks to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities and mineral and stone resources. The decision guidelines of the Zone require the Responsible Authority to consider the following when assessing an application, in particular:

- **General Issues:**

The land is 0.56 Ha in area and is large enough to accommodate the proposed building. The proposal was advertised to nearby residents and no objection was received from the properties adjoining the subject site.

Subject to conditions requiring amended plans, it is considered that the proposal will not have a significant impact on the surrounding neighbours.

- **Rural Issues:**

The proposal will have no impact on conventional rural activities such as grazing or cropping as the site is not large enough for these activities.

Domestic Animal husbandry falls within the agriculture group of land uses and subject to permit conditions is considered an appropriate use of the site.
- **Environmental Issues:**

As discussed above the proposal will have no impact on flora and fauna as the site has no habitat or native vegetation on site.

The proposed building is to be located on a level area that requires no excavation, however some fill will be required to meet Melbourne Waters floor level requirements.
- **Design and Siting Issues:**

The proposed outbuilding complies with the minimum setbacks of 20 metres from the front boundary and 5 metres from the side boundary.

A condition will be placed on the permit requiring that the owner set the fence of the dog exercise yard back 2 metres from the boundary to allow for screen planting to reduce any visual impact.

A condition will also be placed on the permit requiring that the overall height be 1 metre to 4.5 metres.

Subject to conditions requiring the submission of amended plans, including a land management/ animal management plan to deal with issues of effluent disposal, run-off, fencing, supervision, noise mitigation and other environmental and amenity protection measures, it is considered that the proposal contemplates sustainable land management for agricultural purposes in a suitable location within the Rural Conservation Zone.

Land Subject to Inundation Overlay

The Land Subject to Inundation Overlay (LSIO) identifies areas where a 1 in 100 Year flood or floodplain area determined by a floodplain management authority warrants protection from flood hazards. These measures ensure 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.

Given that Melbourne Water had no objection to the proposed use and development, it is considered that the proposal will not increase the potential risk to life, health or safety a 1 in 100 Year flood poses, and will not affect or obstruct floodwater, stormwater or drainage over the property, subject to their conditions being met. Conditions requested by Melbourne Water will be placed on the permit to ensure the building is adequately protected from potential flood risk.

Objections

A response to objections is provided below:

- **Animal rights and animal welfare concerns**

Most of the objections received relate to concerns about the ethics of breeding dogs at a large scale and the potential harm this causes the animal/s involved. Whilst Council considers this to be a valid concern, the scope of the assessment able to be undertaken via an application for a planning permit is limited to an assessment against the relevant planning policy included in the MPS, PPF, LPPF and relevant Zone and Overlay controls.
- **Compliance with current legislation around animal (dog) breeding**

As previously discussed, this proposal does not constitute commercial animal breeding under Agriculture Victoria legislation as less than 11 fertile females will be used for breeding.

Council is responsible for enforcing *Domestic Animals Act 1994*. Other relevant legislation including *Domestic Animals Regulations 2015* and the *Prevention of Cruelty to Animals Act 1986* or regulations made under that Act are enforced by other bodies.

Council carry out annual inspections or on receipt of a complaint, so the use will be scrutinised by Council and external bodies to ensure compliance with current legislation.

- **Loss of property value**

Loss of property value is not a planning consideration.

- **Loss of view**

The planning system does not protect the individuals' right to a view. No objection has been received from either abutting landowner regarding this issue.

- **Traffic**

Objectors nearby to the proposal have raised concerns over the increase in traffic expected.

The applicant has advised that the dogs are sold online, and the purchasers of the puppies will not attend the site, with the animals being collected from an agreed location.

The use has been carried out for the past 18 months and Council have received one complaint over an escaping dog and no resident has complained about the use currently causing any traffic concerns.

Given the above, it is not expected that there will be any noticeable increase in vehicle traffic.

- **Impact on agriculture**

An objector within the vicinity of the subject site has raised concerns over animals escaping and impacting on stock. The proposal includes 1.8 metre high dog proof fencing which the animals will not be able to escape from the site.

The proposal will not negatively impact on any existing agricultural activity.

- **Inappropriate use in a green wedge**

The Green Wedge policy supports the facilitation of agricultural land uses within the Green Wedge where the off-site amenity impacts can be maintained and the natural environment protected.

As previously discussed, Domestic Animal Husbandry (dog breeding) is nested under the broader land use definition of "Agriculture" under the Cardinia Planning Scheme and therefore, is inherently considered an 'agricultural' type land use and is therefore supported in Green Wedge areas.

The proposal is compatible with the rural and agricultural character of the area and given its strategic location (away from sensitive residential areas) is considered acceptable. As previously advised the use has been carried out with no complaints about noise from adjoining properties. Subject to appropriate conditions it will not cause any major disruption to the surrounding agricultural properties.

- **Amenity of neighbours (noise and visual impacts)**

Noise

The use has been carried out for the past 18 months and no complaint has been raised with Council regarding noise generated by the existing use.

Whilst two objections from residents within the vicinity of the site have raised concerns over potential noise impacts, neither have previously lodged complaints with Council. One objector within the vicinity of the subject site has raised concerns over the noise of dogs barking at night.

With the construction of a purpose built structure that has appropriate acoustic design, it is not anticipated that the proposed use will result in unacceptable noise emissions. The noise emissions will be less than the current situation with the dogs currently being housed outside.

Visual amenity

An objector living within the vicinity of the subject site has raised concerns over the visual impact.

Concerns raised by a nearby resident over visual impact can be ameliorated by the inclusion of a landscape buffer around the exercise yard fence with a condition included on the permit requiring that the fence of the exercise yard be setback 2 metres from the boundary with a requirement for landscape screening to be planted within this 2 metre buffer.

The applicant has also agreed to reduce the height of the building by approximately 1 metre so that the maximum height does not exceed 4.5 metres. The reduction in the height and boundary planting will minimise any potential visual impact to an acceptable level.

A condition will be placed on the planning permit requiring these changes.

- **Environmental protection**

Impacts on vegetation and flora and fauna

An objector has raised concerns about the potential disruption the proposal may have on endangered species and their habitat.

The proposal is not expected to cause any detriment to the species as the proposal does not result in the removal of habitat vegetation.

Waste management

An objector has raised concerns over waste management and soil contamination.

A Land/Animal Management Plan will be required to be submitted to Council's satisfaction to ensure that waste is appropriately managed.

Subject to appropriate conditions it is not expected that the use will result in any environmental impact.

Western Port Green Wedge Policy

The Western Port Green Wedge Policy identifies an area of approximately 746 square kilometres of rural southern part of Cardinia Shire Council and the City of Casey, which are home to important assets to both municipalities.

It is considered that this application responds appropriately to the objectives of the Policy in terms of supporting existing agricultural and horticultural industries. The proposal is not considered to cause detriment to the future direction of soil based agricultural pursuits on the site and surrounding sites that the Policy seeks to encourage in this region and should be supported.

Clause 51.02 Metropolitan Green Wedge Core Planning Provisions

The proposal is consistent with Clause 51.02-2 as this clause permits the proposed use and development

The relevant purposes of these provisions are:

- To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.
- To protect productive agricultural land from incompatible uses and development.

As discussed, the proposal will not impact on the surrounding agricultural uses or impact on the natural environment, landscape or natural resource or recreation values.

Clause 65 Decision Guidelines

The Application has been assessed against the Clause 65 Decision Guidelines, which requires Council to consider additional factors such as:

- The Municipal Planning Strategy and the Planning Policy Framework;
- The purpose of the zone, overlay or other provision;
- Any matter required to be considered in the zone, overlay or other provision;
- The effect on the amenity of the area;
- The effect the proposal may have on the orderly planning of the area;
- The amenity of the area, proximity to public land;
- The suitability of the land for subdivision;
- The existing use and possible future development of the land; and
- Traffic and road safety impacts.

As discussed the application aligns with Planning Policy Framework and the purpose of the Zone to provide for and protect agricultural activities where appropriately located in the Green Wedge.

The dog breeding operation has been carried out albeit without a planning permit with limited amenity impacts in the past 18 months. The proposed permit conditions are expected to result in compliance with noise levels and are not expected to reduce the amenity of the surrounding sensitive uses.

Therefore, it is considered that the application is consistent with the decision guidelines of all applicable planning controls.

Conclusion

The proposed use and development is consistent with the requirements of the Cardinia Planning Scheme and based on the assessment above it is not considered that the proposal will not cause any unreasonable detriment to adjoining properties. It is therefore recommended that a Notice of Decision to Grant Planning Permit T210005 be issued for the use and development of the land for Domestic Animal Husbandry (Dog Breeding) at L1 TP310627, 150 Settlement Road, Caldermeade VIC 3984

subject to the following conditions:

Conditions

1. Before the use and development starts, plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and an electronic copy must be provided. The plans must show:

- a) An amended site plan showing a two (2) metre wide landscaping strip between the boundary and dog exercise yard;
- b) A landscaping plan of the landscaping strip showing species and planting density to Council's satisfaction;
- c) Amended elevations of the proposed kennel building showing a maximum height of 4.5 metres;
- d) Amended fencing design of the dog exercise yard to comply with Melbourne Water's condition 20;
- e) Detailed construction plans of the proposed kennels showing acoustic materials utilised to ensure compliance with the Environment Protection Regulations 2021 and relevant Environment Reference Standards relating to noise generated by rural industry;
- f) That the building design has been certified by a qualified member of the Association of Australian Acoustical Consultants or the Australian Acoustics Society which confirms that the buildings design and fenced external exercise yards will comply with the relevant Environment Protection Regulations 2021;
- g) A detailed kennel plan to show:
 - i. Provision for visitors and staff to have access to hot and cold hand washing facilities on site.
 - ii. One-third of animal pens to be weatherproof with a raised bed.
 - iii. Pens to be a minimum size of 10sqm with a minimum dimension of 1.8 metres by 1.8 metres.
 - iv. Pens to be separated by solid partitions, galvanised wire or weld mesh.
 - v. All pens constructed with concrete floors.
 - vi. A separate mating area that is physically separate from other animals.
 - vii. An isolation area which must have impervious barriers or 10 metres away from other animals.
- h) A Land/Animal Management Plan to show:
 - i. How effluent disposal will be managed, which may include:
 - Until the Responsible Authority is satisfied that water supply and waste treatment facilities can operate effectively under full load conditions, all dog faeces must be collected at least once a day, and then be stored in an appropriate compost installation for periodic disposal to the satisfaction of the Responsible Authority.
 - Liquid waste including dog urine and wash down water from the Domestic Animal Husbandry use must be disposed of on the subject land via an EPA approved treatment plant.
 - ii. How drainage and stormwater will be managed, including:
 - No polluted stormwater must be discharged directly or indirectly into the drainage easement (E-1) which runs perpendicular to the southern boundary to the subject site or otherwise cross the boundaries of the subject site;
 - iii. Safety measures to be actioned in the event of flood, bushfire or other emergency.
 - iv. How the animals will be supervised.

- v. How animals will be prevented from escaping, including construction details for the perimeter fencing that ensures that dogs are not able to dig below that fence or jump a fence and escape.

Use:

2. The use as shown on the endorsed plan/s must not be altered without the written consent of the Responsible Authority.
3. No more than fifteen (15) dogs may be kept on the property at any one time. This includes:
 - d) No more than nine (9) fertile female dogs (entire female 12 months or older);
 - e) No more than three (3) entire males; and
 - f) Any dog sixteen (16) weeks or older.
4. All dogs kept at the property over twelve (12) weeks of age must be registered with Cardinia Shire Council.

Compliance:

5. The permit holder must remain a member of any applicable organisation (required by legislation) as well as remain compliant with all other relevant legislation and codes of practice at all times.
6. Compliance must be maintained at all times (as appropriate to each individual activity) with the following documents/ legislation (and if there is a conflict between any document and the permit or between documents, the more restrictive provision must apply) to the satisfaction of the Responsible Authority:
 - a) The Land/ Animal Management Plan as approved under this permit.
 - b) *Environment Protection Regulations 2021* and relevant Environment Reference Standards relating to noise generated by rural industry.
 - c) Any other relevant legislation and codes of practice.
7. At all times during the operation of the use hereby approved, the following requirements must be met to the satisfaction of the Responsible Authority:
 - a. A responsible person must be present on the site at all times when dogs are present and reasonably available 24 hours per day.
 - b. The dogs must not leave the subject land unless in the company of an owner, trainer or responsible person and be appropriately restrained by a rope, cord or leash and/or in a vehicle from which they are unable to escape.
 - c. The dogs must not be allowed within the subject land outside the enclosures shown on the endorsed plans unless in the company of an owner, trainer or responsible person and be appropriately restrained by a rope, cord or leash and/or under the effective control of an owner, trainer or responsible person.
 - d. Unless with the prior written consent of the responsible authority, feeding of the dogs must only occur within the day time hours of 6.00 am to 6.00 pm and any exercise of dogs outside the fenced enclosure must only occur between the hours of 7.00am and 5.00pm, or unless in unforeseen circumstances whereby the dogs would otherwise go unfed or exercised to the satisfaction of the responsible authority. The permit holder or nominated responsible person must document any such unforeseen circumstances in writing, with times, dates and reasons.
 - e. All deliveries and collections, including of dogs and waste associated with the Domestic Animal Husbandry (Dog Breeding) Facility must occur between 7.00

am and 6.00 pm unless with the prior written consent of the responsible authority.

