



City of
Whittlesea

MINUTES

OF ORDINARY COUNCIL MEETING

HELD ON

TUESDAY 11 OCTOBER 2016

AT 6:30PM

**IN COUNCIL CHAMBER, 25 FERRES
BOULEVARD, SOUTH MORANG**

COUNCILLORS

STEVAN KOZMEVSKI MAYOR, SOUTH WEST WARD

KRIS PAVLIDIS SOUTH WEST WARD

DARRYL SINCLAIR SOUTH WEST WARD

ADRIAN SPINELLI SOUTH WEST WARD

NORM KELLY SOUTH EAST WARD

SAM ALESSI SOUTH EAST WARD

KEN HARRIS SOUTH EAST WARD

MARY LALIOS SOUTH EAST WARD

REX GRIFFIN NORTH WARD

RICKY KIRKHAM NORTH WARD

CHRISTINE STOW NORTH WARD

SENIOR OFFICERS

MICHAEL WOOTTEN

CHIEF EXECUTIVE OFFICER

RUSSELL HOPKINS

DIRECTOR COMMUNITY SERVICES

STEVE O'BRIEN

DIRECTOR PLANNING AND MAJOR PROJECTS

NICK MANN

DIRECTOR CITY TRANSPORT & PRESENTATION

HELEN SUI

DIRECTOR CORPORATE SERVICES

SEAN MCMANUS

ACTING DIRECTOR PARTNERSHIPS &
ENGAGEMENT

MICHAEL TONTA

MANAGER GOVERNANCE

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1. OPENING

1.1 MEETING OPENING AND PRAYER

The Chief Executive Officer opened the meeting with a prayer at 6.30pm.

1.2 MAYOR'S RECONCILIATION STATEMENT

On behalf of the City of Whittlesea the Mayor recognised the rich Aboriginal heritage of this country and acknowledge the Wurundjeri Willum Clan as the Traditional Owners of this place.

1.3 PRESENT

Members:

Cr Stevan Kozmevski	Mayor (South West Ward)
Cr Kris Pavlidis	Councillor (South West Ward)
Cr Darryl Sinclair	Councillor (South West Ward)
Cr Adrian Spinelli	Councillor (South West Ward) * arrived at 6.51pm
Cr Norm Kelly	Deputy Mayor (South East Ward)
Cr Sam Alessi	Councillor (South East Ward)
Cr Ken Harris	Councillor (South East Ward) * arrived at 6.35pm
Cr Mary Lalios	Councillor (South East Ward)
Cr Ricky Kirkham	Councillor (North Ward)
Cr Christine Stow	Councillor (North Ward)

Officers:

Mr Michael Wootten	Chief Executive Officer
Mr Steve O'Brien	Director Planning and Major Projects
Mr Russell Hopkins	Director Community Services
Mr Nick Mann	Director City Transport & Presentation
Ms Helen Sui	Director Corporate Services
Mr Sean McManus	Acting Director Partnerships & Engagement
Mr Michael Tonta	Manager Governance

2. APOLOGIES

APOLOGY

Apologies were received on behalf of Cr Griffin, Cr Harris and Cr Spinelli who requested that leave be granted for this meeting.

COUNCIL RESOLUTION

MOVED: Cr Stow
SECONDED: Cr Sinclair

THAT the Councillors apologies be received and leave be granted.

CARRIED

3. DECLARATIONS OF INTEREST

THE FOLLOWING DECLARATIONS OF INTEREST WERE MADE TO THE CHIEF EXECUTIVE OFFICER PRIOR TO THE MEETING:

Cr Alessi declared an indirect interest in item 6.1.4 – 187 – 205 Settlement Road Thomastown – Use and development of a store, reduction of car parking requirements and display of internally illuminated signage.

THE FOLLOWING DECLARATIONS OF INTEREST WERE MADE TO THE CHIEF EXECUTIVE OFFICER DURING THE MEETING:

NIL

4. CONFIRMATION OF MINUTES OF PREVIOUS MEETING

COUNCIL RESOLUTION

MOVED: *Cr Kelly*
SECONDED: *Cr Sinclair*

THAT the following Minutes of the preceding meeting as circulated, be confirmed:

Ordinary Meeting of Council held 20 September 2016

CARRIED

5. CONSIDERATION AND ACTION ON PETITIONS AND JOINT LETTERS

5.1 PETITIONS

5.1.1 TRAFFIC MANAGEMENT FULLARTON DRIVE EPPING

Cr Lalius tabled a petition from 26 people (18 residents and 8 non-residents) requesting Council address the parking issues in Fullarton Drive Epping.

COUNCIL RESOLUTION

MOVED: *Cr Lalius*
SECONDED: *Cr Sinclair*

THAT Council resolve to receive the petition and a report be prepared.

CARRIED

5.2 JOINT LETTERS

NIL REPORTS

6. OFFICERS' REPORTS

COUNCIL RESOLUTION

MOVED: Cr Kelly
SECONDED: Cr Sinclair

THAT Council resolve to adopt the Recommendations for items numbers 6.1.1, 6.1.2, 6.3.1 and 6.4.1 .

CARRIED

Group Adoption of Items En Bloc

Councillors may choose not to consider reports on the Notice Paper individually and to resolve to adopt, in one resolution, the recommendations listed on the Notice Paper for a number of reports. Such a resolution will have the effect of adopting the Officer's recommendation for each of the reports identified in the Council resolution. The remaining items of business are considered and voted on separately.

Cr Harris entered the Council Chamber at 6:35pm.

6.1 PLANNING AND MAJOR PROJECTS

6.1.1 9 CLARKE STREET, THOMASTOWN - CONSTRUCTION OF THREE DOUBLE STOREY DWELLINGS

File No: 715607

Attachments: 1 Locality Maps
2 Development Plans

Responsible Officer: Director Planning & Major Projects

Author: Principal Planner

APPLICANT: Architectural Plans & Permits Pty Ltd

COUNCIL POLICY: Clause 21.09 - Housing

ZONING: General Residential Zone

OVERLAY: Development Contributions Plan Overlay

REFERRAL: Not applicable

OBJECTIONS: Two

RECOMMENDATION: That Council approve the application

ELECTION PERIOD STATEMENT

The recommended decision is not a 'Major Policy Decision' or an 'Inappropriate Decision' under sections 93A and 93B of *the Local Government Act 1989*.

REPORT

EXECUTIVE SUMMARY

The applicant proposes to demolish the existing dwelling and construct three double storey dwellings. The existing vehicle crossing is integrated into the design response servicing Dwelling Nos. 2 and 3, with a second crossing to service Dwelling No. 1.

Advertising of the proposal resulted in two objections being received. The grounds of objection relate to overshadowing, increased noise, increased traffic, loss of privacy, structural damage to adjoining property, increased rubbish, and inconsistency with key design outcomes within the Housing Diversity Strategy.

The proposal demonstrates a satisfactory level of compliance with the provisions of Clause 55 of the Whittlesea Planning Scheme. Planning permit conditions are required to clarify and improve the proposed development in relation to overlooking.

The Housing Diversity Strategy (HDS) nominates this site as being within the Neighbourhood Interface Change Area. The proposal generally complies with the preferred density and design principles of this Change Area and is considered to be an acceptable three dwelling development in an appropriate location as nominated by the HDS.

On the basis of the Clause 55 assessment and the proposal's general compliance with the proposed HDS, it is recommended that Council approve the application.

SITE AND SURROUNDING AREA

The subject site is located on the western side of Clarke Street, Thomastown; approximately 165m south of Spring Street (see *Attachment 1*). The subject site is irregularly shaped and is relatively flat, with a 16.8m frontage to Clarke and a maximum depth of 47.5m. The site has an area of 663.5m². The site currently contains a detached single storey dwelling and various outbuildings. There is no significant vegetation on the land.

The surrounding area is generally characterised by single storey dwellings and a mix of dwelling styles, with some double storey dwellings in the area. There are a number of existing and approved medium density residential developments in the immediate locality, including those at Nos. 2, 4, 8, 12, 13, 14, 15, 16, and 23 Clarke Street; Nos. 3, 4, 5, 9-11, 16, 17, 18, 19 Newton Street; Nos. 1 and 2 Edwards Street; Nos. 9, 10, 11, 16, and 17 McLeod Street; and No. 8 Symon Street.

The subject site is located in proximity to the following sites, services and infrastructure:

- Bus Route 357 – Wollert West – Thomastown Station via Epping Station (170m north)
- Bus Routes 554 and 557 – Thomastown via West Lalor (170m north)
- Bus Route 555 - Epping Northland via Lalor, Thomastown, Reservoir (300m east);
- Thomastown Primary School (190m north)
- Thomastown shops (270m northeast)
- Meridian Business Park (285m east)
- Thomastown Railway Station (530m northeast).

RESTRICTIONS AND EASEMENTS

The Certificate of Title for the property shows that the site is affected by Restrictive Covenant 1484573 and relates to the excavation or removal of earth, clay, stone, gravel or sand from the site. There are no restrictions on title that preclude Council from determining the application. A 1.8m wide drainage easement runs along the rear of the property.

PROPOSAL

The applicant proposes to construct three double storey dwellings on the subject site (see *Attachment 2*). The existing dwelling will be demolished.

The proposed dwellings will each contain an open plan kitchen, lounge and meals areas at ground floor level, as well as laundry and toilet facilities. Dwelling No. 1 will also contain an open study at ground floor level. At first floor level, Dwelling No. 1 will contain three bedrooms, and a bathroom. The master bedroom will have a walk-in-robe and ensuite. Dwelling Nos. 2 and 3 will each have two bedrooms and a bathroom at first floor level. Each dwelling will have a single garage, with Dwelling No. 1 provided with a second uncovered tandem car space. Vehicular access to Dwelling Nos. 2 and 3 will be provided via the existing crossover, whilst a second crossover at the northeast corner of the site will provide vehicle access to Dwelling No. 1.

Details of the proposed development are outlined in the following table:

	Height/ Scale	Number of Bedrooms	Setbacks	Private Open Space	Car Parking	Maximum Height
Dwelling No. 1	Double Storey	Three + open study	8.4m – eastern (front) boundary; Nil - northern (side) boundary; 3.5m - southern (side) boundary.	31m ² secluded private open space + front setback	Single garage + tandem car space	7.5m
Dwelling No. 2	Double Storey	Two	Nil - northern (side) boundary; 5m - southern (side) boundary.	40m ² total	Single garage	7.1m
Dwelling No. 3	Double Storey	Two	1.2m - northern (side) boundary; 1m - southern (side) boundary; 2.5m – western (rear) boundary	46m ² total	Single carport	7.2m

PUBLIC NOTIFICATION

Advertising of the application has resulted in two objections being received. The grounds of objection can be summarised as follows:

1. Overshadowing
2. Increased noise
3. Increased traffic
4. Loss of privacy
5. Structural damage to adjoining property
6. Increased rubbish
7. Inconsistency with key design outcomes within the Housing Diversity Strategy

HOUSING DIVERSITY STRATEGY

The Housing Diversity Strategy (HDS) was introduced into the Whittlesea Planning Scheme via Planning Scheme Amendment C181, gazetted on 22 October 2015. The Strategy provides a strategic framework for future residential development in the established areas of the municipality for the next 20 years. It aims to guide the future location and diversity of housing stock and identifies areas of housing growth and change, including areas where future housing growth will not be supported. In general, it aims to encourage higher residential densities and a diversity of housing types and sizes into areas within convenient walking distance to public transport and activity centres.

The HDS is now a reference document in the WPS and is included within Clause 21.09-4 ‘Change Areas in the Established Suburbs’. An assessment against the HDS is provided under Standard B2 of the Clause 55 assessment.

ASSESSMENT AGAINST CLAUSE 55 OF THE WHITTLESEA PLANNING SCHEME

The following table provides details on whether the proposal complies with the requirements of Clause 55 of the Whittlesea Planning Scheme. Under these provisions a development:

- Must meet all of the objectives
- Should meet all of the standards

If Council is satisfied that an application for an alternative design solution meets the objective, the alternative design solution may be considered.

	✓ - Compliance x - Non compliance	Objectives	Standards	Comments
B1	Neighbourhood Character	✓	✓	<p>The surrounding area is predominantly characterised by single dwellings, however there are a number of medium density residential developments also located in the locality comprising 2-5 dwellings and including both single and double storey developments.</p> <p>The design of the proposed dwellings and colours and materials proposed will complement the existing character of the area.</p>
B2	Residential Policy	✓	✓	<p>The HDS nominates the subject site as a Neighbourhood Interface Change Area (Clause 21.09-4 of the WPS). This Change Area encourages medium and standard density development with the preferred housing types comprising single dwellings, dual occupancies (including duplexes), townhouses and multi-units.</p> <p>Key design principles include a range of building heights that support housing diversity, moderate front setbacks to allow for significant landscaping and medium canopy trees, medium site coverage, useable private open space and the provision of a large canopy tree in the front setback.</p> <p>The proposed development is consistent with the preferred density and key design principles outlined in the HDS.</p>
B3	Dwelling Diversity	N/A	N/A	Only applicable to developments of ten (10) or more dwellings.
B4	Infrastructure	✓	✓	
B5	Integration with the street	✓	✓	
B6	Street setback	✓	X	This standard requires dwellings to be set back the average distance of the front walls of existing buildings on the abutting allotments or 9.0m, whichever is the lesser. In this case, the average is 9.6m; therefore a front setback of 9.0m is required.

