



# Cardinia

MINUTES OF TOWN PLANNING COMMITTEE

MONDAY, 6 FEBRUARY 2017

## MINUTES OF TOWN PLANNING COMMITTEE

held in the Council Chambers, 20 Siding Avenue, Officer  
on Monday, 6 February 2017

The meeting commenced at 7.00 pm

### PRESENT:

Mayor, Brett Owen, Chairman

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

Messrs Garry McQuillan (CEO), Mike Ellis (GMAS), Derek Madden (GMCS), Andrew Paxton (GMPD), Jenny Scicluna (GMCWB), Doug Evans (MG)

### APOLOGIES:

Nil

### DECLARATION OF PECUNIARY AND OTHER INTERESTS

Nil.

## TABLE OF CONTENTS

1. USE OF AN EXISTING BUILDING AS A PLACE OF WORSHIP AT 320 WATSON ROAD, PAKENHAM..... **ERROR! BOOKMARK NOT DEFINED.**
2. DEVELOPMENT OF THE LAND FOR AN OUTBUILDING AND USE OF THE LAND FOR ANIMAL KEEPING (5 DOGS) AT 72 GAINSBOROUGH AVENUE LANG LANG..... **ERROR! BOOKMARK NOT DEFINED.**
3. EARTHWORKS AT 230 TELEGRAPH ROAD, BEACONSFIELD UPPER..... **ERROR! BOOKMARK NOT DEFINED.**
4. LAND SALES OFFICE AT WESTERNPORT ROAD, LANG LANG..... **ERROR! BOOKMARK NOT DEFINED.**
5. REMOVAL OF NATIVE TREES AT 20 PINNOCKS ROAD, EMERALD..... **ERROR! BOOKMARK NOT DEFINED.**
6. REMOVAL OF NATIVE VEGETATION AT 555 PAKENHAM ROAD, PAKENHAM UPPER..... **ERROR! BOOKMARK NOT DEFINED.**
7. RE-SUBDIVISION OF TWO (2) EXISTING LOTS (BOUNDARY REALIGNMENT) AT 35-43 GARDENIA STREET, PAKENHAM ..... **ERROR! BOOKMARK NOT DEFINED.**
8. PLANNING SCHEME AMENDMENT ACTIVITY REPORT..... **ERROR! BOOKMARK NOT DEFINED.**
9. PLANNING MATTERS THE SUBJECT OF APPEAL AT VCAT..... **ERROR! BOOKMARK NOT DEFINED.**
10. PLANNING ENFORCEMENT MATTERS..... **ERROR! BOOKMARK NOT DEFINED.**
11. PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY..... **ERROR! BOOKMARK NOT DEFINED.**

# **1 USE OF AN EXISTING BUILDING AS A PLACE OF WORSHIP AT 320 WATSON ROAD, PAKENHAM**

FILE REFERENCE INT175262

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Ricardo Ramos

## **RECOMMENDATION**

That a Refusal to Grant Planning Permit T140744 be issued the use and development of the land for a place of worship, business identification signage, car parking and associated earthworks at 320 Watson Road, Pakenham Victoria 3810

### **Attachments**

- |          |   |          |
|----------|---|----------|
| <b>1</b> | Locality plan                                       | 1 Page   |
| <b>2</b> | Layout plans of proposal                            | 3 Pages  |
| <b>3</b> | Copies of objections circulated to councillors only | 27 Pages |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.: T140744

APPLICANT: Cultured House Designs

LAND: 320 Watson Road, Pakenham Victoria 3810

PROPOSAL: The use and development of the land for a place of worship, business identification signage, car parking and associated earthworks

PLANNING CONTROLS: Clause 35.04-1 Green Wedge Zone  
 Clause 35.04-5 Green Wedge Zone  
 Clause 44.04-1 Land Subject to Inundation Overlay  
 Clause 52.05-9 Advertising Signs  
 Clause 52.06-5 Car Parking

NOTIFICATION & OBJECTIONS: The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by sending notices to adjoining land owners and occupiers and placing a sign on site.

A total of 19 objections were received.

KEY PLANNING CONSIDERATIONS: Impact on the Green Wedge Zone  
 Inconsistent with the Cardinia Western Port Green Wedge Management Plan – Adopted July 2016  
 Increase in traffic during events  
 Car parking requirements  
 Visual amenity  
 Number of patrons

RECOMMENDATION: Refusal.

**BACKGROUND:**

There are no relevant planning permissions provided to the land.

**SUBJECT SITE:**

The subject site is located on the corner of McGregor Road and Watson Road, Pakenham, approximately 3 kilometres from the Princes Freeway to the north. The land size is approximately 4 hectares.

The site is located within a Green Wedge Zone with the Land Subject to Inundation Overlay on the property. The area surrounding the site is mainly used for agriculture uses and there are dwellings located within a 500 metre radius of the subject site

A crossover is located on Watson Road, with no access from McGregor Road. There are no easements that run through the subject site.

The site currently contains a dwelling and associated buildings. The site is cleared with planted vegetation along the southern and western boundaries with a few small planted scattered shrubs.

The topography of the land is flat.

The main characteristics of the surrounding area are:

- The area surrounding the subject site is mainly used for agricultural purposes. There are several dwellings located along McGregor Road and dwelling located immediately to the north of the subject site. As the area is mainly used for agricultural purposes, there is not much development other than dwellings, outbuilding and building associated with agricultural uses. Land is typically clear of vegetation There are watercourses located to the west and south of the subject site.

**PROPOSAL:**

The proposal is for the use and development of the land for a place of worship, business identification signage, car parking and associated earthworks. The development will take place in multiple stages, however the applicant is applying for stage 1. Any further stages will require a planning permit. Stage 1 includes the construction of the stupa, roofed verandah, office/library/kitchen building, two roundabouts, car parking area for 84 car parking spaces, internal accessways, advertising signage and two proposed gates at each entrance.

The intention of the application is to develop a place of worship so individuals can participate and learn about the Buddhist religion. It is expected that approximately 20-25 people will attend the site daily. There will also be approximately 3 events throughout the year which will have approximately 450 patrons.

The main access to the site would be from McGregor Road (unsealed road) and a secondary access would be from Watson Road (unsealed road).

**Use - Place of Worship**

The place of worship will be used as a Buddhist temple. The applicant has stated that there will be 3-4 monks residing at the existing residence on the site. There will be a maximum of 25 guest on site daily and a maximum of 450 guest during religious events.

The hours of daily operation are as follows:

Day	Time	Event	Max No. of Patrons
Daily	7:00am, 10:30am, 1:00pm	Food offering to monks	10
Weekdays	5:00pm – 8:45pm	Meditation session	20
Weekends	5:00pm – 8:45pm	Meditation session	25

### Building and Works (Stage 1)

Stage 1 of the construction will include the following structures.

#### *The Stupa*

The stupa will be located 57 metres from northern boundary and 130 metres from the western boundary. The stupa will be circular in shape and be 20 metres in width and have a maximum height of 15 metres. It is in the shape of a dome, with the maximum height of the dome being 9 metres with the tower extending to 15 metres.

#### *Office Building/Library/Kitchen*

The building will be located 51 metres from northern boundary and 47 metres from the western boundary. The building will be square in shape and contain library, meeting room, two dining rooms, kitchen, office and toilet facilities. *It will measure 21 metres by 21 metres and have a total height of 10.84 metres to the skylight.*

#### *Roofed Verandah*

The building will be located 94 metres from the northern boundary and 90 metres from the western boundary. *The verandah will be constructed in a circular shape and within the centre contain a 'Bo Tree'. It will be open sided, with a flat roof and have a maximum height 3.651 metres in height.*

#### *Sitting Buddha*

The sitting Buddha will be located north 15.5 metres directly north of the stupa. The Buddha will be within a roofed structure that will be 7.8 metres in height.

#### *Advertising Signage*

The signage will be located 12.5 metres from the north-eastern corner of the subject site. The sign will measure 3 metres in width and have a maximum height of 2.5 metres. The sign states 'BUDDHIST TEMPLE, MEDITATION CENTRE, 320 WATSON ROAD, PAKENHAM, VICTORIA, MAIN ENTRANCE, 6M' and will contain a picture of a sitting budda. The sign is proposed to be in the colour red terra with a timber frame.

#### *Car Parking and Access*

A crossover at 9 metres in width is proposed from McGregor Road and will be the main access to the subject site. The accessway splits into two lanes to allow for left and right turn lanes onto McGregor Road.

A second crossover is located from Watsons Road and is 5.5 metres in width. The second crossover accesses the dwelling and a car parking area containing 10 spaces.

Sliding gates will be constructed at both entrances, the wall adjacent to the gate will be constructed in brick and have a maximum height of 1.8 metres. The internal accessways will be 6 metres in width and to gain access to the car parking area, the two (2) main roundabouts, including the disabled car parking spaces. A gate is located along the private road and will prevent vehicle movement thru the site.

Stage 1 of the car parking area will contain 84 car parking spaces. A gravel footpath will be constructed to allow for pedestrians to move from the car parking area to the buildings within the site.

### *Buildings to be Retained On-site*

The following buildings will be retained on site:

- Dwelling – To be used as the monk’s residence.
- Sheds – For use as storage and a bicycle facility.
- Rotunda - Retained per owner’s/occupiers request.

### *Landscaping*

The plan details 20 different species that will be planted throughout the site. Taller vegetation will be planted along the McGregor Road and in certain areas along the Watson Road boundary.

### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 10.04 - Integrated decision making
- Clause 11.04-7 - Green wedges
- Clause 12.04 - Significant environment and landscapes
- Clause 13.02-1 - Floodplains
- Clause 14.01 - Agriculture
- Clause 15.01-1 - Cultural identity and neighbourhood character
- Clause 16.02-1 - Rural and residential Development
- Clause 18.02-5 - Car parking
- Clause 19.02-3 - Cultural facilities

### **Local Planning Policy Framework (LPPF)**

- Clause 21.01 - Cardinia Shire Key Issue and Strategic Vision
- Clause 21.01-1 - Municipal Strategic Statement
- Clause 21.04-2 - Agriculture

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

The relevant provisions/ documents are:

- Clause 52.05 - Advertising Signs
- Clause 52.06 - Car Parking
- Clause 52.34 - Bicycle Facilities
- Clause 57 - Green Wedge Zone
- Clause 65 - Decision Guidelines
- Cardinia Western Port Green Wedge Management Plan – Adopted 2016

### **Zone**

The land is subject to the Green Wedge Zone-Schedule 1

### **Overlays**

The land is subject to the following overlays:

- Land Subject to Inundation Overlay

### **PLANNING PERMIT TRIGGERS**

The proposal for the use and development of the land for a place of worship, car parking and advertising signage requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04-1 Green Wedge Zone, a planning permit is required for the use of the land for a place of worship
- Pursuant to Clause 35.04-5 Green Wedge Zone, a planning permit is required to construct or carry out building and works associated with a Section 2 use (place of worship), earthworks,
- Pursuant to Clause 44.04-1 Land Subject to Inundation Overlay, a planning permit is required to construct a building or to construct or carry out works.
- Pursuant to Clause 52.05-9 Advertising Signs, a planning permit is required for business identification signage.
- Pursuant to Clause 52.06-5 Car Parking, a planning permit is required for a reduction in the number of car parking spaces.

## **PUBLIC NOTIFICATION**

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

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

Council has received 19 objections to date.

The key issues that were raised in the objection/s is/are:

- Conflict with the purpose of the Green Wedge Zone and agricultural use of the area.
- McGregor Road is an unsealed road and potential noise and dust impacts.
- Visual impact on the existing landscape.
- Additional traffic on McGregor Road, which will make it an unsafe road to travel on.
- Health impacts of dust.
- The number of additional car parking spaces
- The number of people the site proposes.
- The proposal will cause amenity issues with surrounding properties.
- Intensity of the development and no buffer zones.
- Site capable of containing sewage treatment.
- Application not being advertised properly

## **REFERRALS**

### *Melbourne Water*

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

## **DISCUSSION**

The proposal is for a place of worship (Buddhist Temple) that will operate on a daily basis with the maximum of 25 patrons on site at one time. There will be approximately 3 events per year with a maximum of 450 patrons on site. Buildings will be constructed on the site and be generally on the western half of the subject site and a car parking area is provided on the north eastern portion of the site. The existing dwelling and other shedding will remain on site. The dwelling will be a residence for the monks.

In the Green Wedge Zone, a planning permit is required to consider the use of the land for a place of worship. The application must be consistent with a number of policies in order to seek approval. There is no

opposition for places of worship within Green Wedge Zone, however places of worship must be located and developed that is consistent with policy.

The use and development would result in a transformation and an intensive non-agricultural use within the Green Wedge Zone. The overarching purpose of the Green Wedge zone is to provide for and protect green wedge land for its agriculture and rural landscape value. As such it is considered the proposal is inconsistent with the relevant State and Local Planning Policy Framework, zone and the Cardinia Western Port Green Wedge Management Plan.

#### **Clause 11.04-7, Green Wedges & Clause 21.04-2, Agriculture**

The State Planning Policy Framework (SPPF) provides for the protection of Melbourne's green wedge land from inappropriate development and the need to protect the valuable landscape and the agricultural productivity it provides. The SPPF also provides that development is required to be close to modes of transport and pedestrian access and car parking areas are to be designed appropriately. Growth within the green wedge should be linked to existing settlement and consistent with the relevant policy.

Green wedge land is usually larger lots and cheaper in cost than lots within the Urban Growth Boundary (UGB) or established residential areas, therefore attractive to accommodate the need for large religious groups and the like. As places of worship are a subject to planning approval in a green wedge zone, this provides an opportunity for religious groups to apply for places of worship. It is expected that more applications of this type will be seen in the future. Uses such as this are not evident within the Westernport green wedge area (refer to figure 1 for map of the Western Port Green Wedge). The impact of such uses create loss of agricultural land and have a long term effect on the agricultural value of the land. If the proposal were approved, it could have a 'domino effect' and lead to further uses that negatively impact on the Westernport green wedge area and its significance.

