

AGENDA

SECTION 86 DEVELOPMENT ASSESSMENT COMMITTEE MEETING

Wednesday 15 May, 2019
Council Chambers
15 Stead Street, Ballan
6.30pm

MEMBERS

Cr. Paul Tatchell (Mayor)	Councillor – Central Moorabool Ward
Cr. John Keogh (Deputy Mayor)	Councillor – East Moorabool Ward
Cr. Jarrod Bingham	Councillor – East Moorabool Ward
Cr. Tonia Dudzik	Councillor – East Moorabool Ward
Cr. David Edwards	Councillor – East Moorabool Ward

OFFICERS

Mr. Derek Madden	CEO
Mr. Satwinder Sandhu	General Manager, Community Planning
Mr. Rob Fillisch	Manager Statutory Planning and Community Safety
Mr. Ewen Nevett	Manager Engineering Services
Ms. Bronwyn Southee	Coordinator Statutory Planning
Mrs. Jacquie Younger	Executive Assistant to General Manager Community Planning and Minute Taker

Item	Title	Responsibility	Page No.	Action
1.	Welcome, Present and Apologies	Chair		Noting
2.	Recording of Meeting	Chair		Noting
3.	Meeting Minutes	Chair		Noting
3.1	Confirmation of previous minutes 17 April, 2019			Resolution
4.	Conflict of Interest	Chair		Noting
5.	Growth & Development Reports	S. Sandhu		Discussion
5.1	Planning Permit Application PA2018 137 – 331 Lot Subdivision, Creation, Variation and Removal of Easements, Removal of Vegetation, and Building and Works within ES02 at 174 Moretons Road, Pentland Hills.	M. Lovell	Page 3	Resolution

5.2	Planning Permit Application PA2018 346 – Variation of Restrictive Covenant AJ565132E item (k) to allow construction of an outbuilding 30.0m x 12.0m x 4.2m high to the eaves at 12 View Gully Road, Hopetoun Park	T. Tonkin	Page 24	Resolution
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6.	Update on Trends, Issues and Other Matters	S. Sandhu	Discussion
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7.	Update of VCAT Decisions	Chair	Resolution
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8.	Date of Next Meeting	Chair	Noting
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8.1 Wednesday 19 June, 2019
6.00pm
North Wing Room 2 & 3
Darley Civic and Community Hub,
182 Halletts Way, Darley

9.	Meeting Close	Chair	Noting
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GROWTH & DEVELOPMENT REPORTS

Item 5.1 Planning Permit Application PA2018 137 – 331 Lot Subdivision, Creation, Variation and Removal of Easements, Removal of Vegetation, and Building and Works within ES02 at 174 Moretons Road, Pentland Hills.

Application Summary:	
Permit No:	PA2018 137
Lodgement Date:	1 June, 2018.
Application in Process lodged:	2 November, 2018
Planning Officer:	Mark Lovell
Address of the land:	'Underbank' - Lot S7 on Plan of Subdivision 725408Y 174 Moretons Road, Pentland Hills
Proposal:	331 lot subdivision, creation, variation and removal of easements, removal of vegetation and building and works within ES02.
Lot size:	117.30 hectares - Lot S7 62.44 hectares - Development site
Why is a permit required?	Clause 32.08-3 - Subdivide land Clause 42.01-2 - Building and works within Environmental Significance Overlay Schedule 2 Clause 42.01-2 - Subdivide land Clause 52.02- Create or vary an easement Clause 52.17 - Remove native vegetation
Reason for being presented to S86 Development Assessment Committee.	Council has requested that any application within Stonehill and Underbank Estates that are not generally in accordance with the approved Development Plan be referred to Council for determination. The subject application is proposing a number of variances to lot sizes, road alignments and public open spaces compared to the development plan approved under Development Plan Overlay Schedule 6.
Public Consultation	
Was the application advertised?	No, exempt from the notice provisions.
Notices on site:	No
Notice in Moorabool Newspaper:	No
Number of Objections:	No objections received.
Consultation Meeting:	Yes. There have been meetings with the permit applicant advising of various concerns.

Policy Implications	
Strategy Objective 2:	Stimulating Economic Development
Context 3A:	Land Use Planning
Victorian Charter of Human Rights and Responsibilities Act 2006	
<p>In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.</p>	
Officer's Declaration of Conflict of Interests	
<p>Under section 80C of the Local Government Act 1989 (as amended), officers providing advice to Council must disclose any interests, including the type of interest.</p> <p><i>Manager – Robert Fillisch</i></p> <p>In providing this advice to Council as the Manager, I have no interests to disclose in this report.</p> <p><i>Author – Mark Lovell</i></p> <p>In providing this advice to Council as the Author, I have no interests to disclose in this report.</p>	
Executive Summary	
Application Referred?	Yes, Southern Rural Water, Western Water, Melbourne Water, Transport Victoria, Powercor Australia, Country Fire Authority, Downer Utilities, DELWP, Council's Infrastructure and Council's Strategic Sustainable Development departments.
Any issues raised in referral responses?	Melbourne Water objected to the proposal on 27 July 2018 and required further additional information which was provided, however its concerns regarding the encroachment of development into sensitive areas as identified in its reports and policies were not resolved and therefore its original objection to the application stands in part.
Preliminary concerns?	Yes, concerned with the layout and outcomes not being generally in accordance with the development plan this including road layout variations, public open space design variations, lot size reduction, and the risk of reduction of the full sized football oval to a junior oval.
Any discussions with applicant regarding concerns?	Yes, several meetings held with the applicant's representatives including on site meetings.

Any changes made to the application since being lodged?	Yes, the application in process was lodged on 2 November, 2018. The Version 6 plans relocated trails and the pedestrian crossing, provided dimensions to the football oval and reduced Lot B to provide direct access to the park.
Brief History	The subject site is vacant residential land that is expected to be developed into residential estate with associated public open spaces and commercial facilities in accordance with the endorsed Underbank Development Plan.
Previous applications for the site?	A number of subdivision permits have been issued for the earlier stages of Underbank Estate.
General Summary	<p>The site is vacant land on undulating terrain with natural waterways. The site presents a unique opportunity to develop a site with distinct views and to retain natural environmental features with the Werribee River forming the southern boundary and historic features including Aboriginal Heritage.</p> <p>The proposal represents a significant departure from the development plan approved under the Development Plan Overlay Schedule 6. The lot sizes proposed are smaller (both in size and required frontage), the number of lots more intensive, the legibility and suitability of the road network compromised, and public open spaces have been relocated to the edges of the sites boundaries which will provide for poor internal amenity for future residents.</p> <p>The applicant has been given ample time to resolve Council's concerns but is only willing to make minor changes/concessions to its plans which is considered would cause detriment to any future community to be located there and also unreasonable maintenance requirements for Council.</p>
Summary Recommendation	
That, having considered all relevant matters as required by the Planning and Environment Act 1987, Council issue a refusal to grant a permit for a 331 lot subdivision, creation, variation and removal of easements, removal of vegetation and building and works within ES02 for the land at Lot S7 on Plan of Subdivision 725408Y, known as 174 Moretons Road, Pentland Hills.	

Site Description

The subject site is located on the northern side of the Werribee River and the eastern side of Moreton Road, Pentland Hills. The lot known as Lot S7 is comprised of two (2) parts with a total lot area of 117.3 hectares. Korkuperrimul Creek traverses the lot in a north-south direction near the eastern boundary of the site. The land is undulating with some low points near waterways and some high points near the western property boundary. The site was formerly used as a horse training facility called Underbank Farm. There are still the remnants of the facility, internal fencing and some of the metal stables building located in the south-east corner of the land. The subdivision is intended to connect Adelong Way which is under construction

in the adjacent stage of Underbank Estate to a roundabout in Halletts Way. There are a scattering of trees throughout the site, however most of the site is grasslands. The significant Phar Lap tree is located in the south-east of the site, this is required to be retained due to its historic value.