- f. The buildings and works hereby approved must be maintained so that dogs are enclosed at all times and so that buildings and works continues to be visually screen stimuli such as other animals and traffic.

Amenity:

8. Waste products from the proposed animals must be stored and disposed of in a manner that minimises odour and littering issues. Waste products from the animals cannot be disposed of in a domestic septic tank system.
9. Offensive odours must not be discharged beyond the boundaries of the premises.
10. Noise emitted from the premises must not exceed the recommended levels as set out in *Environment Protection Regulations 2021* and relevant Environment Reference Standards relating to noise generated by rural industry or as amended).
11. All feed is to be stored in vermin-proof structures to the satisfaction of the Responsible Authority
12. The use must be managed to the satisfaction of the responsible authority so that the amenity of the area is not detrimentally affected, through the:
 - a) Transport of materials, goods or commodities to or from the land.
 - b) Appearance of any building, works or materials.
 - c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash dust, waste water, waste products, grit or oil.
 - d) Presence of vermin.
 - e) Or in any other way.

Development:

13. The layout of the site and the size of the proposed buildings and works, as shown on the approved plan/s, must not be altered or modified without the consent in writing of the Responsible Authority
14. Once the development has commenced, it must be continued and completed to the satisfaction of the Responsible Authority.
15. The exterior colour and cladding of the kennels must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the outbuilding must be of a non-reflective nature in accordance with the endorsed plans.
16. All stormwater must be conveyed by means of drains to satisfactory points or areas of discharge approved by the Responsible Authority, so that it will have no detrimental effect on the environment or adjoining property owners.
17. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
18. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.

Melbourne Water:

19. The Building be constructed with finished floor levels set 900mm above natural surface levels.
20. All open space within the property (including setbacks) must be set at existing natural surface level so as not to obstruct the passage of overland flows.

21. Any new fencing/gates must be of an open style of construction (minimum 50% open) to allow for the passage of overland flows.
22. No fill outside of the proposed building footprint except for minimal ramping into the building kennels.
23. Prior to the commencement of works, a separate application direct to Melbourne Water (Asset Services Team) must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

Expiry:

24. A permit for the development and use of land expires if—
 - a) the development does not start within **two (2) years** after the issue of this permit; or
 - b) the development is not completed within **four (4) years** after the issue of this permit; or
 - c) the use does not start within **two (2) years** after the completion of the development; or
 - d) the use is discontinued for a period of **two (2) years**.

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

Notes:

- A Building Permit may be required for this development. To obtain a building permit you must contact a Registered Building Surveyor.
- The permit holder must hold a current Domestic Animal Business permit for Dog Breeding with the relevant Council.
- The permit holder must maintain a membership with an applicable organisation.

Advice

To access more information regarding other services or online applications that Melbourne Water offers please visit our website at <http://www.melbournewater.com.au/Planning-and-building/Pages/planning-and-building.aspx>.

Resolution

Moved Cr Kaye Cameron, seconded Cr Carol Ryan.

That Planning Permit Application T210005 for the use and development of the land for Domestic Animal Husbandry (Dog Breeding) at L1 TP310627, 150 Settlement Road, Caldermeade VIC 3984, be refused and a Refusal to Grant a Permit be issued on the following grounds:

- The proposal is inconsistent with the purpose and decision guidelines of the Rural Conservation Zone.
- The proposal is inappropriately located within a flood prone area and is contrary to the purposes, objectives and strategies of the Land Subject to Inundation Overlay and Clauses 13.03-1S (Floodplain management) and 21.02-1 (Catchment and coastal management).
- The proposal is incompatible with surrounding land uses.
- The proposal does not respond to the vision or objectives for the Westernport Green Wedge.
- The proposal will result in unreasonable off-site amenity impacts.
- The proposal does not represent the orderly planning of the area.

Carried

5.3 T200808 PA - Extensions & partial demolition to a Heritage Hotel, use of the land for a Gaming Premises, 40 EGMs & a Function Centre, parking reduction, alter access to a RDZ1, increase area & patrons for liquor at 96-102 Station St, Koo Wee Rup

Responsible GM: Luke Connell
Author: Evie McGauley-Kennedy

Recommendation(s)

That Council refuse the application for alterations and extensions and partial demolition to an existing Hotel in a Heritage Overlay, the use of the land for a Gaming Premises and use of 40 Electronic Gaming Machines (EGMs), use of the land for a Function Centre, a reduction in car parking, alterations to access to a Road Zone Category 1, an increase to the area for the sale and consumption of liquor and an increase to the number of patrons allowed under a licence on the following grounds:

1. The proposal is inconsistent with Clause 21.06-4 (Gaming) and Clause 22.03 (Gaming);
2. The proposal is inconsistent with the purpose and decision guidelines of Clause 52.28 (Gaming);
3. The proposal is inconsistent with Clause 18.02-4 (Car parking) and Clause 52.06 (Car parking) as it fails to provide adequate on-site car parking;
4. The proposal does not result in net community benefit; and
5. The proposal does not represent the orderly planning of the area.

Attachments

1. Locality Map [5.3.1 - 1 page]
2. Application Documents [5.3.2 - 248 pages]
3. CONFIDENTIAL - Copy of Objections - Circulated to Councillors only [5.3.3 - 28 pages]

Executive Summary

APPLICATION NO.:	T200808
APPLICANT:	NBA Group Pty Ltd
LAND:	96-102 Station St, Koo Wee Rup
PROPOSAL:	Alterations and extensions and partial demolition to an existing Hotel in a Heritage Overlay, the use of the land for a Gaming Premises and use of 40 Electronic Gaming Machines (EGMs), use of the land for a Function Centre, a reduction in car parking, alterations to access to a Road Zone Category 1, an increase to the area for the sale and consumption of liquor and an

	increase to the number of patrons allowed under a licence.
PLANNING CONTROLS:	<p>Zone:</p> <ul style="list-style-type: none"> • Mixed Use Zone • Land adjacent to a Road Zone Category 1 <p>Overlays:</p> <ul style="list-style-type: none"> • Heritage Overlay – Schedule 269 (Royal Hotel) • Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	<p>Pursuant to Section 52 of the Planning and Environment Act 1987, the application was advertised by the placing of a sign on site, notices in the mail to adjoining and nearby property owners and a notice in the newspaper.</p> <p>Twenty-one (21) objections have been received to date.</p>
KEY PLANNING CONSIDERATIONS:	<p>Heritage Gaming Traffic Car parking Noise Social and economic benefits Licensed premises</p>
RECOMMENDATION:	That the application be refused on the grounds stated in this report

Background

The application as described above is being proposed for the site known as the Royal Hotel in Koo Wee Rup. The establishment was constructed by A. Oliver and was opened in September 1915. It is located at 96-102 Station St, Koo Wee Rup and is covered by Heritage Overlay 269.

According to Cardinia Shire's Heritage Study 2011 (revised 2015), the Royal Hotel at Koo Wee Rup is a two-storey parapeted Edwardian Freestyle red brick and stuccoed hotel, strategically set at the corner of Moody Street opposite the Koo Wee Rup railway station.

Distinctive aspects of the design include the large upper level arched porch, facing the railway, with the cement lettering wrapped around the architrave, and the domed caps to the main parapet piers. A Norman tower motif has been angled across the corner of the building but otherwise the upper level is plain with rectangular openings and cemented string moulds.

A verandah and drive-thru bottle shop has been added at the ground level. Otherwise the building is externally very intact.

The site continues to operate as a hotel pursuant to existing use rights, providing a sports bar, TAB and bistro in the original part of the building, as well as a separate drive-thru bottle shop in the later addition to the rear. A car park is located at the rear and side of the building. Live music is occasionally played on weekends.

The upper floor of the hotel once provided approximately fourteen (14) accommodation rooms, however, currently is vacant and unusable.

The venue operates pursuant to a General Liquor License (31912420) allowing for supply of liquor on the licensed premises for consumption on and off the premises.

Conditions on the liquor license include:

- Maximum capacity of 262 patrons;
- Consumption on the premises:
 - Sunday Between 10am and 11pm;
 - Good Friday & Anzac Day between 12 noon and 1am the following morning;
 - On any other day Between 7 am and 1am the following morning except for Good Friday and ANZAC Day mornings.
- Consumption off the premises:
 - Sunday Between 10am and 11pm;
 - Good Friday & Anzac Day between 12 noon and 11pm;
 - On any other day Between 7 am and 11pm.

As the site operates pursuant to existing use rights, apart from the conditions of the liquor license there are no historical planning permits restricting the hours of operation or the number of patrons permitted on the premises.

The hotel is both historically and aesthetically significant to Cardinia Shire Council.

According to the Heritage Study, historically, the Royal Hotel is significant as an illustration of the growth of Koo Wee Rup in the early decades of the twentieth century. It has been one of the major social centres in Koo Wee Rup since 1915 and associated with popular figures in the town, Denis & Alice McNamara. Its location, opposite the railway station is evocative of the dependence of train travel in this town and the hotel is the most prominent within this early commercial centre which stretches from the station to the south.

Aesthetically, the Royal Hotel is significant as one of the finest examples of Edwardian hotel design in the Gippsland Region. It is notable for its high degree of external intactness and fine detailing. It is a prominent local landmark within Koo Wee Rup and an important element within the historic Station Street precinct.

An application (Planning Permit T950377) for alteration and extension to the existing hotel, including gaming facilities was approved on 22 August 1995, however the gaming aspect of this permit was never acted upon and the permission has since lapsed.

According to the Officer Report prepared for the proposal, the application did not specify the number of gaming machines but did set aside a space for a 'gaming room' which measured 54m².

Subject Site

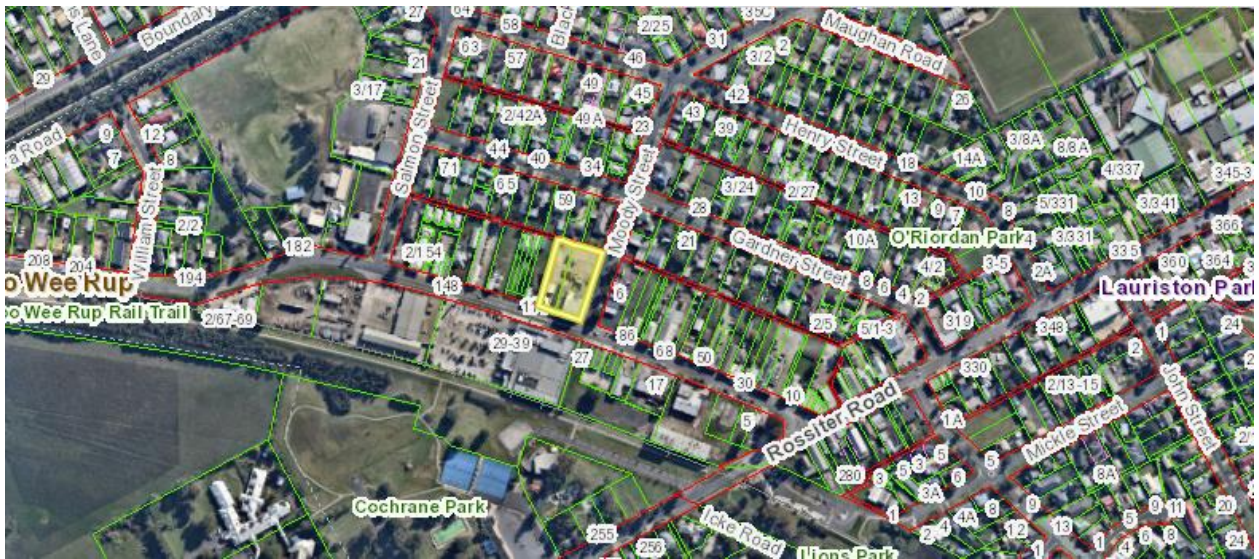


Figure 1: Subject site and surrounds

The subject site is located on the north side of Station Street, on the western corner with Moody Street. It is located at the western end of Koo Wee Rup's town centre and is adjacent to Koo Wee Rup's strip shopping centre as defined in the Schedule to Clause 52.28 (Gaming).

