

**City of Kingston
Ordinary Council Meeting**

Minutes

28 April 2008

Notice is given that an Ordinary Meeting of Kingston City Council will be held at 7.00pm at 1230 Nepean Highway, Cheltenham, on Monday, 28 April 2008.

1. **Apologies**
2. **Confirmation of Minutes of Previous Meetings**

Minutes of Ordinary Council Meeting 31 March 2008.

3. Declaration by Councillors or Officers of any Interest or Conflict of Interest

4. Petitions

4a) Collins Street Depot Site

A petition signed by 215 residents requesting Council reconsider a four storey height limit at the Collins Street Depot site will be tabled by the Ward Councillor, Cr West.

5. Presentation of Awards

The Mayor will recognise the newly elected Junior Mayor, Tahryn Mant, and the former Junior Mayor, Victoria Hermitage, in the public gallery.

6. Reports from Village Committees

Recommendations from the April cycle of meetings are enclosed.

7. Reports from Delegates Appointed by Council to Various Organisations

8. Environmental Sustainability Reports

K 45	<i>Town Planning Application Decisions March 2008</i>	<i>Page 7</i>
K 46	<i>Town Planning Application-Centre Dandenong Road Heatherton</i>	<i>Page 8</i>
K 47	<i>Town Planning Application-34 Nepean Highway Mentone</i>	<i>Page 25</i>
K 48	<i>Town Planning Application-13 Stayner Grove Moorabbin</i>	<i>Page 39</i>
K 49	<i>Town Planning Application-48 to 50 Bourke Street Mentone</i>	<i>Page 59</i>
K 50	<i>Town Planning Application-5 Avenza Street Mentone</i>	<i>Page 78</i>
K 51	<i>Town Planning Application-405 Station Street Bonbeach</i>	<i>Page 97</i>
K 52	<i>Town Planning Application - 295 - 315 Kingston Road, Clarinda</i>	<i>Page 108</i>
K 53	<i>Amendment C73 –Highett Activity Centre</i>	<i>Page 150</i>
K 54	<i>Amendment C75 – Chelsea Supermarket Patterson lakes Supermarket</i>	<i>Page 160</i>
K 55	<i>Amendment C81–Thrift Park Neighbourhood Activity Centre</i>	<i>Page 170</i>
K 56	<i>Amendment C91 – Mordialloc Activity Centre</i>	<i>Page 175</i>
K 57	<i>Amendment C93 – Significant Trees</i>	<i>Page 179</i>
K 58	<i>New Residential Zones Discussion paper</i>	<i>Page 186</i>
K 59	<i>Town Planning Application -76 – 78 Balcombe Road, Mentone</i>	<i>Page 140</i>

9. Community Sustainability Reports

K 60	<i>Draft Kingston Cycling and Walking Facility Plan 2009 -2013</i>	<i>Page 189</i>
K 61	<i>Annual Report of City Historian</i>	<i>Page 193</i>

10. Organisational Development and Governance Reports

K 62	<i>Quarterly Reports to Council and Community Plans</i>	<i>Page 194</i>
K 63	<i>Annual Update of “Council to Staff” Delegation Instrument</i>	<i>Page 197</i>
K 64	<i>Naming Proposal- “The Horse Paddock” Mordialloc</i>	<i>Page 200</i>
K 65	<i>MAV State Council meeting</i>	<i>Page 202</i>

11. Notices of Motion

K 66	<i>Cr West – Logging in Water Catchment Areas</i>	<i>Page 203</i>
K 67	<i>Cr Petchey –Australian Conservation Foundation Bay Monitor Program</i>	<i>Page 204</i>
K67A	<i>Cr West- Plan</i>	<i>Page 204</i>

12. Question Time

13. Urgent Business

14. Items in Camera

K 68	<i>Confidential Property matter</i>	<i>Page 207</i>
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Minutes of the Ordinary Meeting of the Kingston City Council held at 1230 Nepean Highway, Cheltenham, on Monday 28 April 2008 at 7:05pm.

Present: Cr Bill Nixon OAM (Mayor)
Cr Greg Alabaster
Cr Arthur Athanasopoulos
Cr Justin McKeegan
Cr Topsy Petchey
Cr Rosemary West OAM

In Attendance: John Nevins – Chief Executive Officer
Paul Franklin-General Manager Corporate Services
Tony Rijs- General Manager Environmental Sustainability
Elaine Sowerby – General Manager, Organisational
Development and Governance
Michael Petit-Manager Communications and Promotions
Ian Nice-Manager Planning and Building
Paul D’Elia- Acting Governance Co-ordinator

1. Apologies

Cr Ronke.

Crs Alabaster/McKeegan

That the apology from Cr Ronke be received, and leave of absence from this meeting be granted. **Carried**

2. Confirmation of Minutes of Previous Meetings

Crs Petchey/Alabaster

That the minutes of the Ordinary Council Meeting held on 31 March 2008 be confirmed. **Carried**

3. Declaration by Councillors or Officers of any interest or conflict of interest in any items on the Notice Paper, pursuant to Section 79 of the Local Government Act 1989

Cr West declared an interest in Item K52 (295-315 Kingston Road, Clarinda), the nature of the interest stated that Cr West is the Co-ordinator of the Green Wedge Coalition.

Cr Nixon declared an interest in item K47 (34 Nepean Highway, Mentone), the nature of the interest stated that Cr Nixon assists at St Vincent de Paul objects stall.

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4. Petitions

Cr West tabled a petition signed by 215 residents requesting Council consider a four Storey height limit at the Collins Street Depot site.

Crs Petchey/Alabaster

That the petition be referred to the Chief Executive Officer for response.

Carried

5 Presentations

The Mayor Cr Bill Nixon recognised the newly elected Junior Mayor, Tahryn Hunt and presented a certificate of appreciation to the former Junior Mayor, Victoria Hermitage.

PRESENTATION OF VILLAGE COMMITTEE REPORTS

6(a) Cheltenham Village Committee
Chairperson-John Natoli
Report of Meeting held on 8 April 2008

The Committee undertook an informative tour of Moorabbin Court House.