Proposal

The applicant is proposing to subdivide land in 331 lots.

The breakup of lot sizes for this stage of Underbank Estate are as follows:

Lot Size	Number of lots	% of total lots
Less than 300m ²	0	0
300m ² -400m ²	9	2.72
400m ² -500m ²	123	37.16
500m ² -600m ²	99	29.90
600m ² -700m ²	46	13.90
700m ² +	45	13.60
Super lots	9	2.72
TOTAL	331	100

This subdivision will be known as Stages 9 to 20 of the Underbank Estate.

The stage break up of lots sizes and lot widths area not including the super lots as follows. The column emphases are lots greater than 700m² in area and lot with a minimum frontage width of 16 metres.

Stage Number	No of lots less than 700m ²	% of stage lots	No of lots greater than 700m ²	% of stage lots	No of lot frontage less than 16 metres	% of stage lots	No of lot frontage greater than 16 metres	% of stage of lots
9	24	100%	0	0%	20	83.33%	4	16.66%
10	50	100%	0	0%	40	80.00%	10	20.00%
11	28	100%	0	0%	14	50.00%	14	50.00%
12	26	100%	0	0%	10	38.46%	16	61.53%
13	29	76.31%	9	23.68%	24	63.15%	14	36.84%
14	18	72.00%	7	28.00%	18	72.00%	7	28.00%
15	27	81.81%	4	18.19%	17	51.57%	14	42.42%
16	22	95.65%	1	4.35%	2	8.69%	21	91.31%
17	19	63.33%	11	36.66%	7	23.33%	23	76.66%
18	23	100%	0	0%	1	4.35%	22	95.65%
19	11	45.83%	13	54.16%	0	0%	24	100%
TOTAL	277	86%	45	14%	153	48%	169	52%

The applicant has stated they are seeking approval to create, vary or remove easements but have not provided plans in support of this as they are awaiting on responses and negotiations with various service authorities.

The applicant is also proposing to remove native vegetation consisting of a small patch of remanent vegetation totalling 0.017 hectares and 38 scattered trees with combined area of 1.906 hectares.

The applicant is also proposing to undertake building and works within the Environmental Significance Overlay Schedule 2. No development plans specific to the smaller lots have been submitted. However as with previous stages of the Underbank Estate it will prevent the future

land owner from having to apply for separate planning permit for single dwellings on single lots greater than 300m² in area. This will promote the orderly planning of the area.

Background to Application

A development plan for the Underbank Estate was approved by Council on 16 September, 2017 in accordance with Schedule 6 to the Development Plan Overlay. The vision for the development plan is that Underbank would be built around a series of walkable neighbourhoods, each with its own unique character, providing a range of housing typologies within walking distance of community facilities to cater to the needs of residents whilst highlighting and protecting existing heritage assets on site.

History

PA2011170 was issued on 11 May, 2012 for staged subdivision of land in accordance with the endorsed plans.

PA2016266 was issued on 31 August, 2017 for land sales signage.

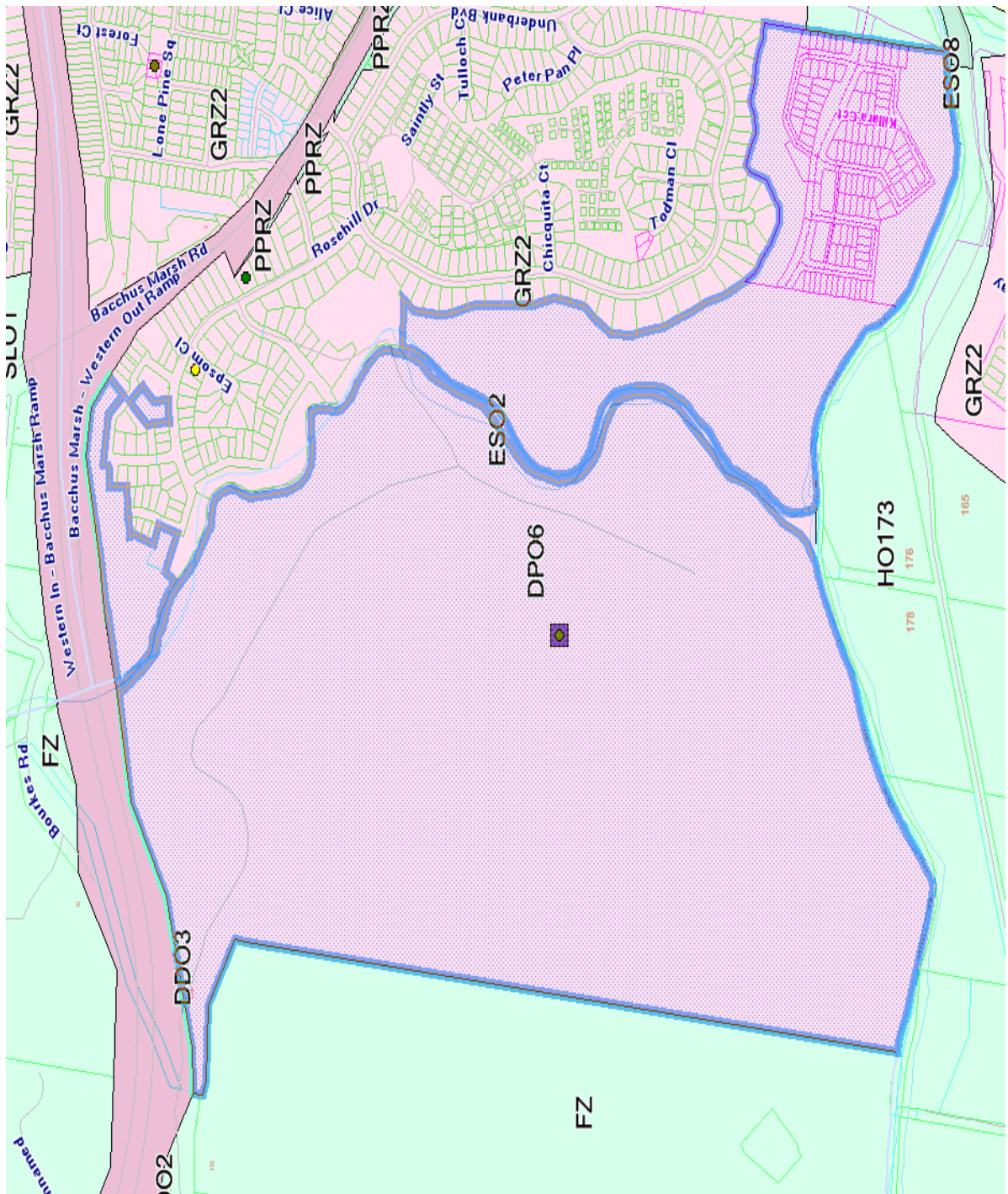
Following the approval of the development plan, PA2017043 was issued on 26 September, 2017 for a staged subdivision, variation of an easement and associated works. This subdivision consisted of 110 lots and was known as Stages 5 to 8 of the Underbank Estate. The permit was amended on 9 August, 2018 to amend the permit preamble to being from a staged subdivision, variation of an easement and associated works and building and works in accordance with ES02. The plans were amended under the secondary consent provisions on 24 August, 2018 altering the staging plan. See Aerial Photography.