The site is developed with the hotel building and an adjoining car park to the side and rear. Vehicle access is gained via two (2) existing crossovers on Moody Street, and one (1) crossover to Station Street.

It is located in an area of mixed uses, including the strip shopping centre to the east (located in the Commercial 1 Zone), a variety of take-away food premises and dwellings located to the west, an established residential area to the north, and a supermarket located across Station Street to the south.

Within the vicinity of the site there are also two (2) schools (St. John the Baptist Primary School and Koo Wee Rup Primary School).

There are no restrictions or agreements registered on title.

The site is not affected by Aboriginal Cultural Heritage sensitivity.



Figure 2: Subject site (latest NearMap imagery)

Relevance to Council Plan

1.1 We empower our communities to be healthy, connected and resilient

1.1.4 Facilitate a partnership approach to create safer communities.

Permit/ Site History

The history of subject property includes:

- Planning Permit T950377 which was issued under the Cranbourne Planning Scheme for alterations and extensions to an existing hotel including gaming facilities on 22 August 1995.
- - The gaming facilities aspect of this permit was not acted on and has since expired.
- Planning Permit T980217 was issued on 29 April 1998 for the use and development of the land for the purpose of a store generally in accordance with the approved plans.
- Planning Permit T160821 was issued for an increase in the area that liquor is to be consumed for an existing licensed premises.
- An application under section 3.3.4(1) of the *Gambling Regulation Act, 2003* for the approval of a premises (Royal Hotel Koo Wee Rup) as suitable for gaming with forty (40) electronic gaming machines was refused by the Victorian Commission for Gambling and Liquor Regulation on 30 April 2021.

Proposal

Approval is sought for the following:

- Alterations, extensions and partial demolition to an existing Hotel in a Heritage Overlay;
- The use of the land for a Gaming Premises and the installation and use of 40 Electronic Gaming Machines (EGMs);
- The use of the land for a Function Centre;
- A reduction in car parking;
- Alterations to access to a Road Zone Category 1; and
- An increase to the area for the sale and consumption of liquor and an increase to the number of patrons allowed under a licence.

Alterations, extensions, and partial demolition of the heritage hotel

The alteration works involve extensive internal building works to introduce a café and community hub on the ground floor and multi-use (dividable) function rooms on the upper level.

These works will see the removal of some internal walls and the construction of new internal walls to rearrange the space.

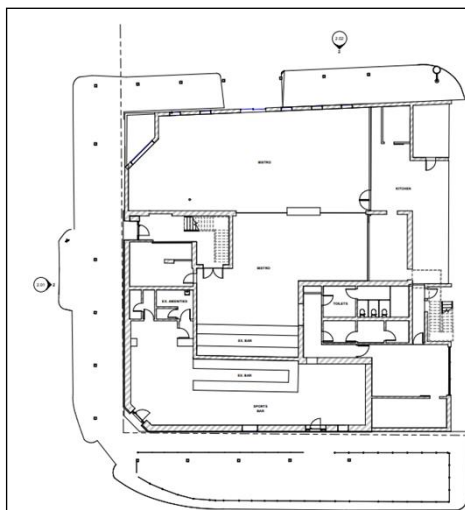


Figure 3: Existing ground floor plan

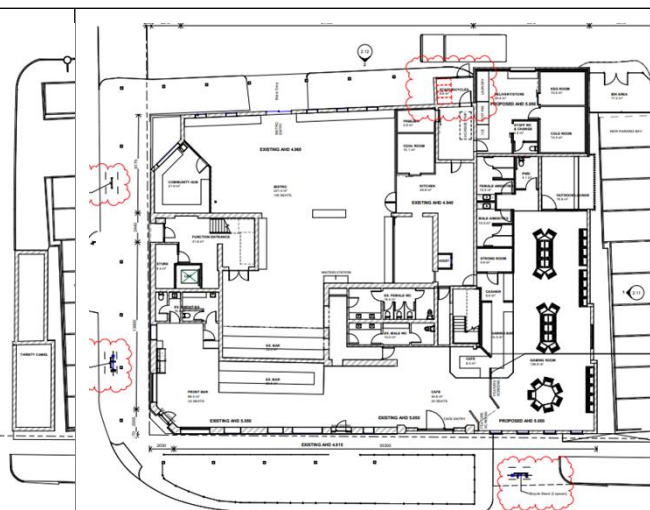


Figure 4: Proposed ground floor plan

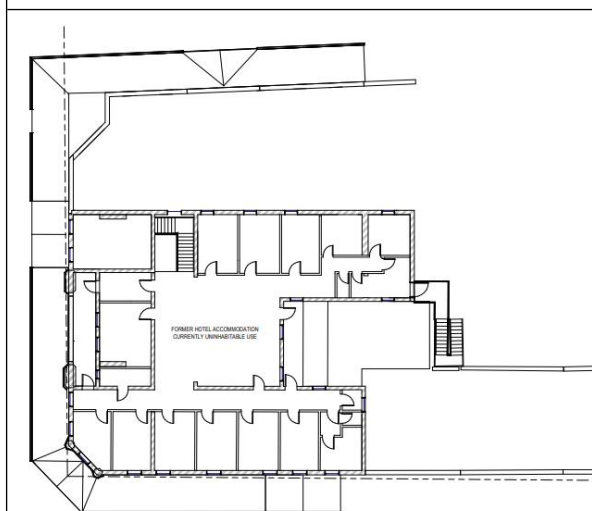


Figure 5: Existing upper floor plan

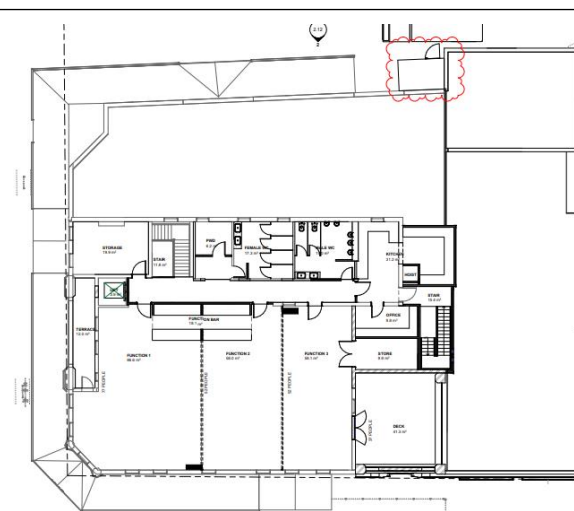
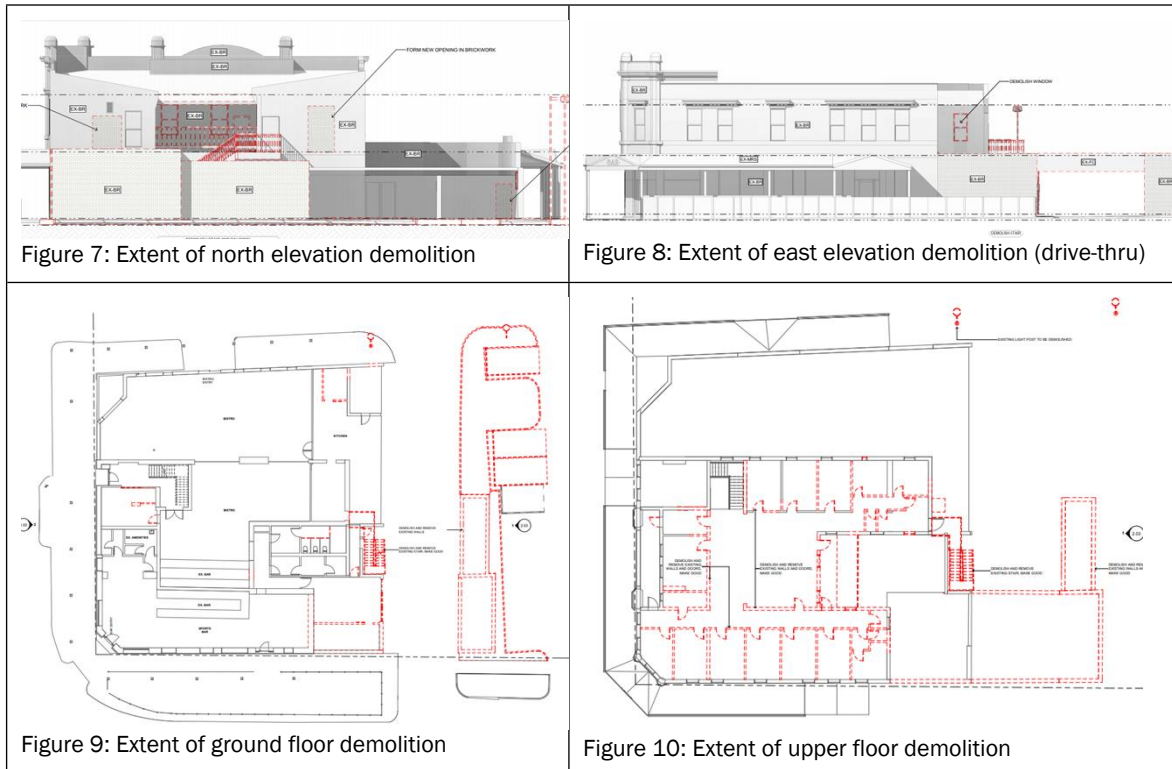


Figure 6: Proposed upper floor plan

The partial demolition works will involve the demolition of the existing drive-thru bottle shop and other parts of the rear façade to incorporate a Gaming Room and part of the proposed café area at ground floor level and the introduction of a balcony for the function rooms at the upper floor level.

The drive-thru bottle shop is not original to the building and appears to have been constructed sometime in the late 1990s as part of Planning Permits T950337 and T980217.

The extent of the proposed demolition works is shown in the red dotted outline in the figures below.



The proposed additions for the Gaming Room and part of the cafe are proposed to be constructed in the footprint of the drive-thru to the rear of the building. These works are proposed in a sympathetic style consistent with the Edwardian era building.

The extension will be constructed with brick, and will incorporate an arched entrance way, a nod to the design of the front façade of the building. The upper floor extension (balcony) will also be constructed in the same style and will remain open on the north and east sides of the building. It will not exceed the existing height of the original building.

The café and community hub areas are considered ancillary to the hotel, and therefore the use has not been considered. The café area is proposed to have a capacity of 20 seats.



Figure 11: 3D renders of the proposed additions to the rear of the building

Use of the land for a Gaming Premises and the installation and use of 40 Electronic Gaming Machines (EGMs)

A portion of the proposed buildings and works described above are proposed to facilitate the proposed use of the land for 40 Electronic Gaming Machines (EGMs).

The applicant proposes that the gaming lounge and EGMs will be open during the hours that the hotel is open (with the exception of the bistro which closes earlier). Currently, the hotel is open between:

- 7am and 1am (the next day) – Monday to Saturday
- 10am and 11pm – Sundays
- 12 noon and 1am - ANZAC Day and Good Friday

The hours of operation are not proposed to change as part of this application.

The EGMs will occupy 18 percent of the gaming floor area and the location of the gaming room is towards the rear of the building and will be accessed off Moody Street, via the cafe, where it will not be highly visible to the main street (Station Street).

The location of the gaming room is proposed at the rear to make access to the gaming lounge inconvenient from other areas of the hotel.

The applicant contends that the proposed gaming lounge has been designed to meet best practice Responsible Service of Gaming (RSG) and will promote responsible gambling, with appropriate anti-gambling material and access to gambler's help.

It is proposed that the Hotel will implement a Responsible Service of Gaming practice, with a Code of Conduct manual prepared by Leigh Barrett & Associates. All staff in the gaming lounge will be suitably RSG qualified.

Ongoing audits and training will be overseen by Leigh Barrett & Associates (incorporating Sommers Elite Training).

Use of the land for a Function Centre (upstairs)

The alterations and additions to the upper floor area proposed to facilitate the use of the land for a function centre, in addition to the current operations of the hotel. As the hotel has not had a function centre or room in operation in the 15 years prior to this application, the use must be considered.

The alterations to the upper floor level will include the construction of three (3) function rooms (that can be partitioned), toilet amenities, a 'back of house' office and storage area, kitchen, bar and outdoor deck/ balcony to the rear.

The upstairs function area is proposed to allow the hotel to expand its entertainment options and provide a space for the community to use.

It is proposed to operate during the same hours of the Hotel and is proposed to accommodate up to 150 patrons according to the Traffic Assessment provided.

Alterations to access to a Road Zone Category 1

Although the vehicle access points remain unchanged, the inclusion of the two (2) new uses have the potential to increase the traffic onto Station Street which is a road under the management of the Department of Transport.