Figure 1





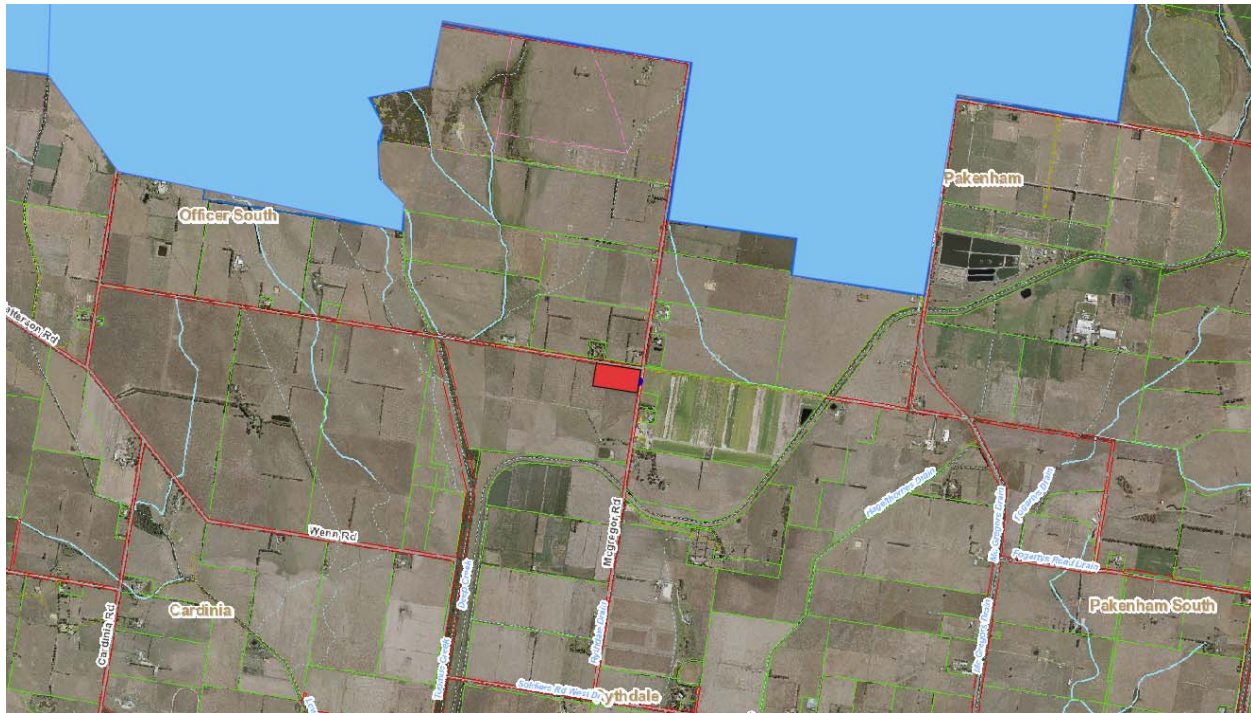
The objective of Clause 11.04-7, Green Wedges is to protect the green wedges of Metropolitan Melbourne from inappropriate development.

The relevant strategies of the Clause related to this application are:

- Ensure strategic planning and land management of each green wedge area to promote and encourage its key features and related values. This is supported by
- Support development in the green wedge that provides for environmental, economic and social benefits.
- Protecting important productive agricultural areas such as Werribee South, the Maribyrnong River flats, the Yarra Valley, Westernport and the Mornington Peninsula.

The green wedge contains significant agricultural values that are vital to Victoria's food source and is under pressure from urban type development that can lead to a fragmented landscape. The map (Figure 2) below shows the subject site in red which is surrounded by agricultural land. The area shown in blue is the urban growth boundary (UGB) detailing the limit to urban development. The subject site is surrounded by agricultural land and urban developments are non-existent. As the UGB is the limit to urban development, the subject site will be surrounded by agricultural land in the future and result in a fragmented landscape if the proposal were approved.

Figure 2.



The proposal is a permanent change of land use that will result in the loss of agricultural land which is contrary to strategy of the SPPF Clause 14.01-1, Protection of agricultural land. This is supported by Local Planning Policy Framework (LPPF) Clause 21.04-2, Agriculture states to protect agricultural land, particularly areas of high quality soils, from the intrusion of urban uses, inappropriate development and fragmentation which would lead to a reduction in agricultural viability, the erosion of the right of farmers to farm land, and ultimately the loss of land from agricultural production. The proposal does not support any agricultural activity on the land and of the surrounding areas. The proposal can impact on the surrounding agricultural land uses and the policy seeks to protect this land for inappropriate developments. The intention of this policy is to ensure that green wedges are not impacted by non-agricultural uses, but be protected and allow for uses that will encourage agricultural activity where appropriate and the proposal fails to adequately address this issue.

**Clause 35.04, Green Wedge Zone & Cardinia Western Port Green Wedge Management Plan – Adopted July 2016.**

*The purpose of the Green Wedge Zone is to:*

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for the use of land for agriculture.
- To recognise, protect and conserve green wedge land for its agricultural, environmental historic, landscape, recreational and tourism opportunities, and mineral and stone resources.
- To encourage use and development that is consistent with sustainable land management practices.
- To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.
- To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.
- To protect and enhance the biodiversity of the area.

The majority of agricultural uses are as of right in a Green Wedge Zone. The impact of urban type developments can have a detrimental impact on the agricultural uses and the open landscape. Pursuant to Clause 35.04-1 of the Green Wedge Zone, a planning permit is required to use the land for a place of worship. While the use is allowed (subject to planning approval), the urban nature of the use can have a detrimental impact on the rural landscape, agricultural land and the effect of the 'right to farm' which is not consistent with the purpose of the zone.

The state and local planning policies or any zone, does not specifically encourage or discourage places of worship. Places of worship exist within non-residential zones, such as industrial and green wedge zones. However, it is encouraged to have this type of use within an established area and they must be located and developed in a manner that is consistent with policy.

The Cardinia Western Port Green Wedge Management Plan – Adopted July 2016, encourages that places of worship within a green wedge are located close to the UGB, at the transition point from urban to rural land, or within existing townships. As green wedges have opened up to contain a broader range of uses (i.e. places of worship), this must be controlled to allow for the non-agriculture based uses (i.e. places of worship) to a suitable area (i.e. near the UGB). The subject site is not within a township, located 3 kilometres from the Princes Freeway and 1 kilometre from the UGB, therefore not being in an appropriate location. The proposal would be more suitable if it were located along the UGB. (Refer to Figure 2 for UGB). It is apparent that the proposal is inconsistent the Green Wedge Zone and Cardinia Westernport Green Wedge Management Plan.

### **Buildings and Works**

The buildings and works associated with the proposal are considered to be large in this location and will impact on rural landscape. The topography in the area is relatively flat and with no prominent structures in the immediate area. Although rural areas can include large houses, sheds and structures associated with rural industry, it is considered the proposal will make a strong impact on the landscape character of the area. The structures are not designed to be compliment the rural landscape. The majority of the height of all structures within the site is approximately 10 metres, with the spire of the stupa extending to 15 metres. The proposal will be out of scale and form with structures that are typical of the rural landscape. It is understood that structures associated with a Buddhist temple have to be a certain requirement for the religious needs. Structures as this would be prominent in the rural landscape and as previously stated be better suite in the transition area along the UGB. Vegetation screening is proposed, however this should not be relied upon to resolve the visual impacts from the road and surrounding properties.

### **Number of Patrons, Traffic and Car Parking**

The maximum number of patrons on site during event days is 450, this will occur approximately 3 calendar days a year. On non-event days, a maximum of 25 patrons will be on the site. Clause 52.06, car parking requires 0.3 car parking spaces per patron. Based on 450 patrons, 135 spaces are required for the proposal to comply. The car parking area provides for 84 car parking spaces, with an additional 10 car parking spaces adjacent to the monk's residence, having a total of 94 car parking spaces on site. The subject site is more than adequate to provide the required number of spaces. The plan does not provide this detail, therefore falls below required 135 car parking spaces.

The majority of the objectors have concerns with is the additional vehicles on McGregor Road and the impact it will cause such as dust and road damage. The road is a public road, therefore the number of vehicles that can use the road daily can't be controlled. On event days, methods can be used to resolve traffic concerns. Dust suppression methods, such as water spraying can be used to deal with issue of dust.

Considering the issues above, if a permit were approved conditions will be included to ensure the proposal can satisfy the required number of car parking spaces, a traffic management plan is required guaranteeing on event days' traffic is managed to Councils satisfaction and dust suppression methods are implemented.

### **Objectors Concerns**

A number of the objector's concerns have been addressed in the discussion of the application above. The following issues from objections have not been addressed:

- The noise impacts on the surrounding area – If a permit were approved, a condition will be included to ensure the proposal complies with the relevant EPA noise level requirements.
- The proposal is not considered to be an intensive development. During normal days, only 25 patrons will be attending the site and this is not considered to be intensive. It is understood from the objectors' view that on the event days, there will be a high amount of vehicle traffic which is

uncharacteristic of the area and could be intensive. The issue with vehicle travel will be dealt thru a Traffic Management Plan if the proposal is approved.

- There are no established requirements in regards to the buffer zones for places of worship or the like.
- The application was advertised in accordance with Section 52 of the *Planning and Environment Act 1987*. The application was advertised to a wider range of properties as the proposal may propose material detriment to large area.

## CONCLUSION

It is a difficult balance to find an appropriate site that will be able to accommodate the needs of the place of worship. The subject site is considered an inappropriate location as it is located away from the UGB. The surrounding agricultural landscape will be fragmented resulting in impacting the agricultural value of the area. Lastly the proposal has the potential to create a pathway for future applications that would be similar. If the applications of this type are not located appropriately within green wedge areas, the result will be detrimental to the purpose of green wedge areas.

In conclusion, the subject site is considered to be inappropriate for the use and development and has failed to responds to the SPPF, LPPF, zone and the Cardinia Westernport Green Wedge Management plan. It is recommended that a Refusal to Grant Planning Permit T140744 be issued for the use and development of the land for a place of worship, business identification signage, car parking and associated earthworks at 320 Watson Road, Pakenham Victoria 3810 on the following grounds:

1. The proposal is fails to adequately satisfy Clause 11.04-7, Green Wedges (SPPF)
2. The proposal is fails to adequately satisfy 21.04-2 Agriculture (LPPF)
3. The proposal is inconsistent with the purpose of Clause 35.04, Green Wedge Zone (Zone)
4. The proposal does not comply with the car parking requirements of Clause 52.06-8 (Particular Provision)
5. The proposal is inconsistent with Cardinia Western Port Green Wedge Management Plan – Adopted July 2016.

**1 USE OF AN EXISTING BUILDING AS A PLACE OF WORSHIP AT 320  
WATSON ROAD, PAKENHAM**

Moved Cr G Moore Seconded Cr M Shilling

That a Refusal to Grant Planning Permit T140744 be issued the use and development of the land for a place of worship, business identification signage, car parking and associated earthworks at 320 Watson Road, Pakenham Victoria 3810 on the following grounds:

1. The proposal fails to adequately satisfy Clause 11.04-7, Green Wedges (SPPF)
2. The proposal fails to adequately satisfy 21.04-2 Agriculture (LPPF)
3. The proposal is inconsistent with the purpose of Clause 35.04, Green Wedge Zone (Zone)
4. The proposal does not comply with the car parking requirements of Clause 52.06-8 (Particular Provision)
5. The proposal is inconsistent with Cardinia Western Port Green Wedge Management Plan – Adopted July 2016.

Cd.

## **2 DEVELOPMENT OF THE LAND FOR AN OUTBUILDING AND USE OF THE LAND FOR ANIMAL KEEPING (5 DOGS) AT 72 GAINSBOROUGH AVENUE LANG LANG**

FILE REFERENCE INT175128

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Mary Rush

### **RECOMMENDATION**

That a Notice of Decision to Grant Planning Permit T160655 be issued for development of the land for an outbuilding and animal keeping (5 dogs) at 72 Gainsborough Avenue, Lang Lang VIC 3984 subject to the conditions attached to this report.

### **Attachments**

- |   |   |          |
|---|---|----------|
| 1 | Locality plan                                       | 1 Page   |
| 2 | Copies of objections circulated to councillors only | 10 Pages |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T160655
APPLICANT:	Lachlan Wright
LAND:	72 Gainsborough Avenue, Lang Lang VIC 3984
PROPOSAL:	Development of the land for an outbuilding and use and development of the land for animal keeping (5 dogs)
PLANNING CONTROLS:	Low Density Residential Zone-Schedule 2 (LDRZ2) Design and Development Overlay-Schedule 1 (DDO1) Vegetation Protection Overlay-Schedule 1 (VPO1)
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> . Seven (7) objections have been received to date.
KEY PLANNING CONSIDERATIONS:	Amenity
RECOMMENDATION:	Notice of Decision to grant permit

### **BACKGROUND:**

Planning Permit T030982 was issued on 30 March, 2004 for the subdivision of land into 37 lots.

### **SUBJECT SITE:**

The site is located on the southern side of Gainsborough Avenue Lang Lang.

A crossover is located adjoining the western boundary and a four (4) metre wide drainage and sewerage easement runs along the rear boundary.

The site is vacant and the topography of the land is flat.

The main characteristics of the surrounding area are:

- North Across Gainsborough Avenue are low density residential lots with some being developed with single dwellings
- South Large rural residential properties used for grazing
- East Vacant low density residential lots
- West Vacant low density residential lots

### **PROPOSAL:**

An application has been received for the development of the land for an outbuilding and use and development of the land for animal keeping.

The proposed outbuilding measures 12 metres by 7.5 metres, with a 3m awning and will have a gable roof with a maximum height 5.2m, constructed in 'Colourbond' weatherboard. The outbuilding is proposed to be constructed three (3) metres from the eastern boundary and over 40 metres from the front boundary. The shed requires a planning permit as there is a building envelope that requires any buildings to be five (5) meters from the side boundaries (the dwelling does not require a planning permit).

The applicant proposes to keep five (5) Shar Pei dogs on the land. They currently have two (2) intact males and two (2) intact females and may acquire a fifth dog of either sex in the future or have a fifth dog on the land which would be boarded for mating purposes only.

It is proposed to have up to two litters per year but not more than one litter at any one time. The applicant has stated the activity is a hobby of the owner and not a commercial activity.

The applicant has advised that the dogs are primarily inside dogs, being kept inside the dwelling with a small verandah area fenced to allow outside access.

The applicant has been granted a Local Laws permit to live in a caravan and use the outbuilding for storage whilst the dwelling is under construction. Council has granted this approval on the site for up to 12 months, and the applicant is in the process of obtaining consent from Council's Building Department to construct an outbuilding on vacant land.

The applicant has submitted a site plan showing that they propose to construct a 1.8 metre high paling fence around the perimeter of the site and on either side of the proposed dwelling with an internal gate delineating the front and back yard. It is noted that the fencing is not part of the planning application, and has not been assessed.

The applicant also proposes to construct an internal fence at a minimum of one metre from the boundary fence as an external fence to house the dogs and limit any interaction with the property boundary fences. This area will be the dog yard and will include kennels to house the animals when exercising in the yard.

### **PLANNING SCHEME PROVISIONS:**

#### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 11 Settlement
- Clause 16 Housing

### **Local Planning Policy Framework (LPPF)**

The relevant clauses of the LPPF are:

- Clause 21.03 Settlement and Housing
- Clause 21.06-1 Design and Built Form

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

- Clause 65 Decision Guidelines

### **Zone**

The land is subject to the Low Density Residential Zone-Schedule 2 (LDRZ2).

### **Overlays**

The land is subject to the following overlays:

- Design and Development Overlay-Schedule 1 (DDO1)
- Vegetation Protection Overlay-Schedule 1 (VPO1)

### **PLANNING PERMIT TRIGGERS**

The proposal for the development of the land for an outbuilding and the use and development of the land for animal keeping (5 dogs) requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.03-1 a planning permit is required to use the land for animal keeping.
- Pursuant to Clause 32.03-4 a planning permit is required for buildings and works associated with a section 2 use (animal keeping)
- Pursuant to Clause 42.03-1 a planning permit is required for a building or works within five (5) metres of a side boundary.

### **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 seven (7) objections to date.

The key issues that were raised in the objections are:

- Number of dogs
- Noise
- Smell
- Traffic
- Visual amenity (front fencing, size of outbuilding, reduced setback)



## REFERRALS

No referrals were required.