Public Notice

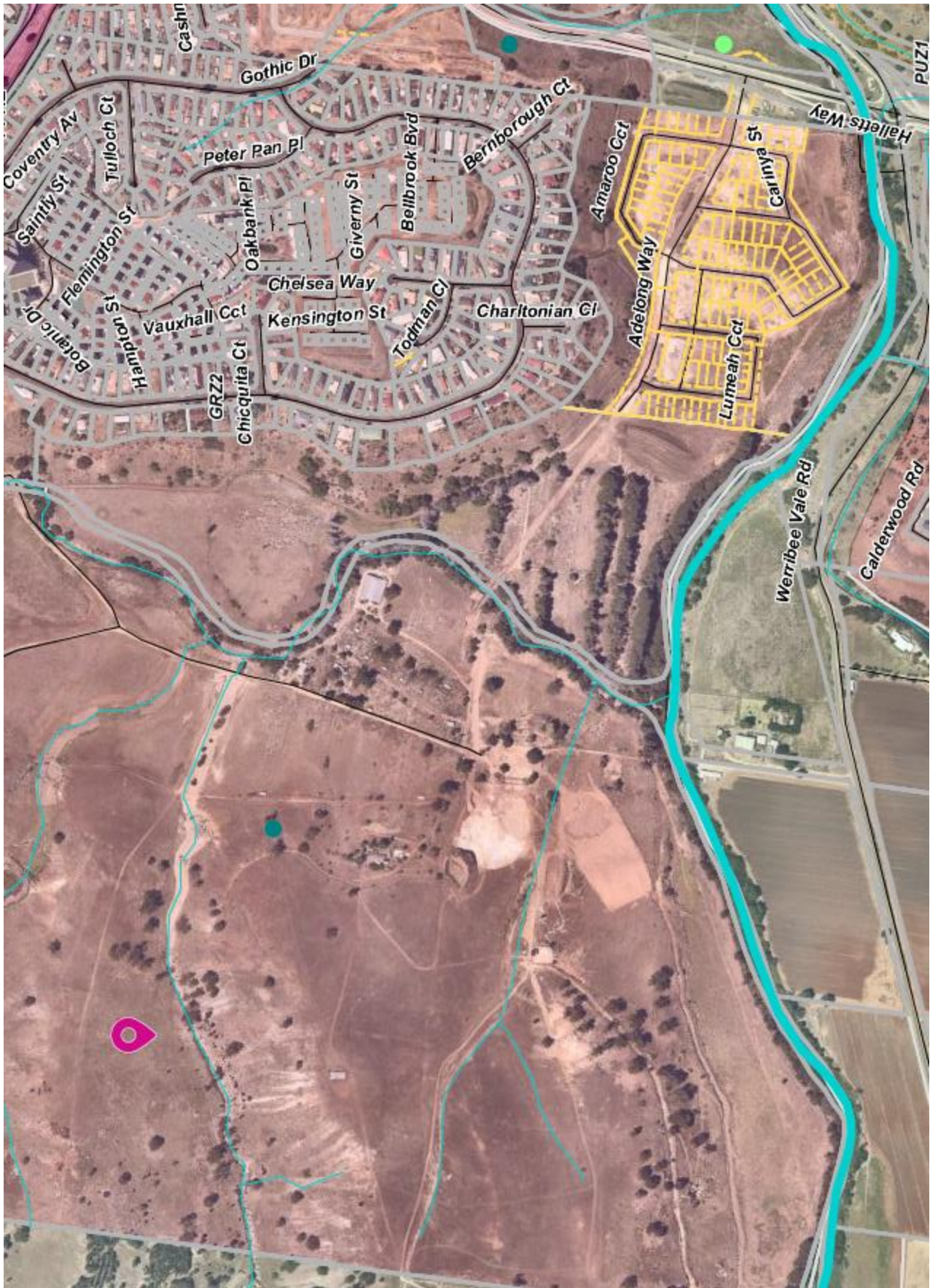
The application was considered exempt from the notice provisions in accordance with Development Plan Overlay Schedule 6.

Locality Map

The map below indicates the location of the subject site and the zoning of the surrounding area.



Area coloured yellow is the approved Underbank Stages 5 to 8.



Plan of Subdivision

Item	Size	River View Planning application
Development Plan (River View portion)	62.4ha (DPR never assigned areas for this project, so assigned areas as design)	62.4ha
Site Area	34.9ha	20.07ha
Developable area	3ha	3ha
Active Open Space (sports fields)	3.42ha	3.64ha
Open Space (recreation and creek environs)	17.3ha (W/M)	21.3ha
Neighbourhood Lot (Block 725m Contour)	Lot Area Generally in the order of 400m ²	Lot Average size 465m ² (excluding those lots which will be subject to future planning applications)
Conventional Lots with slopes Greater than 1:10	Minimum lot sizes generally in the order of 700m ²	N/A, no lot have a slope greater than 1:10
Conventional Lots with slopes Less than 1:10	Lots less than 700m ² permitted	Average lot size 613m ²
Rural Interiors Lots	Larger blocks of sensitive interiors and steep land, Lot size not specified in development plan	Average (6) 1426 1025m ²
Neighbourhood C: Frontage Width	Lots will typically have a minimum frontage of 16m	Lot Average Frontage 16.96m (excluding future reserves which will be subject to further planning applications)



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02/11/17 | RV 6 | DENSITY
01/11/16
RAB DRAFT

UNDERBANK

'Underbank' via Halletts Way
Bacchus Marsh
Moorabool Shire Council

DENSITY
PLAN ANALYSIS

5.2 Objectives & Principles

The Underbank Master Plan is based on a more traditional neighbourhood design approach. These principles look to respond to the natural features and context of the site to allow for the identity of Underbank to develop organically and grow over time.

These core principles have informed the master plan for Underbank, resulting in a holistic design approach that will create a distinct village character that responds to the natural features of the site.

In order to realise the vision for Underbank as a vibrant residential community, the following key principles and objectives have been considered:

- **Identity & Character:**
 - Encourage a high standard of contemporary built form and landscape outcomes;
 - Local parks to provide focal points and destinations, and look to enhance safety and interaction;
 - Utilise creek environs as community asset.
- **Compact & Walkable Neighbourhoods:**
 - Ensuring all residents are within a five minute walk to open space;
 - Neighbourhoods have a discernible centre (park/community facility) with clearly defined edges via landscape features and creek environs;
 - Ensuring the majority of residents are within a 10min walk of community facilities;
- **Connected Street Network:**
 - Creating a permeable thoroughfare network;
 - Pedestrian-friendly - designed to allow for pedestrians, cyclists and public transport;
 - Integrate with the surrounding road and pedestrian network;
- **Site Responsive:**
 - Master planning that responds to site opportunities and constraints;
 - A street layout that responds to the slope and creek environs;
 - Range of lot sizes that respond to site features and propose uses.
- **Open Space & Environment:**
 - Create a diversity of open space types to provide for a range of active and passive recreational opportunities;
 - Enhance and rehabilitate degraded creek environs to form part of the landscape;
 - Avoid development along escarpments;
- **Variety:**
 - To provide for a range of lot sizes and styles to contribute to diversity;
 - Incorporate a range of public facilities to encourage community integration;
 - Identify opportunities for community facilities subject to local demand.



Figure 30: Indicative Development Plan

Comparative view of both the development plan and the subdivision plan



Figure 1: Approved Development Plan



Figure 2: Proposed Plan of Subdivision

Planning Scheme Provisions

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- Clause 11.01-1R Settlement Central Highlands.
- Clause 11.02-1S Supply of urban land.
- Clause 11.03-3S Peri-urban areas.
- Clause 12.01-2S Native Vegetation Management.
- Clause 12.05-2R Landscapes Central Highlands.
- Clause 15.01-3S Subdivision Design.
- Clause 15.01-5S Neighbourhood Character.
- Clause 16.01-2S Locational of Residential Development.
- Clause 18.02-2S Public Transport.
- Clause 19.03-2S Infrastructure Design and Provision.
- Clause 19.03-3S Integrated Water Management.
- Clause 21.03-2 Urban Growth Management.
- Clause 21.03-3 Residential Development.
- Clause 21.03-4 Landscape and Neighbourhood Character.
- Clause 21.07-2 Bacchus Marsh.