6(b) Mordialloc Village Committee
Chairperson-Andrew Gustke
Report of Meeting held on 8 April 2008

The Committee received an informative presentation from Steve Perumal of the Parks section regarding Peter Scullin Reserve.

6(c) Mentone/Parkdale Village Committee
Acting Chairperson-Claire Houston
Report of Meeting held on 8 April 2008

MP 45 Clearing of Development Sites

Members were disappointed to see blocks cleared leaving nowhere for birds and fauna to live. It was noted that all new dual occupancy redevelopments must have a canopy tree planted as part of the approval process.

Committee Recommendation

That the Committee recommend that Council reconsider the practice of allowing builders and developers to moonscape their development sites prior to building, in view of the impact on the habitat available for native birds and fauna.

Officer Comment

Council takes a very dim view of development sites which are fully cleared before a decision is made on an application. It has been very proactive in this respect and the number of times that this occurs has reduced significantly. Each and every planning permit issued contains conditions requiring at least one new canopy tree within the frontage site and at least one canopy tree planted in the rear private open space of each dwelling together with lower canopy plantings.

West/Athanasopoulos

That the Village Committee be advised that Council takes a very dim view of development sites which are fully cleared before a decision is made on an application, and has acted pro-actively to significantly reduce the number of occasions on which this occurs.

Carried

MP 52 Bay Dredging - Sand Relocation

Sand from Dromana is being relocated back to the centre of the bay. This sand could be utilised on the Kingston and neighbouring suburbs' foreshore. The Port Authority does not seem to be interested in pursuing this idea. The Committee wishes to suggest that the Government look at cost differences in dumping the sand on the foreshore compared with placing it back into the centre of the bay.

Committee Recommendation

That the Committee recommend that Council approach the Port of Melbourne Authority and the State Government to suggest the placement of high quality dredged sand as close as practicable to Kingston's beaches, to assist in the renourishment of Kingston's beaches in a more cost effective way.

Officer Comment

The City of Kingston and the Association of Bayside Municipalities have consistently advocated for beach renourishment to be an integral part of the Channel Deepening Project that is re-using the clean dredged sand. This position has been conveyed to the Government in writing, and also through presentations to the two planning panels that considered the Environmental Effects Statements.

It is disappointing the Government is not pursuing the opportunity to re-use the sand for beach renourishment, however Council and the Association of Bayside Municipalities will continue to lobby the Government for a sustainable beach renourishment program.

West/Petchey

That Council continues to work closely with the Association of Bayside Municipalities to undertake joint lobbying to the State Government for a sustainable beach renourishment program.

Carried

**6(d) Clayton South Village Committee
Chairperson-Debra Woff
Report of Meeting held on 8 April 2008**

The Committee discussed parking issues at Rosebank Avenue.

**6(e) Chelsea/Chelsea Heights/Bonbeach Village Committee
Chairperson-Nigel McGillivray
Report of Meeting held on 9 April 2008**

The Committee discussed plans for a new footpath canopy at Chelsea Railway Station.

**6(f) Patterson Lakes/Carrum Village Committee
Chairperson-Glen Baker
*Report of Meeting held on 9 April 2008***

The Committee discussed the forthcoming Harvest Festival.

**6g) Clarinda/Oakleigh South Village Committee
Chairperson-Ian Shearer
*Report of Meeting held on 9 April 2008***

The Committee discussed the launch of the “Bundle of Sticks” artwork.

**6(h) Aspendale/Edithvale/Aspendale Gardens Village Committee
Chairperson-Kerin Griffiths
*Report of Meeting held on 10 April 2008***

The Committee discussed the new Council electoral structure.

7 Reports from Delegates Appointed by Council to Various Organisations

Cr West reported on the meeting with the VLGA and presented a report on the affects of Logging in water catchment areas and advised of a Notice of Motion on the matter to be considered later in the meeting.

Cr Petchey reported on the meeting of the Australian Conservation Foundation Bay Monitor Program, outlined their proposed activities and advised of a Notice of Motion on the matter to be considered later in the meeting.

Alabaster/Athanasopoulos

The reports be received and Crs West and Petchey be thanked for their attendance

Carried

8. Environmental Sustainability Reports

K 45 Town Planning Application Decisions – March 2008

Author: Ian Nice – Manager, Planning

Approved By: Tony Rijs-General Manager, Environmental Sustainability

Attached for information is the report of Town Planning Decisions for the month of March 2008.

A summary of the decisions is as follows:

Type of Decision	Number of Decisions Made	Percentage (%)
Planning Permits	61	83
Notice of Decision	9	14
Refusal to Grant a Permit	2	1
Other - Withdrawn (0) - Prohibited (0) - Permit not required (0) - Lapsed (3)	3	2
Total	75	100

(NB: Percentage figures have been rounded)

Recommendation

That the report be noted.

(See Attachment)

Mckeegan/Alabaster

That the recommendation be adopted

Carried

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K 46 Centre Dandenong Road, Heatherton

Author: Sherie Kirby – Senior Planner

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	MacroPlan Australia Pty Ltd
Application No.	KP414/07
Location:	Lot 1 on PS143145, Centre Dandenong Road, Heatherton
Melways Ref:	88A3
Proposal:	Two (2) Convenience Restaurants, Advertising Signage and Alter Access to Land Adjacent to a Road Zone (Category 1)
Zoning:	Green Wedge Zone (Schedule 2)
Kingston Planning Scheme Ordinance Controls:	Clause 15.02: Floodplain Management Clause 17.02: Business Clause 19.03: Design & Built Form Clause 21.03: Land Use Challenges for the New Millennium Clause 21.10: Non Urban Areas Clause 22.04: South East Non Urban Area Policy Clause 22.15: Outdoor Advertising Signage Policy Clause 35.04: Green Wedge Zone (Schedule 2) Clause 43.02: Design & Development Overlay (Schedule 4 & Schedule 5) Clause 44.04: Land Subject to Inundation Overlay Clause 45.02: Airport Environs Overlay (Schedule 1) Clause 52.05: Advertising Signs Clause 52.06: Car Parking Clause 52.07: Loading & Unloading of Vehicles Clause 52.29: Land Adjacent to a Road Zone (Category 1) Clause 57: Metropolitan Green Wedge Land Clause 65.01: Decision Guidelines Clause 66.02: Referrals

Main Issue:

The main issue in this application is whether the proposal for two (2) convenience restaurants would satisfy the “existing use” requirements under Clause 63.08 of the Kingston Planning Scheme, given that the proposed use is prohibited under the Green Wedge Zone. Specifically, Council needs to be satisfied that the proposed alternative use would be less detrimental to the amenity of the locality.