The Traffic Assessment prepared in support of the application suggests that significant additional vehicle movements generated by the site are likely to occur as a result of the introduction of the Function Centre use due to the increase in patronage.

Although peak use of this space is likely to occur in the evenings (late in the week and weekends), the new use is considered to intensify access (by traffic volumes) to Station Street (RDZ1).

Licensed premises

Due to the increase in floor area (function room and gaming room), the applicant is also seeking an increase in the red line area to increase the areas for the sale and consumption of liquor.

A new red line plan for the gaming room and upstairs function room has been provided with the application.

Although the hotel does not have a limit on the number of patrons due to it operating under existing use rights, the hotel's liquor license does currently stipulate the number of patrons allowed on site at any one time.

Currently the liquor license allows for a maximum capacity of 262 patrons. The applicant intends to apply for a new license to increase the maximum capacity of the venue (across the two floors) to 400 patrons.

The applicant forecasts that the proposal will generate 14 new jobs within the Koo Wee Rup community.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- Mixed Use Zone
- Adjacent to a Road Zone Category 1

Overlays

The land is subject to the following overlays:

- Heritage Overlay - Schedule 269 (Royal Hotel Koo Wee Rup)
- Land Subject to Inundation Overlay

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 – Settlement
 - Clause 11.01-1S – Settlement
 - Clause 11.03-1S – Activity centres
- Clause 13 – Environmental Risks and Amenity
 - Clause 13.03-1S – Floodplain management
 - Clause 13.05-1S – Noise abatement
- Clause 15 – Built environment and Heritage
 - Clause 15.01-1S – Urban design
 - Clause 15.01-2S - Building design
 - Clause 15.01-1S – Neighbourhood character
 - Clause 15.01-6S - Design for rural areas
 - Clause 15.03-1S – Heritage conservation
- Clause 17 – Economic development
 - Clause 17.01-1S – Diversified economy
 - Clause 17.02-1S - Business
- Clause 18 – Transport
 - Clause 18.02-3S – Road system

- Clause 18.02-4S – Car parking
- Clause 19 – Infrastructure
 - Clause 19.02-3S – Cultural facilities
 - Clause 19.02-4S – Social and cultural infrastructure

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 – Cardinia Shire Key Issues and Strategic Vision
- Clause 21.02-1 – Catchment and coastal management
- Clause 21.03-4 – Rural townships (Koo Wee Rup)
- Clause 21.02-6 – Post contact heritage
- Clause 21.04-1 – Employment
- Clause 21.05-6 – Community services and facilities
- Clause 21.06-4 – Gaming
- Clause 21.08-3 – Local Areas – Western Port Region (Koo Wee Rup)
- Clause 22.03 – Gaming

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 – Car Parking
- Clause 52.27 – Licensed Premises
- Clause 52.28 – Gaming
- Clause 52.29 – Land Adjacent to a Road Zone Category 1
- Clause 52.34 – Bicycle facilities
- Clause 63 – Existing use rights
- Clause 65 – Decision guidelines
- Clause 66 – Referral and notice provisions
- Cardinia Shire Heritage Study 2011 (revised 2015) – Koo Wee Rup – Royal Hotel (H0269)
- Cardinia Township Character Assessment – Garfield, Bunyip, Koo Wee Rup and Lang Lang, November 2006.
- Koo Wee Rup Township Strategy, October 2015.
- Cardinia Shire Gaming Policy Review (December 2015), 10 Consulting Group Pty Ltd.

Planning Permit Triggers

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.04-1 (MUZ) a planning permit is required to use the land for a Function Centre and Gaming Premises.
- Pursuant to Clause 32.04-9 (MUZ) a planning permit is required to construct or carry out works associated with a Section 2 Use (Function Centre and Gaming Premises).

- Pursuant to Clause 43.01-1 (H0269) a planning permit is required to demolish (part demolition) and construct and carry out works on a Heritage listed building.
- Pursuant to Clause 44.04-2 (LSIO) a planning permit is required to construct or carry out works.
- Pursuant to Clause 52.06 (Car parking) a planning permit is required to reduce or waiver the number of car spaces required.
- Pursuant to Clause 52.27 (Licenced premises) a planning permit is required to alter the number of patrons under a licensed to be increased and increase the area where liquor is allowed to be consumed or supplied.
- Pursuant to Clause 52.28-3 (Gaming) a planning permit is required to install or use a gaming machine.
- Pursuant to Clause 52.29 (RDZ1) a planning permit is required to alter access 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 and nearby land.
- Placing a sign on site.
- Placing an advertisement in the local newspaper.

The notification has been carried out correctly, and the statutory declaration has been submitted to Council on 1 June 2021. The application was placed in the Pakenham Gazette on 5 May 2021.

Council has received twenty-one (21) objections to date.

The main concerns raised by the objections are:

- Electronic gaming's detrimental social and economic impacts within a small, rural community (i.e. gambling-related harm)
- Exacerbation of mental health, social and family problems associated with gambling addiction (also referred to as problem gambling)
- Financial stress caused by gambling-related harm
- Electronic gaming is likely to have a further negative effect on an already vulnerable and disadvantaged community
- Inappropriate location of EGMs within easy access of the shopping strip and supermarket where most residents have to shop
- Past negative experiences with EGMs
- EGMs will ruin the character of the Pub/ Hotel

- There are venues close by already with EGMs available for those wanting to participate in electronic gaming
- Reduction in carparking and issues this may cause for surrounding residences and businesses (including CFA on when all firefighters are called out – i.e. bushfires)
- Increased area for the sale and consumption of liquor
- Increased crime and violence and no permanent police presence within the Township
- Emergency access from the first floor

Only one (1) objection raised concerns about:

- Noise from additional patrons

Only one (1) objection raised concerns about:

- Alterations to the heritage building and removal of upstairs accommodation will detrimentally affect the heritage significance of the Hotel

It should also be noted, that many of the objections did not raise any issues with the proposed upgrades, extensions and inclusion of a Function Centre use to the Hotel, with many objectors writing that they support this aspect of the proposal as potentially having a positive contribution to the local community.

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	Department of Transport [Determining]	No objection (no conditions)
	Melbourne Water [Determining]	No objection (subject to conditions)
Section 52 Notices	N/A	

Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Heritage	Generally supportive of the proposed extensions and partial demolition to the heritage building.

Strategic Planning	Does not support the proposal due to inconsistencies with Council's Local Planning Policies (Clause 21.06-4 - Gaming and Clause 22.03 - Gaming).
Social and Community Planning	Does not support the proposal due to the socio-economic impacts of introducing gaming into the township.
Urban Design	Generally supportive of the design of extensions. Suggested that a use of a more modern approach to the proposed gaming room extension (in terms of materiality) to differentiate between heritage and new could be explored.
Traffic	Does not support the proposal due to insufficient car parking provision for the increase in patronage.
Engineering	Supportive of the application (buildings and works). No conditions.

Discussion

The proposal for alterations, extensions and partial demolition of the heritage hotel to accommodate the use of the land for a function centre, increase the area used for and the number of patrons supplied the sale and consumption of liquor and the ancillary community hub and café is considered generally consistent with the aims and objectives of the objectives of the Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, as well as the zones and overlays which apply to the subject site as discussed below.

However, the proposed use of the land for a Gaming Premises and the installation and use of 40 EGMs, along with the car parking reduction sought is considered inconsistent with the objectives of the Cardinia Planning Scheme and does not constitute an orderly planning outcome.

Although the planning scheme facilitates the generation of local jobs, supports proposals which will enhance entertainment and recreational venues – especially within small or rural townships – and supports the development and use of heritage buildings when done sympathetically and whilst preserving the heritage character of significant buildings, it does not support the establishment of gaming venues in unsuitable locations or venues.

The proposed introduction of gaming into the existing Hotel venue within Koo Wee Rup is not considered to accord with both state and local planning policy aimed at directing gaming venues to establish in appropriate locations and venues.

Planning Policy Framework (PPF) and Municipal Planning Strategy (MPS)

A number of state and local policies are relevant to this application that protect the community from gaming-related harm, ensure that uses are compatible with the existing uses in the area, as well as ensure that licenced premises are appropriately managed, adequate car parking is provided and that buildings and works on a heritage building do not detrimentally impact the heritage fabric or significance of the site.

Clause 11.01-1S (Settlement) seeks to promote the sustainable growth and development of Victoria through strategies such as creating and reinforcing settlement boundaries, ensuring that facilities such as community facilities are concentrated in central locations and ensure that land that may be required for future urban expansion is not compromised.

Clause 11.03-1S (Activity centres) seeks to encourage the concentration of major retail, residential, commercial, administrative, entertainment and cultural developments into activity centres that are highly accessible to the community. Clause 11.03-1S has a particular focus on support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies and improving the social, economic and environmental performance and amenity of activity centres. Strategic planning policy (Clause 22.03 - Gaming) for the use and development of land in and around this activity centre (Koo Wee Rup Town Centre) does not encourage EGMs venues to be established within this area.

Clause 13.03-1S (Floodplain management) seeks to protect life, property and community infrastructure from flood hazard, flood storage functionality and natural flood carrying and storage capacity.

Clause 13.05-1S (Noise abatement) seeks to assist the control of noise effects on sensitive land uses.

Clause 13.07-1S (Land use compatibility) seeks to protect community amenity, human health and safety, while facilitating appropriate commercial, industrial, infrastructure and other uses with potential adverse off-site amenity impacts by ensuring that uses and development is compatible with adjoining or nearby land uses and protecting existing commercial, industrial and other uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

Clause 15.01-1S (Urban design) seeks to create urban environments that are safe, healthy, functional and enjoyable and that contribute to a sense of place and cultural identity.

Clause 15.01-2S (Building design) seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm.

Clause 15.01-5S (Neighbourhood character) seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Clause 15.01-6S (Design for rural areas) seeks to ensure development respects valued areas of rural character.

Clause 15.03-1S (Heritage conservation) seeks to ensure the conservation of places of heritage significance, by encouraging appropriate development that respects places with identified heritage values, encouraging restoration and retaining those elements which are of importance.

Clause 17.01-1S (Diversified economy) seeks to strengthen and diversify the economy and support rural economies to grow and diversify.

Clause 17.02-1S (Business) seeks to encourage development that meets the community's needs for retail, entertainment, office and other commercial services by ensuring commercial facilities are aggregated and provide net community benefit in relation to their viability, accessibility and efficient use of infrastructure.

Clause 18.02-3S (Road system) seeks to manage the road system to achieve integration, choice and balance by developing an efficient and safe network and making the most of existing infrastructure.

Clause 18.02-4 (Car parking) seeks to ensure an adequate supply of car parking that is appropriately designed and located.

Clause 19 (Infrastructure) ensures that planning for development of social and physical infrastructure should enable it to be provided in a way that is efficient, equitable, accessible and timely.

Clause 19.02-3S (Cultural facilities) seeks to develop a strong cultural environment and increase access to the arts, recreation and other cultural facilities by encouraging a wider range of arts, cultural and entertainment facilities including cinemas, restaurants, nightclubs and live theatres in the Central City and at Metropolitan Activity Centres

Clause 19.02-4S (Social and cultural infrastructure) seeks to provide fairer distribution of and access to social and cultural infrastructure by encouraging the location of social and cultural infrastructure to activity centres.

Clause 21.01 (Cardinia Shire Key Issues and Strategic Vision) outlines the key issues facing Cardinia include the management of growth including urban pressures on areas such as the Westernport Green Wedge, and the provision of infrastructure to meet the needs of the existing and future community.

Clause 21.02-1 (Catchment and coastal management) seeks the protection of floodplains and development on them.

Clause 21.02-6 (Post-contact heritage) recognises the rich and diverse cultural heritage of Cardinia Shire illustrates the historic use, development and occupation of the land. This history is demonstrated by a wide range of heritage places that include buildings and structures, monuments, trees, landscapes and archaeological sites. These places give Cardinia a sense of historic continuity as well as demonstrating the economic, social and political circumstances of the time and this policy seeks to protect and preserve these recognised sites by including them into the Heritage Overlay.

Clause 21.03-4 (Rural townships) seeks to retain and enhance the existing rural township character in Cardinia Shire's rural townships (including Koo Wee Rup) by maintaining and promoting the overall historic character within each township.

Clause 21.04-1 (Employment) supports the development and enhancement of economically sustainable businesses within the municipality including within rural townships.

Clause 21.05-6 (Community services and facilities) recognises the need to provide and cater for community facilities for all members of the community in appropriate locations.

Clause 21.08-3 – (Local Areas – Western Port Region - Koo Wee Rup) seeks to ensure 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.

Of particular importance to this proposal are Clauses 21.06-4 (Gaming) and Clause 22.03 (Gaming).