## DISCUSSION

The Low Density Residential Zone provides the ability for Council to consider a planning permit for animal keeping for up to five (5) animals as a Section 2 permit required use, including any associated buildings and works.

The proposal is consistent with the definition of animal keeping which includes the keeping and breeding of domestic animals.

The proposal was advertised and seven (7) objections have been received. In response to the grounds of objections the following can be concluded:

- **Number of dogs**

The applicant proposes to keep a maximum of five (5) dogs on the site at any one time. A condition can ensure this maximum number is met.

The applicant proposes to have not more than one litter of puppies at any one time due to the demanding work load associated with raising a litter of puppies such as feeding, cleaning etc.

Once the puppies are four (4) months of age they will not be permitted to remain on the land as they would be counted as part of the total number of animals permitted by the planning permit. A condition can ensure this requirement.

Only the breed Shar Pei will be allowed to be breed on the land. A condition can ensure this requirement.

In conclusion it is not considered that five (5) animals is excessive if they are well managed/disciplined and appropriate conditions are placed on any planning permit restricting numbers, breed and appropriate noise/waste controls. The keeping of five (5) animals is a Section 2 permit required use in the Low Density Zone and the current proposal is in accordance with this limit.

- **Noise**

Several objections have raised concerns over noise associated with the truck owned by the applicant, and dogs barking.

There are no planning permit triggers for the truck or trailer and therefore this cannot form part of the decision making for this application. However, the truck and trailer are owned by the applicant and is his commuter vehicle, driven to and from work sites.

The storage of a commuter vehicle is ancillary to the use of the dwelling and does not require planning permission.

It is up to the owner to insure that they comply with EPA noise regulations and comply with the covenant in relation to storage of the vehicle, again this is not part of the planning permit approval or assessment.

If the dogs are managed efficiently, there is no suggestion that noise would be a significant issue. The fencing proposed around the yard and on either side of the dwelling will block the view of the dogs to the adjoining yards and the streetscape, which would reduce the visual stimulus to barking.

- **Offensive odours**

The owners propose to use a composting worm system to decompose animal waste which breaks down the waste to a harmless organic product which would not produce any offensive odours. A condition would be placed on any permit issued requiring the submission of a waste management plan to Council's satisfaction.

- **Traffic**

Objectors have raised concerns over the movement of the owner's commuter vehicle to and from the site. As previously stated, a commuter vehicle whether a truck or otherwise, is ancillary to the residential use of the land and does not require planning permission.

Prospective purchasers of the dogs would only attend the site by appointment and with a potential of around 12 puppies per year, the numbers of visitors to the site would be minimal.

- **Visual amenity**

Objectors have raised concerns over the visual impact of the 1.8 metre high fence proposed along the front boundary and on the eastern and western side boundaries up to the yard proper. There are no planning permit requirements for fencing, the side fencing is a civil matter, however a 1.8m front fence will require a building permit and any permission would be assessed under the Building Act.

The application originally had the outbuilding exceeding the 120 square metre limit imposed by the Design and Development Overlay-Schedule 1, by 3 metres (123 square metres proposed). The applicant has reduced the size of the outbuilding to 90 square metres. This has resulted in the three (3) metre setback from the boundary that triggers a permit for the outbuilding only requiring a planning permit. The outbuilding is proposed to be constructed three (3) metres from the eastern boundary which is a reduction in the five (5) metres required by the Overlay by two (2) metres.

It is not considered that the location of the outbuilding will result in any significant visual impact to the site to the east, given the boundary fence and the three (3) metres between the fence and the outbuilding which gives ample room for effective screen planting. A condition can be placed on any permit issued requiring screen planting.

- **Safety**

Several objectors are concerned about safety of residents in relation to the potential for dog attack. The applicant has proposed appropriate fencing around the site, it is also noted that the breed is considered friendly and the applicant has advised that when the animals are outside the home, they will be on leashes for their own protection, as the dogs are expensive show dogs. The applicant has advised that for the past 9 years of undertaking their hobby they have never had one dog escape.

### **Clause 65 Decision Guidelines**

The proposed use and development is a hobby of the owner and consistent with the residential nature of the area. The proposal is consistent with the State and Local Planning controls which identify that use and development in residential areas should be consistent with the character of the area.

The proposal is consistent with the zone and the overlays applicable to the site.

The proposed use is a specified permit required section 2 use within the Low Density Zone which signifies that it is a use which has been determined to be consistent with the residential character of the area. Currently a land owner within the Shire who lives on a site of 4000m<sup>2</sup> can have four dogs without requiring an excess animal permit (Local Laws permit). The current proposal requires a Planning Permit for the breeding aspect of the proposal. Subject to appropriate permit conditions, it is considered that the current proposal will be consistent with the orderly planning of the area as it is associated with the residential use of the site.

Subject to appropriate permit conditions relating to number of dogs on site, breed, noise and odour it is considered that the use and development will not have a significant impact on the amenity of the nearby residents.

## CONCLUSION

The proposal is considered to be consistent with State and Local planning policies, the Zone and Overlays applicable to the site and the orderly planning of the area.

It is recommended that a Notice of Decision to Grant a Permit for application T160655 be issued for the Development of the land for an outbuilding and animal keeping (5 dogs) at 72 Gainsborough Avenue, Lang Lang, subject to the following conditions

## CONDITIONS

1. Before the 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. Three copies must be provided. The plans must be generally in accordance with the plans submitted to Council but modified to show:
  - a. An amended plan showing an internal fence sited a minimum of 1 metre from the boundary fences along the east, west and south boundaries incorporating the proposed exercise yards/outdoor kennels at the rear of the property so to restrict any access for the dogs along the neighbouring boundary fences.
  - b. Elevation plans of the proposed outbuilding showing cladding in weatherboard materials.
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. This permit allows the use of the land for the keeping/breeding of Shar Pei dogs only.
4. No more than 5 dogs (excluding offspring) may be kept on the property at any time without written consent from Responsible Authority.
5. All offspring from the 5 dogs must be removed from the property within 16 weeks of birth unless with written consent of the satisfaction of the Responsible Authority
6. Offensive odours must not be discharged beyond the boundaries of the premises.
7. Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011).
8. All animal waste generated must be disposed of on-site in a hygienic manner, or disposed of off-site at an approved waste disposal facility.
9. If the waste is to be disposed of on-site, the applicant must submit a detailed proposal of how the applicant intends to manage the waste hygienically, and in a manner that will not cause a nuisance.
10. All feed is to be stored in vermin-proof structures to the satisfaction of the Responsible Authority.
11. The use and development 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.

12. Before the development is occupied, a permanent screen of trees and shrubs must be planted between the outbuilding and the eastern boundary to provide an effective visual screen to the satisfaction of the Responsible Authority.
13. The outbuilding may only be used for the storage of vehicles and goods related to domestic activities being carried out on the property. The outbuilding may not be used for human habitation.
14. Storm water must not be discharged from the site other than by means of an underground pipe drain discharged to an approved outlet to the satisfaction of the Responsible Authority.

#### **Permit Expiry**

This permit will expire if one of the following circumstances applies:

- a. The development and use are not started within two years of the date of this permit.
- b. The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months afterwards if the approved development has not commenced and twelve months if the approved development has commenced

#### **Permit Notes**

A Building Permit may be required for this development. To obtain a building permit you will need to contact a registered building surveyor.

## **2 DEVELOPMENT OF THE LAND FOR AN OUTBUILDING AND USE OF THE LAND FOR ANIMAL KEEPING (5 DOGS) AT 72 GAINSBOROUGH AVENUE LANG LANG**

Moved Cr G Moore Seconded Cr R Brown

That a Notice of Decision to Grant Planning Permit T160655 be issued for development of the land for an outbuilding and animal keeping (5 dogs) at 72 Gainsborough Avenue, Lang Lang VIC 3984 subject to the following conditions:

1. Before the 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. Three copies must be provided. The plans must be generally in accordance with the plans submitted to Council but modified to show:
  - a. An amended plan showing an internal fence sited a minimum of 1 metre from the boundary fences along the east, west and south boundaries incorporating the proposed exercise yards/outdoor kennels at the rear of the property so to restrict any access for the dogs along the neighbouring boundary fences.
  - b. Elevation plans of the proposed outbuilding showing cladding in weatherboard materials.
2. The use and development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. This permit allows the use of the land for the keeping/breeding of Shar Pei dogs only.
4. No more than 5 dogs (excluding offspring) may be kept on the property at any time without written consent from Responsible Authority.
5. All offspring from the 5 dogs must be removed from the property within 16 weeks of birth unless with written consent of the satisfaction of the Responsible Authority
6. Offensive odours must not be discharged beyond the boundaries of the premises.
7. Noise emitted from the premises must not exceed the recommended levels as set out in Noise from Industry in Regional Victoria (NIRV; EPA Publication 1411, 2011).
8. All animal waste generated must be disposed of on-site in a hygienic manner, or disposed of off-site at an approved waste disposal facility.
9. If the waste is to be disposed of on-site, the applicant must submit a detailed proposal of how the applicant intends to manage the waste hygienically, and in a manner that will not cause a nuisance.
10. All feed is to be stored in vermin-proof structures to the satisfaction of the Responsible Authority.
11. The use and development 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.

12. Before the development is occupied, a permanent screen of trees and shrubs must be planted between the outbuilding and the eastern boundary to provide an effective visual screen to the satisfaction of the Responsible Authority.
13. The outbuilding may only be used for the storage of vehicles and goods related to domestic activities being carried out on the property. The outbuilding may not be used for human habitation.
14. Storm water must not be discharged from the site other than by means of an underground pipe drain discharged to an approved outlet to the satisfaction of the Responsible Authority.

#### **Permit Expiry**

This permit will expire if one of the following circumstances applies:

- a. The development and use are not started within two years of the date of this permit.
- b. The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months afterwards if the approved development has not commenced and twelve months if the approved development has commenced

#### **Permit Notes**

A Building Permit may be required for this development. To obtain a building permit you will need to contact a registered building surveyor

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### **3 EARTHWORKS AT 230 TELEGRAPH ROAD, BEACONSFIELD UPPER**

FILE REFERENCE INT175124

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Frances Stipkovic

#### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T160621 be issued for Works associated with a half basketball court comprising site cut and fill (retrospective application) at 230 Telegraph Road, Beaconsfield Upper for the reasons outlined in this report.

#### **Attachments**

- |   |  |         |
|---|--|---------|
| 1 | Locality plan  | 1 Page  |
| 2 | Proposed plans                                       | 4 Pages |
| 3 | Copies of objections, circulated to councillors only | 2 Pages |

#### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	<b>T160621</b>
APPLICANT:	<b>Peter Martine</b>
LAND:	<b>230 Telegraph Road, Beaconsfield Upper VIC 3808</b>
PROPOSAL:	<b>Works associated with the existing dwelling (half basketball court) comprising site cut and fill (retrospective application)</b>
PLANNING CONTROLS:	<b>Rural Conservation Zone Schedule 2 Environmental Significance Overlay 1 Bushfire Management Overlay</b>
NOTIFICATION & OBJECTIONS:	Notice of the application by way of letters was given to adjoining to adjoining and nearby land owners and occupiers. To date, one (1) objection has been received.
KEY PLANNING CONSIDERATIONS:	Environmental and landscape characteristics of the area Impact on streetscape character Impact on native vegetation
RECOMMENDATION:	Refusal

#### **BACKGROUND:**

Earthworks and the installation of a number of shipping containers were brought to the attention of Council's Planning Compliance Department in August 2015. As a consequence, an inspection was carried out and it was revealed that the buildings and works contravened the Cardinia Planning Scheme. An application was made to the Victorian Civil and Administrative Tribunal (VCAT) for an Enforcement Order to have the land reinstated. This planning application was lodged September 2016 and as a consequence, the VCAT proceedings have been adjourned until this application has been determined.

#### **SUBJECT SITE:**

The site is located on the south-east corner of Telegraph Road and Hughendon Road, Upper Beaconsfield approximately 285m from A'beckett Road. The site (2.3 hectares) is irregular in shape, has a frontage to Telegraph Road of 83m, an angled frontage to Hughendon Road totalling 209m and also fronts Reed Avenue for a distance of 157m. Remnant vegetation lines the road reservation on both Telegraph Road and Hughendon Road.

Vehicle access is provided via a crossover on Telegraph Road and driveway located within the front setback.

The site currently developed with a single dwelling setback 3.9m from Telegraph Road and 12.3m from Hughendon Road. There is currently one (1) shipping container on the site located within the front setback. As detailed above, this issue is currently being resolved with Council's Planning Compliance Department.

A 20m high Eucalyptus tree is located on the southern end of the works adjacent to Hughendon Road. Dense remnant vegetation is concentrated to the rear of the site.

There is a land fall of approximately 50m from the front to the rear of the site. There are no easements affecting the land.

The main characteristics of the surrounding area are:

- No. 232 Telegraph Road (1.51 hectares) adjoins the eastern boundary and is developed with a single dwelling setback 3.9m from the common boundary, Vegetation cover is dense.
- No. 18 Hughendon Road, located directly west of the site is developed with a single dwelling setback 21m from the eastern boundary. Vegetation cover is dense with the exception of a cleared area located centrally.
- No. 240 Telegraph Road comprises twelve (12) lots on the north and south-east side of Telegraph Road. Land on the north side is generally undeveloped with the exception of a dwelling on the lot directly opposite the subject site.
- Land on the south-east side is also developed with a single dwelling. Vegetation cover is dense.

Land in the vicinity is generally characterised by large semi-rural style allotments each developed with a single dwelling and outbuildings. The built form is subordinate to vegetation which is dense. Land fall is typically undulating.

#### **PROPOSAL:**

Retrospective approval is sought for earthworks setback approximately 10.1m from the existing dwelling on the site. The works are located on the north-west corner of the site and abut Telegraph Road and Hughendon Road. The total area of the works is approximately 220sqm. A maximum site cut of 1.2m is located on the southern end of the works and is proposed to be stabilised with a 1.2m high concrete sleeper retaining wall. Works on the eastern end are proposed to be stabilised by a battered slope.

Whilst the works were originally carried out to accommodate shipping containers on the site, this formed part of Planning enforcement proceedings, the owner eventually removed the shipping containers from the site. The owner does not want to reinstate the land and this application proposes to utilise this area for a half basketball court to be asphalted and fenced using 1.8m high cyclone mesh fencing. Vegetation is proposed along the eastern and southern ends.

The construction of any building (including the installation of a shipping container) or the removal of vegetation does not form part of this proposal. Vegetation removal had previously occurred within this area in 2015 and the matter was investigated by Council's Planning Compliance Department.

#### **PLANNING SCHEME PROVISIONS:**

##### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:



- Clause 12 – Environmental and Landscape Values
- Clause 15.01 – 5 – Cultural identity and neighbourhood character
- Clause 16.02 – 1 – Rural residential development

#### **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 – 3 – Rural Townships

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

The relevant provisions/ documents are:

- Not applicable.

It is noted that a proposal does not include the removal of Victorian native vegetation and as such, an assessment against Clause 52.17 (Native Vegetation) is not required.

