

5.5 T240007 PA - Use of Land for a Restricted Recreation Facility - 7 Convoy Lane, Pakenham

Responsible GM: Lili Rosic
Author: Hamish Mival

Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240007 for Use of Land for a Restricted Recreation Facility on the following grounds:

1. The proposal is not consistent with State and Local Planning Policy as it introduces an incompatible land use to an uncorrupted industrial area.
2. The proposal fails to meet the purpose of the Industrial 1 Zone, as it does not provide for manufacturing industry, the storage and distribution of goods or associated uses, and may affect the safety and amenity of these uses.

Attachments

1. T240007 PA - Officer Report [5.5.1 - 8 pages]
2. T240007 PA - Locality Map [5.5.2 - 1 page]
3. T240007 PA - Application Documents [5.5.3 - 26 pages]

Application Details

APPLICATION NO.:	T240007
APPLICANT:	Nitish Kapila
LAND:	L15 PS 911081T V12262 F741, 7 Convoy Lane, Pakenham VIC 3810
PROPOSAL:	Use of Land for a Restricted Recreation Facility
PLANNING CONTROLS:	Industrial 1 Zone
NOTIFICATION & OBJECTIONS:	No objections received
KEY PLANNING CONSIDERATIONS:	<ul style="list-style-type: none">• Land Use Compatibility• Industrial Land Supply
REASON FOR MEETING:	Recommendation for refusal
RECOMMENDATION:	Refusal

Executive Summary

The purpose of this report is to consider an application for the Use of Land for a Restricted Recreation Facility. This is to consist of a personal training facility by appointment only. There is to be a single employee, with a maximum of three (3) patrons at any one time. It is to operate between the hours of 6am and 7pm, with no specific days mentioned by the applicant.

The land is subject to the Industrial 1 Zone, along with various State and Local Planning Policies including *Plan Melbourne 2017-2050* and the *Melbourne Industrial and Commercial Land Use Plan (2020)*.

The proposal is recommended for refusal as it presents an incompatible land use in a highly important and strategic industrial area.

Relevance to Council Plan

{council-plan}

APPLICATION FOR CONSIDERATION
REFUSAL
OFFICER REPORT



Application Details:

Proposal	Use of Land for a Restricted Recreation Facility
Applicant	Nitish Kapila
Date Received:	03 January 2024
Statutory Days:	39 days as of 28 March 2024
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> None
Application Number	T240007
Planner	Hamish Mival
Land/Address	L15 PS911081T V12262 F741, 7 Convoy Lane, Pakenham VIC 3810
Property No.	5000035388
Zoning	IN1Z - Industrial 1 Zone
Overlay/s	None
Permit Trigger(s)	Pursuant to Clause 33.01-1 Industrial 1 Zone a Planning Permit is required to use the land for a Restricted Recreation Facility (Leisure and recreation)
Aboriginal Cultural Sensitivity	<input checked="" type="checkbox"/> No
Section 55 Referrals	<input checked="" type="checkbox"/> None
Registered restrictions on Title	<input checked="" type="checkbox"/> Yes, list below: <ul style="list-style-type: none"> ▪ Covenant AX602717A: Relates to MCP: AA9768. This includes: <ul style="list-style-type: none"> ○ Restrictions related to exterior walls on the land. ○ Forbidding of storage of goods, materials and/or containers outside of any building on the land ○ Restrictions on the use of the land for a bank, café/take away premises or restaurant without written consent. ○ Restrictions on the use of the land for towing depot, vehicle wrecking, junkyard, container storage depot, brothel, sex shop, place of worship/assembly or morgue without written consent. ○ Restrictions on the use of the land for a mechanic, panel beating or spray painting unless entirely within a building. ▪ The proposal complies with these restrictions.
Recommendation	<input checked="" type="checkbox"/> Refusal

Ward Councillor communications	<input checked="" type="checkbox"/> None
Documents relied on	<ul style="list-style-type: none"> Floor plan prepared by Nitish Kapila. Endorsed plans from Permit T200401. Title Documents

Proposal

Proposal is for the use of the land for a Restricted Recreation Facility. It will be operated as a personal training studio, with a proposal for a maximum of seven (7) classes a day. There is proposed to be a maximum of three (3) clients each session, and only one (1) staff member. A floor plan has been provided showing there will be a mix of fitness machines within the building, along with weights and large gym mats. The property has a total of four (4) titled parking spaces.

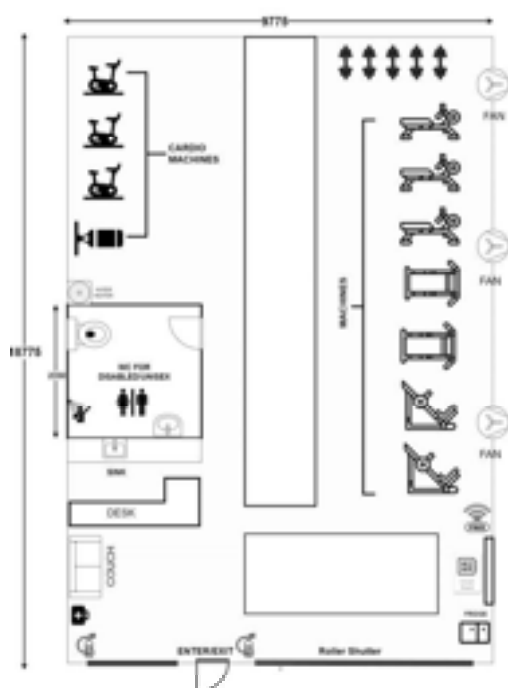


Figure 1 - Proposed floor plan

Subject site & locality

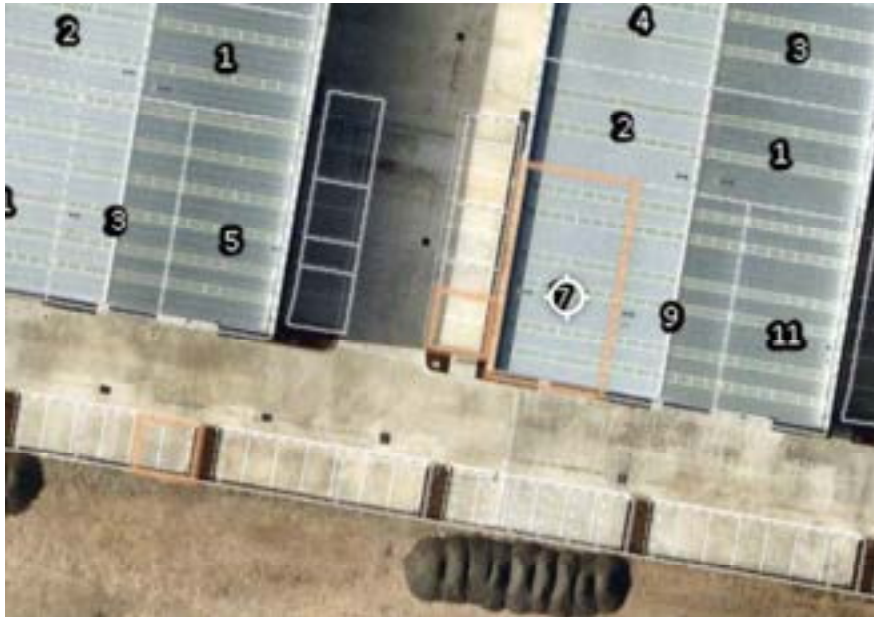


Figure 2 - Aerial image of subject site

An inspection of the site and the surrounding area has been undertaken.