	✓ - Compliance x - Non compliance	Objectives	Standards	Comments
				Dwelling No. 1 will have a minimum setback of 8.4m and as such technically will not comply with the Standard. However the proposed setback is consistent with the setback of the existing dwelling on the site, and the curved frontage to Clarke Street and staggered setbacks of surrounding dwellings result in a negligible impact on the surrounding locality. Accordingly, this non-compliance is considered acceptable.
B7	Building height	✓	✓	
B8	Site coverage	✓	✓	
B9	Permeability	✓	✓	
B10	Energy efficiency	✓	✓	
B11	Communal open space	N/A	N/A	Only applicable if public or communal open space is to be provided on site or adjacent to the development.
B12	Safety	✓	✓	
B13	Landscaping	✓	✓	
B14	Access	✓	✓	
B15	Parking location	✓	✓	
B17	Side and rear setbacks	✓	✓	
B18	Walls on boundaries	✓	✓	
B19	Daylight to existing windows	✓	✓	
B20	North-facing windows	✓	✓	
B21	Overshadowing open space	✓	✓	
B22	Overlooking	✓	X	The objective of this Standard seeks to limit views into existing secluded private open space and habitable room windows. The first floor level window placement to Dwelling Nos. 1, 2 and 3 may result in some views into existing secluded private open space and habitable room windows on adjoining sites.

	✓ - Compliance x - Non compliance	Objectives	Standards	Comments
				It is considered appropriate to include a condition on any permit that is issued requiring the submission of revised plans showing the provision of fixed obscured glazing to a height of 1.7m, sill heights to a height of 1.7m or external screens to a height of 1.7m to ensure compliance with Standard B22. This can easily be achieved without compromising the design of the dwellings.
B23	Internal views	✓	✓	
B24	Noise impacts	✓	✓	
B25	Accessibility	✓	✓	
B26	Dwelling entry	✓	✓	
B27	Daylight to new windows	✓	✓	
B28	Private open space	✓	✓	
B29	Solar access to open space	✓	✓	
B30	Storage	✓	✓	
B31	Design detail	✓	✓	
B32	Front fences	✓	✓	
B33	Common property	✓	✓	
B34	Site services	✓	✓	

CAR PARKING

Clause 52.06 of the Whittlesea Planning Scheme prescribes the rate and design standards for car parking spaces required on site. Pursuant to this clause the following car spaces are required:

Dwelling No.	No. of bedrooms	Car spaces required	Car spaces provided	Complies
1	Three + study	Two	Two	Yes
2	Two	One	One	Yes
3	Two	One	One	Yes

Garages should be at least 6.0m long and 3.5m wide for a single space and 5.5m wide for a double space (measured inside the garage or carport). An open car space should be at least 4.9m long and 2.6m wide. The proposal complies with these requirements.

DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY (SCHEDULE 3)

The site is affected by the Development Contributions Plan Overlay. Pursuant to Clause 45.06 of the Whittlesea Planning Scheme, the Development Contributions Plan Overlay enables the levying of contributions for the provision of works, services and facilities prior to development commencing. Schedule 3 to the overlay requires contributions for drainage infrastructure for medium density residential development at a current rate of \$2.19 per square metre of the total site area.

COMMENTS ON GROUNDS OF OBJECTION

1. Overshadowing

The objector has concerns regarding reduction of light and warmth to the dwelling as a result of the proposed development. The proposed development complies with Standards B20 and B21 and is consistent with the north-facing windows objective at Clause 55.04-4 and the overshadowing open space objective, at Clause 55.04-5. Accordingly, this ground of objection cannot be substantiated.

2. Increased noise

The proposed development complies with Standard B24 of the Whittlesea Planning Scheme which seeks to contain noise sources in developments that may affect existing dwellings and to protect residents from external noise. The proposal is for residential use of the land in a residential area and the development will not require external mechanical plant or any other inappropriate source of noise. While some additional noise will be generated by virtue of the greater number of residents on the land, this is acceptable in a residential area. Accordingly, this ground of objection cannot be substantiated.

3. Increased Traffic

The development complies with the requirements of Clause 52.06 (Car parking) of the Whittlesea Planning Scheme. The proposal will result in a minor increase in vehicle movements per day and will not adversely affect Clarke Street. Accordingly, this ground of objection cannot be substantiated.

4. Loss of privacy

As identified in the assessment above, first floor level window placement to Dwelling Nos. 1, 2 and 3 may result in some views into existing secluded private open space and habitable room windows on adjoining sites. Accordingly this ground of objection can be substantiated if the issue is not addressed. It is considered appropriate to include a condition on any permit that is issued requiring the submission of revised plans showing the provision of fixed obscured glazing to a height of 1.7m, sill heights to a height of 1.7m or external screens to a height of 1.7m to ensure compliance with Standard B22. This can easily be achieved without compromising the design of the dwellings.

5. Structural damage to adjoining property

The objector is concerned that demolition and construction works on the site will result in damage to her property. The responsibilities of developers, builders, sub-contractors and tradespeople working on building sites are enforced under the Building Site Code of Practice and will be addressed as part of any building permit subsequently issued for the proposal. Accordingly, this ground of objection cannot be substantiated.

6. Increased rubbish

The objector has concerns that if the dwellings are rented out, tenants will dump rubbish on the nature strip. The proposed dwellings each have designated bin storage areas and there is sufficient space provided along the frontage of the subject site for the collection of waste bins. Council also offers residents a hard rubbish pick up service for larger items. There is no evidence that the addition of two dwellings would contribute to increased littering in the area. It is also noted that the potential for littering is not a relevant planning consideration. Accordingly, this ground of objection cannot be substantiated.

7. Inconsistency with key design outcomes within the Housing Diversity Strategy.

The objector raises concerns that the proposed development does not adequately address the provisions of the Housing Diversity Strategy (HDS). The HDS nominates this site as being within the Neighbourhood Interface Change Area. The proposal is considered to be consistent with the preferred density, housing type and proximity to services and facilities as outlined in the HDS. Furthermore, the proposed development satisfies the key design principles relating to the preferred height, setbacks, site coverage, private open space and landscaping to be provided on site. Accordingly, this ground of objection cannot be substantiated.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

The application has been assessed against the Whittlesea Planning Scheme and in particular the objectives and standards of Clause 55 (ResCode) and the HDS. The proposal demonstrates a satisfactory level of compliance subject to minor modifications as outlined. It is considered that the proposal will not have a detrimental impact on the character of the neighbourhood nor on existing surrounding residential properties and accordingly approval of the application is recommended.

RECOMMENDATION

THAT Council resolve to approve Planning Application No. 715607 and issue a Notice of Decision to Grant a Permit for the construction of three double storey dwellings at 9 Clarke Street, Thomastown, in accordance with the endorsed plans and subject to the following conditions:

- 1. Prior to the endorsement of the plans required under Condition No. 3 of this permit, the permit holder must pay to Council a contribution for drainage pursuant to Clause 45.06 of the Whittlesea Planning Scheme. The drainage contribution will be subject to the Consumer Price Index (CPI) applicable at the time of payment.**
- 2. (a) Prior to the endorsement of the plans required under Condition No. 3, or at such later date as the Responsible Authority may approve in writing, there shall be lodged with the Responsible Authority an amount of \$600 as**

security deposit for the satisfactory completion and maintenance of the landscaping works hereby permitted.

- (b) Upon completion of the landscaping works to the satisfaction of the Responsible Authority, the Responsible Authority will refund the security deposit to the payee.
3. Before the development starts, three copies of a revised plan must be submitted to and approved by the Responsible Authority, showing provision of fixed obscured glazing or external screens to a height of 1.7m to all first floor habitable room windows in compliance with Standard B22, Clause 55 of the Whittlesea Planning Scheme.
 4. Before development commences, a detailed landscape plan prepared by a person suitably qualified or experienced in landscape design must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale with dimensions and show all proposed landscaping, including details of any existing vegetation to be removed or retained, the location of all new planting, a schedule of plant species and height at maturity, and a maintenance schedule. Species selection is to be to the satisfaction of the Responsible Authority. Any proposed trees must be at an advanced stage of growth when planted.
 5. The development allowed by this permit and shown on the plans and/or schedules endorsed to accompany this permit shall not be amended for any reason without the consent of the Responsible Authority.
 6. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
 7. Prior to the occupation of the dwellings hereby approved, landscaping works shown on the endorsed plan must be completed and then maintained to the satisfaction of the Responsible Authority.
 8. Prior to the occupation of the dwellings hereby approved, the car parking areas and access ways must be drained, fully sealed and constructed with asphalt, interlocking paving bricks, coloured concrete or other similar materials to the satisfaction of the Responsible Authority.
 9. In areas set aside for car parking, measures must be taken to the satisfaction of the Responsible Authority to prevent damage to fences or landscaped areas.
 10. Vehicular access to the site must be by way of a vehicle crossing constructed in accordance with Council's Vehicle Crossing Specifications to suit the proposed driveway(s) and the vehicles that will be using the crossing(s). The location, design and construction of the vehicle crossing(s) must be approved by the Responsible Authority. Any existing unused or redundant crossing(s) must be removed and replaced with concrete kerb, channel and naturestrip to the satisfaction of the Responsible Authority. All vehicle crossing works are to be carried out with Council supervision under a Road Opening Permit.
 11. Before starting any buildings or works, engineering plans showing a properly

prepared design (with computations) for the internal drainage and method of disposal of stormwater from all roofed and sealed areas, including the use of an on-site detention system, must be submitted to Council for approval. These internal drainage works must be completed to Council's satisfaction prior to using or occupying any building on the site.

12. Prior to the occupation of the dwellings hereby approved, the permit holder is required to construct at no cost to Council, drainage works between the subject site and the Council nominated point of discharge. Such drainage works must be designed by a qualified engineer and submitted to and approved by Council. Computations will also be required to demonstrate that the drainage system will not be overloaded by the new development. Construction of the drainage system must be carried out in accordance with Council specifications and under Council supervision.
13. Discharge of stormwater from the land must be provided by means of an underground pipe drainage system designed to the satisfaction of the Responsible Authority and discharging into an approved outlet in a street to an underground pipe drain to the requirements of the Responsible Authority. In this regard no water shall be discharged from any pipe or paved area onto the surface of any adjacent land.
14. Prior to the occupation of the dwellings hereby approved, reticulated (water, sewerage, gas and electricity) services must be constructed and available to the satisfaction of the Responsible Authority.
15. The permit holder shall be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The permit holder shall be responsible for obtaining prior specific written approval for any works involving the alteration of Council or other Public Authority assets.
16. Prior to occupation of any dwelling on the subject site, a letter box and house number to the satisfaction of the Responsible Authority shall be provided for each dwelling.
17. At all times during the construction phase of the development, the permit holder shall take measures to ensure that pedestrians are able to use with safety any footpath along the boundaries of the site.
18. Upon completion of all buildings and works authorised by this permit the permit holder must notify the Responsible Authority of the satisfactory completion of the development and compliance with all relevant conditions.
19. Any litter generated by building activities on the site shall be collected and stored in an appropriate enclosure which complies with Council's Code of Practice for building/development sites. The enclosures shall be regularly emptied and maintained such that no litter overflows onto adjoining land. Prior to occupation and/or use of the building, all litter shall be completely removed from the site.

20. During the construction phase, a truck wheel washing facility or similar device must be installed and used to the satisfaction of the Responsible Authority so that vehicles leaving the site do not deposit mud or other materials on roadways. Any mud or other materials deposited on roadways as a result of construction works on the site must be cleaned to the satisfaction of the Responsible Authority within two hours of it being deposited.
21. In accordance with the Planning and Environment Act 1987 a permit for the development expires:
- (a) The approved development does not start within 2 years of the date of this permit; or
 - (b) The approved development is not completed within 4 years of the date of this permit.

The responsible authority may extend the periods referred to above if a request is made in writing. This request must be made before or within 6 months after the permit expiry date where the development has not yet started and within 12 months after the permit expiry date where the development allowed by the permit has lawfully started before the permit expires.

NOTES

Advanced Trees

An advanced tree under this permit shall generally constitute the following:

- Evergreen – minimum container size 45 litre spring ring, calliper at ground level 50mm.
- Deciduous – minimum calliper at ground level 65mm, minimum height 2 metres.

Easements

No structure may be built over an easement on the subject site without the consent of the relevant Responsible Authority.

Property Numbering

Property Numbers will be allocated by the City of Whittlesea in accordance with Council's Street Numbering Policy. Please do not give potential buyers any interim numbering as this often leads to confusion and problems once the correct number is issued. Please check with Council's Subdivision Department or GIS Department to verify all street numberings before commencement of any advertising for sale or lease.

COUNCIL RESOLUTION

MOVED: Cr Kelly
SECONDED: Cr Sinclair

The above Recommendation was adopted unchanged as part of an en bloc Resolution Moved by Cr Kelly, Seconded by Cr Sinclair. See Section 6 - Officers' Reports for further information on items adopted en bloc.

CARRIED

6.1.2 46 COOKES ROAD, DOREEN - AMENDMENT TO PLANNING PERMIT NO. 714335 (AMENDED) TO ALLOW THE REMOVAL OF ONE ADDITIONAL RIVER RED GUM TREE

File No: 714335

Attachments:

- 1 Locality Map
- 2 Approved/Proposed Tree Removal Plan
- 3 Photo of Tree 3 (*Eucalyptus camaldulensis*)

Responsible Officer: Director Planning & Major Projects

Author: Planning Officer - Growth Areas Development Assessment

APPLICANT: Fratello Consulting Pty Ltd.

COUNCIL POLICY: River Red Gum Protection Policy

ZONING: Farming Zone
General Residential Zone

OVERLAY: Development Contributions Plan (Schedule 5)
Development Plan (Schedule 5)
Incorporated Plan (Schedule 1)
Vegetation Protection (Schedule 1)

REFERRAL: Sustainability Planning

Parks and Open Space

Department of Environment, Land, Water and Planning (DELWP)

OBJECTIONS: Nil

RECOMMENDATION: That Council resolve to amend Planning Permit No 714335 (Amended) to allow for the removal of one additional River Red Gum Tree.

ELECTION PERIOD STATEMENT

The recommended decision is not a 'Major Policy Decision' or an 'Inappropriate Decision' under sections 93A and 93B of *the Local Government Act 1989*.