#### **Zone**

The land is subject to the **Rural Conservation Zone Schedule 2**

#### **Overlays**

The land is subject to the following overlays:

- Clause 42.01 - Environmental Significance Overlay 1
- Clause 44.06 - Bushfire Management Overlay

It is noted that a planning permit is not required under the Bushfire Management Overlay as there is no building proposed under this application and the works are in excess of 10m from the existing dwelling.

#### **PLANNING PERMIT TRIGGERS**

The proposal for works associated with the existing dwelling (half basketball court) requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.06 - 5, a planning permit is required for works associated with a Section 2 use (dwelling) and for earthworks altering the flow of water across a property boundary.
- Pursuant to Clause 42.01 – 1 a planning permit is required for works exceeding 1.0m in depth.

#### **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.

To date, one (1) objection has been received:

The key issues that were raised in the objection are:

- Drainage and environmental implications on the nearby creek as a result of vegetation removal and works;
- Visual impact;

- Inappropriate use and potential traffic hazard and inappropriate location of crossover.

## REFERRALS

- The application was not required to be referred externally.

## DISCUSSION

Overall, it is considered that the proposal is inconsistent with the relevant State and Local Planning Policy Framework, the Rural Conservation Zone and Environmental Significance Overlay 1.

Clause 12.01-1 recognises the significance of native vegetation and impact on Victoria's biodiversity. The removal of native vegetation must be avoided where practical. (Whilst there is no trigger under Clause 52.17, the works have impacted the Tree Protection Zone of native vegetation, if the land is not reinstated then the trees may be destroyed).

Clause 16.02-1 seeks to ensure that rural residential living avoids environmental impacts.

Clause 21.01 places heavy emphasis on the protection and conservation of environmentally significant areas including the northern hills and the maintenance and enhancement of existing landscapes. Clause 21.03 – 3 recognises Upper Beaconsfield as a large rural township where the rural character must be maintained. The siting of buildings and works must compliment the area.

The objective of the Rural Conservation Zone is:

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

The objective of the Environmental Significance Overlay is:

- To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.
- To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.
- To ensure that the siting and design of buildings and works addresses environmental hazards including slope, erosion and fire risk, the protection of view lines and maintenance of vegetation as the predominant feature of the landscape.

Both the Rural Conservation Zone and Environmental Significance Overlay 1 recognise the significant landscape and environmental values of the hills area north of Princes Highway and this policy seeks to retain these values and limit the impact of development within these areas.

The visual impact of the works is unacceptable in this environmental setting given the site's corner location and proximity to both Telegraph Road and Hughendon Road. As front and side fencing is generally absent or post and wire (i.e. transparent) the works are exposed and can easily be viewed from the road. The site excavation is prominent when viewed from Telegraph Road and the works, (particularly once asphalted) is inconsistent with the existing streetscape character. Significant excavations, particularly within the front setback, are not predominant along Telegraph Road. Excavations are generally limited for the construction of a dwelling or outbuilding and generally do not excessively go beyond the building footprint. Buildings and

vehicle accessways typically respond to the topography of the land and are subordinate to the landscape. Further, the presence of remnant vegetation is typical within front setbacks. The installation of 1.8m high cyclone fencing to enclose the works on the title boundaries will further compromise the open landscape character of the area and is inconsistent with the rhythm of development on Telegraph Road and in the broader vicinity. Whilst transparent, the height and style of this fencing is not sympathetic to the surrounds.

Overall, it is considered that the streetscape character is significantly compromised as a consequence of the existing works and proposed basketball court.

The application was referred to Council's Biodiversity Officer who has recommended that the land be reinstated. It was concluded that the excavations have impacted the tree protection zones of four (4) Eucalyptus trees. It is recommended that the health of these trees be monitored over a two (2) year period. Further, it is likely the proposed asphaltting for the court will adversely impact existing established native vegetation within the road reservation. As Council will not be supporting this application. Rectification works (including revegetation) will be required by way of an Enforcement Order which must be issued at the direction of the Victorian Civil and Administrative Tribunal (VCAT).

The application was referred to Council's Development Engineer who does not object to the proposal subject to conditions relating to storm water runoff, stabilisation and EPA guidelines forming part of any approval to be issued. Whilst it's acknowledged that the works can be stabilised, drained appropriately and utilised for another purpose, the visual and environmental impacts are unacceptable in this context.

As the original works involved the construction of a crossover on Telegraph Road, the application was also referred to Council's Traffic Engineer for comment. There is no objection for the use as a basketball court from a traffic perspective however, it appears that consent from Council was not obtained for the construction of the second crossover which is inappropriately located given its proximity to the intersection. As this application is recommended for refusal, the land owner will be required to reinstate the second crossover.

## RESPONSE TO OBJECTION

A response to the objection received is provided below:

*Drainage and environmental implications on nearby Creek as a result of previous vegetation removal and works;*

As detailed above, the application was referred to Council's Development Engineer who does not object to the proposal subject to the inclusion of conditions. Whilst the works do alter the flow of water across the property boundary which may impact nearby water courses, conditions relating to storm water discharge can be imposed to alleviate drainage and environmental issues. In the event that Council was in support of this application, drainage works would need to be carried out to ensure storm water overflow would not cause adverse impacts on adjoining or nearby land.

*Visual impact;*

As discussed above, the visual impact within the streetscape is not acceptable having regard to the objectives of the Rural Conservation Zone and Environmental Significance Overlay 1. On this basis, it is recommended that the application be refused and the land be reinstated.

*Inappropriate use and potential traffic hazard and inappropriate location of crossover*

As detailed above the application was referred to Council's Traffic Engineer who has advised that it was unlikely that approval for the additional crossover was obtained. Whilst the crossover details are not shown on the plans, based on aerial photography, its location and width are not appropriate given its proximity to the intersection at Telegraph and Hughendon Roads. There is no objection from Traffic for the use as a basketball court and fencing along the title boundaries is shown. In the event that Council were to support the application, vehicle access to this area must be provided internally from the existing accessway.

## CONCLUSION

Having regard to the above assessment, it is considered that the proposal is inconsistent with the objectives of the State and Local Planning Policy Framework and more specifically the objectives of the Rural Conservation Zone and Environmental Significance Overlay 1 and therefore it is considered that the proposal should not be supported.

It is recommended that a Refusal to Grant Planning Permit T160621 be issued for Works associated with a half basketball court comprising site cut and fill (retrospective application) at 230 Telegraph Road, Beaconsfield Upper VIC 3808 on the following grounds:

1. The proposal is inconsistent with State and Local Planning Policy Framework
2. The proposal is inconsistent with the objectives of Clause 35.06 Rural Conservation Zone 2
3. The proposal is inconsistent with the objectives of Clause 42.01 Environmental Significance Overlay 1

### **3 EARTHWORKS AT 230 TELEGRAPH ROAD, BEACONSFIELD UPPER**

Moved Cr J Owen Seconded Cr G Moore

That a Refusal to Grant Planning Permit T160621 be issued for Works associated with a half basketball court comprising site cut and fill (retrospective application) at 230 Telegraph Road, Beaconsfield Upper on the following grounds:

1. The proposal is inconsistent with State and Local Planning Policy Framework
2. The proposal is inconsistent with the objectives of Clause 35.06 Rural Conservation Zone 2
3. The proposal is inconsistent with the objectives of Clause 42.01 Environmental Significance Overlay 1

Cd.

## **4 LAND SALES OFFICE AT WESTERNPORT ROAD, LANG LANG**

FILE REFERENCE INT175223

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Cara Moody

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T160584 be issued for Use and development of the land for a land sales office with advertising signage, a reduction in car parking and alterations of access to a RDZ1 at CA 13E & 13F Parish of Lang Lang, Westernport Road, Lang Lang VIC 3984 for reasons outlined in this report.

### **Attachments**

- |   |                   |         |
|---|-------------------|---------|
| 1 | Locality plan     | 1 Page  |
| 2 | Development plans | 3 Pages |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T160584
APPLICANT:	1st Choice Real Estate Agency (Brian McIntosh)
LAND:	Westernport Road, Lang Lang VIC 3984
PROPOSAL:	Use and development of the land for a land sales office with advertising signage, a reduction in car parking and alterations of access to a RDZ1
PLANNING CONTROLS:	Commercial 1 Zone
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , by sending notices to adjoining land owners and occupiers. No objections have been received.
KEY PLANNING CONSIDERATIONS:	The visual impact of the sales office on a gateway site in Lang Lang. How the proposals response to the Lang Lang township strategy
RECOMMENDATION:	Refusal

### **BACKGROUND:**

There is no previous planning history for the site.

### **SUBJECT SITE:**

The site is located on the eastern corner of Westernport Road and McDonalds Track.

There are no crossovers or easements located on the land.

The site is currently vacant with the topography of the land being flat.

The main characteristics of the surrounding area are:

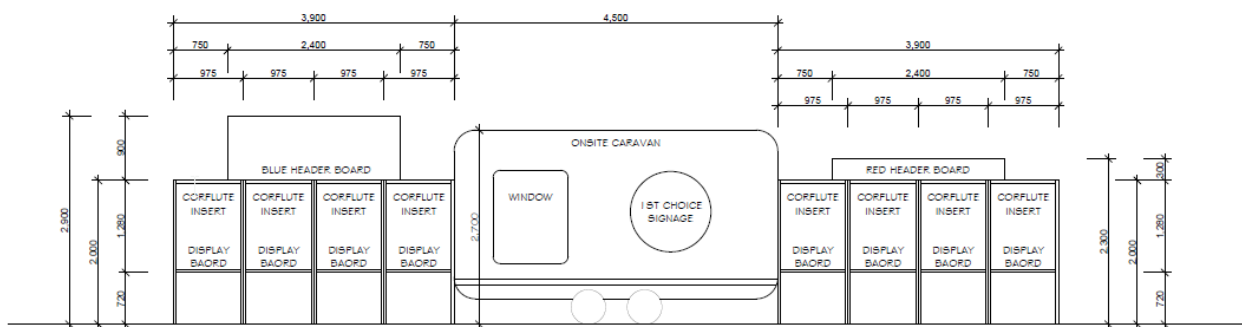
- North: Directly north of the site is Westernport Road (the main street of Lang Lang) across the road from this is a dwelling and kitchen store before reaching Lang Lang community hall and Thwaites Park.
- East: Directly east of the site is a fish and chip shop following this is a mixture of dwellings and commercial stores that make up the main street of Lang Lang.
- South: Directly south of the site is residential developments and McDonalds Track.
- West: Directly west of the site is the Westernport Road, McDonalds Track roundabout, beyond this is Lang Lang Showgrounds, the Lang Lang Hotel and various warehouses.

**PROPOSAL:**

The applicant is proposing to use the land for a temporary land sales office, selling land for three different subdivisions/estates in the Lang Lang vicinity. It is proposed that the land sales office will be situated in a caravan and include signage, no car parking is provided on the site, thereby requiring a planning permit for a reduction in car parking.

It is proposed that the sales office would operate on weekends with the occasional Friday evening, and be manned by one person, allowing for passers-by to grab a brochure about the nearby land for sale.

The caravan would be located 7.5m from the northern title boundary across both properties, with signage located either side of the caravan facing the roundabout. There would be a crushed rock all-weather track located in front of the caravan and a path towards Westernport Road. The caravan and signage appears as below:



**NORTH WEST ELEVATION**  
SCALE 1:50



**PLANNING SCHEME PROVISIONS:**

**State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 15.01-2 Urban Design Principles
- Clause 15.01-5 Cultural Identity and Neighbourhood Character
- Clause 17-01-1 Business

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03-3 Rural Townships
- Clause 21.06-1 Design and Built Form
- Clause 21.07-4 Lang Lang

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

The relevant provisions/ documents are:

- Clause 52.05 Advertising Signage
- Clause 52.06 Car Parking
- Clause 52.29 Land adjacent to a RDZ1 or a PAO for a Category 1 Road
- Clause 65 Decision Guidelines

### Zone

The land is subject to the Commercial 1 Zone

### Overlays

The land is not subject to any overlays.

### PLANNING PERMIT TRIGGERS

The proposal for *the* use and development of the site for a Land Sales Office, associated Signage and a reduction in Car Parking requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 34.01-1 of the Commercial 1 Zone a planning permit is required for the use of the land for a Land Sales Office.
- Pursuant to Clause 34.01-4 of the Commercial 1 Zone a planning permit is required to construct a building or construct or carry out works.
- Pursuant to Clause 52.05-7 of the Advertising Signage Provision a planning permit is required to have promotional signage on a vacant site.
- Pursuant to Clause 52.29 of the Land Adjacent to a RDZ1 or a PAO for a Category 1 Road Provision a planning permit is required to alter access.

### 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.

No objections have been received.

### REFERRALS

*Vic Roads:*



The application was referred to Vic Roads as a statutory referral. Vic Roads had no objection to the proposal.

## DISCUSSION

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

### State and Local Planning Policy Framework

#### *Clause 15.01-2 (Urban Design Principles):*

The objective of the Urban design principles (Clause 15.01-2) is to achieve architectural and urban design outcomes that contribute positively to the local urban character and enhance the public realm, while minimising detrimental impact on neighbouring properties. In regards to this context, development needs to take into account the strategic context of the location, being a gateway site into Lang Lang, the usage of the land for a sales office does not meet the requirements below.

The clause states that new development needs to respect the historic precedent of the area, it is considered a caravan of this nature does not meet this requirement. It also goes on to identify that new development should achieve high standards in architecture and urban design, however despite cleaning up the appearance of the caravan and painting it to reflect the signage and business logo the required level of urban design is not met.

#### *Clause 21.06-1 Design and built form:*

Clause 21.06-1 outlines objectives that should be met in order to create site responsive designs that take into account the character and constraints of a site and wider area. One of the objectives is to:

- 'To promote a high standard of design which creates a strong character and identity for the area, provides for functional built environment and promotes community and personal safety.'

This objective is overlooked by not responding to the existing character of the area, or the township strategy already in place. Best practice in design is not met and the development fails to contribute to the character, identity and sense of place of the Lang Lang Township.

#### *Clause 21.07-4 (Local Areas: Lang Lang) and the Lang Lang Township Strategy:*

The overall objective of the urban design clause within Lang Lang is to encourage development which creates a strong character and identity for the area, provides for a functional built environment and promotes community and personal safety. The proposal of a temporary land sales office contradicts this clause by not respecting the need to reinforce the character of the town, not developing the existing vacant lots to reflect the community and by detracting from the ideal memorable entry experience into Lang Lang from the gateway site. The Lang Lang township strategy is an incorporated document within the Lang Lang local area clause.

The Lang Lang township strategy promotes the need to facilitate residential development and subdivision of residentially zoned land. The land sales office is furthering this by promoting the sale of this land and ultimately the growth of the Lang Lang township. However the site chosen to locate this land sales office is contentious as it is specifically identified as a site that requires careful consideration and planning due to its gateway location into Lang Lang town centre. The site is located within the community and cultural precinct of the township as identified by the strategy, meaning that any use on these sites needs to promote evening and weekend community activity, incorporate open space and include complimentary shops, cafes, restaurants or related retail facilities. Desired form and character needs to positively reflect a strong landscape setting, civic associations, be of high quality, and accommodate heritage and cultural associations, high pedestrian and amenity connections and should accommodate off street car parking to the rear.