Zone

The subject site is in the General Residential Zone, Schedule 2 (GRZ2).

The purpose of the Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

Under Clause 32.08-3, a permit is required to subdivide land. An application to subdivide land must meet the relevant requirements of Clause 56 for a residential subdivision.

Clause 32.08-3 states an application to subdivide land that would create a lots less than 400 square metres capable of a development for a dwelling must ensure the vacant lot contains at least 25 percent as garden space. This does not apply to a lot created in accordance with an approved development plan. With an approved development plan under the Development Plan Overlay Schedule 6, the garden space provisions do not apply.

Decision guidelines are listed under Clause 32.08-12. Under the subdivision section has the following decision guidelines:

- The pattern of subdivision and its effect on the spacing of buildings.
- For subdivision of land for residential development, the objectives and standards of Clause 56.

With reference to Schedule 2, the neighbourhood character objectives are:

- To encourage new development, including innovative and unique development that enhances and responds positively to the existing neighbourhood character.
- To encourage an increase in landscaping within the public and private realm.
- To encourage new development to respect existing setbacks within the streetscape.
- To encourage new development to have minimal or low scale front fencing.
- To ensure garages, carports, and second storey development do not visually dominate dwellings or streetscapes.

Overlays

Development Plan Overlay Schedule 6

Pursuant to Clause 43.04-1 of the Moorabool Planning Scheme a permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority. This does not apply if a schedule to this overlay specifically states that a permit may be granted before a development plan has been prepared to the satisfaction of the responsible authority.

A permit granted must:

- Be generally in accordance with the development plan.
- Include any conditions or requirements specified in a schedule to this overlay in accordance with the Development Plan.

The objectives of Schedule 6 of the Development Plan Overlay are:

- Planning for residential and associated development in a logical, cost effective and sequential manner.
- Efficient use of infrastructure, and land, and management of any impacts on the environment and amenity.
- Identification and effective management of sites of environmental, heritage and landscape significance.
- Co-ordinated provision of utility services and drainage.
- Co-ordinated provision of physical and community infrastructure and public open space that enhances the amenity, safety and liveability of the precinct and surrounds.
- Preparation of an integrated development plan generally in accordance with the Underbank Farm Concept Plan shown in Clause 5.0 of this Schedule.

Environmental Significance Overlay Schedule 2

This overlay covers waterways protection. The objectives under Part 2.0 are:

- To protect the habitat significance of vegetation.
- To provide for appropriate development of land within 100 metres of either side of a waterway.
- To prevent pollution and increased turbidity of water in natural waterways.
- To prevent increased surface runoff or concentration of surface water runoff leading to erosion or siltation of waterways.
- To conserve existing flora and fauna habitats close to waterways and to encourage generation and regeneration of habitats.

A permit is required under Clause 42.01-2 to subdivide land. Decision guidelines are listed Schedule 2 Part 4.0.

Council has previously issued a permit to approve lots affected by ESO2 as the only trigger as much of the ESO2 concerns have been resolved through a previous planning process.

Relevant Policies

Housing Bacchus Marsh to 2041

Council has prepared a housing strategy called Housing Bacchus Marsh to 2041, to address how it will manage growth pressures and preserve important neighbourhood character into the future. Bacchus Marsh has been specifically identified in Plan Melbourne and the Central Highlands Regional Growth Plan as a suitable location to accommodate growth.

Key reasons for this strategic direction relate to Bacchus Marsh's regional service centre role, its relative accessibility to Melbourne, Geelong and Ballarat, its well established town centre and the availability of greenfield and infill development opportunities. Housing Bacchus Marsh 2041 is one of several key projects that will be inputs into the preparation of Moorabool 2041.

Particular Provisions

Clause 52.02 Easement, Restrictions and Reserves

A permit is required before a person proceeds:

- Under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.
- Under Section 24A of the Subdivision Act 1988.
- Under Section 36 of the Subdivision Act 1988 to acquire or remove an easement or remove a right of way.

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

Clause 52.17 Native Vegetation

Under Clause 52.17-2 a permit is required to remove, destroy or lop native vegetation, including dead native vegetation. Decision guidelines are listed under Clause 52.17-5. This part of the estate has no native vegetation removal.

Clause 53.01 Public Open Space Contribution and Subdivision

A person who proposes to subdivide land must make a contribution to Council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the Subdivision Act 1988. The applicant is providing more than 5% of the total land area as public open space. This contribution sits separately to the Development Contribution's required through the agreed Section 173 Agreement.

Discussion

Lot Arrangement and Subdivision Pattern

The lots are generally rectangular in shape and either follow a north-south axis or east-west axis which is typical of a grid streetscape pattern. There are, however, some proposed lots at the northern and southern aspects that encroach into the escarpments. In these areas, officers understand that the applicant's intent is to have dwellings constructed in the front part of the land and private open spaces in the sloping part of the land. On these lots, back fences would act as the border between the subdivision and remaining parts of the escarpments. The proposed subdivision includes a main connector road running in an east to west direction and a new south to north road to connect to further stages of Underbank. Compared to the approved development plan, the east-west road has introduced a T-intersection and a bend in the roadway around super Lot E.

In the approved development plan, the connector road was intended to be constructed to a width of 26.5 metres and to serve a function as a boulevard with a central landscape strip separating two way vehicle traffic. The connector road through the proposed subdivision has been reduced in width from 26.5 metres to 24 metres which could lead to the loss of the boulevard road arrangement. Reinstating the width of the connector road to 26.5 metres width in accordance with the development plan will affect the lengths of lots immediately adjacent to this roadway.

A further key concern with the subdivision pattern is the lack of a perimeter road around the subdivision as illustrated in the approved development plan. The perimeter road was intended to allow dwellings to face and have an outlook to public open spaces (either encumbered or unencumbered) and to allow for ease of maintenance of public areas. Having rear fences adjacent to public open spaces is a poor design response.

Development Plan Overlay Schedule 6 and Lot Densities

The core principles outlined in the approved development plan informed the Master Plan for Underbank, resulting in a holistic design approach that will create a distinct village character that responds to the natural features of the site. This section of the estate was spilt into Neighbourhoods A and C.

Neighbourhood A follows the creek corridor with residential lots identified as 'Neighbourhood Lots' being lots with the minimum size generally in the order of 400m² except where lots are close to amenities. This is the flattest section of the site and will be the central focal point of the estate with the creek corridor and walking trails, retention of the historic stables building and retention of the Phar Lap tree. Neighbourhood A is also intended to be developed possible future town centre and community facilities. The applicant has illustrated the super lots in this area which allow for higher residential densities and some mixed uses. This part of the site has convenient access to local park 1, local park 2 and local park 3. The subdivision is considered to accord with the approved development plan in this neighbourhood precinct.

Neighbourhood C covers most of the subject land. According to the approved development plan, the residential lots in this neighbourhood are identified as either 'Rural Interface Lots' being the lots adjacent to the western property boundary or 'Conventional Lots' being all other lots within this part of the estate. The approved development plan provides that 'Rural Interface Lots' are intended to be larger blocks at sensitive interfaces on steeper land for a less urban experience. 'Conventional Lots' are areas where the minimum lot sizes are generally in the order of 700m² with a minimum lot width of 16 metres except for flatter parts of the land which can have higher densities. Contrary to this, the subdivision proposes a high proportion of smaller lot sizes predominately around 400-600m² in area and some lots less than 16 metres in frontage width.