REPORT

EXECUTIVE SUMMARY

Planning Permit No. 713483 was issued on 12 November 2013 for the purpose of undertaking a multi-lot residential subdivision (49 lots and the construction of Cookes Road along the property boundary) at 46 Cookes Road, Doreen. To facilitate this development, a planning application (714335) was lodged for the removal of 0.233 hectares of Plains Grassy Woodland and two small River Red Gum trees. This application was considered and approved by Council at its meeting on 8 October 2013.

Through the detailed engineering design of the subdivision and, due to the requirement of Melbourne Water to fill lots to a depth of 0.8m, two additional River Red Gums were proposed to be removed as an amendment to Planning Permit No. 714335. These trees would have been impacted by necessary construction activity and would not have been able to survive beyond the construction of the subdivision. As a consequence, the amended planning application to remove these four additional River Red Gums was approved by Council at its meeting on 15 March 2016. Tree 3 (which is now proposed to be removed) had originally been earmarked for retention. However, further engineering design of the subdivision has established that this tree will be impacted by construction activity to incorporate a footpath along the southern boundary of Cookes Road. Council's Sustainability Planning Unit and Parks and Open Space Department support the removal of the tree. Accordingly, it is recommended that the amendment to Planning Permit No. 714335 (Amended) be approved to allow the removal of one additional River Red Gum tree (Tree 3) from the land. The native vegetation offset requirement amounts to 0.024 General Biodiversity Equivalence Units. The offset must be secured in the Port Philip and Western Port CMA region and meet a minimum strategic biodiversity score of 0.080, in accordance with Condition No. 3 of the Planning Permit 714335.

SITE AND SURROUNDING AREA

The subject site is located on the south-west corner of Bassets Road and Cookes Road, is generally rectangular in shape and covers an area of 3.913 hectares (see *Attachment 1*). The site has a frontage to Cookes Road of 387.54m on its northern boundary. Cookes Road also extends around the western boundary of the site for a length of 104.48m. The lot has frontage to Bassetts Road on its eastern boundary for a length of 95.82m. The southern boundary of the site measures 429.19m in length.

The site is mainly located in the General Residential Zone. However, a portion of the western side of the site is located within a Farming Zone. The land has remained in the Farming Zone to create a buffer zone between the subject site and the mushroom farm located to the north-west. The locality has undergone significant change over the past five years from rural living and agricultural uses to a more urban character. Surrounding developments include the Panorama Estate located approximately 90m to the south of the site and the Bella Vista Estate to the north of Cookes Road which have both been developed for residential purposes. A planning permit has also been issued for a residential subdivision at 25 Bassetts Road, Doreen which abuts the site to the south.

The site, along with many of the surrounding land parcels in the area, is vacant. A flora and fauna assessment identified 19 River Red Gums (*Eucalyptus camaldulensis*) and several scattered non-indigenous trees (*Sugar Gums*), a single Black Wattle (*Acacia mearnsii*) and a number of non-indigenous trees and shrubs (*Peppercorn Trees and Boxthorn*) on the site.

RESTRICTIONS AND EASEMENTS

The site is legally described as Crown Allotment 1A Section 4 Parish of Yan Yean Volume 10043 Folio 121. There are no restrictions on Title that preclude Council from determining this application.

BACKGROUND

The subject site is located within the Bassetts Road Development Plan area and the Mernda Strategy Plan area. According to the Bassetts Road Development Plan, the site is identified for residential development and a local convenience centre.

Planning Permit Nos. 714335 and 713483 were assessed concurrently by Council and were subsequently granted to facilitate the residential subdivision of the site. Planning Permit No.

713483 was issued on 12 November 2013 for the residential subdivision of the land into 49 lots.

Planning Permit No. 714335 was issued for the removal of 0.233 hectares of Plains Grassy Woodland and two small River Red Gum trees by Council at its meeting on 8 October 2013. This permit was amended by Council at its meeting on 15 March 2016 to allow the removal of two additional, relatively small River Red Gum trees. The Tree Removal Plan shows the vegetation already approved for removal. The current application seeks to further amend Planning Permit No. 714335 (Amended) to allow the removal of one additional River Red Gum from the site to facilitate the subdivision (see *Attachment 2*, which depicts the trees already approved for removal and the tree earmarked for removal).

PROPOSAL

The applicant proposes the removal of one additional River Red Gum tree (*Eucalyptus camaldulensis*) from the site (see *Attachment 3*).

Tree identification	Species	Common Name	Diameter of Truck over bark at Breast Height (cm)	Retention Value
3	<i>Eucalyptus camaldulensis</i>	River Red Gum	44	Medium

The flora and fauna assessment of the tree earmarked for removal identifies it as being a small tree with a medium retention value, a fair structure and poor form. Further, more refined engineering design of the subdivision has resulted in structural fill being required within proximity to this tree in order to accommodate a shared footpath and to ensure that a depressed shared footpath does not result in an unacceptable level of flooding in this locality. Consequently, this tree is likely to fail and will ultimately pose a liability to Council in the future.

PLANNING CONTEXT

State Planning Policy Framework

Clause 12.01-1 Protection of biodiversity

Clause 12.01 of the Whittlesea Planning Scheme relates to biodiversity and the protection of Victoria’s natural habitat. The objective of this clause is to assist the protection and conservation of biodiversity, including native vegetation retention and provision of habitats for native plants and animals and control of pest plants and animals.

Clause 12.01-2 Native Vegetation Management

This clause seeks to achieve no net loss in the extent and quality of native vegetation. The strategy to achieve this is to apply the risk-based approach to managing native vegetation as set out in Permitted clearing of native vegetation – Biodiversity assessment guidelines (Department of Environment and Primary Industries, September 2013).

LOCAL PLANNING POLICY FRAMEWORK

Clause 22.10 River Red Gum Protection Policy

Clause 22.10 of the Whittlesea Planning Scheme relates to Council’s River Red Gum Protection Policy. This policy applies to the protection of River Red Gums located in urban and rural areas.

The objective of this policy is “to ensure that the development of urban and rural areas takes into account the presence, retention, enhancement and long term viability of Red Gums in urban areas.” The policy states that:

- *The intrinsic value of River Red Gums be recognised in establishing character and identity in urban and rural areas.*
- *Urban development be designed to take into account the presence, retention and long term viability of River Red Gums.*
- *Generally only those trees independently assessed as presenting a danger to people and property should be removed.*
- *Where feasible, areas of significant River Red Gum regeneration be protected in any development proposal.*
- *The awareness of developers and land owners to the significance, value and potential benefits of the trees be increased.*

ZONE AND OVERLAY DECISION GUIDELINES

The majority of the subject site is located within the General Residential Zone and a small section within the western portion of the site is zoned Farming. The land is also affected by the Vegetation Protection Overlay (Schedule 1), Incorporated Plan Overlay (Schedule 1), Development Contributions Overlay (Schedule 5) and Development Plan Overlay (Schedule 5). Pursuant to Clause 32.08 of the Whittlesea Planning Scheme, a planning permit is not required to remove native vegetation from land within a General Residential Zone, in which the tree earmarked for removal is located.

Of particular relevance to this application is the Vegetation Protection Overlay - Clause 42.02 of the Whittlesea Planning Scheme which requires a planning permit for the removal, destruction and lopping of native vegetation on land affected by the overlay. Schedule 1 to this overlay relates to the River Red Gum Grassy Woodland region within the Mernda, Doreen and South Morang area, where the subject site is located. This schedule has the following objectives:

- *To preserve and maintain significant vegetation and the character of the area;*
- *Maintain soil qualities and minimise the impacts of erosion; and*
- *Preserve natural habitat for flora and fauna.*

Particular Provisions

Clause 52.17 – Native Vegetation

Pursuant to Clause 52.17 of the Whittlesea Planning Scheme, planning approval is required to remove, destroy or lop native vegetation, including dead vegetation, on land that together with all contiguous land in one ownership, has an area greater than 0.4 hectares. This does not apply:

- *If the table to Clause 52.17-6 specifically states that a permit is not required.*
- *To the removal, destruction or lopping of native vegetation specified in the schedule to this clause.*
- *To an area specified in the schedule to this clause.*

The permit exemptions in Clause 52.17-6 do not apply to this proposal.

REFERRALS

The application was referred internally to Council's Parks and Open Space Department and Sustainability Planning Unit and externally to the Department of Environment, Land, Water and Planning (DELWP).

Council's Sustainability Planning Unit advises that the proposal to remove one additional River Red Gum tree from the land is acceptable, provided the permit conditions of Planning Permit No. 714335 (Amended) are applied.

Both Council's Parks and Open Space Department and the Department of Environment, Land, Water and Planning advised that they do not object to the removal of one additional River Red Gum tree from the land since the total removal of native vegetation is less than 0.5ha and therefore not considered to have detrimental biodiversity impacts on the site. Both internal and external stakeholders acknowledged that the River Red Gum Tree (Tree 3) will be negatively impacted by construction activities and unable to survive beyond the construction of the subdivision and accordingly, be removed.

PLANNING COMMENTS

Council acknowledges the importance of native vegetation, and in particular River Red Gum trees, as a visual and environmental feature within the municipality. In this instance, the request to remove one additional River Red Gum tree from the land is considered acceptable.

The tree proposed to be removed is a small tree with a fair structure, poor form and a medium retention value. The subdivision is currently under construction. Further, more refined engineering design of the subdivision has established that additional structural fill needs to be placed in proximity to this tree in order to accommodate a shared footpath and to ensure that a depressed shared footpath does not result in an unacceptable level of flooding at this location. Discussions with Council's Development Engineering Team confirm that a depressed shared footpath will result in an unacceptable level of flooding. The structural fill required to accommodate the shared footpath will likely result in the tree failing and ultimately pose a liability to Council in the future.

The future development of the land will accord with the Mernda Strategy Plan and the Bassetts Road Development Plan by providing a residential subdivision with appropriate densities and road connections. The removal of one additional small River Red Gum tree of poor form is a consequence of this development and is considered to provide a balanced outcome through protecting the majority of the more mature, significant vegetation on the site whilst facilitating development that accords with the relevant policies of the Whittlesea Planning Scheme.

Given the scale of the development and remaining biodiversity values on site, it is unlikely that offsetting can be achieved onsite. An existing permit condition requires that offsets be undertaken in line with the State Government's Biodiversity Assessment Guidelines (DEPI 2013) and Native Vegetation Gain Scoring Manual (DEPI 2013). While some of the site is currently in the Farming Zone that does contain native vegetation, the Bassetts Road Development Plan nominates the entire site for residential development and so offsets on site area not appropriate in this instance.

It is considered that the relevant policy objectives relating to Clauses 22.10 (River Red Gum Protection Policy), 42.02 (Vegetation Protection Policy Overlay Schedule 1), and 52.17 (Native Vegetation Removal) of the Whittlesea Planning Scheme have been appropriately addressed in the planning assessment.

Offsets in accordance with the provisions 'Biodiversity Assessment Guidelines (DEPI 2013) and Native Vegetation Gain Scoring Manual (DEPI 2013)' have been required as a condition on the amended planning permit.

PUBLIC NOTIFICATION

The site is covered by the Development Plan Overlay – Schedule 5 (DPO5) and the Incorporated Plan Overlay – Schedule 1 (IPO1) which both exempt planning permit applications from the notice requirements of Section 52(1)(a), (b) and (d) of the Planning and Environment Act, 1987, provided that the application is generally in accordance with the associated incorporated or approved plan.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

It is considered that the proposal is in accordance with the relevant provisions of the Whittlesea Planning Scheme. Following a review of the supporting arboricultural assessment and given the support for the proposal by Council's Parks and Open Space and Sustainability Planning Departments, and the Department of Environment, Land, Water and Planning, it is considered that the removal of one additional, relatively small River Red Gum tree from the site is acceptable in this instance. The vegetation removal is justified given the need to provide structural fill in proximity to the tree in order to accommodate a shared footpath (the provision of this fill will also ensure that flooding in this locality is mitigated), the immaturity of the tree, its poor form and medium retention value.

Accordingly, it is recommended that the amendment to the existing permit (714335 (Amended)) be approved. In particular, it is recommended that the Tree Removal Plan be endorsed, allowing the removal of one additional River Red Gum tree from the land.

RECOMMENDATION

THAT Council resolve to approve the amendment to Planning Application No. 714335 (Amended) allowing the removal of one additional River Red Gum tree, as follows:

- 1. Endorse the Concept Development Plan, Drawing No: M1322-ODP, Version: V.18 drawn by KW, prepared by Fratello Projects dated 16/08/2016.**

COUNCIL RESOLUTION

MOVED: *Cr Kelly*
SECONDED: *Cr Sinclair*

The above Recommendation was adopted unchanged as part of an en bloc Resolution Moved by Cr Kelly, Seconded by Cr Sinclair. See Section 6 - Officers' Reports for further information on items adopted en bloc.

CARRIED

6.1.3 53 BLACKMAN AVENUE, MILL PARK - REQUEST FOR EXTENSION OF TIME TO PLANNING PERMIT - CONSTRUCTION OF FIVE (5) DWELLINGS -

File No:	714542
Attachments:	1 Locality Maps 2 Development Plans
Responsible Officer:	Director Planning & Major Projects
Author:	Assistant Manager Established Areas Planning
APPLICANT:	Angelico Homes Pty Ltd
COUNCIL POLICY:	Medium Density Housing Policy
ZONING:	General Residential Zone
OVERLAY:	Development Contributions Plan Overlay Vegetation Protection Overlay
RECOMMENDATION:	That Council not support an extension of time.

ELECTION PERIOD STATEMENT

The recommended decision is not a 'Major Policy Decision' or an 'Inappropriate Decision' under sections 93A and 93B of *the Local Government Act 1989*.