Being a gateway site into the main street of Lang Lang the site needs to encourage innovative design that upgrades the streetscape of the town centre while also reflecting existing character. Utilising the site for a temporary sales office prevents development on the site for three years thereby also preventing employment opportunities for the local community who already have a below average employment rate compared to the overall for Cardinia. The proposed use and development does nothing to consolidate the towns commercial precinct and it creates a harsh point of focus.

### **Commercial 1 Zone**

The Commercial 1 Zone is in place to create a vibrant mixed use commercial centre for retail, office, business, entertainment and community uses. The use of the land for a land sales office is a section 2 use within this zone and considered unusual given the sales office is not located on the land for sale. If it had of been located on the land that is for sale, then no permit would have been required. The proposed use may impact the amenity of surrounding residential uses; it is recognised that the application has been advertised to neighbouring residential lots without objection.

The proposed development will promote the movement of pedestrians and vehicles around the site without any improvements to existing pedestrian/car parking infrastructure. The reduction to car parking has been assessed by council's traffic engineering department as of no concern. The development is well setback and of a temporary nature, which is out of character with existing development in the area. It is not considered that the development enhances the streetscape nor signify the importance of the gateway site.

The site is a prominent corner in Lang Lang, a caravan used as a land sales office would not complement the amenity of the Lang Lang Township and disregard the design objectives for the Westernport Road/McDonalds track community and culture precinct.

### **CONCLUSION**

In conclusion, the proposal is not consistent with the purposes and objectives of the relevant provisions of the Cardinia Planning Scheme. The proposed use and development is considered inappropriate for the subject site and surrounding area and therefore it is considered that the proposal should not be supported.

It is recommended that a Refusal to Grant Planning Permit T160584 be issued for the 'Use and development of the land for a land sales office with advertising signage, a reduction in car parking and alterations of access to a RDZ1' at CA 13E & 13F Parish of Lang Lang, Westernport Road, Lang Lang, on the following grounds:

1. The proposal fails to adequately satisfy the following Clauses of the Cardinia Planning Scheme:
  - a) Clause 15.01-2 (Urban Design Principles)
  - b) Clause 21.06-1 (Design and Built Form)
  - c) Clause 21.07-4 (Local Areas: Lang Lang)
2. The development contradicts the principles of the Lang Lang Township Strategy.
3. The proposal fails to meet the purpose of the Commercial Zone

## 4 LAND SALES OFFICE AT WESTERNPORT ROAD, LANG LANG

Moved Cr J Owen Seconded Cr G Moore

That a Refusal to Grant Planning Permit T160584 be issued for Use and development of the land for a land sales office with advertising signage, a reduction in car parking and alterations of access to a RDZ1 at CA 13E & 13F Parish of Lang Lang, Westernport Road, Lang Lang VIC 3984 on the following grounds:

1. The proposal fails to adequately satisfy the following Clauses of the Cardinia Planning Scheme:
  - a) Clause 15.01-2 (Urban Design Principles)
  - b) Clause 21.06-1 (Design and Built Form)
  - c) Clause 21.07-4 (Local Areas: Lang Lang)
2. The development contradicts the principles of the Lang Lang Township Strategy.
3. The proposal fails to meet the purpose of the Commercial Zone

Cd.

## **5 REMOVAL OF NATIVE TREES AT 20 PINNOCKS ROAD, EMERALD**

FILE REFERENCE INT175226

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Hugh Pierce

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T130633 be issued for the Removal of forty-nine (49) Native Trees at 20 Pinnocks Road, Emerald Victoria 3782 on the following grounds:

1. Failure to provide the required information does not allow the Responsible Authority and Recommending Referral Authority to assess the application in full
2. The proposed removal could detrimentally impact the biodiversity of the applicable section of the Menzies Creek corridor inconsistent with the strategies and objectives of
  - a) Clause 14.02-1 Catchment planning and management
  - b) Clause 12.01 – Biodiversity
  - c) Clause 21.02-3 – Biodiversity
  - d) Clause 42.01 – Environmental Significance Overlay - Schedule 1
  - e) Clause 52.17 – Native Vegetation.

### **Attachments**

- 1 Locality plan 1 Page

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T130633
APPLICANT:	Joyce Hazard
LAND:	20 Pinnocks Road, Emerald Victoria 3782
PROPOSAL:	Removal of forty-nine (49) native trees
PLANNING CONTROLS:	Rural Conservation Zone Schedule 2 Bushfire Management Overlay, Environmental Significance Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , by sending notices to adjoining land owners and occupiers. No objections have been received.
KEY PLANNING CONSIDERATIONS:	Impact of vegetation removal on Menzies Creek
RECOMMENDATION:	Refusal

### **BACKGROUND:**

There is no relevant planning permit history affecting the land.

**SUBJECT SITE:**

The subject site is a battle-axe shaped measuring approximately 7 hectares. The land contains a pitched roof dwelling and an empty swimming pool to its rear in the south-west corner of the subject site. In the north half of the subject site Menzies Creek runs from the east to the north-west.

Vegetation coverage across the site varies between dense coverage along either side of Menzies Creek and the dwelling. However, elsewhere the land is predominantly vacant aside from the occasional sporadically located cluster of 3-4 trees.

Topographically, the land exhibits a sharp slope downwards from the south boundary in a north direction of approximately 60 to 70 metres to Menzies Creek before proceeding to rise approximately 30 metres in a north-east direction.

The main characteristics of the surrounding area are:

- North: 65 Ferres Road: L-shaped rural allotment measuring approximately 7.98 hectares. The land contains a large outbuilding and associated buildings in the north half of the site. The remainder of the property is vacant of built form and contains limited vegetation coverage.
- East: 35-53 Ferres Road: Irregular shaped allotment measuring approximately 7.15 hectares. The land contains a dwelling and outbuilding located in the north-east corner of the subject site. The north-east half of the property is predominantly cleared of vegetation whilst the south-west half exhibits dense vegetation coverage.
- South: Lot 2 Laurel Lane: Irregular shaped allotment measuring approximately 4074 square metres. The land contains a dwelling and swimming pool located centrally. The site exhibits limited vegetation coverage.

Lot 3 Laurel Lane: Irregular shaped allotment measuring approximately 5713 square metres. The land contains a dwelling and outbuilding in the west half of the land. Vegetation coverage is evident around the dwelling and along the north and south common boundaries.

3 Pinnocks Road: Irregular shaped allotment measuring approximately 16 hectares. The land contains a dwelling and associated outbuildings in the south-east corner of the land. Vegetation coverage is limited to the land around the dwelling and associated outbuildings with the remainder of the land cleared.

- West: 22 Pinnocks Road: Irregular shaped allotment measuring approximately 4318 square metres. The land contains a dwelling and sporadic vegetation coverage.

24-38 Pinnocks Road: Irregular shaped allotment measuring approximately 2.88 hectares. The land contains a dwelling and associated outbuilding south of the site's centre. There is a mixture of cleared and vegetated areas.

**PROPOSAL:**

The applicant is seeking planning approval for the removal of forty-nine (49) Black Wattle trees. The trees proposed for removal are located in and around 30 metres of Menzies Creek and are required to be removed, according to the applicant, in order to accommodate a fence.

The applicant has advised that eight of the trees proposed for removal are dead.

**SECTION 173 AGREEMENT**

The subject site is encumbered with an agreement pursuant to Section 173 of the Planning and Environment Act 1987. The agreement requires the owners of the land to provide a pedestrian walking track along the tributary of Menzies Creek. The proposal will not contravene this restriction.

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**PLANNING SCHEME PROVISIONS:**

**State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 12.01 – Biodiversity
- Clause 13.03-2 – Erosion and landslip
- Clause 14.02-1 Catchment planning and management

**Local Planning Policy Framework (LPPF)**

The relevant clauses of the LPPF are:

- Clause 21.02-2 – Landscape
- Clause 21.02-3 – Biodiversity

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

The relevant provisions/ documents are:

- Clause 52.17 – Native Vegetation
- Clause 65 - Decision Guidelines
- Emerald District Strategy

**Zone**

The land is subject to the Rural Conservation Zone - Schedule 2

**Overlays**

The land is subject to the following overlays:

- Clause 42.01 – Environmental Significance Overlay - Schedule 1
- Clause 44.06 – Bushfire Management Overlay

**PLANNING PERMIT TRIGGERS**

The proposal for the removal of forty-nine (49) trees requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to 'Clause 42.01 – Environmental Significance Overlay – Schedule 1' a planning permit is required to remove, destroy or lop any vegetation.
- Pursuant to 'Clause 52.17 Native Vegetation' a planning permit is required to remove destroy or lop native vegetation.

**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.*

No objections have been received.

## REFERRALS

### *Melbourne Water*

The application was referred to Melbourne Water for comment. Melbourne Water objected to the proposal for the following reasons on 26 February 2014:

- The proposal would result in the loss of both existing and potential habitat connectivity along the waterway.
- Melbourne Water's vision for this reach of waterway is to maintain the existing structure, connectivity and condition of the riparian vegetation. There are also two noted vulnerable bird species in the immediate area that would value the mid and over storey vegetation for habitat.

Some additional information was provided and forward to Melbourne Water on 7 October 2014. Melbourne Water advised that the information was not adequate and that they required additional information to be provided before they were able to provide a response. The information required to be submitted comprised of a survey showing the proposed fence alignment, an arborist assessment, a revegetation plan and stream frontage management program.

Council has requested this information on several occasions, this application has been in limbo and as the applicant has not responded to the further information request, a decision is required to be made irrespectively.

*Department of Environment, Land, Water and Planning, formerly Department of Sustainability and Environment at the time of referral*

The application was referred to the Department of Environment, Land, Water and Planning for comment. Department of Environment, Land, Water and Planning did not object to the removal.

## DISCUSSION

Clause 14.02-1 'Catchment planning and management' empathises that natural drainage corridors should be retained with at least 30 metres wide vegetation to maintain natural drainage function, stream habitat and wildlife corridors and landscape values. Furthermore, Clause 12.01-1 'Protection of biodiversity' highlights the need to both protect and conserve Victoria's biodiversity, including important habitat for Victoria's flora and fauna while Clause 42.01 - Environmental Significance Overlay - Schedule 1 encourages the protection and enhancement of bio links across the landscape.

Melbourne Water acknowledges in their initial referral response that the corridor provides habitat for two vulnerable bird species and removal of vegetation could detrimentally impact the habitat connectivity. As a consequence, it is considered that suitable information must be provided before it can be appropriately concluded that the quality of the waterway or the environment will not be adversely impacted as a consequence of the vegetation removal. Despite repeated attempts by Council officers to attain the further information originally requested by Melbourne Water on 7 October 2014 the applicant has failed to provide a suitable response. Therefore it is not considered that a complete assessment of the application can be undertaken and that the quality of both the waterway and vulnerable species that make use of it as a habitat may be unnecessarily jeopardised.

Council's Biodiversity Officer has reviewed the submitted information and supports Melbourne Water's further information request.

## CONCLUSION

The proposed removal of forty-nine (49) trees cannot be assessed against the requirements of the Scheme or with the views of the Recommending Referral Authority as further information, as requested, has not been submitted despite many attempts by Council. It is considered that without this information Council cannot consider the potentially adverse impacts upon the biodiversity of the applicable section of the Menzies Creek corridor. As this is inconsistent with the relevant State Planning Policy Framework, Local Planning Policy Framework, Overlay and Particular Provisions refusal of the application is recommended.

#### **GROUND OF REFUSAL**

It is recommended that a Refusal to Grant Planning Permit T130633 be issued for the Removal of forty-nine (49) Native Trees at 20 Pinnocks Road, Emerald Victoria 3782 on the following grounds:

3. Failure to provide the required information does not allow the Responsible Authority and Recommending Referral Authority to assess the application in full
4. The proposed removal could detrimentally impact the biodiversity of the applicable section of the Menzies Creek corridor inconsistent with the strategies and objectives of
  - f) Clause 14.02-1 Catchment planning and management
  - g) Clause 12.01 – Biodiversity
  - h) Clause 21.02-3 – Biodiversity
  - i) Clause 42.01 – Environmental Significance Overlay - Schedule 1
  - j) Clause 52.17 – Native Vegetation.



## 5 REMOVAL OF NATIVE TREES AT 20 PINNOCKS ROAD, EMERALD

Moved Cr J Owen Seconded Cr G Moore

That a Refusal to Grant Planning Permit T130633 be issued for the Removal of forty-nine (49) Native Trees at 20 Pinnocks Road, Emerald Victoria 3782 on the following grounds:

1. Failure to provide the required information does not allow the Responsible Authority and Recommending Referral Authority to assess the application in full
2. The proposed removal could detrimentally impact the biodiversity of the applicable section of the Menzies Creek corridor inconsistent with the strategies and objectives of
  - a) Clause 14.02-1 Catchment planning and management
  - b) Clause 12.01 – Biodiversity
  - c) Clause 21.02-3 – Biodiversity
  - d) Clause 42.01 – Environmental Significance Overlay - Schedule 1
  - e) Clause 52.17 – Native Vegetation.

Cd.

## **6 REMOVAL OF NATIVE VEGETATION AT 555 PAKENHAM ROAD, PAKENHAM UPPER**

FILE REFERENCE INT175305

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Leanne Rider

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T160369 be issued for Removal of native vegetation at 555 Pakenham Road, Pakenham Upper on the following grounds:

The proposed removal is inconsistent with the strategies and objectives of

- a) Clause 12.01 – Biodiversity
- b) Clause 21.02-3 – Biodiversity
- c) Clause 42.01 – Environmental Significance Overlay - Schedule 1
- d) Clause 52.17 – Native Vegetation.

### **Attachments**

1 Locality plan 1 Page

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T160369
APPLICANT:	Denise Plummer
LAND:	555 Pakenham Road, Pakenham Upper
PROPOSAL:	Removal of vegetation
PLANNING CONTROLS:	Rural Conservation Zone Schedule 2 Bushfire Management Overlay Environmental Significance Overlay Schedule 1
KEY PLANNING CONSIDERATIONS:	Environmental impact
RECOMMENDATION:	Refusal

### **BACKGROUND:**

There are no relevant planning permit applications or history that affect the property

### **SUBJECT SITE:**

The site is located on the northern side of Pakenham Road and is 1.73 hectares in size. The rear of the property abuts onto Old Gembrook Road.

A crossover is located along the southern boundary toward the western boundary.

The site currently contains a dwelling, outbuildings, water tanks and some dense vegetation to the northern and eastern property boundaries.

The topography of the land has a fall of 20 metres from north to south over the site.  
The main characteristics of the surrounding area are:

- The northern property boundary adjoins the Old Gembrook Road with a large tree reserve to the rear of the property.
- The eastern property boundary adjoins a property with an established dwelling and outbuildings and some dense vegetation surrounding the property boundaries.
- The southern property boundary adjoins Pakenham Road, beyond this road are some large properties with established dwellings and outbuildings and some dense vegetation.
- The western property boundary adjoins a property with an established dwelling and outbuilding and some dense vegetation.

#### **PROPOSAL:**

The application is for the removal of three (3) native trees. The application states the trees are required to be removed as the applicant believes that these are considered to be dangerous.