The subject land forms part of larger site located on the eastern side of Koo Wee Rup Road and western side of O'Sullivan Street, with access off both. The site contains twenty-eight (28) warehouses of varying sizes, with the majority presently being vacant. All of the parking spaces on the site are titled to individual warehouses.

The subject warehouse is approximately 10m wide and 19m deep, for an approximate area of 190sqm. It has access off a swinging door and large roller door. It is within a State-significant Industrial Precinct, as identified within *Plan Melbourne 2017-2050*, and as shown below:

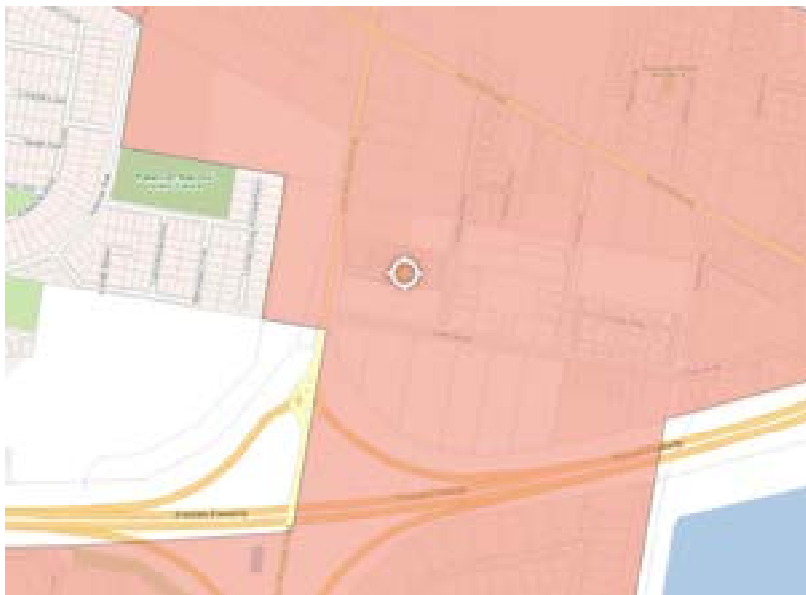


Figure 3 - State-significant industrial precinct



Figure 4 - Aerial image of surrounding area

Permit/Site History

The history of the site includes:

- Planning Application T200387 (Withdrawn): *'Building and works for warehouse development with ancillary offices'*.
- Planning Permit T200401 (Issued 13 November 2020): *'Development of the land for a multi-warehouse development and associated works and alteration of an access to a Road in a Road Zone Category 1'*.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- IN1Z - Industrial 1 Zone

Overlays

The land is not subject to any overlays.

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.02 Managing Growth
 - Clause 11.02-1S Supply of urban land
- Clause 13.07 Amenity, Human Health and Safety
 - Clause 13.07-1S Land use compatibility
- Clause 17.01 Employment

- Clause 17.01-1S Diversified economy
- Clause 17.02 Commercial
 - Clause 17.02-1S Business
- Clause 17.03 Industry
 - Clause 17.03-1S Industrial land supply
 - Clause 17.03-3S State significant industrial land

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.04 Economic Development
 - Clause 21.04-1 Employment
 - Clause 21.04-4 Industry

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 Car Parking
- Clause 52.34 Bicycle Facilities
- Clause 65.01 Approval of an Application or Plan
- *Melbourne Industrial and Commercial Land Use Plan (2020)*
- *Plan Melbourne 2017-2050*

Planning Permit Triggers

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

- Pursuant to Clause 33.01-1 Industrial 1 Zone a Planning Permit is required to use the land for a Restricted Recreation Facility (Leisure and recreation).

Public Notification

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

- Sending notices to the owners and occupiers of adjoining land.

Council has received no objections to date.

Referrals

External Referrals/Notices:

Referrals/ Notice	Referral Authority	Brief summary of response
Section 55 Referrals	None	▪ N/A

Section 52 Notices	None.	▪ N/A
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Internal Referrals:

Internal Council Referral	Advice/ Response/ Conditions
Traffic	No objection, subject to conditions.
Strategic Planning	Object to the proposal on the following grounds: <ul style="list-style-type: none"> - State significant industrial land would be prejudiced by a non-industrial use. - Proposed use is contrary to the purpose of the Industrial 1 Zone. - Concerns around amenity impacts on future as of right industrial uses.

Assessment

State and Local Planning Policy

Various state and local planning policies are relevant to the proposal, with an assessment provided below.

Clause 11.02-1S Supply of urban land, Clause 17.03-1S Industrial land supply, Clause 17.03-3S State-significant industrial land and Clause 21.04-4 Industry

These policies are in place to ensure a sufficient supply of urban land and specifically industrial land. The subject land has been identified as being suitable for industrial use, and zoned Industrial 1 Zone accordingly. It has direct access to a major road and freeway, with a suitable buffer to the residential area to the west. Therefore, it is recognised that it should be preserved for industrial uses and not prejudiced by non-industrial uses. The proposal would introduce a non-industrial use to a currently non-corrupted industrial area and would remove the subject site from industrial land stock. It is deemed that the proposal therefore isn't consistent with the objectives of these policies or strategies.

Additionally, the subject site is located within the Officer-Pakenham Industrial Precinct, identified within *Plan Melbourne 2017-2050* as being a State-significant industrial precinct. The scheme provides objectives to protect this industrial land and ensure sufficient availability of this strategically located land is made available. Heavy industrial areas should also be protected from inappropriate development, and adequate buffer distances provided from sensitive or incompatible uses.

The proposed land use is incompatible in this respect. While the complex itself consists of small warehouses, there is only a single operational business in the complex to date, that being a Motorcycle repair shop (Section 1 Use). Surrounding land has also not been fully developed, including the large lot to the south that remains vacant. This lot has recently been approved for subdivision, along with a large service centre development (T180716). It is not deemed appropriate to approve a use that may prejudice, or be prejudiced by, future as-of-right heavy industrial use that could occur both on this newly created lot and other lots in the area.

While the policy does allow for some limited retailing (restricted retail and trade supplies), it also specifies that this should be provided along arterial roads. The proposal consists of a leisure and recreation use, with limited to no retail aspect, and is nestled within the complex not visible from the arterial road. This contributes to it being an inappropriate location for the use.