REPORT**EXECUTIVE SUMMARY**

An application has been received to extend a planning permit (No. 714542) allowing the construction of five dwellings at 53 Blackman Avenue, Mill Park. The application seeks to extend the time for the commencement of the development. The permit was originally granted on 5 June 2014 under delegation by officers (as no objections were received). The permit was due to expire on 5 June 2016.

On 1 July 2016 officers advised the applicant that the permit extension was not supported. On 26 August an application was made to the Victorian Civil and Administrative Tribunal (VCAT) for a review of this decision.

At its meeting on 30 August 2016, Council resolved to make amendments to its Instrument of Delegation to require that requests for extensions of time to planning permits under section 69(2) of the *Planning and Environment Act 1987* be determined by Council where planning circumstances have changed since the grant of a permit or where there is a recommendation by officers to refuse an extension. Following this resolution, the permit holder made a further extension request to enable the matter to be determined by Council. The permit allows for extension requests to be made within three months of the lapse date.

This report recommends that the extension of time relating to the subject permit not be supported because planning circumstances have changed since the permit was granted and it is unlikely that if a fresh application were to be made for the same development a further planning permit would now be granted. The changed planning circumstances set out in this report relate to Council's Housing Diversity Strategy.

The outcomes of this Strategy now form part of the Whittlesea Planning Scheme and provide direction on preferred housing character in different parts of the municipality. Under the Strategy the subject land is now classified as 'Suburban Residential' in which preferred housing is to be characterised by standard density housing such as detached dwellings and duplexes. The development approved under the Permit has been assessed as now being inconsistent with this preferred housing and character.

SITE AND SURROUNDING AREA

The subject land (*see Attachment 1*) comprises a vacant residential lot of 1,212m² located south of Blackman Avenue, Mill Park approximately 285m east of Redleap Avenue. The surrounding area is generally characterised by a mixture of double and single storey dwellings. There are no other medium density housing sites in the surrounding area other than 40 and 41 Blackman Avenue which contain dual occupancies/ duplexes.

BACKGROUND

Planning Permit No. 714542 was granted on 5 June 2014 authorising the construction of five dwellings (four double storey and one single storey). An objection was received but later withdrawn thus allowing the application to be determined under delegation by officers. The Permit was amended on 22 September 2014 to allow for minor alterations. The endorsed plans are shown in *Attachment 2*.

Condition No. 19 of the Permit states:

This permit will expire if:

- a) the approved development does not start within two years of the date of this permit; or*
- b) the approved development is not completed within four years of the date of this permit.*

Before the permit expires or within three months afterwards, the owner or the occupier of the land to which it applies may ask the Responsible Authority for an extension of time. The Responsible Authority may extend the time within which the development is to be started or completed.

The initial application for the extension was received on 20 June 2016. Officers advised the applicant on 5 July 2016 that the extension of time request was not supported for the reasons set out in this report. An appeal was subsequently lodged at VCAT on 29 August seeking a review. A hearing date has not yet been set.

CURRENT PERMIT EXTENSION REQUEST

The current request was received within the three month period following the lapse date. The request does not specify an extension period and in these circumstances the default period of a further two years is assumed. The reasons for the extension are set out by the applicant as follows:

- Family member being ill over the past 18 months.
- Delay in obtaining Build Over Easement consent from Yarra Valley Water (now obtained).

A Building Permit application has been lodged with Council (23 May 2016).

The applicant has also stated that costs have been incurred in the scraping of the block in readiness to commence the development.

ASSESSMENT

When the permit was issued on 4 June 2014 the land was located in a Residential 1 Zone. In October 2015 Amendment C181 was approved by the Minister for Planning which introduced the new Statewide reformed residential zones to all established areas within the Whittlesea Planning Scheme. In relation to the subject land and surrounds, the General Residential Zone was applied. Amendment C181 also included Council's adopted Housing Diversity Strategy (HDS) within the Municipal Strategic Statement (which forms part of the Planning Scheme). In particular, Clause 21.09-4 was introduced to define residential change areas and the preferred housing character within these areas. The subject land was included in a 'Suburban Residential' change area in which preferred housing is to be characterised by standard density housing and dual occupancies/ duplexes. These areas are typically not in close proximity to public transport and activity centres.

The HDS sets out 'Key Design Principles' that encourage separation of dwellings at ground level, increased areas of private open space and provision for significant landscaping including canopy trees. Building heights are to reflect existing suburban scale and character.

The proposed development (*refer Attachment 2*) is for five dwellings (including four double storey dwellings) and provides for a continuous built form across all five dwellings. The secluded private open space for each proposed dwelling is compliant with Clause 55 of the Planning Scheme but minimal - ranging from 33 to 40m². The provision of canopy trees is restricted to the front setback although a small tree is nominated within each rear yard under the endorsed landscape plan.

Changes to residential zones within the established areas had been the subject of comprehensive community, resident and developer consultation prior to the application being made and the permit being granted. Council adopted the HDS in December 2013. The amendment was on public exhibition during the period that the application was under consideration. When the permit was granted it was contrary to Council's adopted HDS. However, because the planning scheme amendment to introduce the strategy into the Whittlesea Planning Scheme had not been adopted it was not able to be 'seriously entertained'. Accordingly, officers were required to assess the application under the general planning provisions then in place. The advanced stage of the amendment and its subsequent approval foreshadowed a limited window of opportunity for the development to commence prior to the expiry of the permit.

The applicable principles for considering extensions of time have been established by VCAT, are based on legal precedent and are applied by all councils. These tests are referred to as the 'Kantor' tests (named after the legal case which introduced them). The tests guide decisions and provide a degree of certainty for all stakeholders who may be affected by decisions relating to extensions of time.

It should be noted that there are no statutory provisions for notifying other affected persons of extension of time requests.

The 'Kantor' tests are set out below with comments under each heading relevant to the current application:

Whether there is a change of planning policy

The change in policy brought about by the approval of Amendment C181 and the introduction of the HDS and associated changes to the Local Planning Policy Framework have been discussed previously in this report. The changed policy context no longer supports the current proposal. The changes were exhibited before the application was made, were advanced at the time the permit was granted and gazetted over a year ago.

A change in planning policy does not prohibit a permit being extended. The context of the site may be taken into account.

Where there are already examples of medium density development that may be non-compliant with a recently introduced change to the planning scheme, a responsible authority may exercise its discretion to extend a planning permit if other tests can be reasonably met. However, in cases such as this, where the surrounding area is broadly consistent with the proposed change, an extension of time should not be supported because it would result in development that is anomalous and discordant with both existing *and* future development.

Whether the landowner is seeking to 'warehouse' the permit

There is no evidence that the permit holder is seeking to 'warehouse' the permit (i.e. not intending to act on the permit in the foreseeable future).

Intervening circumstances bearing on the grant or refusal of the extension

Individual circumstances may be considered to a certain extent. However, the Tribunal have held that extending a permit on compassionate grounds when proper application of the criteria would indicate otherwise, and in circumstances where the same level of hardship is being experienced by many other people without relief, would not be a proper exercise of a responsible authority's planning discretion. Decisions are required to be made on a consistent basis in accordance with established planning law and principles, and applied impartially to the particular facts and the circumstances of each case. In this case it should be noted that the permit holder is not prevented from realising a modest level of development under a new application for planning permit.

The need for consent by Yarra Valley Water to build over an easement relates to part of the approved carport associated with Dwelling No. 5. It is the responsibility of applicants to undertake due diligence on these matters at the planning application stage. The applicant has not stated when this application was made or the length of the delay. It is the view of officers that this intervening circumstance is an insufficient justification for the extension of time when weighted against other more critical criteria.

The total elapse of time and whether the time limit original imposed was adequate.

The time limit imposed was reasonable. The permit holder was given the benefit of a standard two year commencement period notwithstanding imminent changes to the planning provisions that were advanced at the time the permit was granted.

The economic burden imposed on the landowner by the permit

This relates to the degree to which the permit holder/ proponent is economically committed to the permit proposal as a consequence of actions taken to give effect to the permit. It should be noted that no development has commenced under the permit. While works preparatory to the commencement have occurred (application for building permit and build over easement consent obtained), these were obtained very close to the permit lapse date and in the context of changed planning circumstances. Making an application for a building permit without any certainty about whether a planning permit will be extended or not is not recommended by officers. Requests for extensions of time before the lapsing of a permit is recommended in these circumstances to enable outcomes to be determined at an early stage.

Preparatory works to the site will not be wasted in the event that a further permit is granted for development on the site.

The probability of a permit issuing should a fresh application be made.

It is unlikely that the permit for five dwellings would be granted should the same application be made today. Based on other similar decisions made by Council, it is likely that this application would be refused because of the changed planning context.

In a recent VCAT decision (23 June 2016) (*Alliance Property Solutions v City of Whittlesea P467/2016*), a senior legal member (H. McM. Wright QC) refused an application for review of an extension of time request similar to the current application.

This matter related to permit that had been granted for three dwellings on a 773m² lot at 16 Hall Street, Epping (also subject to a 'Suburban Residential' change area introduced by the HDS). The Tribunal stated in this recent case that:

The two Kantor tests of relevance in this case are:

- *whether there has been a change of planning policy; and*
- *The probability of a permit issuing should a fresh application be made.*

The two tests are related in that the planning policy will be a major determinant as to whether the permit would issue on a fresh application.

.....

The Tribunal is of the opinion that in cases where there is a real and substantial divergence of opinion as to the planning merits of a new application it is not appropriate to resolve the debate on an application for an extension of time of the existing permit. At this stage it cannot be said that the Kantor test regarding the probability of a permit issuing should a fresh application be made is satisfied. On the other hand if a fresh application is made what is presently speculation will be translated into actuality.

.....

....in cases where the use or development is still permitted the prudent course is to see whether it, of some modification of it [the development] will be permitted.

.....

In the ever changing kaleidoscope of planning policy and planning controls it should never be assumed that a permit will be extended.

The current VCAT appeal relates to an earlier officer decision. If the recommendation of this report to not support the extension of time is adopted, the applicant may be required to either amend the current VCAT application for review or commence new proceedings to reflect this updated decision.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

The purpose of limiting the life of a permit is to ensure that it does not become inappropriate due to a change in circumstances. The HDS was introduced into the Whittlesea Planning Scheme subsequent to the issue of the permit. These changes in policy suggest that it would be unlikely that the current proposal would be supported if a fresh application were to be made. On these grounds it is recommended that the extension of time not be supported. The applicant is not prevented from making a further application for medium density development on the land.

RECOMMENDATION

THAT Council resolve to not support the application to extend Planning Permit No. 714542 for the construction of five dwellings at 53 Blackman Avenue, Mill Park and advise the applicant accordingly.

COUNCIL RESOLUTION

MOVED: *Cr Laliros*
SECONDED: *Cr Kelly*

THAT Council resolve to:

1. Approve the application to extend Planning Permit No. 714542 for the construction of five dwellings at 53 Blackman Avenue, Mill Park to allow the development to start by no later than 5 June 2018; and
2. Advise the applicant of the resolution of 1. above.

CARRIED

6.1.4 187-205 SETTLEMENT ROAD, THOMASTOWN - USE AND DEVELOPMENT OF A STORE, REDUCTION OF CAR PARKING REQUIREMENTS AND DISPLAY OF INTERNALLY ILLUMINATED SIGNAGE

File No:	715944
Attachments:	1 Locality Maps 2 Development Plans
Responsible Officer:	Director Planning & Major Projects
Author:	Senior Planner
APPLICANT:	Kennards Self Storage
COUNCIL POLICY:	Industrial Development Policy
ZONING:	Industrial 1 Zone
OVERLAY:	Development Contributions Plan
REFERRAL:	VicRoads
OBJECTIONS:	Two
RECOMMENDATION:	That Council refuse the application

ELECTION PERIOD STATEMENT

The recommended decision is not a 'Major Policy Decision' or an 'Inappropriate Decision' under sections 93A and 93B of *the Local Government Act 1989*.

REPORT**EXECUTIVE SUMMARY**

A planning permit is sought for the redevelopment of part of the land for a self-storage facility (Store), a reduction of car parking requirements, the display of business identification signage and alteration of access to a road in a Road Zone Category 1.

Advertising of the proposal resulted in two objections being received from tenants within the subject site. The grounds of objection relate to parking security and inappropriate built form.

The proposal fails to demonstrate a satisfactory level of compliance with the relevant provisions of the Whittlesea Planning Scheme, including the Industrial Development Policy (Clause 22.09), Industrial 1 Zone (Clause 33.01), Signage (Clause 52.06), Car Parking (Clause 52.06), and the alteration of access to a road within a Road Zone Category 1 (Clause 52.29).

There are concerns with the response of the proposal against the relevant aspects of the Whittlesea Planning Scheme that cannot be overcome and as such, it is recommended that Council refuse the application.

SITE AND SURROUNDING AREA

The subject site (*Attachment 1*) is located on the south side of Settlement Road Thomastown, approximately 43m to the east of Apex Court. The site is irregular in shape with a total site area of 3.714ha. The site has a northern frontage to Settlement Road of

approximately 170m, a frontage to Apex Court to the west of 12m and a southern rear boundary of approximately 230m to the Maroondah Aqueduct Reserve.

The land is currently occupied by three separate buildings (approved pursuant to Planning Permit No. 708192) which are located at the eastern, southern and western side boundaries with a common car parking area within the central part of the site. Additional car parking areas are located to the south of the southern building and within the south-western portion of the site (with direct access to Apex Court). A total of 421 car parking spaces are required to be provided on-site which was reduced from an earlier requirement of 447 as a result of changes in the uses on site and modified floor area.