#### **PLANNING SCHEME PROVISIONS:**

##### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 12.01-2 Native Vegetation Management
- Clause 12.04-2 Landscapes
- Clause 13.05 Bushfire

##### **Local Planning Policy Framework (LPPF)**

The relevant clauses of the LPPF are:

- Clause 21.02-2 Landscapes
- Clause 21.02-3 Biodiversity
- Clause 21.03-3 Rural Townships

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

The relevant provisions/ documents are:

- Clause 52.17 Native Vegetation
- Clause 65 Decision Guidelines

#### **Zone**

The land is subject to the Rural Conservation Zone Schedule 2

#### **Overlays**

The land is subject to the following overlays:

- Bushfire Management Overlay
- Environmental Significant Overlay Schedule 1

### PLANNING PERMIT TRIGGERS

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

- Pursuant to 3.0 of Schedule 1 to Clause 42.01 of the Environmental Significance Overlay, a planning permit is required for the removal of native vegetation.
- Pursuant to Clause 52.17 of Native Vegetation, a planning permit is required to remove, destroy or lop any native vegetation.

### PUBLIC NOTIFICATION

Pursuant to Section 52 of *The Planning and Environment Act 1987* the proposal was not advertised as it was considered that it would not result in material detriment to any person for the following reasons:

- The proposed trees for removal are in the middle of the property and would not affect the adjoining neighbours.
- There are other trees in the area that would provide screening from the road and neighbouring properties.

### REFERRALS

No external referrals were required as part of the assessment of this proposal. The application was referred internally to Councils Biodiversity Officer.

### DISCUSSION

The Environmental Significance Overlay identifies areas where the development of land may be affected by environmental constraints, and to ensure that development is compatible with identified environmental values.

The relevant objectives from the Environmental Significance Overlay are:

- *To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.*
- *To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.*

The purpose of Clause 52.17 Native Vegetation is to avoid the removal of native vegetation which makes a significant contribution to biodiversity.

The applicant has stated that the reason for removal of the trees is because they are dangerous. The arborist report supplied by the applicant does not agree with this assumption. Instead the report submitted by the applicant concludes the following:

*The removal of these three trees is not supported based on the assessment of risk of harm posed to persons or property. The arborist's report states that the risk the trees present is low.*

*While some level of dead wood removal and weight reduction pruning might be undertaken, it is considered that this is largely optional rather than required to maintain a safe environment.*

The application was referred to Council's Biodiversity Officer who does not support the removal of the trees for the same reasons expressed in the previously discussed Arboriculture Report. Additionally, they have also highlighted that the report also states cables may be installed for tree numbered one to further reduce risk, although it is assessed as a low risk already.

After considering the arborist report and the comments from Councils qualified officer, it is considered that the trees proposed for removal are still healthy and the applicant can undertake some optional pruning or steel cabling and removal of hanging limbs to assist with the weight of the higher limbs.

## **CONCLUSION**

It is considered that the application is inconsistent with the requirements of the Cardinia Planning Scheme and it is therefore recommended that the removal of three native (3) trees at 555 Pakenham Road, Pakenham Upper, be refused on the following grounds:

The proposed removal is inconsistent with the strategies and objectives of

- e) Clause 12.01 – Biodiversity
- f) Clause 21.02-3 – Biodiversity
- g) Clause 42.01 – Environmental Significance Overlay - Schedule 1
- h) Clause 52.17 – Native Vegetation.

**6 REMOVAL OF NATIVE VEGETATION AT 555 PAKENHAM ROAD,  
PAKENHAM UPPER**

Moved Cr J Owen Seconded Cr G Moore

That a Refusal to Grant Planning Permit T160369 be issued for Removal of native vegetation at 555 Pakenham Road, Pakenham Upper on the following grounds:

The proposed removal is inconsistent with the strategies and objectives of

- a) Clause 12.01 – Biodiversity
- b) Clause 21.02-3 – Biodiversity
- c) Clause 42.01 – Environmental Significance Overlay - Schedule 1
- d) Clause 52.17 – Native Vegetation.

Cd.

## **7 RE-SUBDIVISION OF TWO (2) EXISTING LOTS (BOUNDARY REALIGNMENT) AT 35-43 GARDENIA STREET, PAKENHAM**

FILE REFERENCE INT175283

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Jennifer Yong

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T160543 be issued for Re-subdivision of two (2) existing lots (boundary realignment) at 35-43 Gardenia Street, Pakenham for the reasons outlined in this report.

### **Attachments**

- |   |                              |        |
|---|------------------------------|--------|
| 1 | Locality plan                | 1 Page |
| 2 | Proposed plan of subdivision | 1 Page |

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T160543
APPLICANT:	Nobelius Land Surveyor
LAND:	35-43 Gardenia Street, PAKENHAM VIC 3810
PROPOSAL:	Re-subdivision of two (2) existing lots (boundary realignment)
PLANNING CONTROLS:	General Residential Zone Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	Pursuant to Section 52 (1A) of the Planning and Environment Act 1987, notification of the application was not given in accordance with Section 52 (1), as the proposal is recommended to be refused.
KEY PLANNING CONSIDERATIONS:	Existing and preferred subdivision character.
RECOMMENDATION:	Refusal

### **BACKGROUND:**

There is no planning history for the subject site.

### **SUBJECT SITE:**

The two subject sites are known as Lot 1 TP437940 and Lot 17 LP99061.

The subject sites are generally rectangular in shape with Lot 1 TP437940 northern boundary abutting Lot 17 LP99061 southern boundary.

### **Lot 1 TP437940**

The site located on the north site of Gardenia Street and has an area of 913m<sup>2</sup> with a street frontage of 18.31 metres and a depth of 49.39 metres. The site is approximately 730 metres north of Princes Highway.

The site slopes gently down from northwest to southeast and contains a single storey dwelling and outbuilding. A single crossover is located along the southern property boundary. The site does not contain any easements. The site is largely clear of vegetation aside from general landscaping.

#### Lot 17 LP99061

The site is located on the west side of Gardenia Street and has an area of 1235.21m<sup>2</sup> with a street frontage of 18.44 metres and a depth of 64.3 metres. The subject site is approximately 780 metres north of Princes Highway.

The site slopes down from west to east and contains a single storey dwelling and swimming pool. A single crossover is located along the eastern property boundary. The site does not contain any easements. Except for a small cluster of mature trees to the rear of the site, the site is largely clear of vegetation.

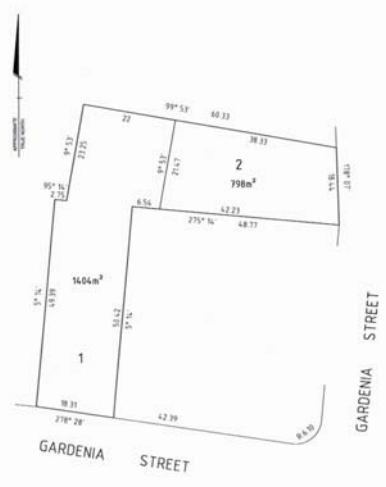
The main characteristics of the surrounding are:

- Residential allotments all of a similar size surround all sides of the subject site.
- 'Falling Waters' residential estate is located 50 metres east of the subject site with 'Pakenham Heights' residential estate located 370 metres west of the subject site.
- Meadowvale Retirement Village is located 515 metres west of the subject site.
- Pakenham Town Centre is located approximately 1.2 kilometres south of the subject site.

#### **PROPOSAL:**

The proposal is to re-subdivide two (2) existing lots by undertaking a boundary realignment. The proposal will involve transferring approximately 437m<sup>2</sup> from Lot 17 LP99061 to Lot 1 TP437940. This will result in:

- Lot 1 TP437940 will have a total area of 1404m<sup>2</sup> and be 'L' shaped. The lot will maintain a frontage of 18.31 metres.
- Lot 17 LP99061 will have a total area of 798m<sup>2</sup> and be rectangular in shape. The lot will maintain a frontage of 18.44 metres.



#### **PLANNING SCHEME PROVISIONS:**

##### **State Planning Policy Framework (SPPF)**



The relevant clauses of the SPPF are:

- 15.01-5 Cultural identity and neighbourhood character

#### **Local Planning Policy Framework (LPPF)**

The relevant clauses of the LPPF are:

- 21.03-2 Urban growth area

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

The relevant provisions/ documents are:

- Clause 65 Decision Guidelines

#### **Zone**

The land is subject to the General Residential Zone

#### **Overlays**

The land is subject to the following overlays:

- Development Contributions Plan Overlay – Schedule 1

#### **PLANNING PERMIT TRIGGERS**

The proposal for the re-subdivision of two (2) existing lots (boundary realignment) requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.08-2 of the General Residential Zone a planning permit is required to subdivide land.

#### **PUBLIC NOTIFICATION**

The application was not advertised pursuant to Section 52 (1A) of the Planning and Environment Act 1987. The applicant was advised early in the application assessment process that it would not be supported at an Officers level, it was decided that advertising would not be beneficial in this case. If the application was appealed at VCAT, it is in all likelihood the proposal would be advertised at this point.

#### **REFERRALS**

- The application was not required to be referred.

#### **DISCUSSION**

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

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

*Clause 15.01-5 (Cultural identity and neighbourhood character)*

The objective of this Clause is to recognise and protect cultural identity, neighbourhood character and sense of place. As such, the proposal should consider the existing subdivision layout of the surrounding area. The

surrounding area has a district uniform rectangular pattern of subdivision. The proposal will result in a lot design that is inconsistent with the existing neighbourhood character of the area.

#### *Clause 21.03-2 (Urban Growth Area)*

The objective of this Clause is to create a functional, attractive, safe and sustainable urban environment for the community. Generally, planning requires subdivision patterns to be functional and orderly which is reinforced by planning provisions and policies such as Clause 56 of the planning scheme (residential subdivision). The proposal creates a lot that is not considered functional or orderly.

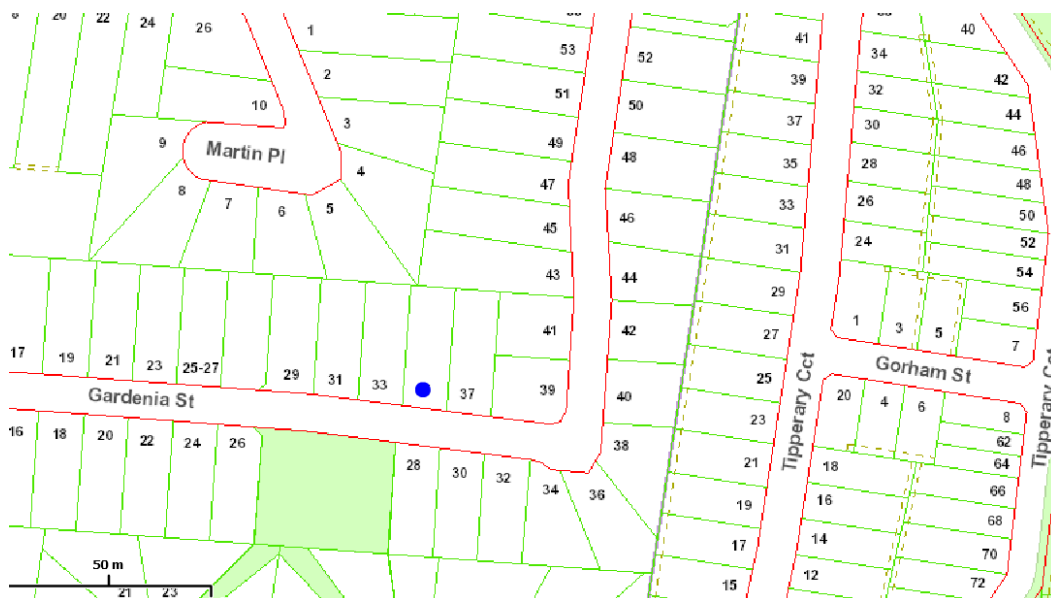
#### **General Residential Zone**

The General Residential Zone aims to provide for residential development that respects the neighbourhood character of the area.

The proposed re-subdivision will deliver two different sized and shaped lots. The proposal involves realigning the common boundary which will result in Lot 1 TP437940 having a lot size of 1404m<sup>2</sup>, achieved by acquiring approximately 437m<sup>2</sup> of Lot 17 LP99061 rear yard. As the lots are located perpendicular to each other, the boundary realignment will create an irregular 'L-shaped' lot for Lot 1 which is not consistent with the existing subdivision pattern of the surrounding area. The predominant pattern of the area is rectangular shaped lots with relatively narrow street frontages relative to its depth.

The boundary realignment will result in Lot 17 maintaining its rectangular shape which is 798m<sup>2</sup> in size. Whilst the lot size and design is considered in keeping with the character of the area, there are concerns that the realignment will result in Lot 17 having a small and impractical rear yard which is not in keeping with the residential character of the surrounding area.

The subdivision pattern of the existing area is recognised below, the land sizes and shapes are consistent, offering uniformity to the neighbourhood character. It is considered the proposed subdivisions will be inconsistent with the current lay of the land.



#### **CONCLUSION**

In conclusion the proposal is not consistent with the purposes and objectives of the relevant provisions of the Cardinia Planning Scheme. The proposed re-subdivision is considered inappropriate for the subject site and surrounding area and as such it is considered that the proposal should not be supported.

It is recommended that a Refusal to Grant Planning Permit T160543 be issued for the Re-subdivision of two (2) existing lots (boundary realignment) at 35-43 Gardenia Street, PAKENHAM VIC 3810 on the following grounds:

1. The proposal fails to adequately satisfy the following Clauses of the Cardinia Planning Scheme:
  - a) 15.01-5 Cultural identity and neighbourhood character,
  - b) 21.03-2 Urban growth area
  - c) Clause 65 Decision Guidelines
2. The proposal fails to meet the purpose of the General Residential Zone
3. The proposal fails to recognise and protect the neighbourhood character resulting in a re-subdivision that will create a lot that is inconsistent with the logical and orderly subdivision pattern of the area.
4. The re-subdivision will create a lot that is inconsistent with the logical and orderly subdivision pattern of the area.
5. The re-subdivision would adversely impact on the established neighbourhood character of the area.

**7 RE-SUBDIVISION OF TWO (2) EXISTING LOTS (BOUNDARY REALIGNMENT) AT 35-43 GARDENIA STREET, PAKENHAM**

Moved Cr J Owen Seconded Cr G Moore

That a Refusal to Grant Planning Permit T160543 be issued for Re-subdivision of two (2) existing lots (boundary realignment) at 35-43 Gardenia Street, Pakenham 3810 on the following grounds:

1. The proposal fails to adequately satisfy the following Clauses of the Cardinia Planning Scheme:
  - a) 15.01-5 Cultural identity and neighbourhood character,
  - b) 21.03-2 Urban growth area
  - c) Clause 65 Decision Guidelines
2. The proposal fails to meet the purpose of the General Residential Zone
3. The proposal fails to recognise and protect the neighbourhood character resulting in a re-subdivision that will create a lot that is inconsistent with the logical and orderly subdivision pattern of the area.
4. The re-subdivision will create a lot that is inconsistent with the logical and orderly subdivision pattern of the area.
5. The re-subdivision would adversely impact on the established neighbourhood character of the area.

Cd.

## **8 PLANNING SCHEME AMENDMENT ACTIVITY REPORT**

FILE REFERENCE INT175263

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Tracey Parker

### **RECOMMENDATION**

That the report be noted.