Clause 21.06-4 (Gaming) identifies that Cardinia Shire Council is committed to minimising the negative impacts of gaming on the community by ensuring that gaming machines are only located within venues that are appropriately located and have appropriate venue characteristics. It seeks to:

- Avoiding problem gambling and convenience gambling.
- Locating gaming machines away from communities vulnerable to problem gambling.
- Achieving social and economic benefits in the location and re-location of gaming machines.
- Avoiding establishment of gaming machines in the growth area ahead of sufficient population growth.
- Recognising the need to protect the rural townships in the municipality from the negative impacts of gaming.

Clause 22.03 (Gaming) applies to all applications which require a permit to install or use a gaming machine or use land for the purpose of gaming. It seeks to:

- To discourage new gaming machines in vulnerable or disadvantaged areas.
- To achieve positive social, economic and environmental outcomes in the location and relocation of gaming machines and avoid exacerbating the risk of problem gambling.
- To minimise opportunities for convenience gaming.
- To locate gaming machines where the community has a choice of non-gambling entertainment or recreation activities within the gaming venue and the local area.
- To protect the amenity of areas surrounding gaming venues.

It also sets out appropriate areas and venues in which gaming machines should be located within Cardinia Shire, as well as setting out application requirements and decision guidelines for any application to be made to Council. It also references the *Cardinia Shire Gaming Policy Review (December 2015)*, 10 Consulting Group Pty Ltd.

Aspects of the proposal, including the proposed buildings and works to the heritage building and use of the land for a function centre are considered consistent with both state and local policy outlined above, which seek to protect and enhance places of heritage significance by ensuring that the proposed works and the use are sympathetic to the heritage building and the local context.

Whilst there are currently issues with the provision of car parking for the function room use, which does not align with policies such as Clause 18.02-4 (Car parking) which seeks to ensure an adequate supply of car parking that is appropriately designed and located, this is something that could potentially be resolved with further changes to the proposal (i.e. patron numbers, inclusion of car parking on another site).

However, the proposal to use the land for electronic gaming machines is in conflict with the aims and objectives of the Planning Scheme when it comes to the consideration of applications to establish gaming venues within the Shire, especially with regards to the proposed location of this establishment and the likely net community disbenefit that the proposal will cause to the local community.

Assessment against Zones and Overlays

As discussed, the site is subject to the Mixed Use Zone, the Land Subject to Inundation Overlay and Heritage Overlay (H0269).

Mixed Use Zone

One of the key purposes of the Mixed-Use Zone is to provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality. In this instance the Hotel component of the use operates pursuant to existing use rights (as described above).

However, pursuant to Clause 73.04 (Nesting Diagrams) the land use 'Function Centre' is included in the broader land use definition 'Place of Assembly', whilst the land use 'Gaming Premises' is included in the broader land use definition 'Retail Premises', resulting in both new uses requiring a planning permit pursuant to Clause 32.04-2 (MUZ).

Additionally, the proposed buildings and works trigger a planning permit pursuant to Clause 32.04-9 (Buildings and works associated with a Section 2 Use within the Mixed Use Zone).

The use of the land for Electronic Gaming Machines and Sale and Consumption of Liquor are also regulated by other provisions of the Cardinia Planning Scheme.

Land Subject to Inundation Overlay

The Land Subject to Inundation Overlay (LSIO) identifies areas where a 1 in 100 Year flood or floodplain area determined by a floodplain management authority warrants protection from flood hazards. These measures ensure 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. Pursuant to Clause 44.04-2 (LSIO) a planning permit is required to construct or carry out works.

Heritage Overlay (H0269)

The key purpose of the Heritage Overlay is to conserve and enhance places of natural and cultural significance, as well as elements which contribute to the significance of heritage places. It is also in place to ensure that development does not adversely affect the significance of heritage places.

Pursuant to Clause 43.01-1 (H0269) a planning permit is required to construct a building or construct or carry out works on a Heritage building, including partial demolition.

Consideration of the use of the land for a Gaming Premises and introduction of 40 EGMs to the Hotel

Although a permit (T950377) was once issued for alterations and additions to an existing hotel including gaming facilities, as discussed above, the gaming facilities aspect of this permit was not acted on and has since expired. Therefore, as the existing Hotel does not benefit from any existing use rights for 'Gaming Premises', the introduction of this use must be considered pursuant to the requirements of the Mixed Use Zone, and any other provisions of the Planning Scheme, not Clause 63.05.

In addition to the provisions of the Mixed Use Zone and other planning policy, Council must also consider local planning policy under Clauses 21.06-4 (Gaming) and 22.03 (Gaming) and the particular provision at Clause 52.28 (Gaming) all three of which deal with the standards and requirements to be met in order for a permit to be granted for a Gaming venue and the use of EGMs.

Clause 52.28-3 (Gaming) also introduces a permit trigger for the installation or use of a gaming machine.

The proposed use of the land for a 'Gaming Premises' and the introduction of 40 Electronic Gaming Machines (EGMs) is considered to be an inappropriate proposal for this site because it is inconsistent with a number of planning and Council policies related to appropriate locations and venues for these types of facilities.

Assessment against Clause 52.28 (Gaming)

As discussed, Clause 52.28-3 introduces a permit trigger for the installation or use of a gaming machine. Based on this a planning permit is required pursuant to Clause 52.28-3 for the installation and use of 40 EGMs in this venue.

Council's role in this process is to ensure the social and economic impacts of the location of gaming machines are considered, as well as considering the physical location or venue proposed for the gaming machines is considered.

In order to assess if the location is appropriate or not, Clause 52.28 outlines locations where gaming machines are prohibited, which includes with shopping complexes and strip shopping centres as outlined in the Schedule to the Particular Provision.

In this case, whilst the subject site is not located within a prohibited location (as outlined in the Schedule), it is located directly adjacent to 6 Moody Street and 4-86 Station Street, which are listed as a prohibited strip shopping centre as specified by Clause 52.28-4 and pursuant to Table 2 of the Schedule:

2.0

25/05/2017
VC133

Prohibition of a gaming machine in a strip shopping centre

A gaming machine as specified in Clause 52.28-4 is prohibited in a strip shopping centre specified in Table 2 below.

Table 2

Name of strip shopping centre and locality	Land description
Koo Wee Rup	6 Moody Street 275-319 Rossiter Road (odd numbers) 272-330 Rossiter Road (even numbers) 4-86 Station Street (even numbers)

Figure 12: Table 2 of the Schedule to Clause 52.28

Based on the location of the subject site adjacent to a prohibited location, Council does not consider that the proposed use of the land for EGMs is consistent with the objectives of Clause 52.28 to ensure that gaming machines are situated in appropriate locations and premises.

Further to this, there are currently no EGM venues located within Koo Wee Rup and given that there are no other venues like the Royal Hotel (i.e. pub) within the Township this provides further indication that this site is not suitable to introduce EGMs.

Because of this, the proposal is also considered inconsistent with the decision guidelines of Clause 52.28-9 which ask the Responsible Authority to consider the following:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The compatibility of the proposal with adjoining and nearby land uses.
- The capability of the site to accommodate the proposal.
- Whether the gaming premises provides a full range of hotel facilities or services to patrons or a full range of club facilities or services to members and patrons.

- Any other matters specified in the schedule to this clause.

Assessment against Clause 21.06-4 (Gaming), Clause 22.03 (Gaming) and decision guidelines of Clause 52.28-9 (Gaming)

As discussed above, Clause 21.06-4 (Gaming) identifies that Cardinia Shire Council is committed to minimising the negative impacts of gaming on the community by ensuring that gaming machines are only located within venues that are appropriately located and have appropriate venue characteristics. It seeks to:

- Avoiding problem gambling and convenience gambling.
- Locating gaming machines away from communities vulnerable to problem gambling.
- Achieving social and economic benefits in the location and re-location of gaming machines.
- Avoiding establishment of gaming machines in the growth area ahead of sufficient population growth.
- Recognising the need to protect the rural townships in the municipality from the negative
- impacts of gaming.

Additionally, Clause 22.03 (Gaming) applies to all applications which require a permit to install or use a gaming machine or use land for the purpose of gaming. It seeks to:

- To discourage new gaming machines in vulnerable or disadvantaged areas.
- To achieve positive social, economic and environmental outcomes in the location and relocation of gaming machines and avoid exacerbating the risk of problem gambling.
- To minimise opportunities for convenience gaming.
- To locate gaming machines where the community has a choice of non-gambling entertainment or recreation activities within the gaming venue and the local area.
- To protect the amenity of areas surrounding gaming venues.

It also sets out appropriate areas and venues in which gaming machines should be located within Cardinia Shire, as well as setting out application requirements and decision guidelines for any application to be made to Council. It refers to the *Cardinia Shire Gaming Policy Review (December 2015)*, 10 Consulting Group Pty Ltd to be considered in the decision-making process.

It should be noted that currently, there are no venues within Koo Wee Rup which offer EGMs. The closest venues with electronic gaming are located at Tooradin, Pakenham, Officer and Beaconsfield, all of which are between 11 and 26 kilometres from the Township by car.

The Royal Hotel is also the only hotel or pub within Koo Wee Rup and is within the centre of the town. Introducing EGMs into the Hotel, when there are not already EGMs in Koo Wee Rup, would make EGM gaming significantly more convenient for the community there.

Because of this and based on Council's assessment, the proposed introduction of EGMs to this venue is likely to cause adverse effects to the Koo Wee Rup community as it does not satisfy the above objectives of Clauses 21.06-4 and 22.03.

The proposal does not achieve the objective of either Clause to locate gaming machines away from and discourage new gaming machines in vulnerable or disadvantaged areas, because:

- According to the Index of relative socio-economic disadvantage (SEIFA), 2016, districts, Cardinia Shire (also referenced in the Social and Economic Impact Assessment

commissioned by Council), the Koo Wee Rup Township falls within the third most disadvantaged districts within the Shire.

- In addition, according to ABS statistics, two of the seven SA1 areas (second quintiles most disadvantaged) are within five (5) kilometres of Koo Wee Rup.
- Based on these statistics, Koo Wee Rup is considered a vulnerable township, as well as being disadvantaged, therefore new gaming machines are to be discouraged from establishing within Koo Wee Rup.

The proposal does not achieve the objective of either Clauses to achieve positive social, economic and environmental outcomes in the location and relocation of gaming machines and avoid exacerbating the risk of problem gambling, because:

- According to the Social and Economic Impact Assessment commissioned by Council (prepared by SYMPlan, dated 28 February, 2021), the venues with the highest expenditure per attached EGM entitlement in the period July 2019-December 2020 in Cardinia Shire were the Pakenham Hotel and Cardinia Club, both of which are located in Pakenham.
- Koo Wee Rup has a similar level of socio-economic disadvantage to Pakenham, therefore it is expected that the introduction of EGMs to this venue will result in the exacerbation of problem gambling within Koo Wee Rup, which would otherwise be minimised by the distance required to travel to other nearby venues (Pakenham and Tooradin).

The proposal does not achieve the objective of either Clauses to minimise opportunities for convenience gaming, because:

- The location is opposite a prohibited location for gaming machines which are named so as they are highly trafficked areas where access to gaming is more easily accessible or noticeable. Therefore, this is inconsistent with Clause 22.03-3 which states that gaming venues should not be located on land abutting or adjacent or opposite or nearby to land, which is in a prohibited area specified in the Schedule to Clause 52.28.
- The Royal Hotel is the only pub within the Township and therefore, the exposure to EGMs is increased for patrons who would otherwise not be exposed to EGMs.
- The location is directly opposite a supermarket (the larger/ main supermarket for the Township and surrounds) therefore, is likely to contribute to the convenience of gaming.

In addition, Clause 22.03-3 states that gaming machines should not be located where they are convenient to concentrations of shops, major community facilities or key public transport nodes where large numbers of pedestrians are likely to pass in the course of their daily activities, in townships and small centres where local convenience services are provided and where no or limited alternative attractions are offered or on sites that abut, are adjacent to, or are opposite a strip shopping centre. All of these tests apply to the subject site, further discouraging EGMs from establishing in this location.

The proposal does not achieve the objective of either Clauses to locate gaming machines where the community has a choice of non-gambling entertainment or recreation activities within the gaming venue and the local area, because:

- The Royal Hotel is the only Hotel/ Pub within the Township and the area immediately surrounding the Township.
- Koo Wee Rup is a small Township where there are currently no other venues which offer the same types of services or entertainment as the Royal Hotel (i.e. bistro and large sit-down restaurant, sale and consumption of liquor on-site etc).
- There are no other non-gambling entertainment or recreational activities available within the Township that are open the same hours (evening and night time hours) of the Royal Hotel. In addition, although there are some other non-gambling entertainment or recreational activities available within the Township and surrounds, these are very limited and mainly consist of small take-away restaurants, cafes (that are not open in the evening), sporting clubs and facilities (usually only open for members) and do not include entertainment facilities (i.e. cinemas etc).
- Because the opening hours of the Royal Hotel extend well beyond those of other establishments within the Township, the venue is likely to attract patrons after other venues/ restaurants etc close.