Clause 13.07-1S Land use compatibility

This policy seeks to protect amenity, human health and safety while facilitating appropriate commercial, industrial, or other uses with potential adverse off-site impacts.

As above, the proposed land use is not compatible with future industrial land uses in proximity and could encroach on these uses and their ability to function safely and effectively. Possible amenity impacts

include noise, dust, traffic, and emissions (on the proposed land use), as well as frequent pedestrian movements (on future industrial uses). While these amenity, human health and safety impacts may not be apparent now, they could arise in the future as the industrial area is further developed, and as these industrial uses are as-of-right, it is not appropriate to create this potential.

Clause 17.01-1S Diversified economy, Clause 17.02-1S Business and Clause 21.04-1 Employment

It is stressed that employment opportunities closer to where people live are strongly encouraged by the scheme, and an adequate supply of commercial land should be provided in appropriate locations. The subject site is considered to be an inappropriate location. It is not easily accessible by foot or public transport and is not within an activity centre. While within an employment area, it provides for only a single job in a space that could be occupied by a more productive industrial use, potentially catering for more jobs. It is recognised that the proposed use could be adequately sited in one of the Shire's commercial areas, with the proposed use being a Section 2 Use within the Commercial 1 Zone and better meeting that zone's decision guidelines.

Clause 33.01 Industrial 1 Zone

The proposed land use is a Section 2 Use within the zone, and therefore requires a permit.

An assessment against State and Local Planning Policy has been provided above. The proposal is not in close proximity to any residential area. It is however in close proximity to both existing and future industrial uses, and it has been determined that these uses would influence the proposed use that may prejudice those industrial uses. Like the right-to-farm in our Shire's agricultural areas, a right to undertake industrial uses on land designated for it should be protected as much as possible, and future conflict could arise by allowing non-industrial uses on new industrial land. The proposal is therefore deemed to not be consistent with the purpose of the zone.

Clause 52.06 Car Parking and Clause 52.34 Bicycle Facilities

The applicant has advised that seven (7) parking spaces are available, although only four (4) spaces are titled with the lot. There do not appear to be any visitor spaces within the complex, except for disabled spaces. It is therefore deemed that there are four (4) spaces available.

Pursuant to Clause 52.06-3, the clause must be considered for a new use. There is no statutory requirement pursuant to the table within Clause 52.06-5, and so the required parking rate is to the satisfaction of the Responsible Authority. The application was referred to Council's Traffic department for comment, who did not object subject to patron limits of one (1) employee and three (3) visitors. With the proposed patronage of the premises being three (3) people at one time, with a single employee, this is satisfied.

Clause 52.34 Bicycle Facilities also applies for a new use. In this instance, pursuant to the table within Clause 52.34-5, one (1) space must be provided for four (4) employees, and one (1) visitor space must be provided for each 200sqm of area (for a minor recreation facility). As the premises is less than 200sqm in size, and the proposed use is to have a single employee, the statutory requirement for bicycle facilities is zero (0).

Plan Melbourne 2017-2050 and Melbourne Industrial and Commercial Use Plan (2020)

Plan Melbourne identifies this industrial area as being part of a State-significant industrial precinct. State-significant industrial precincts are specifically cited as providing strategically located land for major industrial development linked to the Principal Freight Network and transport gateways. It is identified that these will be protected from incompatible land uses to allow continual growth in freight, logistics and manufacturing investment. This site specifically is well located a short distance from the Princes Freeway.

The *Melbourne Industrial and Commercial Use Plan* further elaborates on this policy. It recognises that there are significant constraints in the supply of industrial land, along with strong demand especially in the Southern Region. The need for commercial land is also recognised. Council recognises that there may be a distinct undersupply of suitable commercial land for uses such as this proposed, which would be well suited for Commercial 2 Zone or Industrial 3 Zone. This however does not justify the erosion of important, underdeveloped industrial land.

Conclusion

While the proposed land use is contemplated in the zone, it must undergo an assessment. While some industrial areas may suit the proposed use, the subject site is a freshly developed industrial complex, not yet corrupted by incompatible uses. Policy strongly suggests that this land should be protected for industrial uses, and so it is deemed that the proposal is not acceptable and should be refused.

Recommendation

Refusal to Grant a Planning Permit

That Council having caused notice of Planning Application No. T240007 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to Refuse to Grant a Permit in respect of the land known and described as L15 PS 911081T V12262 F741, 7 Convoy Lane, Pakenham, for the Use of Land for a Restricted Recreation Facility under the following grounds:

THE REASONS FOR REFUSAL

1. The proposal is not consistent with State and Local Planning Policy as it introduces an incompatible land use to an uncorrupted industrial area.
2. The proposal fails to meet the purpose of the Industrial 1 Zone, as it does not provide for manufacturing industry, the storage and distribution of goods or associated uses, and may affect the safety and amenity of these uses.

The aerial map displays the property at 7 Convo Lane, Pakenham. The property is divided into several lots, numbered 1 through 11. A red box highlights a specific area on the property. The map includes a scale bar (0 to 20m) and a north arrow. Surrounding streets are labeled: Swift Lane, Prompt Lane, and Convo Lane. The map is sourced from Vicmap Cartographic | © Nesmap.



Planning Enquiries
Phone: 1300 787 624
Web: www.cardinia.vic.gov.au

Clear Form

Office Use Only

Application No.:

Date Lodged: / /

Application for a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the end of this form.

Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any questions, please contact Council's planning department.

Questions marked with an asterisk (*) must be completed.

If the space provided on the form is insufficient, attach a separate sheet.

Click for further information.

The Land

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Street Address *

Unit No.: 7	St. No.: 120	St. Name: koo wee rup
Suburb/Locality: Pakenha		Postcode: 381

Formal Land Description *
Complete either A or B.

This information can be found on the certificate of title.

If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A	Lot No.:	<input type="radio"/> Lodged Plan	<input checked="" type="radio"/> Title Plan	<input type="radio"/> Plan of Subdivision	No.: T20040
OR					
B	Crown Allotment No.:	Section No.:			
Parish/Township Name:					

The Proposal

You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.

For what use, development or other matter do you require a permit? *

Planning to open personal training studio at no.7 convoy lane. (1205 Koo wee Rup rd., Pakenham. where I will be taking one on one or max three on one personal training classes.

- I am planning to paint inside walls monument.
- Three wall fans, a tv
- Rubber gym floor mats
- Business name, services and logo inside out
- Epoxy flooring at reception
- cardio and gym equipment's

Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

Estimated cost of any development for which the permit is required *

Cost \$ 20.00

You may be required to verify this estimate. Insert '0' if no development is proposed.

If the application is for land within **metropolitan Melbourne** (as defined in section 3 of the *Planning and Environment Act 1987*) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy **must** be paid to the State Revenue Office and a current levy certificate **must** be submitted with the application. Visit www.sro.vic.gov.au for information.