### **Attachments**

*Nil.*

### **EXECUTIVE SUMMARY**

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

### **Status of active amendments**

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

<b>CARDINIA PLANNING SCHEME AMENDMENTS ACTIVITY REPORT</b>						
<b>A/No.</b>	<b>Proponent</b>	<b>Address</b>	<b>Purpose</b>	<b>Exhibition Start</b>	<b>Exhibition End</b>	<b>Status</b>
C205	EDM Group	80 McDonalds Track Lang Lang.	Rezone part of the land from Farming Zone to Industrial 1 Zone with a combined Planning Permit S96			On 20/06/2016 Council adopted to request Minister's authorisation.
C206	Cardinia Shire Council	16 Beaconsfield-Emerald Road Emerald	Rezone 16 Beaconsfield-Emerald Road Emerald from Rural Conservation Zone 2 to Public Park and Recreation Zone.	Thu 07/01/2016	Mon 08/02/2016	Amendment submitted to the Minister for approval on 04/10/2016. Awaiting approval.
C208	Cardinia Shire Council	Cardinia Shire	Updates the Local Planning Policy Framework (LPPF) to make reference to relevant policy direction outlined in Plan Melbourne. Airport Policy and Healthy By Design.	Thu 21/07/2016	Mon 22/08/2016	Amendment submitted to the Minister for approval on 19/01/2017. Awaiting approval.

CARDINIA PLANNING SCHEME AMENDMENTS ACTIVITY REPORT						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C209	Cardinia Shire Council	Pakenham Golf Course	<p>Rezone of part of the golf course from Public Park and Recreation Zone to Low Density Residential Zone 3 and apply a schedule to allow a minimum lot size of 2000m2.</p> <p>Apply the Low Density Residential Zone 3, a Vegetation Protection Overlay 1 and Development Design Overlay 1 to land within the Deep Creek Master Plan area, and consider a planning permit for a two lot subdivision to allow for the land to be zoned Low Density Residential Zone 3 and Public Park and Recreation Zone.</p>	Fri 24/06/2016	Wed 31/08/2016	Panel Report received on 09/01/2017. Amendment process continuing.
C211	Cardinia Shire Council	Pakenham Structure Plan area	Amends the Municipal Strategic Statement to consider 'Activity Centre Structure Plans' and to incorporate the Pakenham Structure Plan into the Local Planning Policy Framework. Adds the Pakenham Structure Plan as an incorporated document in the Planning Scheme.	Thu 12/05/2016	Tue 14/06/2016	Report going to General Council Meeting on 16/03/2017 seeking adoption of the amendment.
C212	Cardinia Shire Council	Various sites	Correction of minor zoning and overlay anomalies, and errors in the description of heritage places in the Schedule to Clause 43.01.	Thu 12/05/2016	Tue 14/06/2016	Amendment submitted to the Minister for approval on 27/09/2016. Awaiting approval.
C214	Pakenham Racing Club Inc.	71 and 77 Racecourse Road, Pakenham (Lot 1 on PS632087K)	Rezone land from Special Use Zone 2 (SUZ2) to General Residential Zone (GRZ).	Thu 13/10/2016	Mon 14/11/2016	Amendment submitted to the Minister for approval on 11/01/2017. Awaiting approval.

CARDINIA PLANNING SCHEME AMENDMENTS ACTIVITY REPORT						
A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C215	Cardinia Shire Council	Green Wedge land	Implement the key recommendations of the Cardinia Western Port Green Wedge Management Plan (July 2016). Amends the Municipal Strategic Statement to remove reference to matters that are now proposed to be addressed in the Western Port Green Wedge Local Planning Policy & include the Cardinia Western Port Green Wedge Management Plan (July 2016) as a reference document.	Thu 01/09/2016	Mon 03/10/2016	On 12/12/2016 Council recommended referral to a Planning Panel to be appointed by the Minister for Planning.
C219	Cardinia Shire Council	Atlantic Drive, Pakenham	The amendment proposes to rezone the subject land from General Residential Zone- Schedule 1 (GRZ1) to Mixed Use Zone (MUZ) to allow for the use and development of the site as originally intended by the approved Cardinia Lakes Neighbourhood Activity Centre Development Plan (Part 3, 2009).	Thu 03/11/2016	Mon 21/11/2016	Amendment submitted to the Minister for approval on 16/12/2016. Awaiting approval.
C221	Villaworld Developments Pty Ltd Group	27-39 Vantage Drive Pakenham	The amendment proposes to rezone the part of residential lots 27-39 Vantage Drive, Pakenham that are covered by the Urban Floodway Zone (UFZ) to General Residential Zone Schedule 1 (GRZ1).	Thu 15/12/2016	Fri 06/01/2017	Exhibition finalised. No submissions received. Amendment process continuing.

## **8 PLANNING SCHEME AMENDMENT ACTIVITY REPORT**

Moved Cr J Owen Seconded Cr G Moore

That the report be noted.

Cd.



## **9 PLANNING MATTERS THE SUBJECT OF APPEAL AT VCAT**

FILE REFERENCE INT175265

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Debbie Tyson

### **RECOMMENDATION**

That the report be noted

### **Attachments**

*Nil.*

### **EXECUTIVE SUMMARY**

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

<b>Hearing Date</b>	<b>App No.</b>	<b>Address</b>	<b>Proposal</b>	<b>Council Decision</b>	<b>Appealed By</b>	<b>Current Status</b>
17-Oct-16	T130036-1	Bridge Road Officer	Use and development of the land for a restricted place of assembly, installation and use of 60 electronic gaming machines and sale and consumption of liquor (full club licence)	Refusal	Applicant	Council Decision set aside - Permit issued
29-Jul-16	T140723	1 Bridle Place, Pakenham	Cancellation of Planning Permit - issued in breach of covenant	Initiated cancellation	Applicant	Awaiting hearing
22/04/2016 Hearing 5/10/16 Compulsory Conference - 10/08/16	T080447-1	11-15 Vista Court Gembrook	The use and development of land for the purpose of twenty (20) dwellings, of which ten (10) are to be used as a retirement village (over 55's) and associated earthworks exceeding one (1) metre. – amend to delete retirement village requirement	Refusal	Applicant	Awaiting Decision
24-Apr-17	T130758-2	5 & 6 Spencer Place, Pakenham	The development of the land for the purpose of five (5) dwellings, generally in accordance with the approved plans	Refusal	Applicant	Awaiting hearing
20-Mar-17	T160196	Timbertop Blvd, Officer	Multi lot subdivision of the land and the removal of one native tree	Refusal	Applicant	Awaiting hearing

15-Mar-17	T160197	32 Racecourse Road, Pakenham	Development of the land for a service station, development and use for a convenience restaurant and convenience shop, car parking variation and works to alter and create access to a Road Zone category 1	Failure to Determine	Applicant	Awaiting hearing
17-Jul-17	T140337	65 Pioneer Road, Lang Lang	Use and development of the land for extractive industry (sand quarry) removal of vegetation and alter access to a road in a Road Zone, Category 1	Failure to Determine	Applicant	Awaiting hearing
20-Mar-17	T160150	70 Croft Road, Nar Nar Goon North	Development of the land a dwelling extension (pergola) and outbuilding (shed)	NOD - Approval	Objector	Awaiting hearing
22-Feb-2017	T150734	7 Henry Street Koo Wee Rup	Subdivision of land into two (2) lots and creation of an easement	Refusal	Applicant	Awaiting hearing

**9 PLANNING MATTERS THE SUBJECT OF APPEAL AT VCAT**

Moved Cr J Owen Seconded Cr G Moore

That the report be noted

Cd.

## **10 PLANNING ENFORCEMENT MATTERS**

FILE REFERENCE INT175269

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Owen Hardidge

### **RECOMMENDATION**

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

### **Attachments**

*Nil.*

### **EXECUTIVE SUMMARY**

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

### **BACKGROUND**

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

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

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

#### **1). Multi-purpose Hearing**

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

#### **2). Admin Mention**

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

#### **3). Adjournment**

An adjournment will be asked for where there has been some discussion between Council and the Respondent, and more time is to be allowed for the Respondent (or Council as the Applicant) for a variety of reasons.

#### **4). Offset plan**

An Offset Plan goes by a few different names, including a Property Management Plan or a Property Remediation Plan. These plans are used when a Respondent has removed vegetation or otherwise damaged vegetation on the Land and Council is seeking a remedy for this removal, normally requiring replanting to occur on the Land. This plan is

what Council will seek in the shape of an Enforcement Order, and the contents of the Plan will be decided by Council's Environment Team.

**5). Full hearing**

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

**6). Consent Orders**

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

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

Property Address	Nature of Contravention	Status
<b>715 Gembrook Rd, Pakenham Upper</b>  (ref: OH:AB:14130, OH:SMAY:15227 OH:OH:16295)	Alleged land use (burning off) and building breaches, that relates to extensive and complex planning history of the site.	<p>Magistrates' Court proceedings adjourned to <b>30 &amp; 31 March 2017 for contested hearing</b>, as accused has filed application in VCAT for declaration as to existing use rights.</p> <p>This VCAT application will be listed for a 2-day hearing in <b>14-15 June 2017</b>.</p> <p>Magistrates' Court proceeding may be delayed pending determination of this issue.</p> <p>Council commenced Building and Local Law prosecution of the owner, arising from construction and commercial-scale burn offs on the site.</p> <p>The owner asserts that burning off activities are protected by the planning scheme. The owner now asserts a broader range of activities attract Existing Use Rights, and this contested proceeding will seek to clarify land use rights.</p> <p>The property has a 17 yr history of litigated planning disputes between 1997 and 2015.</p>
<b>555 Back Creek Rd, Gembrook</b>  <b>EH:LK:16272)</b>	Native vegetation removal, and earthworks creating a dam, in breach of Section 173 agreement and the scheme. Rural Conservation Zone – Sch 1, Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and Clause 52.17	<p>Magistrates' Court prosecution arising from the creation of a large dam (by earthworks and vegetation removal), contrary to strict environmental controls and Section 173 agreement protecting vegetation on the land.</p> <p>On <b>15<sup>th</sup> September 2016</b> the Court issued a Warrant for arrest to compel the attendance of the accused. The</p>

		accused has recently re-located, and we are investigating options to locate him.
<b>230 Telegraph Road Beaconsfield Upper</b>  <b>EH:JALF:16300</b>	Earthworks and excavation creating a structure consisting of a total of six 40ft shipping containers, in breach of 35.06-5 Rural Conservation Zone – Sch 2, clause 42.01-2 Environmental Significance Overlay – Sch 1, Bushfire Management Overlay, and clause 44.06-1	VCAT Enforcement arising from the creation of a structure, earthworks and excavation, contrary to strict environmental controls.  The owner has submitted a planning application to regularise the development, which is pending.  VCAT application for enforcement order filed and Practice Day of the matter to <b>20<sup>th</sup> January 2017</b> , which will be further adjourned.

## CONCLUSION

The list of current enforcement activities is presented for information.

## **10 PLANNING ENFORCEMENT MATTERS**

Moved Cr J Owen Seconded Cr G Moore

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

Cd.

## **11 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY**

FILE REFERENCE INT175301

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Debbie Tyson

### **RECOMMENDATION**

That the report be noted

### **Attachments**

*Nil.*

### **EXECUTIVE SUMMARY**

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

#### **Central Ward - Delegated Decisions from 6/12/16 to 18/01/17**

<b>Date</b>	<b>Permit No</b>	<b>Location</b>	<b>The Proposal</b>	<b>The Decision</b>
7/12/2016	T160351 - PC3	1 Frogmores Street, Pakenham VIC 3810	SEC 173 - Plans to Comply - Subdivision of the land into ten (10) lots in accordance with the endorsed plans.	Withdrawn
8/12/2016	T160572	9 Industrial Drive, Pakenham VIC 3810	Buildings and works for one (1) warehouse	Issued
8/12/2016	T160615	9 Corporate Terrace, Pakenham VIC 3810	Construction of two (2) warehouses and associated works	Issued
8/12/2016	T160684	75 Caversham Drive, Pakenham VIC 3810	The subdivision of land into three (3) lots in accordance with the endorsed plans	Issued
13/12/2016	T160171	189 Ahern Road, Pakenham VIC 3810	Subdivision of the land (boundary realignment)	Withdrawn
16/12/2016	T160662	Commercial Drive, Pakenham VIC 3810	Building and works for seven (7) warehouses with ancillary offices	Issued
16/12/2016	T160494	Southeast Business Park, Corporate Terrace, Pakenham VIC 3810	Multi lot subdivision of the land in stages	Issued
16/12/2016	T160736	5 Acacia Court, Pakenham VIC 3810	Subdivision of the land into three (3) lots	Issued
20/12/2016	T160625	Caversham Drive, Pakenham VIC 3810	Development of the land for three (3) dwellings	Issued
21/12/2016	T160823	Sharnet Circuit, Pakenham VIC 3810	Subdivision of the land into twelve (12) lots	Issued
21/12/2016	T160723	2 Wadsley Avenue, Pakenham VIC 3810	Subdivision of the land into eight (8) lots	Issued
22/12/2016	T160749	18 Industrial Drive, Pakenham VIC 3810	Use and development of the land for materials recycling and warehouse	Issued
23/12/2016	T160588	South East Business Park, 23-25 Commercial Drive, Pakenham VIC 3810	Subdivision of Lot A on unregistered plan PS747660P into eleven (11) lots and common property	Issued
23/12/2016	T160731	6 Bormar Drive, Pakenham VIC 3810	Building and works for warehouse development with ancillary office	Issued
23/12/2016	T160589	South East Business Park, 23-25 Commercial Drive, Pakenham VIC 3810	Subdivision of the land into twelve (12) lots and common property and the creation of easements	Issued
4/01/2017	T160402	26 Mullane Road, Pakenham VIC 3810	Subdivision of the land and Development Plan Overlay - Schedule 5	Issued



6/01/2017	T150634 - PC1	115 Peck Road, Pakenham Victoria 3810	Plans to Comply - Condition 1 - Subdivision to create super-lots and Staged residential subdivision and associated works (including road-works on land affected by the Land Subject to Inundation Overlay) and removal of native vegetation	Issued
6/01/2017	T160235	7 Thomas Street, Pakenham VIC 3810	Development of the land for three (3) dwellings on a lot	NOD
10/01/2017	T970139 - 2	31 Main St, Pakenham Victoria 3810	Amendment to Planning Permit T970139 (issued for a Medical Centre) by amending Conditions 4 and 5, modifying the endorsed plans and amending what the Permit allows to include a reduction in on-site car parking (1 space) and display of business identification signage.	Issued
12/01/2017	T160490	42 Bate Close, Pakenham VIC 3810	Development of the land for a telecommunications facility	Issued
13/01/2017	T160649	5A Fairway Court, Pakenham VIC 3810	The development of the land for the construction of an outbuilding	Issued
13/01/2017	T160659	2 Venture Way, Pakenham VIC 3810	Development of the land for six (6) warehouses	Issued
17/01/2017	T140239 - PC1	270 Bald Hill Road, Pakenham Victoria 3810	Plans to Comply - Use and development of the land for a major sports and recreation facility (ice arena), reduction in the requirements of Clause 52.07 and the sale and consumption of liquor	Issued
17/01/2017	T160114 - PC1	71-77 Racecourse Road, Pakenham VIC 3810	Use and development of the land for twenty-six (26) dwellings, creation of access to a Road Zone Category 1 and removal of native vegetation	Issued