Existing Conditions:

The subject site is located on the north-west corner Centre Dandenong Road and Boundary Road, Heatherton. The site is slightly irregular in shape and has a frontage of approximately 80 metres to Centre Dandenong Road and a frontage of approximately 80 metres to Boundary Road with an overall site area of 6071m².

The land is currently vacant, however, was previously used for a service station. At present, there are four (4) access points to the subject site with two (2) along Centre Dandenong Road and two (2) along the site's Boundary Road frontage. A number of established Eucalyptus and Melaleuca trees exist on the site, predominantly along the site's north and west property boundaries.

Land to the north, west and east (opposite Boundary Road) of the subject site is used for market gardens whilst the land directly to the south (opposite Centre Dandenong Road) is owned and developed by the Moorabbin Airport Corporation. Both Centre Dandenong Road and Boundary Road are zoned Road Zone (Category 1).

The applicant has signed a declaration stating that there is no restrictive covenant on the subject site.

Site History:

Council records indicate that a planning permit was issued by the former City of Springvale on 7th July, 1983, to allow the land to be used and developed for a service station.

Proposal:

It is proposed to develop and use the land for two (2) convenience restaurants and to alter and/or remove access to land adjacent to a Road Zone Category 1.

Each restaurant would have gross floor area of 250m² and would be provided with a maximum of 48 seats in addition to a "drive-thru" facility. A total of sixty (60) car parking spaces would be provided for both restaurants. Two (2) of the existing vehicle crossovers would be removed in addition to the western-most accessway being altered along the site's Centre Dandenong Road frontage.

It is proposed that the facility will operate between the hours of 6:00am to 11:00pm everyday (except Friday) and from 6:00am to 12 midnight on Fridays. A total of six (6) advertising signs are proposed, with two (2) internally-illuminated business signs to be displayed on each building and a 10 metre high pylon sign to be erected along each road frontage.

The proposal also includes the removal of twelve (12) native specimens of vegetation, comprising seven (7) Eucalyptus trees and five (5) Melaleuca trees. It should be noted, however, that no planning approval is required for the removal of these trees given that all specimens would be located within ten (10) metres of the proposed buildings and therefore exempt under the provisions of Clause 52.17 (Native Vegetation) of the Kingston Planning Scheme.

Planning Scheme Requirements:

Pursuant to Clause 35.04 of the Kingston Planning Scheme, the use of land for a service station is prohibited. However, there are provisions under Clause 63 of the Scheme which may allow a prohibited use to be undertaken on land where existing

land use rights can be demonstrated. With respect to this proposal, the applicant submits that existing use rights exists on this land for the following reasons:

- A permit for the use had been granted immediately before the approval date of the Kingston Planning Scheme and the use commenced before the permit expired.
- The site has been used for a continuous services station use for 15 years as required by Clause 63.11.

Although the proposed use is “prohibited” under the provisions of the Green Wedge Zone, there is evidence to suggest that the applicant is entitled to seek approval for and alternate land use under the provisions of Clause 63.08 of the Scheme provided that Council is satisfied that the proposed new use would be less detrimental to that of the previous use.

A planning permit is also required under the following sections of the Scheme:

- Clause 44.04 – Land Subject to Inundation Overlay (LSIO)
- Clause 52.05 – Advertising Signs
- Clause 52.29 – Land Adjacent to a Road Zone (Category 1)

A number of the policies contained within the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF), including Council’s Municipal Strategic Statement (MSS) are considered relevant in the consideration of this proposal, namely:

- Clause 21.03: Land Use Challenges for the New Millennium
- Clause 21.10: Non Urban Areas
- Clause 22.04: South East Non Urban Area Policy
- Clause 22.15: Outdoor Advertising Signage Policy
- Clause 35.04: Green Wedge Zone (Schedule 2)
- Clause 44.04: Land Subject to Inundation Overlay
- Clause 45.02: Airport Environs Overlay (Schedule 1)
- Clause 52.05: Advertising Signs
- Clause 52.06: Car Parking
- Clause 52.07: Loading & Unloading of Vehicles
- Clause 52.29: Land Adjacent to a Road Zone (Category 1)
- Clause 57: Metropolitan Green Wedge Land
- Clause 65.01: Decision Guidelines
- Clause 66.02: Referrals

Amendment to the Application Before Notification:

In response to Council’s further information letter dated 5th July, 2007, the applicant submitted amended plans showing details regarding the proposed advertising signage and also the submission of a landscape plan.

The proposed amendments to the application were considered appropriate and approved prior to public notification.

Advertising:

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Two (2) objections were received from McDonalds Australia Limited and the Defenders of the South East Green Wedge Inc.

The grounds of objection are as summarised, as follows:

- The case for existing use rights under Clause 63 of the Kingston Planning Scheme has not been qualified.
- The use and development of the land for two (2) convenience restaurants is a further and more intensive use of the site.
- It will result in reduced amenity of the area, given the height and type of the new signage.
- The design of the proposal is not respectful of its position as a gateway site to the “green wedge”.
- The proposal would have a significantly greater impact compared to that of the service station and would result in a larger site coverage, the type of activity, more cars parked on site, more visible signage.
- Increased litter associated with use.
- Longer operating hours than the previous service station.

Response to Grounds of Objection:

Existing Use Rights/ Intensity of Proposed Use/Reduced Amenity

This is one of the key issues raised by the objectors in relation to this proposal. As previously discussed, Council officers are satisfied that the applicant has provided sufficient evidence to suggest that the proposed use would meet the criteria for alternative land use rights under Clause 63.08 of the Kingston Planning Scheme. In determining this, Council officers gave careful consideration to the nature and potential impact of the land use on the surrounding area with particular regard to traffic, advertising signage, native vegetation removal and general amenity concerns.