Existing Conditions

Describe how the land is used and developed now *

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

multi-warehouses with access to road.

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 Provide a plan of the existing conditions. Photos are also helpful.

Title Information

Encumbrances on title *

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- ☐ Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- ☒ No
- ☐ Not applicable (no such encumbrance applies).

 Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

Applicant and Owner Details

Provide details of the applicant and the owner of the land.

Applicant *

The person who wants the permit.

Please provide at least one contact phone number *

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

Contact person's details*

Same as applicant ☒

Name:

Title:

First Name:

Surname:

Organisation (if applicable):

Postal Address:

If it is a P.O. Box, enter the details here:

Unit No.:

St. No.:

St. Name:

Suburb/Locality:

State:

Postcode:

Owner *


The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.



Declaration

This form must be signed by the applicant *

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

 Information in this application is true and correct to the best of the permit application.

 Date: 03-01-2024
day / month / year

Need help with the Application?

General information about the planning process is available at planning.vic.gov.au

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

Has there been a pre-application meeting with a council planning officer?


☒ No ☐ Yes If 'Yes', with whom?: 

Date:  day / month / year

Checklist

Have you:

☒ Filled in the form completely?

☐ Paid or included the application fee?  Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

☒ Provided all necessary supporting information and documents?:

- ☒ A full, current copy of title information for each individual parcel of land forming the subject site.
- ☒ A plan of existing conditions.
- ☒ Plans showing the layout and details of the proposal.
- ☒ Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.
- ☒ If required, a description of the likely effect of the proposal (for example, traffic, noise, environmental impacts).
- ☒ If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void.

☒ Completed the relevant council planning permit checklist?

☒ Signed the declaration?

Lodgement

Lodge the completed and signed form, the fee and all documents with:

Cardinia Shire Council
PO Box 7
Pakenham VIC 3810

In person: 20 Siding Avenue, Officer

Contact Information:
Telephone: 1300 787 624
Email: mail@cardinia.vic.gov.au
DX: 81008

Deliver application in person, by post or by electronic lodgement.

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MORE INFORMATION

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The Land

Planning permits relate to the use and development of the land. It is important that accurate, clear and concise details of the land are provided with the application.

How is land identified?

Land is commonly identified by a street address, but sometimes this alone does not provide an accurate identification of the relevant parcel of land relating to an application. Make sure you also provide the formal land description - the lot and plan number or the crown, section and parish/township details (as applicable) for the subject site. This information is shown on the title.

See **Example 1**.

The Proposal

Why is it important to describe the proposal correctly?

The application requires a description of what you want to do with the land. You must describe how the land will be used or developed as a result of the proposal. It is important that you understand the reasons why you need a permit in order to suitably describe the proposal. By providing an accurate description of the proposal, you will avoid unnecessary delays associated with amending the description at a later date.

⚠ Planning schemes use specific definitions for different types of use and development. Contact the Council planning office at an early stage in preparing your application to ensure that you use the appropriate terminology and provide the required details.

How do planning schemes affect proposals?

A planning scheme sets out policies and requirements for the use, development and protection of land. There is a planning scheme for every municipality in Victoria. Development of land includes the construction of a building, carrying out works, subdividing land or buildings and displaying signs.

Proposals must comply with the planning scheme provisions in accordance with Clause 61.05 of the planning scheme. Provisions may relate to the State Planning Policy Framework, the Local Planning Policy Framework, zones, overlays, particular and general provisions. You can access the planning scheme by either contacting Council's planning department or by visiting Planning Schemes Online at planning-schemes.delwp.vic.gov.au

⚠ You can obtain a planning certificate to establish planning scheme details about your property. A planning certificate identifies the zones and overlays that apply to the land, but it does not identify all of the provisions of the planning scheme that may be relevant to your application. Planning certificates for land in metropolitan areas and most rural areas can be obtained by visiting www.landata.vic.gov.au Contact your local Council to obtain a planning certificate in Central Goldfields, Corangamite, Macedon Ranges and Greater Geelong. You can also use the free Planning Property Report to obtain the same information.

See **Example 2**.

Estimated cost of development

In most instances an application fee will be required. This fee must be paid when you lodge the application. The fee is set down by government regulations.

To help Council calculate the application fee, you must provide an accurate cost estimate of the proposed development. This cost does not include the costs of development that you could undertake without a permit or that are separate from the permit process. Development costs should be calculated at a normal industry rate for the type of construction you propose.

Council may ask you to justify your cost estimates. Costs are required solely to allow Council to calculate the permit application fee. Fees are exempt from GST.

⚠ Costs for different types of development can be obtained from specialist publications such as Cordell Housing: Building Cost Guide or Rawlinsons: Australian Construction Handbook.

⚠ Contact the Council to determine the appropriate fee. Go to planning.vic.gov.au to view a summary of fees in the Planning and Environment (Fees) Regulations.

Metropolitan Planning Levy refer Division 5A of Part 4 of the *Planning and Environment Act 1987* (the Act). A planning permit application under section 47 or 96A of the Act for a development of land in metropolitan Melbourne as defined in section 3 of the Act may be a leviable application. If the cost of the development exceeds the threshold of \$1 million (adjusted annually by consumer price index) a levy certificate must be obtained from the State Revenue Office after payment of the levy. A valid levy certificate must be submitted to the responsible planning authority (usually council) with a leviable planning permit application. Refer to the State Revenue Office website at www.sro.vic.gov.au for more information. A leviable application submitted without a levy certificate is void.

Existing Conditions

How should land be described?

You need to describe, in general terms, the way the land is used now, including the activities, buildings, structures and works that exist (e.g. single dwelling, 24 dwellings in a three-storey building, medical centre with three practitioners and 8 car parking spaces, vacant building, vacant land, grazing land, bush block).

Please attach to your application a plan of the existing conditions of the land. Check with the local Council for the quantity, scale and level of detail required. It is also helpful to include photographs of the existing conditions.

See **Example 3**.

Title Information

What is an encumbrance?

An 'encumbrance' is a formal obligation on the land, with the most common type being a 'mortgage'. Other common examples of encumbrances include:

- **Restrictive Covenants:** A 'restrictive covenant' is a written agreement between owners of land restricting the use or development of the land for the benefit of others, (eg. a limit of one dwelling or limits on types of building materials to be used).
- **Section 173 Agreements:** A 'section 173 agreement' is a contract between an owner of the land and the Council which sets out limitations on the use or development of the land.
- **Easements:** An 'easement' gives rights to other parties to use the land or provide for services or access on, under or above the surface of the land.
- **Building Envelopes:** A 'building envelope' defines the development boundaries for the land.

Aside from mortgages, the above encumbrances can potentially limit or even prevent certain types of proposals.

What documents should I check to find encumbrances?