### Port Ward - Delegated Decisions from 26/09/16 to 18/01/17

Date	Permit No	Location	The Proposal	The Decision
7/12/2016	T160593	120 Wattletree Road, Bunyip VIC 3815	Development of the land for an outbuilding with a reduced setback	NOD
8/12/2016	T160044	New Address - L211 PS705124C, Nar Nar Goon-Longwarry Road, Tynong Victoria 3813	Development of the land for a dwelling, outbuildings, horse stables and horse training facilities	Issued
8/12/2016	T160045	New Address - L212 PS705124C, Nar Nar Goon-Longwarry Road, Tynong Victoria 3813	Development of the land for a dwelling, outbuildings, horse stables and horse training facilities	Issued
8/12/2016	T160185	10 McDonalds Road, Catani VIC 3981	Development of the land for a dwelling extension and an outbuilding with a reduced setback	Issued
8/12/2016	T160552	120 Denhams Road, Koo Wee Rup VIC 3981	Two (2) lot subdivision	Issued
8/12/2016	T160660	70 O`Briens Road, Yannathan VIC 3981	Alterations and additions to an existing dwelling	Issued
12/12/2016	T160046	New Address - L213 PS705124C, Nar Nar Goon-Longwarry Road, Tynong Victoria 3813	Development of the land for a dwelling, outbuildings, horse stables and horse training facilities	Issued
12/12/2016	T140337	65 Pioneer Road, Lang Lang Victoria 3984	Use and development of the land for extractive industry (sand quarry) removal of vegetation and alter access to a road in a Road Zone, Category 1	Applicant lodged Failure to determine at VCAT
12/12/2016	T160069	3500 South Gippsland Highway, Koo Wee Rup Victoria 3981	Use of the land for a dwelling and earthworks associated with a driveway.	Issued
13/12/2016	T160451	Pakenham Racecourse, 330 Nar Nar Goon-Longwarry Road, Tynong VIC 3813	Development of the land for a telecommunications monopole	Issued

15/12/2016	T160825	U 18/27 Jefferson Road, Garfield VIC 3814	Veranda	Withdrawn
16/12/2016	T160173	15 Patullus Road, Yannathan VIC 3981	Construction of a dam	Issued
19/12/2016	T150180	170 McDonalds Track, Lang Lang Victoria 3984	Subdivision of the land	Issued
19/12/2016	T160390	105 Hobson Road, Rythdale VIC 3810	Two (2) lot boundary realignment	Issued
19/12/2016	T160435	365 Seymour Road, Nar Nar Goon North VIC 3812	The use and development of a Telecommunications Facility, associated equipment shelter and associated works	Issued
19/12/2016	T160701	Murphy Lane, Longwarry VIC 3816	Development of the land for a building associated with agriculture (hay shed)	Issued
20/12/2016	T160092	60 Nar Nar Goon Road, Nar Nar Goon VIC 3812	Demolition of a building, development of buildings and removal of vegetation associated with an education centre	Issued
20/12/2016	T160838	660 Koo Wee Rup-Longwarry Road, Bayles VIC 3981	Demolition and removal of buildings	Issued
21/12/2016	T150424 - PC1	47 Railway Avenue, Bunyip Victoria 3815	Subdivision of land into two (2) lots	Issued
21/12/2016	T160633	270 Fogarty Road, Tynong North VIC 3813	Development of the land for an outbuilding	Issued
22/12/2016	T160440	12 Knights Court, Tynong VIC 3813	use and development of a caretaker's house and development of buildings and works associated with animal training & horse stables	Issued
22/12/2016	T160677	10 Woodman Avenue, Bayles VIC 3981	Development of Land for replacement outbuilding	Issued
22/12/2016	T160717	175 Fechner Road, Koo Wee Rup VIC 3981	Development of the land for a building associated with agriculture (hay store)	Issued
22/12/2016	T160744	84 Gainsborough Avenue, Lang Lang VIC 3984	Construction of an outbuilding	Issued
22/12/2016	T160841	U 29/27 Jefferson Road, Garfield VIC 3814	Proposed Verandah	Withdrawn
23/12/2016	T160566	4 Haynes Close, Bunyip VIC 3815	Variation of a restrictive covenant	Issued
23/12/2016	T160601	185 Yarrabubba Road, Nar Nar Goon North VIC 3812	Construction of three (3) buildings associated with Agriculture	Issued
23/12/2016	T160711	254 Snell Road, Nar Nar Goon North VIC 3812	Buildings and works associated with an existing accommodation facility	Issued
3/01/2017	T160840	U 2/27 Jefferson Road, Garfield VIC 3814	Proposed Verandah to Unit No 2	Withdrawn
3/01/2017	T160842	U 30/27 Jefferson Road, Garfield VIC 3814	Proposed Veranda to Unit 30	Withdrawn
5/01/2017	T160430 - PC1	270 Cardinia Road, Officer South VIC 3809	Use and Development of the land for a display home village, the erection of advertising signage, construction of single dwellings on lots within the Special Use Zone Schedule 4, and a reduction in car parking in accordance with the endorsed plans.	Issued
5/01/2017	T160789	2 Greenhill Court, Bunyip VIC 3815	Additions and alterations to existing dwelling	Withdrawn
6/01/2017	T120217 - 1	Nine Mile Road, Tynong Victoria 3813	Amend Permit - Buildings and works and use of land for a Rural Store and Rural Industry	Withdrawn
9/01/2017	T150823 - PC1	Alexandra Avenue, Koo Wee Rup Victoria 3981	Subdivision of the land into fifteen (15) lots	Withdrawn
10/01/2017	T160726	13 Mulcare Street, Nar Nar Goon VIC 3812	Development of the land for a dwelling with a reduced setback from the property boundaries and the road	Issued
11/01/2017	T160837	97 Moody Street, Koo Wee Rup VIC 3981	Proposed Construction of a colour bond Garage and habitable outbuildings	Withdrawn

12/01/2017	T160315	6 Ravendene Court, Maryknoll VIC 3812	Variation to a registered covenant (to extend a dwelling outside the building envelope and extend the waste water envelope) and construction of a dam and outbuilding within 5 metres of a boundary.	Issued
16/01/2017	T130145 - PC1	62 Tynong Road, Tynong Victoria 3813	Resubdivision of two lots (boundary realignment)	Issued
16/01/2017	T160635	335 Tynong North Road, Tynong North VIC 3813	Use and development of the land for a dwelling and removal of vegetation	Issued
16/01/2017	T160778	275 McDonalds Drain Road, Koo Wee Rup VIC 3981	Buildings and works associated with the construction of an outbuilding and verandah	Issued

### Ranges Ward - Delegated Decisions from 26/09/16 to 18/01/17

Date	Permit No	Location	The Proposal	The Decision
7/12/2016	T130764 - PC5	226 Rix Road, Beaconsfield Victoria 3807	Plans to Comply - Condition 15 - Multi lot subdivision of the land	Issued
7/12/2016	T150780 - PC1	85 Bayview Road, Officer Victoria 3809	Subdivision of land and removal and/or variation of an easement	Issued
7/12/2016	T160579	Clematis Park Road, CLEMATIS VIC 3782	Buildings and works for the construction of a covered horse arena	Issued
7/12/2016	T160627	2 Montuna Grove, Guys Hill VIC 3807	Alterations and additions to the existing dwelling	Issued
8/12/2016	T160146 - PC6	Officer South Road, Officer VIC 3809	Plans to Comply - Con. 12 MCP, Stage 12A) Subdivision of the land, associated works (including road-works within land affected by the Land Subject to Inundation Overlay) and creation of restrictions	Issued
8/12/2016	T160630	186 Beenak Road, Gembrook VIC 3783	Construction of an agricultural building and associated works	Issued
12/12/2016	T160680	13-15 Mahon Avenue, Beaconsfield VIC 3807	12 Lot subdivision	Issued
13/12/2016	T160504	Shop 3/22-24 Old Princes Highway, Beaconsfield VIC 3807	Sale and consumption of liquor associated with a restaurant	Issued
16/12/2016	T160140	48 Devon Avenue, Cockatoo VIC 3781	Buildings and works for one (1) dwelling, two (2) outbuildings, associated earthworks and vegetation removal	Issued
16/12/2016	T160412	74 Stoney Creek Road, Beaconsfield Upper VIC 3808	The use and development of a dwelling, vegetation removal and associated works	Issued
19/12/2016	T160381	U 3/3 Banks-Smith Drive, Gembrook VIC 3783	Use and development of the land for two (2) dwellings	NOD
20/12/2016	T150713 - PC1	21 Berrys Road, Emerald Victoria 3782	Use of the land for a second dwelling (transformation of existing outbuilding) and associated buildings and works	Issued
20/12/2016	T160190	90 McMullen Road, Officer VIC 3809	Stage multi-lot subdivision and creation of a carriageway easement in accordance with the endorsed plans.	Issued
20/12/2016	T160345 - 1	23-25 Salisbury Road, Beaconsfield Upper VIC 3808	AMENDED PERMIT - Development of the land for an outbuilding, retaining walls, associated earthworks and vegetation removal	Issued
22/12/2016	T130340 - PC4	70 Brunt Road, Beaconsfield Victoria 3807	Plans to Comply - Landscape Master Plan (Stages 1 and 2 ) LCD -001 Subdivision of the land	Issued
22/12/2016	T150827 - PC1	96 Mary Street, Officer Victoria 3809	Development of the land for fourteen (14) dwellings and associated works in accordance with the endorse plans	Issued
22/12/2016	T150659 - PC3	224 Kenilworth Avenue, Beaconsfield Victoria 3807	Plans to Comply - Landscape Master Plan (Stages 3 and 4 ) LCD -001 Staged subdivision of land in accordance with the endorsed plans.	Issued

22/12/2016	T160105 - PC3	191 Rix Road, Officer VIC 3809	Plans to Comply - Condition 3 of the Planning Permit - Subdivision of land in accordance with the endorsed plans.	Issued
22/12/2016	T160669	655 Pakenham Road, Pakenham Upper VIC 3810	Use and development of the land for a dwelling	Issued
23/12/2016	T160675	1-5 Carawa Street, Cockatoo VIC 3781	Removal of 16 Pine Trees (Pinus Radiata)	Issued
3/01/2017	T150659 - PC1	224 Kenilworth Avenue, Beaconsfield Victoria 3807	Staged subdivision of land in accordance with the endorsed plans.	Withdrawn
4/01/2017	T150659 - PC4	224 Kenilworth Avenue, Beaconsfield Victoria 3807	Staged subdivision of land in accordance with the endorsed plans.	Issued
5/01/2017	T150578 - PC2	45 Orchard Road, Gembrook Victoria 3783	Re-subdivision (boundary realignment) of two (2) existing lots	Issued
5/01/2017	T160187 - PC1	8 Carawa Street, Cockatoo VIC 3781	Subdivision of the land into two (2) lots	Issued
6/01/2017	T160412 - PC1	74 Stoney Creek Road, Beaconsfield Upper VIC 3808	Development of the land for a dwelling, earthworks and removal of vegetation	Issued
6/01/2017	T160629	25 Toogood Court, Pakenham Upper VIC 3810	Development of the land for an outbuilding	Issued
10/01/2017	T140403 - 1	225 Belgrave-Gembrook Road, Cockatoo Victoria 3781	The use and development of the land for a dwelling (within 100 metres of a Road Zone Category 1)	Issued
10/01/2017	T150659 - 1	224 Kenilworth Avenue, Beaconsfield Victoria 3807	Subdivision of the land in stages and the creation of easements, generally in accordance with the approved plans	Issued
10/01/2017	T160718	69 First Avenue, Cockatoo VIC 3781	Development of the land for an outbuilding	Issued
10/01/2017	T160519	Stephens Road, Officer VIC 3809	Realignment of boundaries between Lot 1 on Plan of Subdivision 138677 and Lot 4 on LP 143617 in accordance with the endorsed plans.	Issued
10/01/2017	T160758	4 Dewhurst Road, Emerald VIC 3782	Construction of an outbuilding	Issued
10/01/2017	T160628	114 Merretts Road, AVONSLEIGH VIC 3782	Buildings and works associated with agriculture	Issued
10/01/2017	T160819	7 Neville Street, Cockatoo VIC 3781	New Dwelling with removal of vegetation	Withdrawn
11/01/2017	T130340 - PC5	70 Brunt Road, Beaconsfield Victoria 3807	PLANS TO COMPLY - Sec 173 Agreement - Subdivision of the land	Withdrawn
11/01/2017	T150610 - PC5	175 Rix Road, Officer VIC 3809	PLANS TO COMPLY - Sec 173 Agreement - Multi-lot residential subdivision, subdivision adjacent to a public acquisition overlay, the removal of easements and associated works.	Withdrawn
11/01/2017	T160867	13 Kookaburra Court, Gembrook VIC 3783	Extension to a Dwelling with associated earthworks	Withdrawn
12/01/2017	T160727	35 Boundary Road East, Emerald VIC 3782	Development of the land for a dwelling extension and associated earthworks	Withdrawn
12/01/2017	T160824	226 Rix Road, Beaconsfield VIC 3807	Subdivision of the land in stages in accordance with the approved plans.	Issued
13/01/2017	T150659 - PC2	224 Kenilworth Avenue, Beaconsfield Victoria 3807	Plans to Comply - PIP - Staged subdivision of land in accordance with the endorsed plans.	Issued
13/01/2017	T150290 - PC8	Bridge, Officer Victoria 3809	Plans to Comply - MCP - Subdivision in stages and associated works, including road-works within a Floodway Overlay and Land Subject to Inundation Overlay, construction of single dwellings on lots less than 300sqm and creation of restriction.	Issued
13/01/2017	T160753	4 Salisbury Road, Beaconsfield Upper VIC 3808	construct a building or construct or carry out works association with an extension to an existing building within a Heritage Overlay	Issued

16/01/2017	T160507	43-45 Wallace Street, Beaconsfield VIC 3807	Use of the land for a Medical Centre and associated works.	Issued
17/01/2017	T160105 - PC4	191 Rix Road, Officer VIC 3809	Plans to Comply - Change to Condition 8- Subdivision of land in accordance with the endorsed plans.	Issued
17/01/2017	T160598	5 Montuna Grove, Guys Hill VIC 3807	Use and development of the land for a dwelling	Issued
18/01/2017	T140748 - PC2	11 Carawa Street, Cockatoo Victoria 3781	Plans to Comply - Sec 173 - The subdivision of the land into two (2) lots and the removal of vegetation	Issued
18/01/2017	T160824 - PC1	226 Rix Road, Beaconsfield VIC 3807	Plans to Comply - Condition 23 BDG Stages 5 & 6 - Subdivision of the land in stages in accordance with the approved plans.	Issued
18/01/2017	T160824 - PC2	226 Rix Road, Beaconsfield VIC 3807	Plans to Comply - Condition 9 LMP - Subdivision of the land in stages in accordance with the approved plans.	Issued

**11 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY**

Moved Cr J Owen Seconded Cr G Moore

That the report be noted

Cd.

Meeting closed at 7.15pm

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Minutes Confirmed  
Chairman