Whilst the current zoning of the subject site is acknowledged, it is strongly argued that the location, visibility and proximity of the land to similar land use (namely the McDonalds Restaurant diagonally opposite the site at No. 370 Boundary Road, Dingley Village) ensures that the proposed land use is appropriate.

Gateway site

One of the issues raised in relation to the location of the site is that it is a “gateway” site to the Green Wedge. As discussed above, the subject land has a high level of

exposure to the public realm particularly given its location at the corner of two main roads.

It is for this reason (in addition to the previous use of the land) that Council officers consider that the proposed development and use of the site for two (2) convenience restaurants is appropriate.

Operating hours

A concern raised by objectors refers to the likelihood of extended operating hours compared to the previous use of the land as a service station. Council officers consider that the hours of operation of the new proposal would be similar to that of the previous land use. Furthermore, the subject site is not within close proximity to any sensitive land use such as residential areas and therefore is not a major consideration in this application.

Preliminary Conference

A preliminary conference was conducted at Council's Cheltenham Office on 22nd November, 2007. The meeting was attended by the applicant, objectors (two representatives from McDonalds Australia Limited) and a Council officer.

At the meeting discussion revolved around the issues raised in the submission provided by McDonalds Australia Limited, however, no resolution was reached.

Referrals

Pursuant to Clause 66.02 of the Kingston Planning Scheme, the application was referred to Vic Roads, Melbourne Water and the Moorabbin Airport Corporation for consideration.

- Vic Roads had no objection to the proposal subject to a number of conditions being placed on any permit issued.
- The Moorabbin Airport Corporation had no objection to the proposal as it considered that the proposal would have no impact on the statutory areas affecting the Airport.
- Melbourne Water had no objection to the proposal subject to a number of conditions being included on any permit issued.

The application was referred to the following internal Council departments for consideration:

- Development Approvals Engineer
- Vegetation Management Officer
- Traffic Engineering
- Strategic Planning

No objection was offered from any of the above internal departments.

Planning Assessment

The following section will consider the application against the relevant sections of the State Planning Policy Framework, Local Planning Policy Framework (including the MSS), zoning objectives and Particular Provisions of the Kingston Planning Scheme.

State Planning Policy Framework:

Clause 15.02: Floodplain Management

In respect to this section of the Planning Scheme it is noted that the applicant will be required to satisfy the requirements of Melbourne Water as permit conditions should a permit be issued.

Clause 19.03: Design & Built Form

It is therefore considered that the proposal (as amended) generally satisfies the broader objectives under the relevant sections of the State Planning Policy Framework.

Local Planning Policy Framework (including the MSS)

Clause 21.10: Non Urban Areas:

It is considered that the proposal would satisfy the relevant strategies outlined under this section of the Scheme, namely:

- “Objective 1: Support and maintain the green wedge concept. Activities in the non urban area must be consistent with, and contribute to, optimal long-term planning solutions for the whole of the south-east metropolitan non urban area”.
- “Objective 7: To manage the edge of urban areas in a manner, which ensures that the non urban area is both stable and enduring”.

Clause 22.04: South East Non Urban Area Policy:

The subject site is located within the South East Non Urban Policy area.

Under this section of the Scheme, it is policy that (amongst other things):

- Non urban land be protected for non urban purposes and used for activities which are consistent with the function and character of the non urban area.
- The following uses (amongst other things) are supported within the non urban area: public open space facilities including parks, sports fields, bicycle networks, etc.

Whilst the proposed use of the land is inconsistent with the “preferred uses” outlined above, strong consideration is required to be given to the previous use of the land. Specifically, the development and use of the land for two (2) convenience restaurants is considered to be no more detrimental to the surrounding amenity of the area. The proposal includes the removal of two (2) existing access points to the land and minimal signage on the proposed buildings.

With regards to the proposed internally-illuminated panel signs, it is suggested that a condition of any planning permit issued require the height to be reduced from 10 metres to 7 metres to be more consistent with similar signage in the surrounding area.

Clause 22.15: Outdoor Advertising Signage Policy:

A number of policies under this section of the Scheme are considered relevant in the consideration of the proposed advertising signage, which forms part of the application, namely in relation to “main road areas” and “non urban areas”.

- **Main Road Areas:** It is acknowledged that signs along declared main roads offer opportunities for long distance visibility. The impact of advertising signs adjacent to main roads are of principal concern with respect to visual amenity, streetscape character and road safety. The policy does not discourage business identification signs, but recognises that there is limited opportunity for major signage within these areas.
- **Non Urban Areas:** The policies generally encourage signs that relate to the use of the land and the scale of surrounding development. Business Identification signs are also not discouraged within these areas.

A number of performance standards for the display of signs are outlined under Clause 22.15-4 of the Scheme and include specific guidelines for advertising signs displayed along main road areas and within non urban areas, such as:

- Signs do not contribute to a safety hazard or potentially distract motorists or pedestrians through the type and level of illumination, colours or form of advertising.
- Signs do not obscure major view lines.
- Signs do not dominate the host buildings and are in scale with their surroundings.
- In the opinion of the Responsible Authority, the signs do not reduce the visual quality of the setting through their size, scale or placement.

It is considered that the proposed signage associated with the proposed development and use, in accordance with the proposed permit condition, is consistent with the relevant policies as outlined above.

Zoning Provisions

Clause 35.04: Green Wedge Zone (Schedule 2):

One of the key purposes of the zone is “to recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources”.

As previously discussed, the proposed use is not consistent with the “preferred” land use within the Green Wedge Zone. However, Council officers consider that regard must be given to the previous use of the site and the site’s location at the juncture of

two (2) main urban roads. Given that the proposed land use should not be more detrimental to the amenity of the area compared with the previous use, it is considered that development of the land for two (2) convenience restaurants is reasonable in this instance.

Pursuant to Clause 35.04-6 of the Kingston Planning Scheme, it is noted that the advertising sign requirements fall under Category 3 under Clause 52.05 of the Scheme.

Clause 43.02 Design and Development Overlay (Schedule 4 and 5):

The proposal has been referred to the Moorabbin Airport Corporation as required and there are no issues with respect to these provisions in the Scheme.