Whilst the Hotel currently provides for a range of facilities and services (unrelated to gaming), because the introduction of EGMs into this facility will result in the only Pub within the Township also providing gaming, there will be no other alternatives provided to members of the community to avoid gaming.

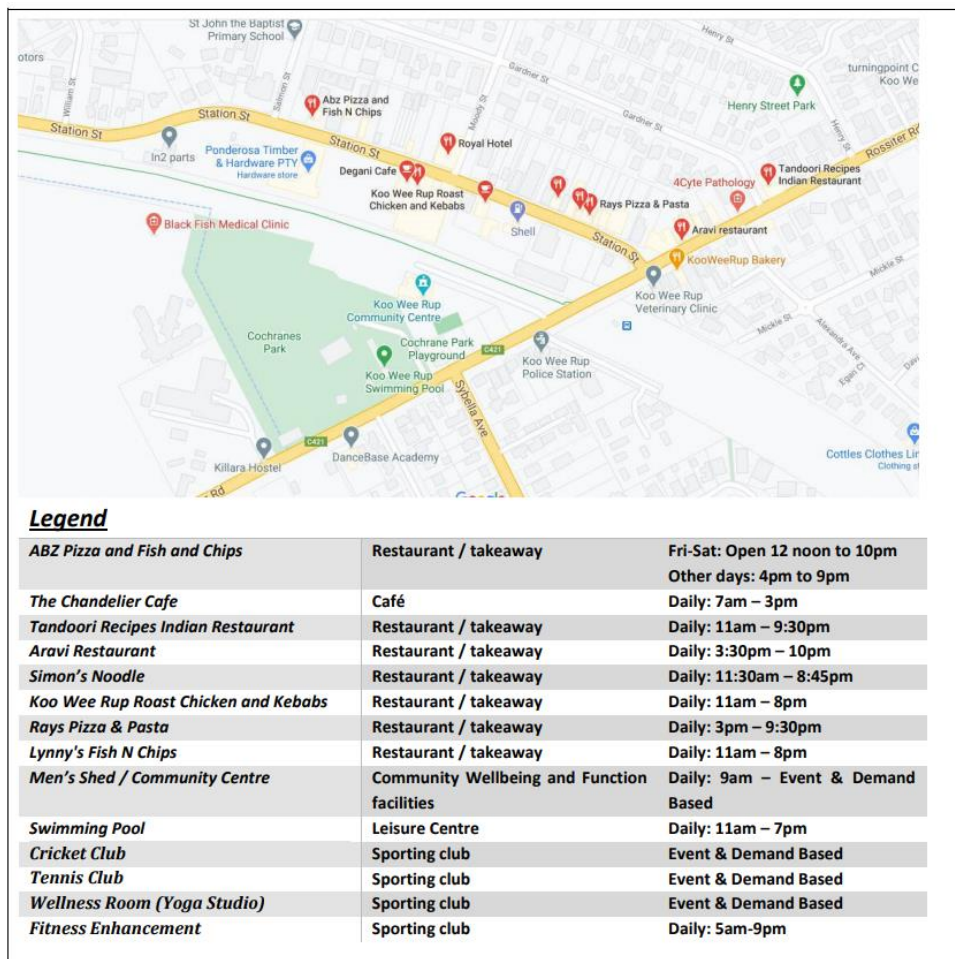


Figure 13: Other non-gaming facilities open/ available within the Township outlined in the application submission

The proposal does not achieve the objective of Clause 22.03 to protect the amenity of areas surrounding gaming venues, because:

- The introduction of gaming could lead to an increase in antisocial behaviour due to the financial stressors on patrons.

Because of this, the proposal also fails to protect a rural township in the municipality from the negative impacts of gaming which is also inconsistent with Clause 21.06-4 (Gaming).

Consideration of the context of the subject site and the social and economic status of the community, in Council's opinion, results in the proposal being inconsistent with the decision guidelines of Clause 52.28-9 which ask the Responsible Authority to consider the MPS and PPF (which includes Clauses 21.06-4 and 22.03), the social and economic impact of the proposal, as well as whether or not the proposal is compatible with surrounding uses.

Social and Economic Impact Assessment

Council's Social and Economic Impact Assessment (SEIA) (prepared by SYMPlan, dated 28 February 2021) is at odds with the applicant's assessment of the social and economic impacts of the proposal which state the impacts will be beneficial to the community. Whilst Council's SEIA suggests that the proposal will likely result in some community benefits, such as economic benefits (community contributions, employment, economic stimulus and tourism) and social benefits (opportunities to use EGMs for those not effected by gambling related harm), these benefits are marginal and do not outweigh the potential disbenefits.

Council's SEIA suggests that overall, the proposal to introduce EGMs in Koo Wee Rup will result in net community disbenefit.

The key findings supporting this conclusion suggest that the disbenefits include:

- The risk factors associated with the design and operation of the gaming venue outweigh the potential protective factors.
- The proposal increases access to opportunities to gamble as it involves a new gaming venue and additional EGMs in the municipality. Increased access to EGMs has been recognised by the Commission as a determinant of gambling-related harms.
- The proposal will introduce EGMs, and increase gambling activity, in the most important social, leisure and entertainment facility serving an isolated community. This will compromise community connectedness and increase exposure to gambling.
- The local community displays multiple indicators of socio-economic disadvantage and vulnerability to gambling-related harms.
- The location of the proposal will contribute to convenience gambling.
- The stakeholders expressed concerns with regards the potential for the proposal to cause and exacerbate gambling-related harms.
- The proposal does not align with the strategic objectives expressed in Council's plans and policies.

Based on this assessment, it is considered that the proposal is not consistent with relevant planning policy and additionally is likely to result in an unacceptable social and economic outcome for the local Koo Wee Rup community and its surrounds. The proposal has the potential to cause or exacerbate gambling-related harms to the community (both Cardinia Shire as a whole, as well as Koo Wee Rup) and that these disbenefits are more likely to impact those most at risk. The proposal is likely to have an overall negative effect on the community due to the inappropriate context of the site and surrounds and therefore, the proposal to introduce EGMs to the Royal Hotel should not be supported.

Consideration of objections

In addition to the above assessment detailing that the proposal is inconsistent with Planning Policy, the majority of objections received from the local community to the application also voice concerns relating to the damage the introduction of EGMs to Koo Wee Rup and the surrounding Townships is likely to cause due to the lack of other non-gambling entertainment and recreation venues, the socio-economic vulnerability of many residents and the inappropriate location for EGMs given the temptation for gamblers to be provided easy access to gaming.

The key themes of the objections received include:

- Electronic gaming's detrimental social and economic impacts within a small, rural community (i.e. gambling-related harm)
- Exacerbation of mental health, social and family problems associated with gambling addiction (also referred to as problem gambling)
- Financial stress caused by gambling-related harm
- Electronic gaming is likely to have a further negative effect on an already vulnerable and disadvantaged community
- Inappropriate location of EGMs within easy access of the shopping strip and supermarket where most residents have to shop
- Past negative experiences with EGMs
- EGMs will ruin the character of the Pub/ Hotel
- There are venues close by already with EGMs available for those wanting to participate in electronic gaming
- Increased area for the sale and consumption of liquor
- Increased crime and violence and no permanent police presence within the Township

For the reasons stated above, it is recommended that the only way to address these concerns about the negative effects of EGMs on the community is to refuse the grant of a permit.

Concerns about car parking issues resulting from the proposal have also been considered further on, however, based on Council's Traffic Engineers assessment of the application, it is also recommended that the only way to address these concerns is to refuse the grant of a permit in its current form.

Additional concerns regarding the preservation of the Heritage building and the impacts of noise have been discussed further on, and it is considered that the measures proposed can mitigate the concerns raised by these objections. However, given the entire scope of the proposal and objections, the application is still recommended for refusal.

Car parking issues

According to the Traffic Impact Assessment prepared, the Hotel currently has the provision of 67 parking spaces on-site and there are also 56 parking spaces available on street, within the surrounding area, resulting in the availability of 123 spaces in total.

Council's Traffic Engineer has reviewed the Assessment submitted and advises that they agree with the car parking rate proposed by the Assessment being 0.3 spaces per patron of the Function Centre.

Based on the peak number of patrons (between 100 and 150 patrons) Council's Traffic Engineer submits that the new use generates an additional parking demand of between 41 to 56 spaces. Given the proposal, Council's Traffic Engineer has seen to appropriate to adopt the higher requirement of 56 spaces for the new uses.

Hence, assuming that 35 spaces are currently available on-site at peak times (as per surveys submitted in the Traffic Assessment) and 2 additional spaces will be provided, there will be 37 spaces available for use by the proposed uses.

- This will result in:
 - a shortfall of 19 spaces to be accommodated by existing on-street parking (if the function venue is at full capacity of 150 patrons); and
 - a shortfall of 4 spaces (if the function venue is limited to 100 patrons)

There are concerns from a traffic perspective with the application, as there is an insufficient provision of on-site car parking to facilitate the expected parking demand for the capacity of patrons sought by the new uses. The site will therefore heavily rely on on-street car parking to accommodate the demand, which will negatively impact other existing uses and the operation and amenity of the surrounding streets due to the significant parking reduction sought.

The application proposal includes a reduction of approximately 35 percent for the on-site provision which is excessive. Hence, the application is not supported from a traffic perspective in its current form. To be reconsidered, it is the advice of Council's Traffic Engineer that the application would either require an increase in the on-site car parking provision or a reduction in the maximum number of patrons permitted on-site.

In addition to Council's Traffic Engineers concerns about the lack of car parking, as outlined above some objections, including one of the CFA, also site car parking as being an issue which would be exacerbated by the new uses based on the application in its current form.

Based on this, the application is also recommended for refusal on the grounds that insufficient car parking is proposed to be provided which is inconsistent with Clause 52.06 and other relevant planning policy relating to the appropriate provision of car parking.

Access to a Road Zone

The key purpose of Clause 52.29 is to ensure appropriate access to identified roads and to ensure appropriate subdivision of land adjacent to identified roads. Pursuant to Clause 52.29 a Planning Permit is only required to do either of the following:

- Create or alter access to a road on a in a Road Zone Category 1 or land in a Public Acquisition Overlay (PAO) to be used as a Category 1 Road.
- To subdivide land adjacent to a road in a Road Zone Category 1 or land in a Public Acquisition Overlay (PAO) to be used as a Category 1 Road.

As the application seeks to alter an existing access to Station Street (RDZ1) by intensifying the access by the volume of traffic proposed by the new use, referral to the Head, Department of Transport (DoT) under Section 55 of the *Act* was required. Based on the Traffic assessment prepared by O'Brien Traffic and the Head, Department of Transport (DoT), being the determining authority, had no objection to granting this permit and offered no conditions.

As the Department of Transport (VicRoads) are supportive of the application, Council has no concern about the proposal and the potential increase in access to the Road Zone. However, this support for the proposal does not mitigate against the other issues raised leading to the recommendation to refuse the application.

Consideration of the use of the land for Function Centre, increase in the red line area for the sale and consumption of liquor and proposed partial demolition and extensions to the Heritage building

Despite the Gaming aspect of the proposal, as well as issues with car parking discussed, which are considered inconsistent with the aims and objectives of relevant planning and Council policy, the Function Centre use, changes to the liquor license and proposed extensions to the Heritage Hotel (both upper and lower floor) and associated demolition works could be considered consistent with relevant policy and supported if the application was made in isolation of the proposed EGMs.

It is also noted that the proposed use of the land for a café and community hub are considered ancillary to the existing use of the land for a Hotel (given their minor size and scale) and therefore, a permit for their use is not considered to be a permit trigger in this instance.

Use of the land for a Function Centre

As the existing Hotel does not exercise existing use rights for 'Function Centre', the introduction of this use must be considered pursuant to the requirements of the Mixed Use Zone, and any other provisions of the Planning Scheme, not Clause 63.05.

The proposed use of the land for a Function Centre is considered to be an appropriate use to associate with an existing Hotel which has existed and operated on the site for many years.

The proposal contemplates an appropriate use of an underutilised and unkept portion of the Heritage building (the former accommodation located upstairs) and integrates well with the existing facilities and hospitalities offered by the Hotel.

The proposal will facilitate the ongoing upkeep and maintenance of the second storey of the building which has remained unused for many years, whilst facilitating a land use which will be beneficial to the local community in terms of providing local employment (through the expansion of the Hotels offerings), as well as providing a space for the local and broader community to use for occasions such as conferences, birthdays, weddings and other functions.