Encumbrances are identified on the title (register search statement) under the header 'encumbrances, caveats and notices'. The actual details of an encumbrance are usually provided in a separate document (instrument) associated with the title. Sometimes encumbrances are also marked on the title diagram or plan, such as easements or building envelopes.

What about caveats and notices?

A 'caveat' is a record of a claim from a party to an interest in the land. Caveats are not normally relevant to planning applications as they typically relate to a purchaser, mortgagee or chargee claim, but can sometimes include claims to a covenant or easement on the land. These types of caveats may affect your proposal.

Other less common types of obligations may also be specified on title in the form of 'notices'. These may have an effect on your proposal, such as a notice that the building on the land is listed on the Heritage Register.

What happens if the proposal contravenes an encumbrance on title?

Encumbrances may affect or limit your proposal or prevent it from proceeding. Section 61(4) of the *Planning and Environment Act 1987* for example, prevents a Council from granting a permit if it would result in a breach of a registered restrictive covenant. If the proposal contravenes any encumbrance, contact the Council for advice on how to proceed.



You may be able to modify your proposal to respond to the issue. If not, separate procedures exist to change or remove the various types of encumbrances from the title. The procedures are generally quite involved and if the encumbrance relates to more than the subject property, the process will include notice to the affected party.

⚠ You should seek advice from an appropriately qualified person, such as a solicitor, if you need to interpret the effect of an encumbrance or if you seek to amend or remove an encumbrance.

Why is title information required?

Title information confirms the location and dimensions of the land specified in the planning application and any obligations affecting what can be done on or with the land.

As well as describing the land, a full copy of the title will include a diagram or plan of the land and will identify any encumbrances, caveats and notices.

What is a 'full' copy of the title?

The title information accompanying your application must include a 'register search statement' and the title diagram, which together make up the title.

In addition, any relevant associated title documents, known as 'instruments', must also be provided to make up a full copy of the title.

Check the title to see if any of the types of encumbrances, such as a restrictive covenant, section 173 agreement, easement or building envelope, are listed. If so, you must submit a copy of the document (instrument) describing that encumbrance. Mortgages do not need to be provided with planning applications.

⚠ Some titles have not yet been converted by Land Registry into an electronic register search statement format. In these earlier types of titles, the diagram and encumbrances are often detailed on the actual title, rather than in separate plans or instruments.

Why is 'current' title information required?

It is important that you attach a current copy of the title for each individual parcel of land forming the subject site. 'Current' title information accurately provides all relevant and up-to-date information.

Some councils require that title information must have been searched within a specified time frame. Contact the Council for advice on their requirements.

⚠ Copies of title documents can be obtained from Land Registry: Level 10, 570 Bourke Street, Melbourne; 03 8636 2010; www.landata.vic.gov.au – go direct to "titles & property certificates".

Applicant and Owner Details

This section provides information about the permit applicant, the owner of the land and the person who should be contacted about any matters concerning the permit application.

The applicant is the person or organisation that wants the permit. The applicant can, but need not, be the contact person.

In order to avoid any confusion, the Council will communicate only with the person who is also responsible for providing further details. The contact may be a professional adviser (e.g. architect or planner) engaged to prepare or manage the application. To ensure prompt communications, contact details should be given.

Check with Council how they prefer to communicate with you about the application. If an email address is provided this may be the preferred method of communication between council and the applicant/contact.

The owner of the land is the person or organisation who owns the land at the time the application is made. Where a parcel of land has been sold and an application made prior to settlement, the owner's details should be identified as those of the vendor. The owner can, but need not, be the contact or the applicant.

See **Example 4**.

Declaration

The declaration should be signed by the person who takes responsibility for the accuracy of all the information that is provided. This declaration is a signed statement that the information included with the application is true and correct at the time of lodgement.

The declaration can be signed by the applicant or owner. If the owner is not the applicant, the owner must either sign the application form or must be notified of the application which is acknowledged in the declaration.

⚠ Obtaining or attempting to obtain a permit by wilfully making or causing any false representation or declaration, either orally or in writing, is an offence under the *Planning and Environment Act 1987* and could result in a fine and/or cancellation of the permit.

Need help with the Application?

If you have attended a pre-application meeting with a Council planner, fill in the name of the planner and the date, so that the person can be consulted about the application once it has been lodged.

Checklist

What additional information should you provide to support the proposal?

You should provide sufficient supporting material with the application to describe the proposal in enough detail for the Council to make a decision. It is important that copies of all plans and information submitted with the application are legible.

There may be specific application requirements set out in the planning scheme for the use or development you propose. The application should demonstrate how these have been addressed or met.

The checklist is to help ensure that you have:

- provided all the required information on the form
- included payment of the application fee
- attached all necessary supporting information and documents
- completed the relevant Council planning permit checklist
- signed the declaration on the last page of the application form

⚠ The more complete the information you provide with your permit application, the sooner Council will be able to make a decision.

Lodgement

The application must be lodged with the Council responsible for the planning scheme in which the land affected by the application is located. In some cases the Minister for Planning or another body is the responsible authority instead of Council. Ask the Council if in doubt.

Check with Council how they prefer to have the application lodged. For example, they may have an online lodgement system, prefer email or want an electronic and hard copy. Check also how many copies of plans and the size of plans that may be required.

Contact details are listed in the lodgement section on the last page of the form.

⚠ Approval from other authorities: In addition to obtaining a planning permit, approvals or exemptions may be required from other authorities or Council departments. Depending on the nature of your proposal, these may include food or health registrations, building permits or approvals from water and other service authorities.

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**REGISTER SEARCH STATEMENT (Title Search) Transfer of
Land Act 1958**

Page 1 of 1

VOLUME 12520 FOLIO 961

Security no : 1241123127368

Produced 01/02/2024 03:02 PM

LAND DESCRIPTION

Lot 15 on Plan of Subdivision 911081T.
PARENT TITLE Volume 12262 Folio 741
Created by instrument PS911081T 08/12/2023

REGISTERED PROPRIETOR

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AX602717A 22/12/2023
Expiry Date 08/12/2043

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE PS911081T FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER		STATUS	DATE
PS911081T (B)	PLAN OF SUBDIVISION	Registered	08/12/2023
AX602716C (E)	DISCHARGE OF MORTGAGE	Registered	08/01/2024
AX602717A (E)	TRANSFER	Registered	08/01/2024

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 7 CONVOY LANE PAKENHAM VIC 3810

OWNERS CORPORATIONS

The land in this folio is affected by
OWNERS CORPORATION 1 PLAN NO. PS911081T

DOCUMENT END

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Document Type	Plan
Document Identification	PS911081T
Number of Pages (excluding this cover sheet)	4
Document Assembled	01/02/2024 13:57