Clause 44.04: Land Subject to Inundation Overlay: It is considered that the proposal would be consistent with the purposes of this Overlay and would accord with the requirements of the relevant floodplain authority (Melbourne Water).

Clause 45.02 Airport Environs (Overlay Schedule 1)

The proposal has been referred to the Moorabbin Airport Corporation as required and there are no issues with respect to these provisions in the Scheme.

Particular Provisions

Clause 52.05 – Advertising Signs

Pursuant to Clause 52.05-8 of the Scheme, the display of an internally-illuminated panel sign is prohibited. The submitted plans indicate that a ten (10) metre high panel sign would be displayed adjacent to each road abuttal. However, given that the proposed signage is prohibited under the requirements of Category 3 of this section of the Scheme, it is considered that signage at a reduced height may be considered reasonable in this location.

A condition of any planning permit issued should require that the two (2) panel signs be reduced in height to a maximum of seven (7) metres, to satisfy the definition of a pole sign (which includes panel signage no greater than 7 metres in height) which is permissible under Category 3.

Clause 52.06 – Car Parking

This section of the Scheme suggests that a car parking ratio of one (1) space per every 0.6 seats be made available to the public. With respect to this proposal, a car parking rate of one (1) space per every 0.625 seats would be provided, therefore exceeding the minimum requirement.

Clause 52.07 – Loading & Unloading of Vehicles

Each of the proposed convenience restaurants would be provided with a loading bay area for delivery vehicles. The dimension and area of each loading bay satisfies the relevant requirements under this section of the Scheme.

Clause 52.29 – Land Adjacent to a Road Zone (Category 1)

The objectives of this Clause are considered to have been satisfied, with the required design modifications made in response to Vic Roads' requirements.

Clause 65.01 – Decision Guidelines

In considering the proposal (as amended), Council officers have had regard to the key decision guidelines under this Clause particularly in relation to the effect on the amenity of the area and the relevant provisions of the Kingston Planning Scheme.

General Comment

It is the view of Council officers that the proposal represents an appropriate land use and development opportunity for this site given the current zoning and location of the subject site. The relevant policies under the State and Local Planning Policy Frameworks encourage the development and use of green wedge land for appropriate land uses, particularly where there is excellent access to the land and other forms of physical infrastructure.

In summary, the main attributes of the proposed development are summarised as follows:

- § It is generally consistent with the relevant policies under the State Planning Policy Framework (SPPF), the Local Planning Policy Framework (LPPF) and Council's Municipal Strategic Statement (MSS).
- § The proposal represents a significant opportunity to utilise land that is highly visible, accessible from two (2) main roads and subject to a number of land use constraints, such as flooding;
- § The overall design and built form of the proposed facility would be sympathetic to the surrounding land uses and the visual impact of the development would be minimised with generous building setbacks, landscape buffers and limited advertising signage;
- § Any amenity impacts should be adequately controlled through appropriate planning permit conditions.

It is considered that the objector's concerns have been addressed, and that subject to the inclusion of suitable permit conditions, the proposal is considered reasonable for the site and warrants Council support.

Recommendation

That Council resolve to issue a Notice of Decision to Grant a Permit to develop and use the land for two (2) convenience restaurants, to display advertising signage and to alter and remove access to land adjacent to a Road Zone (Category 1), subject to the following conditions:

- 1 Before the development and/or use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on 29th August, 2007, but modified to show:
 - a) the provision of an amended landscape plan and associated planting schedule in accordance with the submitted concept landscape plan prepared by Memla Landscape Architects (dated 21st December, 2007) but modified to show: a tree protection zone (TPZ) around the two (2) trees to be retained within the front setback. The TPZ must be three (3) metres in a radius surrounding the *Ficus macrophylla* (Moreton Bay Fig) and *Myoporum insulare* (Common Boobialla).
 - b) the maximum height of the two (2) internally-illuminated panel signs reduced from ten (10) metres to seven (7) metres the location of any external waste storage/collection areas; and
 - c) full details of all external building materials and colours for the proposed buildings.
- 2 The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 Any new building must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS2021-2000, Acoustics – Aircraft Noise Intrusion – Building Siting and Construction, issued by Standards Australia International Limited.
- 4 The development of the site must be provided with stormwater treatment works which must incorporate water sensitive urban design principles (including re-use) to improve discharge quality and a detention system for any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council’s Development Approvals Engineer can advise on treatment options.
- 5 The development must not be occupied and the permitted use/s must not commence until all buildings and works and the conditions of this permit have been complied with, unless with the further consent of the Responsible Authority.

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- 6 Before the development hereby permitted commences, a drainage plan showing the method of stormwater treatment from the development must be submitted to the Responsible Authority for approval. The plan must be prepared by a qualified person and show all drainage works required. The plan must also show all existing and proposed features that may have an impact on drainage (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.)
- 7 Stormwater drainage of the site must be provided so as to prevent any overflows onto adjacent properties and be in accordance with the approved drainage plan.
- 8 Before the use allowed by this permit commences, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.
- 9 All existing vegetation shown on the endorsed plans for retention must be suitably marked and adequately protected before any development starts on the site and that vegetation must not be removed, destroyed or lopped without the prior written consent of the Responsible Authority.
- 10 Before commencement of the use hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
 - a) Constructed to the satisfaction of the Responsible Authority.
 - b) Properly formed to such levels that they can be used in accordance with the plans.
 - c) Surfaced in a manner to the satisfaction of the Responsible Authority.
 - d) Drained to the satisfaction of the Responsible Authority.
 - e) Line-marked to indicate each car space, all access lanes and, if necessary, the direction in which vehicles are to travel to the satisfaction of the Responsible Authority.
 - f) In accordance with any Council adopted guidelines for the construction of car parks.

Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
- 11 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.
- 12 The car parking provided on the land must always be made available for the use by persons employed or residing on the subject land to the satisfaction of the Responsible Authority and no measure restricting access by such persons to the car park may be taken without the prior written consent of the Responsible Authority.
- 13 Access to the site must be constructed in accordance with the requirements of Vic Roads and the Responsible Authority.