The Function Centre is proposed to operate between the existing operation hours of the Hotel, and given that the function centre is linked to the existing Hotel (being it is located above the existing Bistro and Sports bar) this is considered acceptable.

The number of patrons proposed to be accommodated within the Function Centre is also considered reasonable in this context and given the hours proposed.

If a permit were granted for the proposal, it is recommended that conditions should be included to require the recommended acoustic treatments (discussed below), as well as conditions limiting the number of patrons allowed within the Function Centre and its hours of operation as follows:

Patron numbers:

- 150 patrons inside at any one time; and
- 37 patrons outside at any one time

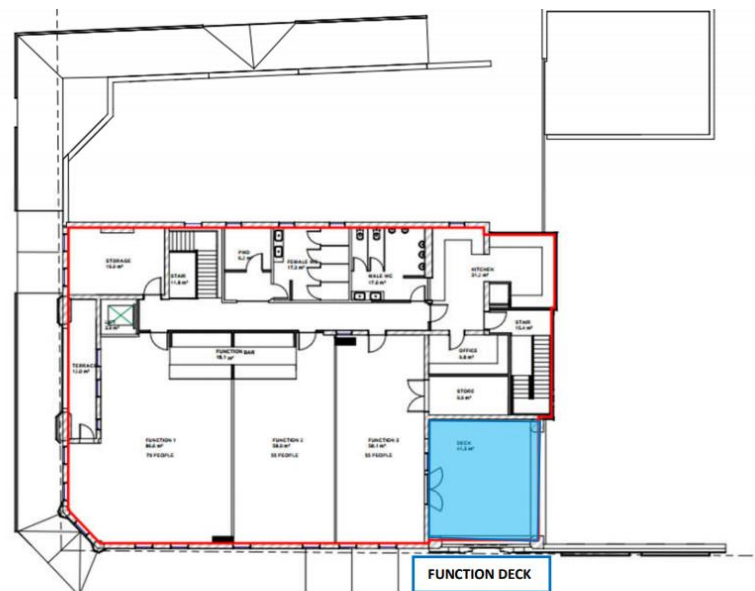
Hours:

- Indoors up until 1am (Thursday to Saturday);
- Indoors up until 11pm (Sunday to Wednesday);
- Outdoors (function room deck) up until 12am (Thursday to Saturday); and
- Outdoors (function room deck) up until 10pm (Sunday to Wednesday).

These conditions are based on the Acoustic Assessment provided with the application, as well as consideration of the surrounding residential uses (including 1 objection relating to noise), and therefore considered reasonable.

Noise from the Function Centre use

An Acoustic Report was prepared by Enfield Acoustics Pty Ltd and submitted with the application to demonstrate that the Function Centre, especially the outdoor deck would not cause material detriment to neighbouring properties by way of noise.



First Floor Plan

This assessment considered the use of the outdoor Function Centre deck up until 1am, with the exception of Sundays (11pm) for up to 37 patrons. The hours of use are consistent with the Hotels current hours of operation.

Based on this, the assessment found that there are noise sensitive receptors at the following locations:

- Dwelling at 19 Moody Street
- Dwelling at 55 Gardner Street
- Dwelling at 39 Gardner Street
- Dwelling at 23 Gardner Street

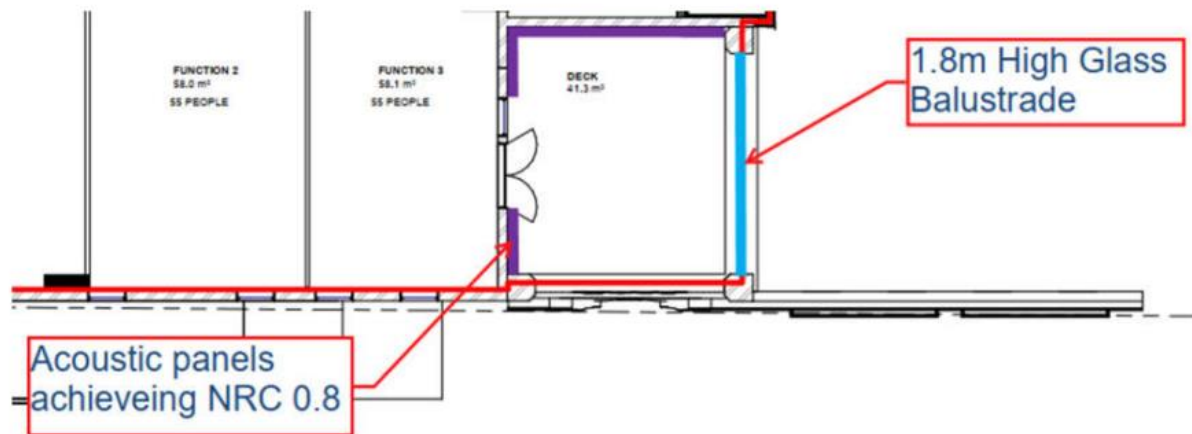


The assessment suggests that given that the above dwellings identified are the closest to the Subject Land, it is intrinsic that compliance at these locations would also result in compliance at all other sensitive uses proximate the Subject Land.

Based on their assessment of the proposal, Enfield Acoustics Pty Ltd concluded that based on the proposed hours, patron numbers and existing 1.9m high timber paling boundary fencing (boundary with 19 Moody Street), the results of the noise modelling indicate that noise emissions from the proposed outdoor areas are expected to satisfy patron noise targets at all identified sensitive uses with the following acoustic treatment to the function area deck:

- Installation of a 1.8m high glass balustrade or screening to the north boundary of the function deck (shown blue below); and
- 50 percent of wall area to be lined with absorptive panels achieving minimum NRC of 0.8 (shown purple below).

A markup of acoustic treatment to the function area deck is shown below.



On this basis, Enfield Acoustics were satisfied that the risk of adverse noise impacts from the proposed Function Centre, including its outdoor deck is low, providing that:

- The acoustic treatment recommended above is installed; and
- Patron numbers within the function area deck are limited to 37 patrons after 10pm.

Increased areas and patrons for sale and consumption of liquor

The key purpose of this provision is to ensure that licensed premises are situated in appropriate locations and to ensure that the impact of the licensed premises on the amenity of the surrounding area is considered. Pursuant to Clause 52.27 a planning permit is required to increase the area that liquor is allowed to be consumed or supplied under a licence and also to increase the number of patrons allowed under a licence.

As the proposal includes the consumption of liquor in the new upstairs function room and outdoor deck extension, the 'red-line' plan is required to be altered as part of this application. It also included the consumption of liquor within the proposed gaming lounge extensions at ground level. This alteration will allow alcohol to be served in the areas of the new additions.

Given the nature of the site (being a Hotel/Pub) the service of food and drink (including liquor) are the main activities undertaken by patrons. The additional floor area to be included to the 'red-line' will significantly increase the areas of the Hotel in which alcohol can be consumed, however this is considered acceptable given the way the upstairs Function Centre will operate (i.e. limitations on patron numbers, organised/ invitation required events, staff and security management) and is not expected to cause any further detriment to the amenity of the area or the safe operation of the site.

The proposed increase in patrons allowed under the Hotel's licence is proposed to increase from 262 to 400 patrons. This increase is considered reasonable given that the operator currently enjoys a five out of five star rating and currently have zero (0) demerit points according to a search of their licence (General Licence No. 31912420) on the Victorian Commission for Gambling and Liquor Regulation (VCGLR) website, which suggests that the venue is well operated and managed in terms of the responsible service of alcohol.

In addition, the area does not have an accumulation of licenced premises. Apart from two (2) local bottle shops (BWS & KooWee Cellars) which currently hold licences for the sale of packaged liquor, the Koo-Wee-Rup Bowling Club who currently hold a Restricted Club Licence and three (3) local cafes and restaurants who currently hold BYO permits, there are no other

venues within Koo Wee Rup Township who hold a General Licence such as the one held by the Royal Hotel. Based on this, the increased area for the sale and consumption of liquor under the Hotels General Licence is not expected to cause any cumulative detriment resulting from the access to the sale of liquor within the community.

Whilst the assessment above recommends that Council should be opposed to the use of the land for EGMs, the service and consumption of liquor within the extensions proposed to accommodate the gaming lounge would not be expected to cause any additional detriment.

Based on these factors it is considered that the proposal to extend the red-line plan to the extension areas is considered appropriate and could be supported, if not for the proposal to also use the land for EGMs.

Buildings and works within the MUZ

The design and size of the extensions for the Function Centre deck and lower floor extensions (Gaming lounge and cafe) are modest and sit comfortably within the site and the surrounding rural township character. The proponent has taken cues from the colour scheme for the existing heritage Hotel and selected a heritage colour palette which respects both the original building, and the rural character of the area.

In addition, Clause 32.04-9 requires that any building or works that adjoin a Residential Zone must comply with the specified provisions of Clause 55.04. The proposal complies with these requirements as detailed below:

- 55.03-5 (Energy efficiency objectives): The proposed extensions do not impact or interfere with northern light to the dwelling at 19 Moody Street due to the building's southerly location.
- 55.04-1 (Side and rear setbacks): The building is setback over 30 metres from the rear boundary and separated from the residential zone by a laneway. Even though these sites are residential zoned, given the large setback and the location of the existing car parking area on the subject site this should mitigate against any impacts.
- 55.04-2 (Walls on boundaries): There are no walls proposed on the northern boundary.
- 55.04-3 (Daylight to existing windows): The large setbacks, demonstrate that there is no overshadowing of adjoining land by the additions to the second floor.
- 55.04-5 (North facing windows): As the subject site is located to the south of the residentially zoned land, there is no impact to north facing windows of this dwelling.
- 55.04-6 (Overlooking): The lower floor extensions will not result in any overlooking. The upper floor Function deck is well setback from the neighbouring residentially zoned property to the north. Although there is an open style balcony proposed, as this balcony is over 9m from the boundary of the neighbouring site, there should be no resulting overlooking. Further, the Acoustic assessment recommended a 1.8 metre-high glass balustrading to the balcony to deal with noise impacts. This could be required to be obscured via permit conditions, although not necessary.

There is no maximum building height specified in the Schedule to this Zone, however, being that the Hotel has existed on the site for many years as a double storey building, the proposed upper floor additions to the rear are considered acceptable and in keeping with the neighbourhood character.

Buildings and works within the LSIO

As the entire site is covered by the LSIO it is not possible for the proposed buildings and works to be located on flood-free land or land with a lesser hazard outside this overlay. As the proposed works for the Function Centre are located at the second storey, and mainly consist of internal works it is not expected to impede flood waters or cause any risk to human life or property. The extensions to the lower floor (Gaming lounge and cafe) are also considered acceptable given that they will be constructed at or above the existing floor level of the Hotel.

The proposed buildings and works are consistent with the existing use of the land for a Hotel and the existence of established dwellings and other commercial type development on surrounding properties supports this. Pursuant to Section 55 the application was referred to Melbourne Water, who had no objection to the proposed development, subject to conditions.

Given that Melbourne Water had no objection to the proposed extensions to the Hotel, subject to conditions requiring that the finished floor levels (FFL) of the extensions must be constructed no lower than the existing floor levels, all open spaces within the property must be set at existing

natural surface level so as not to obstruct the passage of overland flows and any new fencing/gates must be open style construction (minimum of 50% open) to allow overland flows.

Based on these conditions it is considered that proposed alterations and extensions to the Hotel will not increase the potential risk to life, health or safety a 1 in 100 Year flood poses, and will not affect or obstruct floodwater, stormwater or drainage over the property, subject to their conditions being met, however this does not mitigate against the recommendations for refusal.

Buildings and works within the H0269

The proposed buildings and works for the proposed function room are mainly internal, apart from the proposed extension (function deck) to the rear of the upper floor which will require some minor demolition to the rear wall of the building and some external stairs, as well as the construction of a 43sqm semi-enclosed balcony. The proposed works for the lower floor extensions will require significant works, however as they are proposed to be sited within the footprint of the bottle shop which is a later addition (as described in the site history) they also result in minor works being carried out on the original building itself.

The internal works include the demolition of internal walls for the disused accommodation rooms, and the construction of new internal walls to divide the spaces. The H0269 does not include internal controls, and therefore the proposed internal works are not expected to impact the heritage significance or appearance of the building.

The proposed demolitions are demonstrated on the plans as being minor in scale and to the minimum extent necessary to facilitate the construction of the function room deck. Given that they are located to the rear upper floor of the building, the demolition works are not expected to adversely affect the significance of the heritage place. The proposed demolition of the bottle shop to the rear of the building is also considered reasonable, given that this part of the building is a much later addition and therefore, not original or contributing to the significance of the heritage place.