Only 13.6% of the lots are 700m² in area or above. The applicant has advised that due to the site constraints and consequent subdivision costs providing lots in accordance with the approved development plan, would not result in a viable residential estate.

The intent of this estate as approved under the development plan was to achieve a diversity of lots sizes catering to different household structures while also providing for seamless integration with existing residential and rural interfaces with the lot sizes addressing the varying topography throughout the site. Council has already supported smaller lots sizes and smaller lot widths of between 10 and 16 metres in width in the River Edge part of the estate (Stages 5 to 8) in accordance with Neighbourhood B. Neighbourhood C was identified to provide larger lots. Permitting the development of small lots in Neighbourhood C will create a dense residential estate and result in poorer levels of amenity to future residents. While higher densities will be appropriate in Neighbourhood A including attached townhouses, row housing and multi-level apartments, this needs to be offset by larger lot sizes and generous private open spaces within Neighbourhood C. Neighbourhood C is comprised of undulating terrain and this will lead to site cuts and the creation of retaining walls which further reduces the development potential of each lot. Based on the slope analysis, maps within the approved development plan a majority of Neighbourhood C has a slope greater than 10%. Having small lots on undulating terrain will result in overdeveloping small lots, promoting boundary walls, reducing side setbacks and creating minimal and unsuitable secluded private open space areas on sloping land. Collectively, such a dwelling pattern will provide for low levels of internal amenity.

In addition, the approved development plan required rural interface lots immediately adjacent to the western property boundary to Neighbourhood C. These are described as larger blocks at sensitive interfaces for a less urban experience. It would be expected that these lots would be greater than 1000m² to create an appropriate transition to the rural environment at the western boundary of the site. Except for lots facing the southern escapement and northern sloped area, lots sizes are between 590m² and 690m² in this part of the land, sizes which are typical of a standard urban residential lot. These lots sizes reflect the remaining parts of Neighbourhood C creating a lack of clear transition from Conventional Lots to the Rural Interface Lots. Small lots at the interfaces with Farming Zone land is a poor design response.

Neighbourhood precincts and housing densities were carefully considered in the design response to the approved development plan. The applicant has made some minor changes and has considered removing one of the super lots adjacent to the new public open space reserve in Neighbourhood C. Such changes do not address the key neighbourhood character elements that were carefully considered during the Development Plan phase and it is considered that the subdivision design response still represents a significant departure from the approved development plan.

Easements

The applicant has sought permission to create, vary or remove easements without knowing which easements are to be altered. The applicant has requested planning approval be granted and then easement will be clarified during the certification stage. This is not a correct way of dealing with the permit trigger. Without knowing which easement will be impacted by the subdivision, the beneficiaries of the easement/s or relevant authorities may not be aware of the application and provided with an opportunity to provide input. The applicant has not undertaken the appropriate level of pre-application discussion to fully determine whether existing easements are no longer required or what new easements are required to service the new subdivision. This component of the application cannot be approved in its current form.

Native Vegetation

The applicant proposes to remove a small patch of remanent vegetation totalling 0.117 hectares and 38 scattered trees. A Biodiversity Assessment has been prepared. The native vegetation achieved a detailed assessment pathway. To offset the removal of native vegetation, 0.441 general habitat units has been calculated using NVIM tool and will include planting of 24 trees within the Port Phillip and Westernport Catchment Authority area or within the Moorabool Shire Council area. DELWP who are determining referral authority under Clause 66.02-2 had no objection to the offset arrangement subject to eight conditions. To remove native cannot be avoided due to the extent of subdivision and associated development works. The proposal is considered to comply with the objectives of Clause 52.17.

Environmental Significance Overlay

Eight residential lots and two (2) super lots are partially covered by the Environmental Significance Overlay Schedule 2. To prevent a requirement for future land owners to apply for separate building and works planning permit within this overlay, the current application can include a request for permission for works within the overlay. Environmental Significance Overlay Schedule 2 covers waterways protection and relevant waterway authorities were notified of the application.

Public Open Spaces

Public open spaces have been largely created to follow the environs surrounding Koruperrimul Creek and the Werribee River. The applicant has advised that 3 hectares will be occupied by parks, 3.64 hectares by active open space consisting of the sports precinct and by 21.31 hectares as open space consisting of the escarpment and creek area. One key difference between the proposed subdivision and the approved development plan is a central park which has been removed and replaced with linear park that connects to the southern open space corridor. The effect of this change is that public open spaces are concentrated to the eastern and southern lot boundaries with the residential lots occupying the bulk of the north and western sections of the site. As with any new estate, the subdivision design is about providing well located public open space within easy walking distances of residences and key services. Due to the undulating terrain, close proximity to public open space is crucial to the subdivision layout. While the proposed subdivision provides more public open space particularly adjacent to the waterways, it has reduced access to public open space for passive recreational purposes in the remaining part of estate. This represents an inappropriate subdivision design response and will provide for poor amenity for future residents.

The approved development plan identified the retained Underbank Stables located in the north-east corner of the subdivision together with the heritage Pharlapp Tree within one local park. The subdivision proposes to move the collector road to the south with the effect of spilling these items, the Stables building being to the northern side of the road and the Pharlapp tree to the southern side of the road. Both of these sites are expected to be well used by the local community. Splitting them by a major roadway may create potential pedestrian safety conflicts and result in a poor design outcome.

Sports Oval

In accordance with a Section 173 Agreement registered on title, the applicant has provided a full sized football oval located near the main east to west roadway and to the eastern side of the subject land. There have been some initial concerns with the orientation of the oval and size which needs to be an AFL sized football oval. The applicant has had extensive discussions with Melbourne Water which has permitted to move the oval closer to the river due to the altered road alignment impacted by the escarpment. The sports oval meets Council's minimum requirements.

Escarpements

There are two (2) significant escarpments known as the southern escarpment and the eastern escarpments. Both escarpments have been identified through the technical report as a high risk of rock falls and landslides. The applicant has engaged Geotechnical Engineers to assess the risk and provide solutions for mitigation measures. The engineers identified that a barrier should be constructed along the toe of the escarpment to catch and contain boulders and debris flows. The barrier is similar to highway barriers which contain horizontal wiring to reduce the impact or force of objects. This barrier would also need to be constructed in conjunction with re-vegetation works to stabilise soils and restrict public access to the escarpments. Full design details of the barrier could be addressed prior to the issue of certification of the Plan of Subdivision.

The subdivision also departs from the approved development plan in relation to the development of the southern escarpment. This includes a reduction to some of the developable area compared to the approved development plan but has also increased into part of this escarpment. As previously noted, the perimeter roadway shown in the approved development plan was intended to form the southern edge of the development with the escarpment. The perimeter road has been replaced with private open space areas (proposed backyards) to future dwellings. The applicant has included a building exclusion zone on the steep part of these lots but the useability of the land for private open space will be constrained by the sloped land comprising of the escarpment.

Cultural Heritage Management

A scattering of artefacts have been identified on site as a result of the Cultural Heritage Management Plan. A high density artefact area recorded as VAHR 7722-1165 requires an open space 60 metres by 22 metres. This accords with the proposed subdivision plan and is located in a large northern public open space area, west of the Stage 13 boundary. The Wurundjeri Land and Compensation Cultural Heritage Council Aboriginal Corporation (WLCCHCAC) approved the CHMP on 3 May, 2018.