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- 14 The surface of the car parking area must be treated to the satisfaction of the Responsible Authority to prevent dust resulting in loss of amenity to adjoining and nearby properties.
- 15 The amenity of the area must not be detrimentally affected by the development and/or use, through the:
 - a) transport of materials, goods or commodities to or from the land;
 - b) appearance of any building, works or materials;
 - c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
 - d) Presence of vermin; and
 - e) In any other way.
- 16 No goods or packaging materials must be stored or left exposed outside the building so as to be visible to the public from a road or other public place.
- 17 No bins or other receptacles may be placed or allowed to remain in the view of the public, and no receptacle shall emit any smells.
- 18 The use hereby permitted must only operate between the hours of 6:00am and 11:00pm, everyday except Fridays, and between 6:00am and midnight on Fridays, unless otherwise approved with the prior written consent of the Responsible Authority.
- 19 Without the prior written consent of the Responsible Authority, no form of public address system or sound amplification equipment must be used on the premises so as to be audible outside the subject site.
- 20 No burglar alarm or warning bell or buzzer or other device may be installed on the subject property unless it is so designed as to shut off automatically after five (5) minutes operation.
- 21 Outdoor lighting must be provided, designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
- 22 Exterior lights must be installed in such positions to effectively light all pathways, car parks and other public areas to the satisfaction of the Responsible Authority.
- 23 All external surfaces of the building elevations must be finished in accordance with the schedule on the endorsed plans and maintained in good condition to Council satisfaction.
- 24 The location of external fans, air-conditioning apparatus and the like must be to Council approval and installed to prevent loss of amenity to the area by its appearance, noise, emission or otherwise.

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25 Any plant and/or equipment proposed on the roof of the building must be screened in a manner to complement the appearance of the building to the satisfaction of the Responsible Authority.

26 Construction on the site shall be restricted to the following times:

Monday to Friday:	7:00am to 7:00pm
Saturday:	9:00am to 6:00pm

Or otherwise as approved by the Responsible Authority in writing.

27 Street numbers of 100mm minimum height and contrasting in colour to the background must be displayed on the front building. Such numbers must be clearly legible from the footpath, roadway, car park or laneway.

28 Conditions Required by Vic Roads:

a) Prior to endorsement of the plans and any works authorised by this permit, the applicant must arrange for a revised Traffic Impact Assessment Report (TIAR) to be prepared to the satisfaction of VicRoads. The report must:

(i) Include, but not be limited to, the following:

- Whilst the proposed development may generate less traffic than the former development for a total day or week, it generates moderately more traffic for the critical design period (Friday PM peak - approx. 5.30pm - 6:30pm) - this impact must be analysed. It should be noted, even if the proposed development generated less traffic than the former development, it does not necessarily mean that the site operated satisfactorily, nor that the site had no impact on the surrounding road network (in particular, Centre Dandenong Rd/Boundary Rd intersection).
- For the critical design period (Friday PM peak), a pre and post-development traffic analysis (eg. SIDRA and/or first-principles) should be provided to determine the impact by the development generated traffic on the signalised intersection of Centre Dandenong Rd/Boundary Rd and the proposed access arrangements (eg. gap-analysis, including a survey of actual gaps available). Include an electronic copy of the data files to allow the analysis to be reviewed.
- For pre and post-development scenarios, a map/table showing the traffic volumes and associated directional distributions for the critical design period.
- Further clarification on the access arrangements to the subject site, in particular, the proposed operation (eg. left-in/left-out, any banned movements).
- An investigation into the appropriateness and feasibility of left-turn deceleration lanes for both accesses.

- A road safety analysis on the proposed access arrangements, including; available sight distance and the effects of queuing and delays (in particular, caused by the west approach of the Centre Dandenong Rd/Boundary Rd intersection).
 - A crash analysis (latest 5yr period) in the vicinity of the site, including a summary of the number of crashes, DCA type of crashes, any trends and whether it impacts on the development.
 - A review of permitted on-street parking (if any) and associated restrictions - eg. to discourage parking on Centre Dandenong Rd/Boundary Rd, parking should be banned via the use of 'No Stopping' signs, in the vicinity of the site, as parking should be contained wholly within the site.
 - An investigation into re-arranging the 'order' and 'pick-up' windows for fast food outlet 'B', in order to ensure there is sufficient storage space within the site to accommodate queued vehicles, which will also assist in improved traffic flow through the site.
 - MAC is proposing to redevelop land on the south-west corner of the intersection - it would be appropriate that both developers meet to discuss their proposed access arrangements to their respective sites, to ensure that there is no conflicting interests/issues.
- (ii) Identify all improvement works required to mitigate the effect of the proposed development along Boundary Road, Centre Dandenong Road and the intersection of Boundary Road and Centre Dandenong Road.
- (iii) Be developed generally in accordance with VicRoads' Draft Guidelines for preparation of a Traffic Impact Assessment Report.
- b) Prior to commencement of any use or any roadworks authorised by this permit the applicant must :
- (i) Prepare functional layout plans for the access arrangements on Edithvale Road to manage the traffic flow, to the satisfaction of VicRoads.
 - (ii) Subsequent to the approval of the functional layout plans, prepare detailed engineering plans for the roadworks along Edithvale Road, to the satisfaction of VicRoads.
- c) Before the commencement of any roadworks authorised by this permit, the developer must demonstrate to VicRoads' satisfaction that they and their contractors have developed and maintained a:
- i. Quality Management System
 - ii. Occupational Health and Safety System