The eastern building (Building A) is occupied by Gainsville furniture and has a floor area of 3,784m². The southern building (Building B) covers a floor area of 6,792m². The majority of this building is currently vacant, however in the past this building accommodated a homewares tenancy. The western end of the southern building (Tenancy B7 which covers a floor area of 1,368m²) is occupied by a Bingo Centre. The western building (Building C) houses a gymnasium (3,504m²) in Tenancies 1-4 while Tenancy C5 (200m²) accommodates a bank (Commonwealth Bank Business Centre). A 'pad site' is located within the north-western corner of the site and is currently vacant.

Vehicle access to the site is via Apex Court to the west and via three crossovers to Settlement Road. On Settlement Road, the western and eastern crossovers provide delivery truck access to the rear of the tenancies via an internal circular one-way accessway around the periphery of the site.

The site is located within an established industrial precinct in Thomastown which generally occupies the area between the Metropolitan Ring Road to the north, High Street to the west and Maroondah Aqueduct to the south and east. The land to the west is occupied by a two storey office and warehouse building. The land to the north, across Settlement Road, is occupied by a diverse range of uses, including take away food premises, car rental tenancies, flooring showrooms, panel beaters, warehouses and offices. To the west there are single storey restricted retail premises facing Settlement Road. In Apex Court, there are single and two storey offices, warehouses and light industrial uses. The land to the south is occupied by the Maroondah Aqueduct, high voltage transmission lines and an open space corridor. Further south are residential properties within Lagen Court. These properties are located approximately 20m from the subject site.

RESTRICTIONS AND EASEMENTS

The site is legally described as Lot 2 of Subdivision 608082H.

Covenant L319044J affects the property and specifically:

- a) Requires the screening of plant machinery, tank or transformer
- b) Prohibits the storage of goods or materials unless fully screened from view from the street by a wall constructed of brick or concrete or reinforced masonry or stained timber planking erected at least ten feet from the boundary which abuts the road.
- c) Requires the front wall (or side wall visible from the street) of all buildings to be constructed of brick, masonry or concrete. This does not apply to windows, doors, facias or gables.

In its current form the application either directly or potentially will breach this covenant without further changes to the proposed use and development, specifically:

- a) Details of the lift overrun and plant equipment has been omitted from the plans
- b) The application includes the outdoor storage of boats, caravans and motor vehicles.
- c) The proposed new building 'D' incorporates colourbond cladding on its façade facing Settlement Road.

Section 173 Agreement R164490G affects the property and relates to the installation of traffic lights and the consolidation of land.

The property is also affected by a number of drainage and sewerage easements located near the southern boundary of the site. No new works are proposed within the easements.

PROPOSAL

It is proposed to use and develop the land for the purpose of a Store, construct alterations and additions to existing buildings, display illuminated business identification signage and alter access to a road within a Road Zone Category 1.

The proposal can be best described in four parts:

Land Use

It is proposed to use part of the land for the purpose of a Store (self-storage facility). The use will occur in the southern building, two new buildings to be constructed centrally within the site (i.e. within part of the existing car park) and an additional building abutting the existing gym. The use will be conducted by Kennards and will allow customers to rent a storage unit within the buildings or outdoor storage space for boats caravans or motor vehicles. There is no minimum or maximum term of rental. The buildings will be accessible to customers 24 hours a day, 7 days a week. Access to the storage areas will be controlled by a pin pad. On weekdays, it is proposed to have two staff present on-site at any one time. On weekends, there will be one staff member present on-site. The use will also include the sale of boxes and other packaging equipment. In addition, the operator will offer a concierge service for the receipt and despatch of customer parcels at the site.

The existing Bingo Centre will be vacated to accommodate the proposed use.

Alterations and Additions

Southern Building

The southern building will be modified internally to accommodate the proposed use. External modifications to the southern building include:

- Three new openings on the northern facade to accommodate truck and vehicle access to the building, including the reconfiguration/removal of existing awnings.
- Application of a film to the existing glazing on the northern facade where the facade abuts a storage unit (so that the contents are not externally visible).
- Installation of a new fire access door on the eastern facade.
- Removal of three existing roller shutter doors on the south facade and installation of new openings to accommodate truck and vehicle access to the building.
- Painting works.

Gainsville

It is proposed to undertake an extension to the existing furniture (Gainsville) tenancy (Building A) in a southerly direction over existing car parking spaces/accessway. The extension will increase the existing tenancy by 868m² and will have a height consistent with that of the existing built form. Consequently, the overall floor area of this building will total 4,652m². The extension will include a new awning and shopfront facing west towards the common car park and a new rear (eastern) fire access door.

New Buildings

Three new buildings are proposed to be constructed, two of which are located centrally within the site and will have a setback of 42.5m (proposed Building E) and 51.5m (proposed Building D) from Settlement Road. The third new building (proposed Building F) will be located adjacent to the western boundary of the site (i.e. to the south of Building C which contains the gymnasium).

Building D will have a floor area of 1845m² over two levels and a height of 6.4m. Building E will have a floor area of 1998m² (including an office covering an area of 112m²) over two levels and a height of 8.5m. Building F will have a floor area of 353m² and a height of 4m. Accordingly, the three new buildings and extension to Building A will result in an additional 4,196m² of floor area on the site. The buildings will be constructed in colourbond cladding and smooth-face cladding to match the existing buildings. In addition, the applicant proposes to install 2.4m high security gates at four locations within the site to restrict access to the proposed Kennards area.

Advertising Signs

The applicant proposes to display the following new advertising signs:

- New pole sign located on the Settlement Road frontage with a height of 6m and width of 2.38m (total advertising area of 14.28m²). The sign content will be directly related to the Kennards tenancy. It is proposed to illuminate the Kennards text and “look” logo. The balance of the sign will not be illuminated.
- The north, east and west facades of Building E will include the following signs:
 - Three 6.38m x 1.91m ‘Kennards’ internally illuminated signs (total advertising area of 36.55m²).
 - Two 2m x 1.91m “look” logo signs which are not proposed to be illuminated (total advertising area of 7.64m²).
 - Internally illuminated awning signs of 600mm in width.

Car Parking and Access

Planning Permit No. 708192 (Amended) which was issued on 27 November 2003 for the purpose of using and developing the land for Restricted Retail Premises (16 tenancies in three buildings with an overall floor area of 15,273m²) requires that 421 car parking spaces be provided on the land.

As the land uses have changed over the years and additional permits have been issued with differing parking rates, the current proposal will result in only 153 car parking spaces being made available for the buildings and uses on site, with a possible further 58 for exclusive use of the self-storage facility as they are behind locked gates, although it is unclear whether up to 37 of these will be used for storing vehicles/boats in lieu of being used for customers to park in while attending the facility.

Any approval will require an amendment to Planning Permit No. 708192 (Amended) due to the reduction in parking.

The proposal includes the alteration of access to Settlement Road by virtue of the proposed works. The introduction of gates preventing access and movement of delivery vehicles to utilise the existing accessway around the periphery of the site will change the way in which access and egress occurs to the site.

BACKGROUND

Planning Permit No. 708192 (Amended) was issued on 27 November 2003 for the purpose of using and developing the land for Restricted Retail Premises (16 tenancies in three buildings with an overall floor area of 15,273m²) and the provision of 421 car spaces on-site.

Other uses within the complex include an Office (Commonwealth Bank Business Centre accommodating up to 30 staff at any one time), a Bingo Centre allowing up to 700 patrons on the site at any one time and a Gymnasium allowing up to 120 staff and patrons at any one time.

PUBLIC NOTIFICATION

Advertising of the application has resulted in two objections being received. The grounds of objection can be summarised as follows and a detailed response to the concerns is provided later within this report:

- The proposal will result in insufficient car parking being provided on-site.
- Proposed Building F will result in the loss of natural light for the tenancy located immediately to the north.
- The proposal will have a negative impact on the physical appearance of the site and existing tenancies.
- The proposal will result in a reduction in safety on-site.
- Prior knowledge of the proposal would have resulted in business owners not leasing commercial space within the complex.

PLANNING ASSESSMENT

Industrial 1 Zone

The subject site is located with the Industrial 1 Zone. The proposed use of the and for a Store requires a planning permit as the site is within 30m of residential properties, located to the south. A planning permit is also required for the proposed works within the Industrial 1 Zone.

The following provides a response to the relevant decision guidelines and responses are setout in the table below:

Decision Guideline	Comments
Streetscape character	The proposed 'colourbond shed' style of development is not consistent with the existing built form on the site and provides a poor interface and relationship with the street. Furthermore, the proposed built form is in contravention of the restrictive covenant registered to the property title.
Built form	<p>The proposed built form presents a poor design outcome for a prominent site having regard to the location of the site on an arterial road and the existing retail and commercial of uses on the site.</p> <p>The proposed colourbond additions will appear out of place when sited centrally within the main car park, surrounded by purpose built restricted retail buildings.</p> <p>In addition, the complete screening of open storage areas (in particular from Apex Court) is needed in order to comply with the restrictive covenant registered to the property title and will result in an unacceptable design outcome.</p>

Decision Guideline	Comments
Landscape treatment	The existing landscaped areas on site have not been maintained. Should the application be approved, the landscape areas would be further reduced. Any approval would need to submit a detailed landscape plan that demonstrates no overall loss in landscaping on site and improvements to the existing landscaped areas.
Interface with non-industrial areas	Whilst details of lighting and landscaping have not been provided, it is considered that appropriate permit conditions will be able to ensure that an acceptable interface with the residential properties to the south is provided. This is likely to entail improved fencing, weed removal and new landscaping along the rear boundary of the site.
Parking and site access	The proposed reduction of car parking spaces and alteration of access throughout the site is not acceptable. Further details are discussed within the parking section later within this report.
Loading and service areas	The proposed alteration to the accessway providing delivery vehicles with the ability to safely and conveniently enter and exit the site is not an acceptable outcome and creates safety concerns for pedestrians and vehicles alike.
Outdoor storage	The proposal includes the outdoor storage of boats, caravans and motor vehicles. This presently breaches the restrictive covenant on title due to visibility from Apex Court.
Lighting	Details of lighting have not been provided by the permit applicant. Should a permit be issued, conditions will be needed to ensure that any lighting provided is baffled to ensure that the amenity of residential properties to the south is not detrimentally affected.

Development Contributions Plan Overlay (Schedule 3)

The site is affected by the Development Contributions Plan Overlay. Pursuant to Clause 45.06 of the Whittlesea Planning Scheme, the Development Contributions Plan Overlay enables the levying of contributions for the provision of works, services and facilities prior to development commencing. In this instance, no additional impervious areas are proposed.

Advertising Signage

There is currently an existing shared business identification pole sign at the front of the site containing signs for the respective businesses. The proposed signage seeks to introduce a new additional individual business pole sign at the front of the site that is considered inappropriate, will contribute to signage clutter within the streetscape and detract from the site's interface with the street. The signage is unnecessary and availability is present on the existing pole sign that provides smart attractive signage to the street in one location.

The proposed pole sign should not be supported, while building signage of the facility is generally acceptable.

Car Parking

Clause 52.06 of the Whittlesea Planning Scheme prescribes the rate and design standards for car parking spaces required on site. The original approval for the site, as amended, required 421 car spaces for the uses and associated floor area. Having regard to the way the land is currently used, the following parking demand and associated provision is as follows:

Use	Rate	Area / No. Patrons	Car spaces required	Car spaces provided
Restricted Retail (Furniture)	3 car parking spaces per 100m ² of leasable floor area.	4,652m ²	139	153
Restricted Recreation Facility (Gym)	0.4 car parking spaces per patron*	120 patrons	48	
Bank	3.5 car parking space per 100m ² of net floor area.	390m ²	13	
Undeveloped Pad site	Approximately 3 car parking spaces per 100m ² of leasable floor area.**	Min 500m ²	≥15	0
Store (Self-Storage)	10% of the site area	10,950m ² ***	1,950m ² ***	Unclear. Refer to discussion below
Total	Car spaces required	Car spaces provided	Shortfall	
	215 <u>Plus</u> an additional area of 1,950m ² for parking associated with the store.	153	62 spaces <u>Plus</u> parking associate with the store.	

* The car parking rate for a Restricted Recreation facility is not defined by the Whittlesea Planning Scheme, but must be provided at a rate to the satisfaction of Council which has previously been utilised at 0.4 spaces per patron.

** This rate of car parking is typical of uses most likely to use and develop the 'pad site'. Alternative uses such as Office have a slightly higher rate.

*** *The total site area of the self storage facility only includes buildings and would actually be greater.*

The proposed use and development requires a significant reduction of car parking spaces required by the Whittlesea Planning Scheme. The table above shows that the existing uses (including the likely development of the 'pad site') results in a shortfall of 62 car parking spaces.

The provision of car parking for the proposed self-storage facility is difficult to quantify for the following reasons:

1. The car parking rate in the Whittlesea Planning Scheme is shown as an area rather than a specific number of car parking spaces.
2. The plans show that many (possibly all) of the parking spaces within the secure storage area will be used for 'outdoor storage' (storage of vehicles, boats and caravans). This has the effect of increasing the required area of car parking as the rate within the table is based on the area of the buildings. It also has the effect of reducing the provision of parking provided.
3. In a practical sense, the parking spaces shown behind the securing fences will either be used for outdoor storage or will not be used as most are not located in a practical location and only accessible through lockable gates.
4. First time customers to the facility or those purchasing their ancillary products would share the remaining 153 car spaces throughout the site further increasing the shortfall.

While a traffic report has been submitted with the application, the report has incorrectly calculated the impact of the proposed development by:

- a) Not applying the correct rate of parking to the proposed expansion of the restricted retail premises;
- b) Not having regard to the future demand of the undeveloped portion of land within the north-west portion of the site (known as the 'pad site').
- c) Allocating car parking spaces to the proposed self-storage facility that is identified by the plans as outdoor storage areas.

The current development has been designed to separate customer parking from loading and unloading areas by providing a dedicated delivery vehicle route around the periphery of the site. The proposed development would prevent delivery vehicles from safely accessing the loading and unloading areas.