General Provisions

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.
- The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.
- The provision and location of reserves for public open space and other community facilities.
- The staging of the subdivision.
- The design and siting of buildings having regard to safety and the risk of spread of fire.
- The provision of off-street parking.
- The provision and location of common property.
- The functions of any Body Corporate.

- The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.
- If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.
- Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

Referrals

Authority	Response
Western Water Southern Rural Water Melbourne Water (determining authority) Powercor Downer Utilities VicRoads	No objection subject to twelve conditions No response. Objected to the application No objection subject to twelve conditions No objection subject to one condition No objection. Noted the Section 173 agreement on title regarding roadworks
Dept of Transport DELWP CFA	No objection subject to three conditions No objection subject to eight conditions No objection subject to two conditions
Infrastructure SSD	Inconsistent with the Development Plan

Financial Implications

There are no financial implications in refusing the subdivision application.

Risk & Occupational Health & Safety Issues

The recommendation of refusal of this subdivision does not implicate any risk or OH&S issues to Council.

Communications Strategy

Notice was not undertaken for the application, in accordance with s.52 of the Planning and Environment Act 1987 and Development Plan Overlay Schedule 6. The applicant was invited to attend this meeting and invited to address Council if required.

Options

Council could consider the following options:

- Issue a refusal in accordance with the recommendations of this report.

Council cannot consider approving of the application as it would contravene the Planning & Environment Act due to a Section 55 determining referral authority objecting to the application.

Conclusion

This proposal represents a significant subdivision within a growth corridor for Council. Due to its unique character, the site has a number of site constraints which require a particular design response such as undulating terrain, natural waterways, unstable escarpments, Aboriginal artefacts and historic buildings. These site constraints require a well-articulated design response to ensure a residential subdivision that provides convenient access to services and adequate levels of amenity. A subdivision response that is generally in accordance with approved development plan would achieve the required design response. There are a number of variations between the approved Development Plan and the proposed subdivision. The approved development plan calls for a mix of densities across the estate with larger lot sizes and widths in Neighbourhood C, a road network which accounts for the site features and constraints, and a more centrally located public open space. The proposed subdivision illustrates smaller lot sizes and widths, an altered network that does not appropriately deal with key site features and constraints and a relocated more linear shaped public open space.

Whilst the difficulties in undertaking this subdivision are acknowledged having regard to the complex site constraints, these factors do not provide concessions to the applicant to justify the extent of changes proposed. The design outcome proposed was not envisaged or planned for in the approved development plan and the subdivision as presented in the latest set of plans will result in a lower quality of living for future residents. The proposed subdivision is not considered to be generally in accordance with the development plan approved under the DP06 and is it is not considered to comply with the objectives and standards of the Moorabool Planning Scheme.

Recommendation

That, having considered all matters as prescribed by the Planning and Environment Act, Council issue a refusal to grant a permit for a 331 lot subdivision, creation, variation and removal of easements, removal of vegetation and building and works within ES02 for the land at Lot S7 on Plan of Subdivision 725408Y, known as 174 Moretons Road, Pentland Hills, based on the following grounds:

- 1. The proposed subdivision is not generally in accordance with the development plan approved under Development Plan Overlay Schedule 6 to Moorabool Planning Scheme.**
- 2. The proposed subdivision does not comply with the objectives and strategies of Clause 15.01-3S, Subdivision Design**
- 3. The lack of a plan to create, vary or remove easements does not comply with the decision guidelines of Clause 52.02.**
- 4. The proposed subdivision represents an overdevelopment of the land.**
- 5. The proposed lot sizes and widths, road layout, and location and configuration of the local park will result in poor design outcomes.**
- 6. Melbourne Water, a determining referral authority has objected to the application with the following grounds**
 - a) The proposed development is inconsistent with the Environmental Significance Overlay - Schedule 2 (ESO2).**

- b) The proposed development is inconsistent with the Design and Development Overlay - Schedule 6 (DD06).
- c) The proposed development is inconsistent with State and Local Planning Policy relating to the protection of waterways, the natural environment and River Health.

Report Authorisation:



Authorised by:

Name: Satwinder Sandhu

Title: General Manager, Community Planning

Date: 16 April, 2019

Item	Development Plan (River View portion)	Size
Site Area	62.44ha (DP never assigned areas for this precinct, so assumes same as design)	62.44ha
Developable area	34.9ha	29.07ha
Parks	3ha	3ha
Active Open Space (sports precinct)	3.42ha	3.64ha
Open Space (escapment and creek environs)	17.5ha total	21.31ha
Neighbourhood Lot Below 125m Contour	Lot size Generally in the order of 400m ²	Lot Average size 465m ² (excluding future lots which will be subject to further planning applications)
Conventional Lots with slope Greater than 1:10	Minimum lot sizes generally in the order of 700m ²	N/A, no lots have a slope greater than 1:10
Conventional Lots with slope Less than 1:10	Lots less than 700m ² permitted	Average lot size 513m ²
Rural Interface Lots	Larger blocks at sensitive interfaces and steeper land. Lot size not specified in development plan	Average lot size 1025m ²
Neighbourhood C: Frontage Width	Lots will typically have a minimum frontage of 16m	Lot Average Frontage 16.98m (excluding future superior which will be subject to further planning applications)



Item 5.2 Planning Permit Number PA2018 346 – Variation of Restrictive Covenant AJ565132E item (k) to allow construction of an outbuilding 30.0m x 12.0m x 4.2m high to the eaves at 12 View Gully Road, Hopetoun Park

Application Summary:	
Permit No:	PA2018346
Lodgement Date:	21 December 2018
Planning Officer:	Tom Tonkin
Address of the land:	Lot 131 on PS 628116E 12 View Gully Road, Hopetoun Park 3340
Proposal:	Variation of Restrictive Covenant AJ565132E item (k) to allow construction of an outbuilding 30.0m x 12.0m x 4.2m high to the eaves.
Lot size:	5730sq m
Why is a permit required?	Clause 52.02 – Easements, Restrictions and Reserves – Variation of a restriction.
Reason for being presented to S86 Development Assessment Committee.	Objection received.
Public Consultation	
Was the application advertised?	Yes
Notices on site:	One
Notice in Moorabool Newspaper:	Yes
Number of Objections:	One
Consultation Meeting:	No. The applicant provided a written response to the objector via the Council officer, including the offer of a meeting to discuss the objection, but the objector did not reply in a timely manner, therefore Council officers determined it was appropriate to present to Council for a decision.
Policy Implications	
Strategy Objective 2:	Minimising Environmental Impact
Context 2A:	Built Environment

Victorian Charter of Human Rights and Responsibilities Act 2006

In developing this report to Council, the officer considered whether the subject matter raised any human rights issues. In particular, whether the scope of any human right established by the Victorian Charter of Human Rights and Responsibilities is in any way limited restricted or interfered with by the recommendations contained in the report. It is considered that the subject matter does not raise any human rights issues.

Officer's Declaration of Conflict of Interests

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

Manager – Robert Fillisch

In providing this advice to Council as the Manager, I have no interests to disclose in this report.

Author – Tom Tonkin

In providing this advice to Council as the Author, I have no interests to disclose in this report.

Executive Summary

Application Referred?	No, not required.
Any issues raised in referral responses?	Not applicable.
Preliminary concerns?	None.
Any discussions with applicant regarding concerns?	Not applicable.
Any changes made to the application since being lodged?	No.
Brief history	Not applicable.
Previous applications for the site?	None.
General summary	<p>The application is for variation of a covenant to allow development of an outbuilding with maximum dimensions of 30.0m length x 12.0m width x 4.2m height to the eaves. Item (k) of covenant AJ565132E currently restricts the size of outbuildings to 13.0m length x 7.0m width x 4.0m in height to the eaves.</p> <p>One objection to the application was received raising concerns about the visual impact of a future shed enabled by the proposal, in particular its overall height.</p> <p>The proposal satisfies all the relevant tests at Section 60(2) of the Planning and Environment Act 1987, as discussed herein, and overall is considered to comply with relevant planning policy.</p>

Summary Recommendation

That, having considered all relevant matters as required by the Planning and Environment Act 1987, Council issue a Notice of Decision to Grant a Permit for this application in accordance with Section 61 of the Planning and Environment Act 1987, subject to the conditions included at the end of this report.