- iii. Environmental Management System
- iv. Traffic Management System
- d). Before the commencement of any roadworks authorised by this permit, the developer must
 - i. Provide a bank guarantee (in the name of the developer/owner) without a termination date, to VicRoads for the estimated cost of works.
 - ii. Provide evidence that the Contractor has a public liability insurance policy for at least \$10 million, effective for the duration of the works.
 - iii. Provide VicRoads with the name, address, business and out-of-hours telephone numbers of the principal roadworks contractor.
- e). At least 7 days prior to roadworks commencing, the applicant must contact VicRoads Surveillance Coordinator (Ph 9881 8079) to notify when work will commence.
- f) The applicant must pay VicRoads for the cost of roadworks surveillance which may be undertaken at certain key times during works.
- g) The applicant must pay the full cost of all roadworks, drainage, service relocations, public lighting and modifications, and any other costs associated with the subject development.
- h) The design, depth and composition of pavement within the road reservation must be to the satisfaction of VicRoads.
- i) Prior to the commencement of any use authorised by this permit the applicant must complete all roadworks in accordance with approved plans and to the satisfaction of VicRoads.
 - i. The existing vehicular crossover near the western boundary must be modified to at least 4.5 m wide, as measured at the property boundary, to operate as an entry only.
 - ii. The existing second-vehicular crossover must be modified to at least 4.5 m wide, as measured at the property boundary, to operate as an exit only.
 - iii. The edges of the vehicular crossovers shall be angled at 60° to the road reserve boundary, to improve entry and exit conditions.
 - iv. Signs and line markings must be provided to direct and control the flow of traffic internal/external to the site, to the satisfaction of the Responsible Authority.
 - v. Any redundant vehicular crossover on Centre Dandenong Road shall be removed and the footpath, nature strip and curbing reinstated to the satisfaction of the Responsible Authority.

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- vi. Car parking spaces must be designed to allow vehicles to drive in a forward direction when both entering and exiting the property, to the satisfaction of the Responsible Authority.
- vii. The developer must pay the full costs of all roadworks, drainage, service relocations, and any other associated costs.

28. Conditions required by Melbourne Water:

- a) No polluted and/or sediment laden run-off is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
 - b) Finished floor levels must be a minimum of 300mm above the applicable flood level.
 - c) Prior to the issue of a Certificate of Occupancy, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum (AHD), must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
 - d) Any car parking and driveway areas are to be greater than 350mm below the flood level.
 - e) Prior to the commencement of works separate application, direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage.
 - f) No fill is to be imported into the overland flow path.
29. A sign(s) to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and deliveries and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3 square metres.
30. The location and details of the sign(s) shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
31. All sign(s) must be constructed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority.
32. Sign(s) must not be animated or contain any flashing or intermittent light.
33. External sign lighting must be designed, baffled and located to the satisfaction of the Responsible Authority.
34. The sign(s) must be only illuminated during the trading hours for the proposed use hereby approved.
35. This permit (or part of the permit that relates to advertising signage) expires fifteen (15) years from the date of issue of the planning permit.

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36. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of Permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and/or use is not started before "[insert date]" (date to be two (2) years from date of permit issue).
- The development is not completed before "[insert date]" (date to be four (4) years from date of permit issue).

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

Note (1): Prior to the commencement of the development or use you are required to obtain the necessary building permit.

Note (2): Prior to the commencement of the development and/or use hereby approved, you are required to obtain any necessary Council Environmental Health approvals.

Note (3): Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation should consult Council's Vegetation Management Officer to verify if a Local Law permit is required for the removal of such vegetation.

Note (4): Unless no permit is required under the Planning Scheme, other signs must not be constructed or displayed without a further permit.

Note (5): If further information is required in relation to Melbourne Water's permit conditions shown above, please contact Melbourne Water on telephone 9235 2517, quoting Melbourne Water's reference 133535.

The applicable flood level for the property is 16.2m to Australian Height Datum (AHD).

The meeting was addressed by Brian Pullen on behalf of the objectors and Jason Black on behalf of the applicant.

West/Athanasopoulos

That the item be deferred

Carried

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K 47 34 Nepean Highway Mentone

Author: Jennifer Mustica-Town Planner

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	St Vincent de Paul Society of Victoria
Address Of Land:	No.34 (Lot 1, 2 & 3 on TP201662T) Nepean Highway, Mentone
Melway Ref:	87A4
Proposal	To use the site for materials recycling, with reduced car parking requirements, pursuant to Clause 52.06 of the Kingston Planning Scheme, and to erect advertising signage.
Contact Officer:	Jennifer Mustica
File No:	KP1025/07
Zoning:	Business 3 Zone
Kingston Planning Scheme Ordinance Controls:	<u>State Planning Policy Framework</u> Clause 17: Economic Development Clause 18: Infrastructure <u>Local Planning Policy Framework</u> Clause 21.06 MSS – Retail and Commercial Land Use Clause 21.12 MSS – Transport, Movement and Access Clause 22.15 – Outdoor Advertising Signage Policy Clause 34.03 – Business 3 Zone & Schedule Clause 36.04 – Road Zone Category 1 Clause 52.05 – Advertising Signage Clause 52.06 – Car Parking Clause 52.07 – Loading and Unloading of Vehicles Clause 52.29 – Land Adjacent to a Road Zone Category 1 Clause 65 – Decision Guidelines
Decision By:	6 th April 2008
Nett Days:	65 days @ 8 th April, 2008

Existing Conditions:

The subject site is located on the south-western corner of the Nepean Highway service road and Winsome Street in Mentone. The site contains a commercial building that is presently vacant. To the front of the building is a large, pole supported, floodlit promotional sign, the face of which extends above and sits independently of the roof of the building. A laneway runs along the site's rear (south-western) property boundary.

The site is located within an existing commercial precinct that stretches along this south-western section of Nepean Highway, terminating at Latrobe Street, which is located further north of the site. Surrounding use and development on the Nepean Highway service road is commercial, with residential development commencing on the south-western side of the rear, abutting laneway. Residential development then extends south-west along Winsome Street.

In the past the building / site has been used for a restaurant, a kitchen display and other commercial type uses none of which have provided any on site car parking.