Alteration of access to a road in a Road Zone Category 1

The application was referred to VicRoads pursuant to Section 55 of the *Planning and Environment Act 1987* as a 'Determining Authority'. On 24 May VicRoads provided a response to the application indicating no objection subject to conditions relating to signage.

Notwithstanding the support for the application that has been given by VicRoads, Council must also consider the effect of the proposal on the operation of the road and on public safety. Having regard to this, the proposed gating of the existing loading and unloading accessway around the periphery of the site will restrict the ability for delivery vehicles to safely access the remaining premises on the site and will encourage delivery vehicles to either use the customer parking area for the loading and unloading of vehicles or for delivery vehicles to reverse out onto Settlement Road, causing issue for the safety of both motorists and pedestrians. Having regard to the above matters, the application does not provide a satisfactory response to this requirement.

COMMENTS ON GROUNDS OF OBJECTION

- **The proposal will result in insufficient car parking being provided on-site.**

The proposal requires a significant reduction of car parking requirements. As discussed in this report, the proposed reduction of car parking requirements is not appropriate. Accordingly, this ground of objection can be substantiated.

- **Proposed Building F will result in the loss of natural light for the tenancy located immediately to the north.**

The proposed 'Building F' will result in a reduction of natural light to the tenancy located directly north. This will have a detrimental impact on the amenity and energy efficiency of the building. Accordingly, this ground of objection can be substantiated.

- **The proposal will have a negative impact on the physical appearance of the site and existing tenancies.**

The proposed built form is not considered to be consistent with the existing development that is also proposed to be retained on the site. Accordingly, this ground of objection can be substantiated.

- **The proposal will result in a reduction in safety on-site.**

This ground of objection is difficult to quantify as the proposed use will typically provide a significant amount of security in order to provide a secure self-storage facility, although also creates safety concerns associated with the modifications to deliveries. Accordingly, this ground of objection cannot be substantiated, however is noted in context of safety concerns that may arise.

- **Prior knowledge of the proposal would have resulted in business owners not leasing commercial space within the complex.**

This is a civil matter in relation to reasonable disclosure and the leasing arrangements on the site. This is not a relevant planning consideration.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

The application has been assessed against the Whittlesea Planning Scheme. The proposal does not demonstrate a satisfactory level of compliance. In particular, the application does not provide an appropriate planning outcome with respect to the proposed built form, provision of car parking, access throughout the site, compliance with the restrictive covenant, presentation of signage. Accordingly refusal of the application is recommended.

DECLARATION OF INTEREST

Cr Alessi declared an indirect interest in this item 6.1.4 – 187 -205 Settlement Road Thomastown – Use and Development of a Store Reduction of Car Parking Requirements and Display of Internally Illuminated Signage to the Chief Executive Officer prior to the meeting.

Prior to the matter being considered or any vote taken in relation to the matter, Cr Alessi left the Council Chamber at 6:39pm and advised the Mayor accordingly.

Cr Alessi returned to the Council Chamber at 6:39pm following the vote on this item.

RECOMMENDATION

THAT Council resolve to refuse Planning Application No. 715944 and issue a Notice of Refusal for the Use and Development of the land as a Store, buildings and works associated with a Restricted Retail Premises, display of business identification signage, a reduction of car parking requirements and alteration of access to the road in a Road Zone Category 1 at 187-205 Settlement Road Thomastown, on the following grounds:

1. The proposed built form is in breach of restrictive covenant L319044J.
2. The proposed store will unreasonably disrupt the circulation of delivery vehicles around the periphery of the site and result in an inappropriate alteration of access to Settlement Road.
3. The proposed development fails to demonstrate compliance with the design requirements of Clause 52.06 with regard to the design of car parking spaces and accessways.
4. The proposed development fails to provide sufficient parking in accordance with the requirements of Clause 52.06 and the reduction is not appropriate due to:
 - a) The demand of existing tenants on the site;
 - b) The potential demand for future tenants on the site; and
 - c) The future car parking requirements of the undeveloped portion of the site.
5. The proposed built form presents a poor interface to the street and design outcome for a prominent site having regard to the location of the site on an arterial road and the existing retail and commercial of uses on the site.
6. The proposed signage located at the site frontage fails to demonstrate compliance with Clause 52.05, is excessive for the site and contributes to signage clutter.

COUNCIL RESOLUTION

MOVED: Cr Kelly
SECONDED: Cr Sinclair

THAT Council resolve to adopt the Recommendation.

CARRIED

6.1.5 310 & 290A BRIDGE INN ROAD, MERNDA - USE AND DEVELOPMENT OF A CHILDCARE CENTRE

File No: 715886

Attachments:

- 1 Locality Maps
- 2 Development Plans
- 3 Development Plan Overlay - Schedule 27 (Fairview Development Plan)

Responsible Officer: Director Planning & Major Projects

Author: Principal Planner

APPLICANT: Watersun Homes

COUNCIL POLICY: Clause 22.05 Child Care Centre Policy

ZONING: General Residential Zone

OVERLAY: Incorporated Plan Overlay (Schedule 1)
 Development Plan Overlay (Schedules 5 and 27)
 Development Contributions Plan Overlay (Schedule 5)
 Vegetation Protection Overlay (Schedule 1)

REFERRAL: Nil

OBJECTIONS: The application was not required to be advertised.

RECOMMENDATION: That Council refuse the application.

ELECTION PERIOD STATEMENT

The recommended decision is not a 'Major Policy Decision' or an 'Inappropriate Decision' under sections 93A and 93B of *the Local Government Act 1989*.

REPORT

EXECUTIVE SUMMARY

An application has been received to use and develop land for the purpose of a 107-place childcare centre within an area proposed for future residential subdivision. The subject land, comprising an area of 2,015m², is located on the southwest corner of Bridge Inn Road and Wellington Street, Mernda. The proposed site is located at the western edge of the Mernda urban growth area and adjacent to the current Urban Growth Boundary. The site occupies a gateway location to a Green Wedge area and the proposed Quarry Hills Park.

This report provides an assessment of the application under provisions of the Whittlesea Planning Scheme. It concludes that use and development is not generally in accordance with incorporated and development plans forming part of the Whittlesea Planning Scheme. Where an application is found not to be generally in accordance with an incorporated or development plan, Council has no ability to issue a planning permit.

An assessment of the planning merits of the application has also shown that the proposal is unable to adequately comply with planning scheme policies relating to childcare centre use and development. The development is also premature as a subdivision framework is yet to be approved for the area. This report recommends that the application be refused.

SITE AND SURROUNDING AREA

The subject site is located on the southwest corner of the Bridge Inn Road and Wellington Street, Mernda (*see Attachment 1*). The land is located within Stage 9 of the Fairview Estate in which subdivision works have recently commenced (*see Attachment 2*). The subject land comprises three proposed residential lots (2 and 4 Wellington Street and 40 Georgia Drive) comprising a combined area of 2,015m². The land falls 7.7m from the rear of the site (195.0 AHD) towards the front (Wellington Street) at 187.3 AHD. The subject site is currently vacant. There are no trees or native vegetation within the area proposed for development.

The subject land occupies an elevated area and the proposed western boundary of the land is defined by the Urban Growth Boundary (UGB). Land outside the UGB is currently being included within the Quarry Hills Park. The western boundary will abut a small hilltop reserve which will form part of the proposed park.

The UGB extends across Bridge Inn Road directly north of the subject land where it continues along a defined contour level. In this context the subject land occupies a gateway leading into and out of the Mernda/ Doreen growth area - separating the growth area with non-urban Green Wedge land. Land to the north is rural in character and not currently proposed for urban development.

A small number of larger lots and associated dwellings are proposed south of Bridge Inn Road and west of the subject land (between the hilltop park referred to above and the UGB/ Quarry Hills Park interface). These lots will be set back from Bridge Inn Road via a service road arrangement. In contrast, the lots proposed on the subject land will protrude close to the Bridge Inn Road corridor making the site prominent.

Land to the east, opposite Wellington Street, comprises the Fashoda homestead heritage place (1B Wellington Street) which is of State heritage significance and contained within a Heritage Overlay. The extent of the registration area was originally approved having regard to the view lines to the heritage place from the west along Bridge Inn Road. Dwellings recently constructed on 5-13 Wellington Street are within the heritage registration area and a Heritage Overlay and are subject to design requirements. The land between 5 Wellington Street and Bridge Inn Road (directly opposite the subject land) cannot be developed with further dwellings to ensure that view lines into the heritage place are not compromised.

The land to the south of the subject site comprises established dwellings associated with Stage 1 of the Fairview Estate although the immediate lot to the south (No. 8) is currently vacant and in private ownership. This landowner has not been notified of the application proposal because, as discussed, further in this report, planning provisions exempt third party notification.

SUBDIVISION CONTEXT

Planning Permit No. 711997 was issued for the subdivision of Fairview Estate in 2010. At that time the UGB ran through the subject land terminating approximately at the corner of Bridge Inn Road and Wellington Street. Not long after the permit was issued, the UGB was extended to allow further land to be included within a residential zone in lieu of the transfer of other land into the Quarry Hills Park. The additional residential land is known as Stage 9. The proposed development is located within this stage.

The subject land is affected by two development plans. The eastern portion of the land (east of the former UGB) is with Development Plan Overlay Schedule 5 (DPO5) and the western portion of the land (west of the former UGB) is within Development Plan Overlay Schedule 27 (DPO27). Development plans have been approved by Council for each respective schedule area. Because the current proposal straddles both DPO areas, the requirements of each approved plan must be met. The extent to which the application proposal is generally in accordance with each respective approved development plan is discussed further in this report.

Stage 9 of the Fairview Estate was approved as an amendment to the existing subdivision permit. However, this permit lapsed on 13 April 2016 because as of that date Stage 9 had not been certified. A request to extend this permit has recently been received and will need to be considered by Council because circumstances have changed since the permit was originally granted. The implications of the subject land not having a currently approved subdivision context are discussed further in this report.

The previously issued permit set out a requirement for design and development guidelines for all lots (including the subject land). These matters were still to be resolved at the time the subdivision planning permit had lapsed and will need to be developed if the permit is extended.

RESTRICTIONS AND EASEMENTS

A Section 173 agreement AK037024V is registered on the parent title. The agreement relates to transfer of open space relating to the Quarry Hills Park, payment of development contributions and requires that development be in accordance with the approved development plan. Further restrictions are likely to be placed on titles approved under a subdivision permit.

PROPOSAL

It is proposed to use and develop part of the land for the purpose of a childcare centre (see *Attachment 2*). The centre is anticipated to accommodate 107 children and associated staff and will operate between 6.30am and 6.30pm Monday- Friday.

The proposal includes a car park at the front of the site which accommodates 25 parking spaces including one 'access for all' space. A single crossover is proposed from Wellington Street.

Due to the fall of the land, the proposed building will be split level. On the ground level at the front of the site is undercover parking and above that is the main part of the centre, which includes all the playrooms, reception and amenities. On the upper level are 'staff only' areas. Service plant will also be accommodated on the upper level (to avoid the plant being placed in the roof). The outdoor play areas will be provided along the sides and rear of the site with direct access from the playrooms. To achieve level play areas significant fill will be required.

The overall height of the building will vary with extensive site cut and fill to deal with the fall of the land. From the front of the site (Wellington Street) the building will be 10.0m in height. From the north (Bridge Inn Road) the building will appear to be 7.8m in height. The building will result in 48 percent site coverage. The building form includes a pitched roof and external materials including face brickwork on the lower level, render finish for the upper level and sections of painted 'Axon' cladding. At the frontage of the site there will be retaining walls and 3.7m high screening of 'Alucobond' cladding and feature screens provided where the building and undercroft parking commences.

The proposed building will address Wellington Street, with the access point leading to stairs and a lift to the reception area from the parking area (beneath the main floor level).

PUBLIC NOTIFICATION

Pursuant to Clause 43.03-2 and 43.04-2 of the Whittlesea Planning Scheme, an application which is generally in accordance with an incorporated plan and a development plan is exempt from the notice requirements of Section 52(1)(a), (b) and (c) of the *Planning and Environment Act 1987*.

PLANNING ASSESSMENT

The following State and local planning policies and particular provisions contained within the Whittlesea Planning Scheme are considered relevant to this application.

State Planning Policy Framework

Clause 15.01-1 (Urban design) sets out strategies to require that development respond to its context and to ensure that transport corridors are integrated with land use planning. For the reasons further set out in this report, it is considered that the site occupies a gateway location and that the height, scaling and massing of development on the site will be out of keeping with the intended lower density objectives for this area.

Local Planning Policy Framework

Clause 21-08-1 (Urban design) requires that planning decisions pay particular emphasis to major gateways and main roads in future urban areas where quality outcomes are a key objective. Maintenance of the image in areas that have been excluded from urban development is also of vital importance. Objectives seek to upgrade the image and appearance of the city through strategies which require service road treatments or other frontage treatments and substantial landscape setbacks along main and other significant roads (other than in activity centres) (Strategy 1.5); protection of the visual qualities of the Quarry Hills (Strategy 1.8) and improvements in appearance at major entrances (Strategy 1.9).

Local Planning Policies*Child Care Centre Policy (Clause 22.05)*

The objective of this policy is to ensure that childcare centres are appropriately located and well-designed, have a minimal impact on the amenity of the area and serve the needs of the community. An assessment of the proposal under the policy is provided below:

Encourage child care centres to locate adjacent to or in proximity to other community support facilities such as schools, pre-schools, open space, medical centres, and recreational facilities.

The nearest features to the subject land are:

- Parkledge Park (400m south)
- Gilson College (350m east)
- St Josephs Primary School (2.1km northeast)
- Mernda Primary School (2.4km northeast)
- Bus Route 572 – University Hill to Doreen (1.8km northeast)

In contrast to the assertions made in the application submission, it is considered the subject land is poorly located to the range of facilities and services (both existing and proposed) referred to in the policy. A significant portion of the proposed catchment will comprise non-urban land.