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PLAN OF SUBDIVISION		EDITION 1	PS911081T	
Location of Land Parish: NAR-NAR-GOON Township: - Section: - Crown Allotment: 32 (PART) Crown Portion: - Title References: Vol. 12262 Fol. 741 Last Plan Reference: LOT 1 ON PS815205N Postal Address: 1205 KOO WEE RUP ROAD (At time of subdivision) PAKENHAM VIC 3810 MGA2020 Co-ordinates: E 367 790 Zone 55 (of approx. centre of plan) N 5 783 390 GDA 2020		Council Name: Cardinia Shire Council Council Reference Number: S23-025 Planning Permit Reference: T220662 SPEAR Reference Number: S201977T Certification This plan is certified under section 6 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 16 or 15A of the Subdivision Act 1988 has not been made Digitally signed by: Fiona Shadforth for Cardinia Shire Council on 15/11/2023 Statement of Compliance issued: 26/11/2023		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON	BOUNDARIES DEFINED BY BUILDINGS ARE SHOWN BY THICK CONTINUOUS LINES. LOCATION OF BOUNDARIES DEFINED BY BUILDINGS: <ul style="list-style-type: none"> MEDIAN: BOUNDARIES LABELLED M EXTERIOR FACE: ALL BOUNDARIES UNLESS OTHERWISE DESCRIBED. WHERE LINES ARE SHOWN THUS - - - - - , THIS INDICATES A BUILDING WALL, FLOOR OR CEILING THAT DOES NOT DEFINE A BOUNDARY. COMMON PROPERTY No. 1 IS ALL THE LAND IN THE PLAN EXCEPT FOR LAND IN ALL LOTS. THE COMMON PROPERTY CONSISTS OF PRIVATE ROADS CALLED CONVOY LANE, NIMBLE LANE, PROMPT LANE & SWIFT LANE. LOTS ON THIS PLAN MAY BE AFFECTED BY ONE OR MORE OWNERS CORPORATIONS. FOR DETAILS OF ANY OWNERS CORPORATIONS INCLUDING PURPOSE, RESPONSIBILITY, ENTITLEMENT AND LIABILITY, SEE OWNERS CORPORATIONS SEARCH REPORT, OWNERS CORPORATIONS ADDITIONAL INFORMATION AND, IF APPLICABLE, OWNERS CORPORATION RULES.		
NOTATIONS				
DEPTH LIMITATION DOES NOT APPLY				
Staging This is not a staged subdivision. Planning Permit No. T220662 PA Survey: This plan is based on survey. This survey has been connected to Permanent Marks no(s). PM786 & PM787 in Proclaimed Survey Area No. 71				
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
SECTION 12(2) OF THE SUBDIVISION ACT 1988 APPLIES TO ALL LAND IN THIS PLAN				
Reference Easement	Purpose	Width (Metres)	Origin	Land Benefited/in Favour Of
E-1	POWERLINE	1	AT747148N	AUSNET ELECTRICITY SERVICES PTY LTD
E-1 & E-2	POWERLINE	SEE DIAG.	THIS PLAN - SECTION 88 ELECTRICITY INDUSTRY ACT 2000	AUSNET ELECTRICITY SERVICES PTY LTD
<div style="border: 1px solid red; padding: 5px; color: red;"> <p>This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.</p> </div>				
 Hellier McFarland Development Consultants Town Planners Land Surveyors Level 2, 1911 Malvern Road, Malvern East, VIC 3145 PO Box 1208, Darling, VIC 3145 Tel: 03 9532 9951 Fax: 03 9532 9941 www.hmf.com.au info@hmf.com.au		REF 133155/T VERSION F Digitally signed by: Steven Willing, Licensed Surveyor, Surveyor's Plan Version (F), 26/09/2023, SPEAR Ref: S201977T	CAD REF: 133155-17 (D 478164.dwg) Digitally signed by: Steven Willing, Licensed Surveyor, Surveyor's Plan Version (F), 26/09/2023, SPEAR Ref: S201977T	ORIGINAL SHEET SIZE: A3 PLAN REGISTERED TIME: 2:03 PM DATE: 8/12/2023 R. Rusan Assistant Registrar of Titles
Amended by: Steven Willing, Licensed Surveyor 08/12/2023				

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Owners Corporation Search Report

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**OWNERS CORPORATION 1
PLAN NO. PS911081T**

The land in PS911081T is affected by 1 Owners Corporation(s)

Land Affected by Owners Corporation:
Common Property 1, Lots 1 - 28.

Limitations on Owners Corporation:
Unlimited

Postal Address for Services of Notices:
1205 KOO WEE RUP ROAD PAKENHAM VIC 3810

PS911081T 08/12/2023

Owners Corporation Manager:
NIL

Rules:
Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

Owners Corporation Rules:
1. OC059562Y 08/12/2023

Additional Owners Corporation Information:
PS911081T 08/12/2023

Notations:
NIL

Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	9	10
Lot 2	9	10
Lot 3	11	10
Lot 4	3	10
Lot 5	3	10
Lot 6	2	10



Department of Environment, Land, Water & Planning

Owners Corporation Search Report

Produced: 01/02/2024 01:57:09 PM

OWNERS CORPORATION 1
PLAN NO. PS911081T

Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Lot 7	2	10
Lot 8	2	10
Lot 9	2	10
Lot 10	2	10
Lot 11	2	10
Lot 12	2	10
Lot 13	2	10
Lot 14	2	10
Lot 15	3	10
Lot 16	3	10
Lot 17	3	10
Lot 18	2	10
Lot 19	2	10
Lot 20	2	10
Lot 21	2	10
Lot 22	2	10
Lot 23	2	10
Lot 24	2	10
Lot 25	2	10
Lot 26	7	10
Lot 27	7	10
Lot 28	8	10
Total	100.00	280.00

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.

Statement End.

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Produced 02/02/2024 12:23:30 PM

Status	Registered	Dealing Number	AX802717A
Date and Time Lodged	22/12/2023 02:22:23 PM		

Lodger Details

Lodger Code	18734A
Name	MY CONVEYANCERS AU
Address	
Lodger Box	
Phone	
Email	
Reference	

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TRANSFER

Jurisdiction	VICTORIA
--------------	----------

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Land Title Reference

12520/961

Transferor(s)

Name	DANDY STEEL FABRICATIONS AUSTRALASIA PTY LTD
ACN	113084876

Estate and/or interest being transferred

Fee Simple

Consideration

\$AUD 573496.00

Transferee(s)

Tenancy (Inc. share)

Name	
ACN	659328266
Address	
Street Number	62
Street Name	GRANGE
Street Type	DRIVE



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Locality	LYSTERFIELD
State	VIC
Postcode	3156

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Covenants

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restrictive covenant with the intent that the burden of the restrictive covenant runs with and binds the burdened land and the benefit of the restrictive covenant is annexed to and runs with the benefited land.