Site Description

The site is identified as Lot 131 on PS 628116E and known as 12 View Gully Road, Hopetoun Park. The site is located on the east side of the street between Eden Crescent and Riverview Drive and is a roughly rectangular shape with an area of 5730sq m. The site contains a single storey dwelling towards the front of the site and a shipping container towards the rear of the site. All reticulated services are available to the site which falls gradually from north to south and not encumbered by any easements.

The site and surrounding neighbourhood is in the Low Density Residential Zone in the eastern residential area of Hopetoun Park in a recently established residential area where most lots are now developed with single dwellings, many of which have ancillary outbuildings which vary in size. To the north, south and west are dwellings fronting View Gully Road, with those dwellings to the immediate north and west also having ancillary outbuildings. To the east are dwellings fronting Thomas Drive.



Proposal

It is proposed to vary item (k) of covenant AJ565132E to facilitate the development of an outbuilding with dimensions of 30.0m length x 12.0m width and 4.2m height to the eaves.

Covenant AJ565132E states that *“the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with every lot on Plan of Subdivision No. PS628116E other than the Lot hereby transferred and that the burden of this covenant shall be annexed to and run at law and in equity with the said Lot hereby transferred does hereby covenant from himself/herself, their heirs, executors, administrators and transferee and the registered proprietor or proprietors for the time being of every lot described in the said Plan of Subdivision (other than the Lot hereby transferred) that the Transferee, his/her executors, administrators and transferees will not site any outbuildings on the Lot other than towards the rear of the Lot and behind any dwelling house and generally in such a manner as to minimize visual impact from the streetscape. No such outbuilding shall be of a size greater than 13 metres in length, 7 metres in width and 4 metres in height to the eaves nor shall they be constructed prior to the erection of a dwelling house on the Lot, and the above covenant shall appear as an encumbrance on the Certificate of Title to be issued in respect of the Lot hereby transferred.”*

The applicant advises that the purpose of the intended outbuilding is for personal domestic storage including a caravan and vehicles.

Public Notice

Notice of the application was given to adjoining and nearby landowners and occupants by mail on 18 February, 2019 and a sign erected on site from 25 February until 12 March, 2019. One objection was received, noting that the objector is not a beneficiary of the applicable covenant.

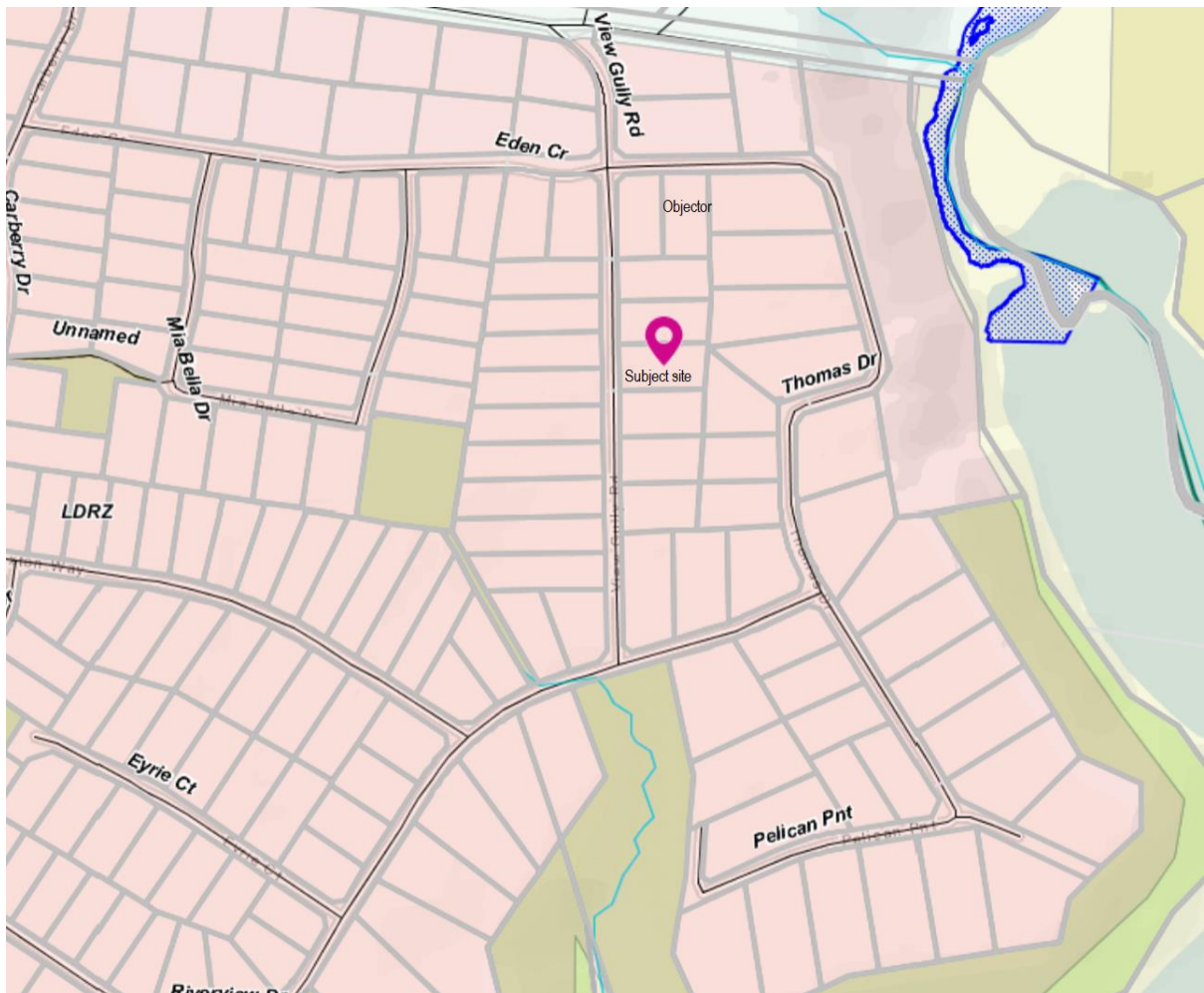
Summary of Objection

The objection received is detailed below with the officer’s accompanying comments:

Objection	Any Relevant Requirements
<p>Potential impact on the nature’s cape from my backyard. The proposal would result in a shed approximately twice the length and width allowed for under the existing covenant. The primary concern is the overall height of the roof pitch which is understood to be at least 6.5m.</p>	<p>Clause 52.02</p>
<p>Officer’s Response: The applicant has advised that the shed would have an approximate maximum height of 5.48m to the roof pitch. In comparison, the existing dwelling on the site has a maximum roof pitch of 5.6m. Refer to ‘Discussion’ section of this report for further discussion of this objection.</p>	

Locality Map

The map below indicates the location of the subject site, the zoning of the surrounding area and the objector's property.



Planning Scheme Provisions

Council is required to consider the Victoria Planning Provisions and give particular attention to the Planning Policy Framework (PPF), the Local Planning Policy Framework (LPPF) and the Municipal Strategic Statement (MSS).

The relevant clauses are:

- 11.03-3S Peri-urban areas;
- 15.01-5S Neighbourhood character; and
- 21.03-4 Landscape and Neighbourhood Character.