Given that this bottle shop extension already exists to the rear of the Hotel, the rear wall of the building at ground level has previously been significantly altered. The works required to facilitate the rear extensions include the removal of parts of this rear wall, which is considered minor and have also been proposed to the minimum extent necessary to facilitate the ground floor extensions.

Council's Heritage citation (Cardinia Shire Heritage Study 2011 (revised 2015) – Koo Wee Rup - Royal Hotel (HO269) outlines conservation management guidelines for the Hotel. This document states that in order to conserve the heritage significance of the Hotel, any demolition must not result in the removal of significant fabric. The proposed elements to be removed are not considered to be of primary significance and its removal will not adversely affect the significance of the place. In addition its removal to facilitate the proposed upper floor extensions will assist in the long term conservation of the place, by facilitating the historic use of the place and will not result in the loss of fabric considered to be primary significance. This is consistent with Council's Heritage citation for the Hotel and therefore, the proposed demolitions can be supported.

The proposed extensions for the outdoor Function Room deck are also not expected to cause any adverse impacts to the significance of the heritage place. They are located to the rear of the building and well designed to integrate and respect the heritage character of the building by ensuring that the works are not visually bulky or dominating as to not detract from the original elements of the building. The proposed extension (being 41.3sqm) is also considered to be of an appropriate scale in relation to the size of the original building, further ensuring the proposed extensions do not detract from the Heritage place.

This is also in keeping with Council's Heritage citation conservation management guidelines which seek to ensure that the siting and design of new development does not overwhelm the historic setting of the building and the site as a whole by becoming a dominant element or by interfering with key views to and from the site.

As discussed, the extensions are complementary in form, scale and materials to the significant buildings and other elements but be clearly contemporary in design.

Although the proposed ground floor extensions are not expected to cause any material detriment to the Heritage fabric of the Hotel, as they are only required to facilitate a proposed gaming lounge and ancillary café at this point in time these works should not be supported. Should the proponent seek another application for buildings and works to facilitate a different use (i.e. extensions to the bistro or function rooms at the ground floor) then these works could be considered reasonable and supported (subject to further assessment).

However, it should be noted that given the recommendation to refuse the proposal based on the unacceptable outcomes of the introduction of the EGMs and traffic issues, the entire proposal must also be refused.

Conclusion

Given the above discussion, it is considered that there are adequate grounds to refuse to grant a planning permit based on the inconsistencies and failure of the proposal to adequately meet objectives of the relevant MPS, PPF, LPPF, in particular Clauses 18.02-4S (Car parking), 21.06-4 (Gaming), 22.03 (Gaming), 52.06 (Car parking) and 52.28 (Gaming).

Notwithstanding the gaming and car parking aspects of the proposal, the proposed use of the land for a Function Centre, the increase to the area for the consumption of liquor and number of patrons allowed for the licenced premises, alterations to the road zone and the associated partial demolition and buildings and works to a Heritage building are generally supported by the Planning Scheme. However, compliance must be achieved with all aspects of Scheme and the proposal does not demonstrate an appropriate outcome when it comes to the consideration of gaming or car parking.

It is important to consider that just because the planning scheme identifies that a permit can be issued for a certain land use, it does not mean that it should. The proposal for the use of

the land for a Gaming Premises and the installation and use of 40 EGMs must have regard for the purpose of the relevant policy and demonstrate that by allowing it by way of a permit, that it is appropriately located so as to not cause unreasonable detriment or harm to the local community. Based on the above assessment against Gaming policy and the objections received it is considered that this proposal cannot demonstrate that it will not do so.

In addition, an application must have regard to the car parking it will generate, and based on the proposal, the application is not considered to sufficiently provide for its own needs.

Cardinia Shire Council must abide by these requirements when assessing the suitability of applications given the site, the surrounding uses and applicable planning controls and upon assessment, these controls have not been adequately addressed or adhered to in order to allow for this application to progress.

Therefore, based on the above assessment it is recommended that the application for a planning permit for alterations and extensions and partial demolition to an existing Hotel in a Heritage Overlay, the use of the land for a Gaming Premises and use of 40 Electronic Gaming Machines (EGMs), use of the land for a Function Centre, a reduction in car parking, alterations to access to a Road Zone Category 1, an increase to the area for the sale and consumption of liquor and an increase to the number of patrons allowed under a licence at L1 & L2 TP517257, 96-102 Station Street, KOO WEE RUP VIC 3981 be refused on the following grounds:

1. The proposal is inconsistent with Clause 21.06-4 (Gaming) and Clause 22.03 (Gaming);
2. The proposal is inconsistent with the purpose and decision guidelines of Clause 52.28 (Gaming);
3. The proposal is inconsistent with Clause 18.02-4S (Car parking) and Clause 52.06 (Car parking) as it fails to provide adequate on-site car parking;
4. The proposal does not result in net community benefit; and
5. The proposal does not represent the orderly planning of the area.

Resolution

Moved Cr Stephanie Davies, seconded Cr Carol Ryan.

That Council refuse the application for alterations and extensions and partial demolition to an existing Hotel in a Heritage Overlay, the use of the land for a Gaming Premises and use of 40 Electronic Gaming Machines (EGMs), use of the land for a Function Centre, a reduction in car parking, alterations to access to a Road Zone Category 1, an increase to the area for the sale and consumption of liquor and an increase to the number of patrons allowed under a licence on the following grounds:

1. The proposal is inconsistent with Clause 21.06-4 (Gaming) and Clause 22.03 (Gaming);
2. The proposal is inconsistent with the purpose and decision guidelines of Clause 52.28 (Gaming);
3. The proposal is inconsistent with Clause 18.02-4 (Car parking) and Clause 52.06 (Car parking) as it fails to provide adequate on-site car parking;
4. The proposal does not result in net community benefit; and
- 5.
6. The proposal does not represent the orderly planning of the area.

Carried

5.4 Planning Scheme Amendment Activity Report

Responsible GM: Kristen Jackson
Author: Luke Connell

Recommendation(s)

That Council note the report.

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.

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C222	XWB Consulting	85 McNamara Road, Bunyip	<p>Amendment C222 proposes to:</p> <ul style="list-style-type: none"> - rezone land from Farming Zone Schedule 1 (FZ1) to Low Density Residential Zone Schedule 3 (LDRZ3) (55 & 85 McNamara Road), - apply a Development Plan Overlay Schedule 21 (DPO 21) (85 McNamara Road), - apply a Design and Development Overlay Schedule 1 (DDO1), and delete the Environmental Significance Overlay Schedule 1 (ES01). 	Thu 08/08/2019	Fri 06/09/2019	<p>Panel Report finalised on 29/04/2020.</p> <p>Council is awaiting further information from the proponent in relation to some of the issues raised in the Panel Report.</p>
C228	Cardinia Shire Council	Pakenham Activity Centre	<p>The Activity Centre Zone Schedule 1 (ACZ1) has been prepared in response to conditions of approval to Cardinia Planning Scheme Amendment C211 to ensure that the Pakenham Structure Plan 2018 has been implemented via the appropriate planning tool into the Cardinia Planning Scheme.</p>	Thu 24/10/2019	Fri 06/12/2019	<p>An application for Ministerial Approval was finalised on 04/05/2021. Extension to the original Structure Plan (2017) has been granted until 31/09/2021 to ensure statutory control is retained while DELWP's assessment of</p>

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			The ACZ1 is a translation of the objectives and strategies as set out in the draft Pakenham Structure Plan 2018 and draft Urban Design Framework 2018. The amendment amends Clauses 21.03, and 21.04, implements two new reference documents, deletes parts of two Development Plan overlays Schedule 1 and 2 of 43.04, and deletes the Pakenham Activity Centre Incorporated Provisions, 20 March 2017 from Clause 72.04.			Amendment C228 for approval continues.
C229	Cardinia Shire Council	Tynong, Garfield and Bunyip	Apply Environmental Significance Overlay Schedule 7 (ES07) to all land within the Urban Growth Boundary (UGB) of Garfield and Bunyip and all land zoned for urban purposes within Tynong to facilitate the provision of habitat corridors for the Southern Brown Bandicoot.	Thu 21/11/2019	Fri 20/12/2019	Re-exhibition completed. A bushfire risk assessment is in progress.

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C238	Cardinia Shire Council	Beaconsfield Precinct - Glismann Road and Old Princes Highway.	<p>Amendment C238 proposes to:</p> <ul style="list-style-type: none"> - Rezone land to the Neighbourhood Residential Zone (NRZ2) (Clause 32.09 Schedule 2) - Apply a Development Plan Overlay (DPO19) to the Glismann Road Area (Clause 43.04 Schedule 19) - Apply Development Contributions Plan Overlay (DCPO5) to the Glismann Road Area (Clause 45.06 Schedule 5) - Amend Clause 72.04 to incorporate the Glismann Road Development Contributions Plan (GRDCP) into the Cardinia Planning Scheme. - Amend Clause 53.01 to facilitate the provision of local open space through the GRDCP. 	Thu 09/07/2020	Mon 14/09/2020	A Panel Hearing was held from 04/05/2021 to 07/05/2021. The Panel Hearing will reconvene for one additional day to allow Council more time to respond to certain issues. A further Panel Hearing date is to be advised by PPV.
C240	Cardinia Shire Council	Koo Wee Rup Township	Implement the objectives of the Koo Wee Rup Township Strategy by:	Thu 13/02/2020	Mon 16/03/2020	An application for Ministerial Approval

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
			<ul style="list-style-type: none"> - applying Development Plan Overlay Schedules 23 and 24 to two undeveloped residential precincts in Koo Wee Rup. - applying Design and Development Overlay Schedule 8 to existing residential areas in Koo Wee Rup. - applying Design and Development Overlay Schedule 9 to the commercial town centre of Koo Wee Rup. 			was finalised on 04/05/2021.
C257	Cardinia Shire Council	53-65 Woods Street, Beaconsfield	Apply a Development Plan Overlay (DPO) for the Woodland Grove Precinct as shown in the Beaconsfield Structure Plan.			<p>A Panel Hearing was held on 28/06/2021.</p> <p>Awaiting the Planning Panel's report.</p>
C264	Cardinia Shire Council	Cardinia Shire municipality	Implement the Advertising Signage Design Guidelines into the Cardinia Planning Scheme.	Thu 06/05/2021	Mon 07/06/2021	<p>Adopted by Council on 19/07/2021.</p> <p>Awaiting approval by the Minister for Planning.</p>

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C265	Cardinia Shire Council	Pakenham South Employment Precinct	Incorporate the Pakenham South Employment Precinct Structure Plan.	Thu 15/10/2020	Thu 26/11/2020	Adopted by Council on 19/07/2021. Currently in the process of preparing an Infrastructure Contributions Plan (ICP).

Resolution

Moved Cr Stephanie Davies, seconded Cr Jeff Springfield.

That Council note the report.

Carried

5.5 Current Planning Enforcement Matters

Responsible GM: Debbie Tyson
Author: Owen Hardidge

Recommendation(s)

That Council note the list of enforcement matters currently before VCAT, the Magistrates' Court and the County Court.

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 (prosecutions reference)	Description of alleged breaches	Status/outcome
765 Gembrook Rd, Pakenham Upper (OH:LK:20505)	Native vegetation alleged removal between April 2016 and July 2018 (contrary to Native vegetation and Environmental Significance Overlay) Earthworks in a road zone without a permit Earthworks in excess of 1 metre, contrary to Environmental Significance Overlay)	This prosecution commenced in 2017. In Dec 2019, following a contested hearing, the Magistrates Court at Dandenong found the owner guilty of all charges. He was convicted and fined \$5,000, and ordered to pay Council costs (to be assessed at a later date). The owner appealed the conviction and sentence, and after a 6-day hearing, the County Court at Melbourne found the owner guilty of the majority of allegations, with one allegation found not proven. Upon being warned that the Court was considering imposing a higher penalty, the owner withdrew his appeal against sentence, and the Magistrates' Court penalty was re-imposed. The County Court ordered the owner to pay Council costs, which will be subject to a further hearing.
2 Johanna Court, Pakenham (JALF:TD:20542)	Between January – April 2020, Native vegetation removal (native grasses) contrary to the Native Vegetation particular provisions and Vegetation Protection Overlay	On 26 March 2021, the Magistrates Court of Victoria found the accused company guilty of all offences (in the absence of any company representatives). The company was convicted and fined \$20,000 and ordered to pay Council costs. The accused company has applied for a re-hearing of the matter. The matter will be next heard on 7 th Oct 2021.

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.

Resolution

Moved Cr Stephanie Davies, seconded Cr Jeff Springfield.

That Council note the list of enforcement matters currently before VCAT, the Magistrates' Court and the County Court.

Carried

6 Meeting Closure

Meeting closed at 7:37pm.