Burdened land	the Land
Benefited land	MCP: AA9768
Restrictive covenant	MCP: AA9768
Expiry Date	08/12/2043

Duty Transaction ID
5876737

The transferor transfers to the transferee their estate and/or interest in the land specified for the consideration, subject to any restrictive covenant set out or referred to in this transfer.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the transferee or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of

Signer Name	INDIA STOKIE
Signer Organisation	MY CONVEYANCERS AU
Signer Role	CONVEYANCING PRACTICE
Execution Date	22 DECEMBER 2023

Execution

1. The Certifier has taken reasonable steps to verify the identity of the transferor or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of

Signer Name	DANDY STEEL FABRICATIONS AUSTRALASIA PTY LTD
Signer Organisation	BILL GIOUTLOU
Signer Role	GIOUTLOU & CO LAWYERS
Execution Date	AUSTRALIAN LEGAL PRACTITIONER
	22 DECEMBER 2023

File Notes:
NIL



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

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Document Type	Instrument
Document Identification	AA9768
Number of Pages (excluding this cover sheet)	2
Document Assembled	02/02/2024 12:44

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**Memorandum of common provisions
Restrictive covenants in a transfer
Section 91A Transfer of Land Act 1958**

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Lodged by	
Name:	Gioutlou & Co Lawyers
Phone:	03 9563 2600
Address:	92A Murrumbeena Road, Murrumbeena VIC 3163
Reference:	8513
Customer code:	18682S

This memorandum contains provisions which are intended for inclusion in transfers of land under the Transfer of Land Act 1958 to be subsequently lodged for registration.

Operative words including words to bind the burdened land and words of annexation must not be included.

Provisions to apply to the transfer:

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Burdened land: The land being transferred

Benefited land: Every other lot shown on Plan of Subdivision 911081T

Covenants: The registered proprietor or proprietors for the time being of the burdened land must not:

1. paint or cause to be painted or finished any external surface of a building on the burdened land unless the same is finished with a durable paint or permanent colour surface in a colour or finish which has first been approved in writing by Dandy Steel Fabrications Australasia Pty Ltd (which approval is not to be unreasonably withheld).
2. suffer or store or permit goods, materials, containers or any other commodities or any tank, plant and machinery or rubbish to be stored or placed outside any building erected on the burdened land.
3. use or permit or suffer any part of the burdened land to be used for purposes of a bank, Cafe/Take away food premises, restaurant as defined in the Cardinia Shire Planning Scheme without the prior written consent of Dandy Steel Fabrications Australasia Pty Ltd which consent shall be either given or denied at the absolute discretion of Dandy Steel Fabrications Australasia Pty Ltd.

35392012A

V3

1. The provisions are to be numbered consecutively from number 1.
2. Further pages may be added but each page should be consecutively numbered.
3. To be used for the inclusion of provisions in instruments.

91ATLA

Page 1 of 2

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Land Use Victoria contact details: see www.delwp.vic.gov.au/property > Contact us

ORIGINAL

Memorandum of common provisions
Section 91A Transfer of Land Act 1958

AA9768

4. use or permit any part of the burdened land to be used for the purposes of motor vehicle towing depot, motor vehicle wrecking, junkyard, container storage depot, brothel, sex shop, place of worship or assembly or morgue without the prior written consent of Dandy Steel Fabrications Australasia Pty Ltd which consent shall be either given or denied at the absolute discretion of Dandy Steel Fabrications Australasia Pty Ltd.
5. use or permit any part of the burdened land to be used for the purposes of motor vehicle mechanic, panel beating or spray painting business unless the activities of the business are wholly carried out within a building on the burdened land.

Expiry: 20 years from the date of registration of the Plan of Subdivision 911081T

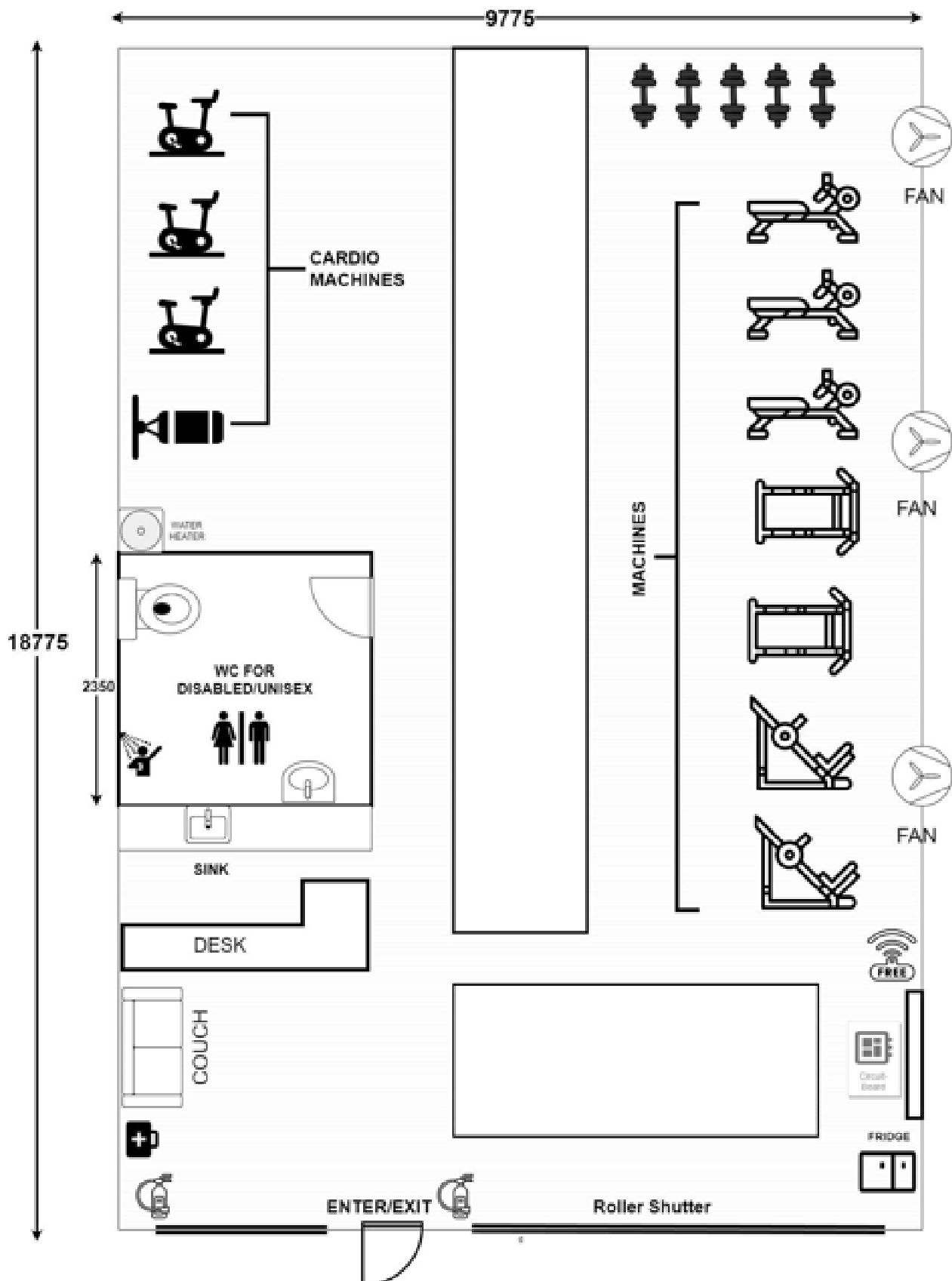
*Optional.
Specify the date the covenants are to expire or if the covenants are to expire on the happening of a particular event, specify the event. If the expiry only applies to particular covenants or specific lots/folios, this must be clearly specified.*