While ultimately some of this land will form part of the Quarry Hills Park, it is not proposed to be developed as a key destination that would support to the childcare centre proposal.

Encourage child care centres to locate in proximity to public transport routes.

The nearest public transport to the site is Bus Route 572 which travels between University Hill and Doreen (1.8km northeast). While a future route along Bridge Inn Road may be provided at a future date, the subject land, located at the edge of the growth area, will lack appropriate integration with public transport services.

Minimise impacts on residential amenity and enhance access, corner sites are preferred locations for child care centres. Establishment of child care centres within cul-de-sacs and on main roads is discouraged.

Bridge Inn Road is a designated arterial road which will accommodate a high volume of traffic within a four lane divided carriageway. As access will not be possible via this main road, all access and parking will be required via a single crossover on Wellington Street (a residential street).

Ensure that the scale and appearance of purpose built child care centres is consistent with surrounding land use, site characteristics, and site location. In residential areas child care centres should have a residential scale, height and building form, which is sympathetic to the character of adjoining dwellings and the streetscape.

The scale of the built form is not consistent with surrounding character (existing and proposed). Due to the slope of the site combined with the need/ desire to have all the care rooms on the same level and outdoor play space also on the same level, a very large built form will be visible when viewed from the front and sides of the building. The scale is not respectful of the emerging character of the area. The overall height is in excess of 10m, essentially presenting a triple storey built form on land that protrudes onto the Bridge Inn Road corridor.

The Coordinator Urban Design within Council's Strategic Planning and Design Department has undertaken a review of the proposal and supports the above assessment.

Ensure that access to and from the site is to be designed in such a way as to allow for the safe and efficient movement of vehicle and pedestrian traffic, including safe set down areas.

The car park provides for the required number of parking spaces. However there are concerns with the safe and efficient movements of vehicles and pedestrians and there is no continuous pedestrian path provided within the car parking area. Additionally, there is no loading bay provided or turning area. The car parking area has the limitation of low clearance where provided in the form of an undercroft. Additionally, there is no direct separated footpath area for pedestrian or bicycles into the site from the site frontage.

Ensure proposals fulfil a demonstrated need.

At this stage there are a number of proposed childcare centres that have been approved in better and more accessible locations within the surrounding growth area. These developments are still yet to commence thus it is difficult to determine whether there is demonstrated need.

Based on the assessment of the criteria above, it is considered that the proposal responds poorly to the Child Care Centre Policy. Opportunities were provided to address a number of

these issues as part of requests for further information. However, the applicant response disagreed with the officer position.

GENERAL RESIDENTIAL ZONE

The subject site is located within the General Residential Zone (GRZ1). Pursuant to Clause 32.08-1 of the Whittlesea Planning Scheme, a childcare centre is a section 2 use (permit required). The relevant decision guidelines for non-residential uses and development under the Zone are outlined below:

Whether the use or development is compatible with residential use.

A childcare centre is compatible with residential uses in a general sense. The proposed centre is likely to create some noise (children playing), however given the general nature of childcare centres, the peak times for outdoor play are not in the earlier or later hours of operation. Noise generated from the arterial road corridor is likely to be a greater noise source within this particular context.

Whether the use generally serves local community needs.

See previous comments in this report.

The scale and intensity of the use and development.

The childcare centre will operate from 6.30am to 6:30pm, Monday to Friday with up to 107 children. Impacts on the area are likely to be experienced in the form of traffic movements. The capacity of 107 children and a likely matching number of parents/carers dropping off and collecting children is a relevant consideration when determining impacts on the residential nature of the site. The subject land is remote from activity centres and there are likely to be higher levels of amenity expected in this area by future residents.

The design, height, setback and appearance of the proposed buildings and works.

It is considered the design, overall height, setbacks and general appearance of the building will result in an unacceptable outcome that is inconsistent with the existing and proposed residential character and scale of the area. For reasons discussed earlier, the building design coupled with issues of site fall and need for cut and fill will contribute to an adverse outcome.

The proposed landscaping.

A concept landscape plan was submitted as part of the application. Council's Parks and Open Space Department raised concerns about the quality of the plan, however this could potentially be addressed through conditions if any permit were to be issued.

The provision of car and bicycle parking and associated accessways.

Details of car and bicycle parking are discussed within later sections of this report.

Any proposed loading and refuse collection facilities.

It is anticipated that deliveries to the site will be via smaller vehicles for supplies and food. While most supplies may be via a small van, based on other childcare centres it is considered unlikely that all deliveries will be made in this way. There is no loading bay provided to accommodate larger deliveries and possibly inadequate space for a larger vehicle to turn and leave the site. Additionally, it should be noted that since half the car park is beneath the building there may be limitations in accessing this area due to clearance heights. Pedestrian safety within the site is also a concern with the movement of these vehicles.

Concerns have been raised regarding waste collection. Private waste collection should occur from within the site. Undertaking this activity on the roadway has the potential to result in adverse impacts.

The safety, efficiency and amenity effects of traffic to be generated by the proposal.

The application was referred internally to Council's City Design and Transport Department which did not raise concerns about safety issues relating to external movements (apart from the waste collection issue). The concerns about amenity of residents through the number of movements at peak drop off and collection times have been raised earlier in this report.

CONSIDERATION OF APPLICATION PRIOR TO SUBDIVISION APPROVAL

As noted previously in this report, the application has been lodged prior to resolution of a number of key subdivision requirements. The previous subdivision approval relating to Stage 9 has lapsed and any extension or re-approval consideration may need to have regard to the design requirements set out in incorporated and development plans. This would include the need to address the preferred design treatment for this prominent location including requirements relating to mass, height and setback. In this respect the application is premature until such time as the broader subdivision approval has been fully resolved.

Contamination investigations and requirements under the subdivision permit are still yet to be resolved in relation to Stage 9. In the event that the use and development is approved (not recommended), it would be necessary that this matter be addressed as part of conditions of any permit that might issue.

INCORPORATED PLAN OVERLAY – SCHEDULE 1 (MERNDA STRATEGY PLAN)

The part of the subject land within the former UGB is subject to the Mernda Strategy Plan (MSP) incorporated document. The use and development of the land must generally be in accordance with this plan. The subject land is designated within a low density residential interface. The MSP also designates the land within a 'visually sensitive design area'. It is a requirement of the MSP that 'visually sensitive areas are to be protected by limiting building height and mass. Building materials and colours should reflect local landscape and environmental character.' The planning permit for subdivision (if extended) is required to address these matters.

While the MSP does not prescribe the location of childcare centres, it is considered the development proposal is not in accordance with the low density interface and does not satisfy the requirement seeking to limit building height and mass.

DEVELOPMENT PLAN OVERLAY – SCHEDULE 5 (MERNDA WEST DEVELOPMENT PLAN)

This Development Plan has been prepared in accordance with the MSP incorporated document. It encourages low density residential development in and around the Quarry Hills interface. General design principles seek to ensure that visually sensitive areas (as defined in the MSP) are protected by limiting building height and mass. Lower density housing is to

provide a buffer to surrounding rural land uses and the Quarry Hills (p.28) and protection of key high points (p. 40). The Development Plan does not prescribe the location of childcare centres.

DEVELOPMENT PLAN OVERLAY – SCHEDULE 27 (FAIRVIEW DEVELOPMENT PLAN)

A more recent Development Plan has been prepared and approved by Council for Stage 9 of the Fairview Estate and includes the subject land. This plan is more prescriptive in terms of outcomes compared with the Mernda West Development Plan. Relevant details of the approved plan as they relate to the site and surrounds are set out below:

- The plan provides for the creation of 78 lots for *single dwelling* development.
- The plan supports conventional density residential development.
- The development plan responds to the natural topography of the site through preferred orientation of roads and lots to avoid extensive earthworks and reliance on large retaining wall structures.
- The plan designates a large 800m²+ lot on the western portion of the subject land and nominates the other proposed lots comprising the subject land as 500-600m² lots.
- Schedule 27 of the DPO requires that the Development Plan show the 'designation of specific land uses, including non-residential land uses and their integration with existing or future development on land abutting the site.' The approved Development Plan 'supports the creation of residential and public open space land uses'. It does not designate a non-residential land use on the subject land.
- The Development Plan (section 5) states: 'The site is not located in close proximity to a neighbourhood activity centre or other activity node which supports an increased density but is located to adjoin an Urban Growth Boundary on the western fringe of the Mernda growth area.'
- The plan 'clearly details the intended subdivision layout.' (Section 5).
- The proposed road network will not support any level of public transport provision.

It is considered the proposed use and development is not in accordance with the detailed Fairview Development Plan (*see Attachment 3*). This plan would need to be amended to allow consideration of the outcome sought. Such a request has not been made either as part of, or subsequent to, the application being made. (It is the view of the applicant that the current proposal is in accordance with an approved Development Plan). Where an application is not in accordance with a development plan, Council has no discretion to grant a planning permit.

Because there is an exemption from notification of an application on land affected by a DPO, It is reasonable that existing and future residents have some certainty about the form and conditions of use and development under an approved development plan such as that approved under DPO27.

It is the recommendation of this report that the application be refused primarily on the basis that the proposal is not generally in accordance with approved incorporated and development plan. However, because what constitutes 'generally in accordance with' is subject to legal challenge, it is considered appropriate that the application also be refused on secondary grounds relating to the merits of the proposal which in summary are:

- Non-compliance with Child Care Centre Policy.
- Detrimental impact on the amenity of the area because of the location, scale and height of the proposed development.
- Inadequate space for refuse collection.

- Non-compliance of State and local planning provisions relating to urban design and protection of gateway locations.

DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY – SCHEDULE 8

Planning approval is not required pursuant to this Overlay, however contributions would be payable in the event that a use and development was approved prior to any subdivision approval.

CAR PARKING

Pursuant to Clause 52.06 of the Whittlesea Planning Scheme, the following car parking rates are required for the proposed development:

Proposed Use	Clause 52.06 Car Parking Rate	Size/No.	No. of Spaces required	No. of Spaces provided	Total Planning Scheme Shortfall
Child care	0.22 spaces per child	107 children	23	25	nil

The proposal meets the onsite parking requirement in terms of number of spaces provided.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

The application has been assessed against relevant provision of the Whittlesea Planning Scheme including the Child Care Policy (Clause 22.05). It is considered that the proposed use and development is premature, does not adequately accord with approved incorporated and development plans, is inadequately integrated with public transport and services and will have an adverse impact on the amenity of the area which occupies an urban-rural interface and gateway location. For the above reasons it is recommended that the application refused.

RECOMMENDATION

THAT Council resolve to Refuse Planning Application No. 715886 and issue a Refusal to Grant a Planning Permit for use and development of a child care centre at 290A and 310 Bridge Inn Road, Mernda on the following grounds:

1. The use and development is not in accordance with the Mernda Strategy Plan incorporated document which designates the area for low density development and requires that visually sensitive areas be protected by limiting building height and mass.

2. The use and development is not in accordance with the approved Fairview Development Plan approved pursuant Clause 43.04 (Schedule 27) of the Whittlesea Planning Scheme.
3. The proposal does not adequately demonstrate compliance with Clause 22.05 (Child Care Policy) of the Whittlesea Planning Scheme. In particular the proposal is:
 - a. Not located in reasonable proximity to other community facilities.
 - b. Not located in proximity to or adequately connected with existing or proposed public transport infrastructure.
 - c. Of a scale, mass and appearance that is not consistent with the existing and preferred character of surrounding land uses and streetscape.
 - d. Not designed to provide for safe and efficient vehicle and pedestrian movements.
4. The development will have a detrimental impact on the amenity of the residential area contrary to the decision guidelines at Clause 32.08 relating to non-residential uses, particularly in relation to the scale and intensity of the proposed development and having regard to the context of the land.
5. The proposal does not provide adequate space for refuse collection within the site; or for delivery vehicles to park, unload and leave the site in a forward direction without causing internal traffic and parking issues.
6. The development is inconsistent with State (Clause 15.01-1) and Local (Clause 21-08-1) frameworks relating to good urban design and does not have adequate regard to the context of the site within a gateway and rural-urban interface location.
7. The proposal is premature until such time as the existing subdivision permit relating to Stage 9 of the Estate has been extended or a new planning permit for subdivision granted, including resolution of subdivision conditions relating to design and development of lots.

COUNCIL RESOLUTION

MOVED: *Cr Kirkham*
SECONDED: *Cr Stow*

THAT Council resolve to defer this item to a future Council Meeting for further consideration.

CARRIED

6.2 COMMUNITY SERVICES

NIL REPORTS

6.3 CITY TRANSPORT AND PRESENTATION

6.3.1 NEW ZEALAND RECREATION ASSOCIATION CONFERENCE 2016 - REQUEST FOR APPROVAL FOR OFFICER TO ATTEND

File No: 147434

Responsible Officer: Director City Transport & Presentation

Author: Manager Parks and Open Space

REPORT

SUMMARY

This report requests approval for Council's Manager Parks and Open Space to attend the New Zealand Recreation Association (NZRA) Conference in Queenstown, New Zealand.

BACKGROUND

The 2016 NZRA Conference is being held in Queenstown, New Zealand from 9 - 11 November 2016. The theme of the 2016 conference is technology and sustainability. Council's Manager Parks and Open Space has been invited to present at the conference on protecting biodiversity through the City of Whittlesea's River Red Gum protection program. The presentation will include the history of River Red Gum protection and ongoing management within the municipality, and is recognition of Council's best practice approach to significant tree retention. The Manager, Parks and Open Space has been invited to present on the protection of River Red Gums within the City of Whittlesea and the ongoing management of these trees.

Under the Travel Policy, Council approval of overseas travel by officers is required.

PROPOSAL

Attendance by the Manager Parks and Open Space at the conference will provide an opportunity to promote Whittlesea City Council's approach to the protection of River Red Gums and share Council's experiences with other Local Government Authorities.