The proposal generally complies with the relevant sections of the PPF and LPPF.

Zone

The subject site is in the Low Density Residential Zone (LDRZ).

The purpose of the Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.*

There is no requirement under the Zone to obtain a permit to vary a covenant.

Overlays

The site is affected by Development Plan Overlay, Schedule 2. There is no requirement under the overlay to obtain a permit to vary a covenant.

Relevant Policies

There are no adopted Council policies relevant to this application.

Particular Provisions

Clause 52.02 Easements, Restrictions and Reserves

Under Clause 52.02 a permit is required to vary a restriction. Before deciding on an application Council must consider the interests of affected people.

Discussion

The provisions of Section 60(2) of the Planning and Environment Act 1987 are relevant to the assessment of this application. Under Section 60(2) of the Act, the responsible authority must not grant a permit which allows the variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction will be unlikely to suffer:

- a) financial loss;
- b) loss of amenity;
- c) loss arising from change to the character of the neighbourhood; or
- d) any other material detriment.

as a consequence of the removal or variation of the restriction.

As previously stated, notice of the application was given to all beneficiaries of the covenant, none of whom objected. It is noted that the objector is not a beneficiary of the applicable covenant.

The four tests are addressed as follows:

(a) Financial Loss

VCAT have consistently stated that the impact of financial loss cannot be easily determined and would require expert evidence. The objector has not provided any information which convinces Council that this is the case.

(b) Loss of Amenity

The covenant currently allows for the development of an outbuilding of 13.0m length x 7.0m width x 4.0m in height to the eaves. The proponent seeks approval to vary the covenant to enable development of an outbuilding of 30.0m length x 12.0m width x 4.2m in height to the eaves.

The site is zoned for residential use and many lots in the area are now developed with dwellings and ancillary outbuildings. It is considered unlikely that the objector, or any beneficiary of the covenant, would experience loss of amenity as a result of the proposed variation of covenant. Overshadowing, setbacks from side and rear boundaries and any other applicable amenity impacts would be protected by the building envelope registered on title and the assessment done as part of the building permit approval process.

The objector's property is approximately 100m to the north and upslope of the subject site, with dwellings and ancillary outbuildings located on all lots adjoining their backyard. The objector's reference to a naturescape from her backyard is understood to refer to views enjoyed of the distant rural landscape more than 500m generally to the south and beyond, over and across the subject site and numerous other residential lots, which may be disrupted by the future outbuilding. Based on the applicant's advice regarding the future outbuilding's maximum height and the subject site's position and distance downslope of the objector's property, it is not considered that the proposed covenant variation would significantly disrupt existing views. In any case, the loss of views is not considered to be a valid objection to development where no planning controls exist to protect views. For these reasons it is considered that the covenant's beneficiaries would be *unlikely* to suffer a loss of amenity.

(c) Loss arising from change to the Character of the Neighbourhood

The neighbourhood character is defined by single dwellings on lots of roughly 5500sq m to 1.0ha in size, many of which have ancillary outbuildings varying in size both smaller and larger than that proposed by the current application. The area is characterised by its lot sizes and their configuration, the generally spacious scale of development and in some sections views of the distant rural landscape. Large bulky sheds are occasionally present and visually prominent, also contributing to the character of the area. Most lots surrounding the subject site, but not the objector's property, benefit from the covenant proposed to be varied which limits the size of outbuildings to 13.0m length x 7.0m width x 4.0m in height to the eaves.

The applicant wishes to construct an outbuilding of up to 30.0m length x 12.0m width x 4.2m in height to the eaves. As referred to above, ancillary outbuildings of varying sizes are a common feature of the neighbourhood, noting that a beneficiary of the covenant whose property is located opposite the subject site was granted approval in 2018 for a covenant variation similar to the current proposal, with construction commenced on the outbuilding subsequently approved. The prevalence of ancillary outbuildings in the neighbourhood of a similar or larger size than what the proposal would enable, including in Eden Crescent and Mia Bella Drive, is such that it is not considered the proposal would change the character of the neighbourhood. Rather, the proposal would enable development which is generally consistent with the neighbourhood character. For these reasons it is considered that the covenant's beneficiaries would be *unlikely* to suffer loss arising from change to the character of the neighbourhood. It is noted that use of the outbuilding other than for activities ancillary to the dwelling would either require separate planning permission or be prohibited.

(d) Any other Material Detriment

The objector did not identify any other material detriment and based on site observations it is not considered that the proposal would cause any other material detriment.

General Provisions

Clause 65 – Decision Guidelines have been considered by officers in evaluating this application.

Pursuant to Clause 65 of the Moorabool Planning Scheme, the responsible authority must consider, among other things, the matters set out in Section 60 of the Planning and Environment Act 1987.

As outlined in the discussion above, under Section 60(2) of the Act, the responsible authority must not grant a permit which allows the variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction will be unlikely to suffer:

- a) financial loss;
- b) loss of amenity;
- c) loss arising from change to the character of the neighbourhood; or
- d) any other material detriment.

as a consequence of the removal or variation of the restriction.

Clause 66 – Stipulates all the relevant referral authorities to which the application must be referred.

Referrals

None required.

Financial Implications

The recommendation of approval of this application would not have any financial implications for Council.

Risk & Occupational Health & Safety Issues

The recommendation of approval of this application does not have any risk or OH&S implications for Council.

Communications Strategy

Notice was undertaken for the application, in accordance with s.52 of the Planning and Environment Act 1987, and further correspondence is required to all interested parties to the application as a result of a decision in this matter. The applicant and objector were invited to attend this meeting and address Council if desired.

Options

Council could consider the following options:

- Issue a Notice of Decision to Grant a Permit in accordance with the recommendations of this report;
- Issue a Notice of Decision to Grant a Permit with changes to the recommendations of this report; or
- Should Council consider refusing the application, Councillors need to explore reasons why the proposal would not comply with the Moorabool Planning Scheme.

Conclusion

Overall, the proposal complies with the Moorabool Planning Scheme and in particular satisfies the requirements of Section 60(2) of the Planning and Environment Act 1987. It is considered that the proposed variation of a covenant to increase the allowable outbuilding dimensions would meet the relevant tests for the assessment of such a proposal, in particular regarding matters of neighbourhood character and amenity.

Recommendation

That, having considered all matters as prescribed by the Planning and Environment Act, Council issues a Notice of Decision to Grant Planning Permit PA2018346 for Variation of Restrictive Covenant AJ565132E item (k) to allow construction of an outbuilding 30.0m x 12.0m x 4.2m high to the eaves at Lot 131 on PS 628116E, 12 View Gully Road, Hopetoun Park 3340 subject to the following conditions:

1. The plan of variation of the restriction must be certified under Section 6 of the Subdivision Act 1988 and then must be registered with the Registrar of Titles before a Building Permit is issued.
2. This permit will expire if the approved variation of the restriction is not registered with the Land Titles Office within two years of the date of this permit. The wording of item (k) has been approved as follows:

(k) Site any outbuildings on the Lot other than towards the rear of the Lot and behind any dwelling house and generally in such a manner as to minimize visual impact from the streetscape. No such outbuilding shall be of a size greater than 30 metres in length, 12 metres in width and 4.2 metres in height to the eaves nor shall they be constructed prior to the erection of a dwelling house on the Lot.

Permit Note:

Except where exempt under the Moorabool Planning Scheme, the outbuilding enabled by this permit shall not be used for any purpose other than ancillary to a dwelling on the lot.

Report Authorisation:



Authorised by:

Name: Satwinder Sandhu

Title: General Manager, Community Planning

Date: 16 April, 2019