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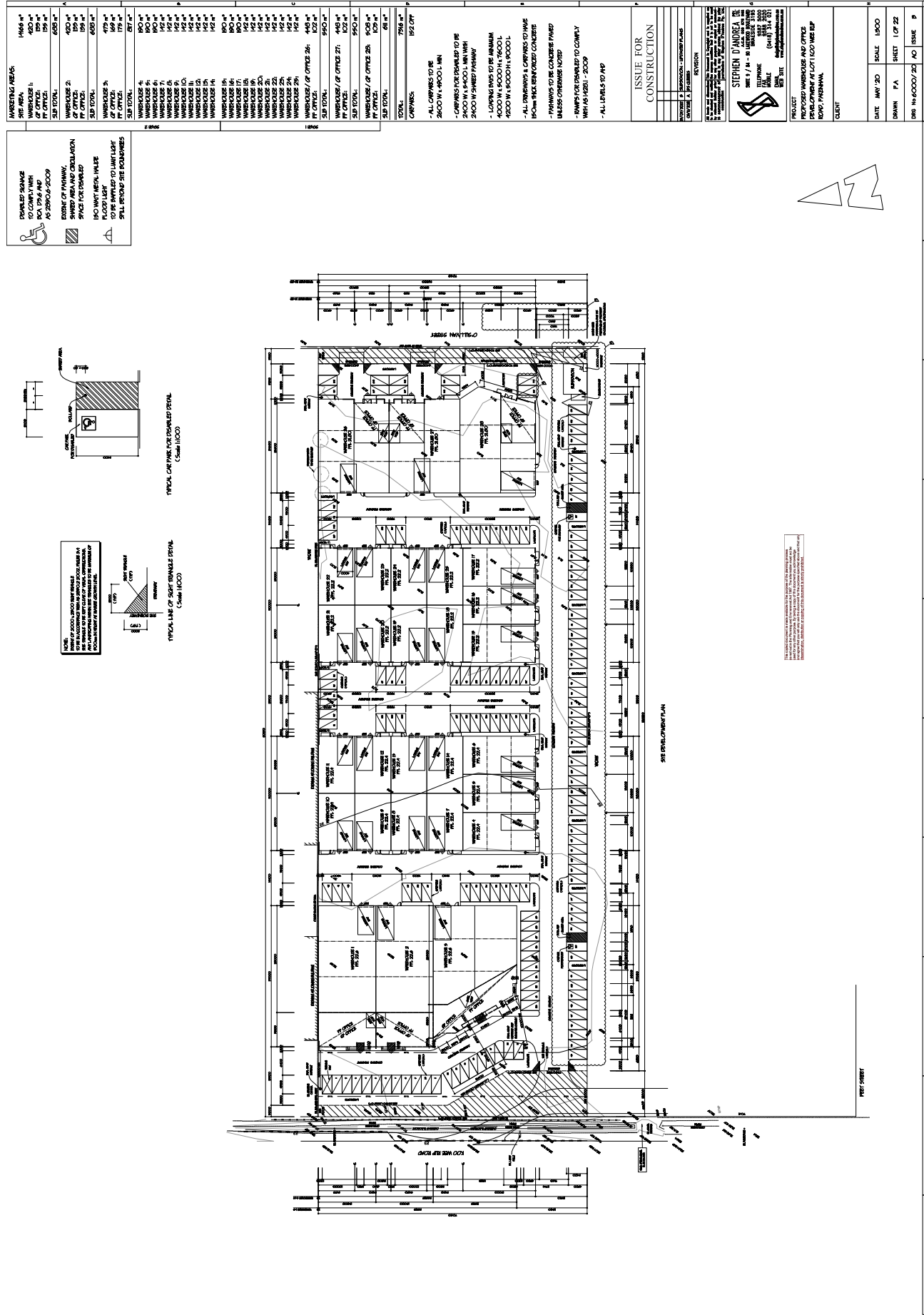
91ATLA
Page 2 of 2

V3

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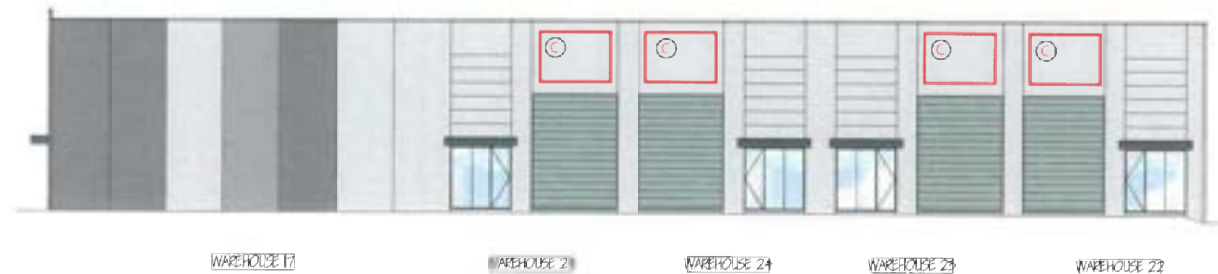
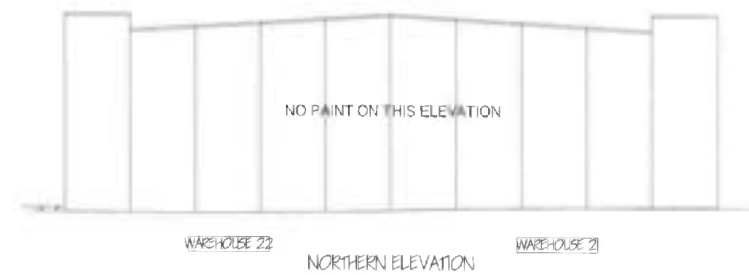
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SIGNAGE SIZES/OPTIONS

- A 1500mm W x 6000mm H
- B 1000mm W x 2500mm H
- C 3500mm W x 2500mm H
- D 4000mm W x 1500mm H
- E 2500mm W x 1500mm H
- F 3500mm W x 2000mm H



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- E 2500mm W x 1500mm H
- F 3500mm W x 2000mm H