The visit to New Zealand is proposed to include an inspection of park and public realm regeneration in the Christchurch city centre following the 22 February 2011 earthquake.

CRITICAL DATES

The NZRA 2016 National Conference is being held from 9 to 11 November 2016.

FINANCIAL IMPLICATIONS

The cost of attending the conference, which includes travel and accommodation, is \$1,800.

POLICY STRATEGY AND LEGISLATION

This report is required under the Travel Policy.

LINKS TO THE COUNCIL PLAN

FUTURE DIRECTION	Living Sustainably
Theme	Environmental sustainability
Strategic Objective	We are an environmentally sustainable City

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the Local Government Act 1989 officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

Attendance at the conference will promote Whittlesea City Council’s approach to the preservation of River Red Gums and biodiversity values, and will also provide the officer with professional development opportunities.

RECOMMENDATION

THAT Council resolve to approve Council’s Manager Parks and Open Space to travel to New Zealand to attend the New Zealand Recreation Association Conference.

COUNCIL RESOLUTION

MOVED: *Cr Kelly*
SECONDED: *Cr Sinclair*

The above Recommendation was adopted unchanged as part of an en bloc Resolution Moved by Cr Kelly, Seconded by Cr Sinclair. See Section 6 - Officers' Reports for further information on items adopted en bloc.

CARRIED

6.4 CORPORATE SERVICES

6.4.1 ASSEMBLIES OF COUNCIL - 11 OCTOBER 2016

File No: 188199
Responsible Officer: Director Corporate Services
Author: Governance Officer

REPORT

SUMMARY

To report to Council the records of Assemblies of Councillors in accordance with Section 80A(2) of the *Local Government Act*.

BACKGROUND

The *Local Government Act 1989* requires records of Assemblies of Councillors to be reported to an ordinary Council meeting and recorded in the minutes of that meeting.

A meeting is an assembly of Councillors if it considers matters that are likely to be the subject of a Council decision or the exercise of a Council delegation and the meeting is:

- A planned or scheduled meeting that includes at least half the Councillors and a member of Council staff; or
- An advisory committee of Council where one or more Councillors are present.

A record must be kept of an assembly of Councillors which lists the Councillors and members of Council staff attending, the matters discussed, disclosures of conflict of interest and whether a Councillor left the meeting after making a disclosure.

PROPOSAL

Assemblies of Councillors records not previously reported to Council are detailed in the following table:-

Assembly Details	Councillor attendees	Officer attendees	Matters discussed
Council Forum 6 September 2016	Cr Kozmevski (Mayor) Cr Kelly (Deputy Mayor) Cr Alessi Cr Griffin Cr Harris Cr Kirkham Cr Lalios Cr Sinclair Cr Stow	CEO DCS DCRS DCTP DPMP DPE-A MOW MPC	1. Councillor Induction and Training Program. 2. Discussion of the Councillor and Staff Interaction Protocol. <i>Nil disclosures</i>
CEO Employment Matters Advisory Committee 6 September 2016	Cr Kozmevski (Mayor) Cr Kirkham Cr Lalios		Confidential Item CEO's performance <i>Nil disclosures</i>

Assembly Details	Councillor attendees	Officer attendees	Matters discussed
Arts Cultural and Sporting Grants Program for Young People 15 September 2016	Cr Kozmevski (Mayor) Cr Kelly (Deputy Mayor) Cr Kirkham Cr Pavlidis	MG-A	The advisory committee made a recommendation to the delegate regarding the following application via a virtual meeting: 1. Suzie Halabi – Sporting Grant – Overseas 2. Maxwell Tzambazis - Sporting Grant – Overseas <i>Nil disclosures</i>

The table below represents an Index of Officer titles:

Initials	Title of Officer	Initials	Title of Officer
CEO	Chief Executive Officer – Michael Wootten	DPMP	Director Planning & Major Projects – Steve O’Brien
DCS	Director Community Services – Russell Hopkins	MG-A	Acting Manager Governance - Colleen Lazenby
DCRS	Director Corporate Services – Helen Sui	MOW	Manager One Whittlesea – Sam Dureau
DCTP	Director City Transport and Presentation– Nick Mann	MPC	Manager People & Culture – Yvette Reardon
DPE-A	Acting Director Partnerships and Engagement – Sean McManus		

CONSULTATION

Consultation has taken place with internal Council Officer representatives of each of the meetings and committees that qualify as an Assembly of Councillors.

FINANCIAL IMPLICATIONS

There are no financial implications as a result of this report.

POLICY STRATEGY AND LEGISLATION

Section 3C(2)(g) of the *Local Government Act 1989* provides that one of Council’s facilitating objectives is to have regard to ensuring transparency and accountability in Council decision making.

Accordingly, section 80A of the *Local Government Act 1989* requires that the Chief Executive Officer must ensure that the written record of an assembly of Councillors is, as soon as practicable:-

- (a) reported at an ordinary meeting of the Council; and
- (b) incorporated in the minutes of that Council meeting.

LINKS TO THE COUNCIL PLAN

Future Direction	Good Governance
Theme	Continuous improvement
Strategic Objective	Best practice models of operation are adopted by Council
Council Goal	Council adopts best practice models of operation

The provision of this report is in line with the Future Direction 7 – Good Governance of Council’s Community Plan by ensuring Council adopts best practice models of operation.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the *Local Government Act 1989* officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

That Council note the record of the Assemblies of Councillors meetings in the table set out in the report.

RECOMMENDATION

THAT Council note the record of the Assemblies of Councillors meetings in the table set out in the report.

COUNCIL RESOLUTION

MOVED: *Cr Kelly*
SECONDED: *Cr Sinclair*

The above Recommendation was adopted unchanged as part of an en bloc Resolution Moved by Cr Kelly, Seconded by Cr Sinclair. See Section 6 - Officers' Reports for further information on items adopted en bloc.

CARRIED

6.4.2 ANNUAL REPORT 2015-2016**File No:** 195250**Attachments:** 1 **Annual Report 2015/2016** (distributed separately - refer to p.7)**Responsible Officer:** Director Corporate Services**Author:** Governance Officer**REPORT****SUMMARY**

The purpose of this report is to provide Council with an opportunity to consider the 2015-2016 Annual Report.

BACKGROUND

The 2015-2016 Annual Report summarises Council's operations for the year and outlines Council's performance against the Council Plan. It also provides audited performance and financial statements for the period 1 July 2015 – 30 June 2016.

In accordance with the *Local Government Act 1989*, public notice has been given that the Annual Report has been prepared and is available for inspection.

The report contains the following:

- A report of Council's operations during the financial year (Part 1);
- An audited performance statement for the financial year of results achieved against the prescribed performance indicators and measures and includes a copy of the Auditor-General's Report on the Performance Statement (Part 2);
- Audited financial statements, prepared in accordance with the Australian Accounting Standards and a copy of the Auditor-General's Report on the Financial Statements (Part 3).

SELECTED HIGHLIGHTS

The Annual Report provides detail on a broad range of activities undertaken during the year by Council on behalf of the community. A selection of the many highlights from the year includes:

- Several significant community festivals and events such as the Whittlesea Community Festival, Whittlesea and Hawkstowe music festivals and Australia Day celebrations.
- Victorian Government Interface Growth Funding of \$6 million which enabled:
 - Opening of Epping Community Services Hub;
 - development of Mill Park Lakes Reserve Sports Pavilion;
 - redevelopment of Barry Road Community Activity Centre;
 - a new tennis pavilion at Lalor Recreation Reserve; and
 - three new community playgrounds.
- More than 3600 residents received regular Home and Community Care services.

- Complementing Council’s ‘in-home’ services is a program of social activities, outings and exercise classes to keep people stimulated and engaged with their community.
- The *Community Building Strategy* was adopted and will see Council work to increase programs, services, community connections and local democracy.
- Earlier involvement of community in the budget process enabled 51 community submissions, with \$130,202 funding provided in community grants for 32 projects.
- Council endorsed the *Victorian Child Friendly Cities and Community Charter* which will guide decision-making around creating inclusive, child-friendly local environments that encourage participation by children and young people.
- Our young people have a voice directly through the *Youth Equity Strategy* to inform Council’s Departments about youth services, and issues and things that matter to young people.
- Council adopted the first *Arts Development Strategy*.
- Our commitment to multicultural harmony and support saw the adoption of an *Asylum Seeker Policy* and *Anti-Racism Strategy*.

CONSULTATION

Copies of the Annual Report were made available at the Council Offices and at the Yarra Plenty Regional Library Branches of Lalor, Thomastown, Mill Park, and Whittlesea. A copy was also published on Council’s website at www.whittlesea.vic.gov.au.

CRITICAL DATES

Public notice has been given that copies of the Annual Report are available for inspection and that it will be considered by Council at this meeting.

FINANCIAL IMPLICATIONS

The Annual Report was produced within approved budget allocations.

POLICY STRATEGY AND LEGISLATION

A copy of the Annual Report including the Audited Performance Statement and Financial Statements has been forwarded to the Minister for Local Government in accordance with Section 131 (6) of the Local Government Act 1989.

LINKS TO THE COUNCIL PLAN

FUTURE DIRECTION	Good Governance
Theme	Continuous improvements
Strategic Objective	Council adopts best practice models of operation

The Annual Report promotes open and transparent government by reporting Council’s operations.

DECLARATIONS OF CONFLICTS OF INTEREST

Under section 80C of the *Local Government Act 1989* officers providing advice to Council must disclose any interests, including the type of interest.

The Responsible Officer reviewing this report, having made enquiries with the relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

CONCLUSION

It is recommended that the 2015-2016 Council Annual Report be received and noted.

RECOMMENDATION

THAT Council resolve to receive and note the 2015-2016 Annual Report in accordance with Section 134(1) of the *Local Government Act 1989*.

COUNCIL RESOLUTION

MOVED: *Cr Kirkham*
SECONDED: *Cr Lalios*

THAT Council resolve to adopt the Recommendation.

CARRIED

6.5 PARTNERSHIPS & ENGAGEMENT

NIL REPORTS

6.6 EXECUTIVE SERVICES

NIL REPORTS

7. NOTICES OF MOTION

NIL REPORTS

8. QUESTIONS TO OFFICERS

NIL

9. URGENT BUSINESS

NIL

10. REPORTS FROM DELEGATES APPOINTED TO COUNCIL BY OTHER BODIES

10.1 WHITTLESEA RECONCILIATION GROUP

Cr Pavlidis provided an overview of a recent meeting of the Whittlesea Reconciliation Group when the following items were discussed:

- Annual planning meeting.
- Group is working towards a more strategic approach to their activities.

COUNCIL RESOLUTION

MOVED: *Cr Kelly*
SECONDED: *Cr Sinclair*

THAT Council resolve to note the Delegate's report.

CARRIED

Cr Spinelli entered the Council Chamber at 06:51 PM.

10.2 WHITTLESEA RECONCILIATION GROUP

Cr Kelly provided an overview of a recent meeting of the Whittlesea Reconciliation Group when the following items were discussed:

Terms of reference discussed

- Expressions of Interest for Members.
- Group would like to be more involved in naming of places.
- Would like to involve other communities and cultures in events.

COUNCIL RESOLUTION

MOVED: *Cr Pavlidis*

SECONDED: *Cr Spinelli*

THAT Council resolve to note the Delegate's report.

CARRIED

11. QUESTIONS TO COUNCILLORS

NIL

12. CONFIDENTIAL BUSINESS

12.1 PLANNING AND MAJOR PROJECTS

NIL REPORTS

12.2 COMMUNITY SERVICES

NIL REPORTS

12.3 CITY TRANSPORT AND PRESENTATION

**12.3.1 SUPPLY AND DELIVERY OF TWO SUCTION ROAD SWEEPERS -
TENDER EVALUATION - CONTRACT 2014-2Z13**

**12.3.2 SUPPLY AND DELIVERY OF ONE TRACTOR WITH REACH MOWER -
FINALISATION REPORT - CONTRACT 2016-8Z1**

12.4 CORPORATE SERVICES

NIL REPORTS

12.5 PARTNERSHIPS & ENGAGEMENT

NIL REPORTS

12.6 EXECUTIVE SERVICES

**12.6.1 MEETINGS OF THE CHIEF EXECUTIVE OFFICER - 12 SEPTEMBER 2016
TO 30 SEPTEMBER 2016**

COUNCIL RESOLUTION

MOVED: *Cr Stow*
SECONDED: *Cr Sinclair*

THAT Council resolve to close the meeting to members of the public for the purpose of considering details relating to the confidential matters above in accordance with Section 89(2) of the Local Government Act 1989 as follows:

12.3.1 SUPPLY AND DELIVERY OF TWO SUCTION ROAD SWEEPERS - TENDER EVALUATION - CONTRACT 2014-2Z13
Confidential in accordance with Section 89(2)(d) of the Local Government Act 1989.

12.3.2 SUPPLY AND DELIVERY OF ONE TRACTOR WITH REACH MOWER - FINALISATION REPORT - CONTRACT 2016-8Z1
Confidential in accordance with Section 89(2)(d) of the Local Government Act 1989.

12.6.1 MEETINGS OF THE CHIEF EXECUTIVE OFFICER - 12 SEPTEMBER 2016 TO 30 SEPTEMBER 2016
Confidential in accordance with Section 89(2)(h) of the Local Government Act 1989.

CARRIED

ACCORDINGLY, THE MEETING WAS CLOSED TO THE PUBLIC AT 6.56 PM.

THE MEETING WAS RE-OPENED TO THE PUBLIC AT 7.03PM.

13. CLOSURE

THERE BEING NO FURTHER BUSINESS THE MAYOR DECLARED THE MEETING CLOSED AT 7.03PM.

CONFIRMED THIS 22 DAY OF NOVEMBER 2016.

CR.
MAYOR