Proposal In Detail

It is proposed to use the site for materials recycling (St Vincent de Paul), with reduced car parking requirements, pursuant to Clause 52.06 of the Kingston Planning Scheme, and to erect advertising signage. The key elements of the proposal are as follows:

- The presentation and sale of donated furniture and other household goods, with a smaller floor space for the retail sale of clothing, operated by the St Vincent de Paul Society of Victoria.
- The rear portion of the building would be used for the sorting of donated stock, plus an office and staff amenities.
- Stock would be delivered by trucks and members of the public to the rear roller door, during hours of operation.
- There would be one volunteer manager and opportunity 30 volunteer workers employed for the business. A total of 4-6 members of staff would be working at any one time.
- There are no car parking spaces on the site, with only street car parking for customer and staff use.
- Hours of operation Monday to Friday 9.00am to 5.00pm and Saturday 10.00am to 2.00pm.
- Advertising signage comprising four (4) 1 metre by 2.5 metre blue and white “Vinnies” signs, with one (1) located on the building’s south-eastern elevation, one (1) on its north-eastern elevation and two (2) on its north-western elevation, plus one (1) 1 metre by 2 metre “Vinnies” sign above the building entrance on the building’s northern (corner) elevation. All signage would be flush mounted to the building and located above the windows, below the building roofline. All signage would be non-illuminated.

The site is seen by the applicant as an opportunity for the sale of larger stock such as furniture, which is difficult to stock in any quantity, in a smaller standard strip shop.

Title Details

The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the title.

Amendment To The Application Before Notification

No amendments made.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Seven (7) objections to the proposal were received.

The grounds of concern may be summarised as follows:

- Loss of amenity;
- Concerns regarding donations being dumped outside the premises during out of business hours.
- Parking/ congestion;
- Inappropriate use of the site;
- The use would attract the wrong type of people to the area; and
- Decrease in property values.

Preliminary Conference

A preliminary conference was held on the 19th March, 2008, where the above issues were discussed, but largely not resolved.

During this meeting the applicant recognised that the dumping of donations outside of the premises is a concern and a continuing problem, which St Vincent de Paul are currently trying to manage and deter people from leaving recyclable goods outside of their stores. Methods such as video surveillance, penalties and signs on the site advising people that dumping is prohibited, are just some of the measures that are currently being tried and implemented across Victoria St Vincent de Paul stores to discourage dumping. None-the-less, the objectors believe that even if these measures were in place, people are still likely to leave donations outside the premises, in good will, during out of business hours.

Concerns regarding deliveries to and from the site were also raised. Objectors raised concerns that trucks would have issues accessing the site and cause conflicts with other vehicles wanting to utilise the laneway, whilst deliveries are being made to the store. The applicant mentioned that smaller delivery vehicles (eg. vans) could be used, to reduce the chance of such conflicts occurring.

All other matters, namely amenity concerns, safety concerns, property values, inappropriate site for proposed use etc., were raised and discussed in great detail at this meeting. However no resolution was reached.

Amendment To The Application After Notification And Re-Notification

No Amendments Made.

Planning Scheme Provisions

Pursuant to the table of uses at clause 34.03-1 (business 3 zone) a planning permit is required to use land for materials recycling. A permit is also required to 52.06-1 (car parking) a permit is required to waive the number of spaces required in the table at clause 52.06-5. Pursuant to clause 34.03-5 (business 3 zone) a permit is further required to erect advertising signage, which is within category 2 of the table at clause 52.05-7 (advertising signs).

Referral

No external or internal referrals were required in respect of this application.

Discussion

Kingston Planning Scheme Provisions:

State Planning Policy Framework (SPPF)

Clause 17.02: Business

This section of the Scheme seeks to encourage developments which meet community's needs for retail, entertainment, office and other commercial services and provide net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities. It is considered that this application meets these objectives.

Clause 18.02: Car parking and public transport access to development

This section of the Scheme seeks to ensure access is provided to developments in accordance with forecast demand taking advantage of all available modes of transport, and to minimise impact on existing transport networks and the amenity of surrounding areas. It is considered that this application meets these objectives.

Local Planning Policy Framework (LPPF)

Clause 21.06 (MSS): Retail and Commercial Land Use

Key issues identified for retail and commercial land use at Clause 21.06-2 include:

- Impacts of structural change in the retail industry on the viability of middle to smaller order neighbourhood and local centres (ie: changes in employment patterns, consumer behaviour, extended trading hours).

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- Impact of regional free standing shopping centres on neighbourhood and local centres.
- Consolidation of retailing activity within existing commercial centres.
- Development of local advantages and specialist niche markets to counterbalance decline in neighbourhood and local centres.
- Need to build on the individual shopper's emerging preference to do weekly shopping in centres other than larger regional and sub-regional centres.
- Need to provide for emerging retail trends and shopping patterns, including growth of peripheral sales activity and 'big box' retailing activity.
- Traditional strip centres with sometimes poor physical image, lack of cohesiveness and poor accessibility.

The objectives identified at Clause 21.06-3 include:

- To protect and strengthen the hierarchy of activity centres within Kingston.
- To reinforce the existing role of the Cheltenham Business Centre including the Westfield Southland centre as the predominant regional focus for retail activity and for entertainment, community, professional services and business services.
- To facilitate opportunities for diversification which enhance the viability of sub regional, neighbourhood and local centres.
- To reinforce the character and identity of local centres in a manner appropriate to their function.
- To promote the development of office activity in locations which enhance rather than undermine Kingston's hierarchy of activity centres.
- To promote the development of bulky goods retail activity in locations which enhance rather than undermine Kingston's hierarchy of activity centres.
- To encourage and accommodate new types of retailing whilst ensuring the viability of existing businesses.
- To encourage the diversification of centres to provide for non-retail businesses where there are vacant retail premises unsuitable to modern retailing.

It is considered that this application meets the relevant objectives.

Clause 21.12 (MSS): Transport, Movement and Access

Key issues identified for transport, movement and access at Clause 21.12-2 include:

- Capacity deficiencies for both north-south and east-west traffic leading to conflicts between arterial traffic and abutting land use.
- High volumes of industrial traffic on roads which are operating at or near capacity.
- Retail/commercial activity centres located on main arterial roads experiencing high volumes of arterial through traffic which causes conflict with local user movements.
- Protection of residential areas from industrial through traffic.
- Need for improvements to key freight routes.
- Conflict between the traffic and non traffic functions of key scenic roads, particularly Beach Road.

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- Poor linkages in some areas between industrial precincts and major arterial road network.
- Inadequate road widths and parking facilities within older industrial areas inhibiting accessibility and movement within and around these areas.

The objectives identified at Clause 21.06-3 include:

- To create a safe, convenient and efficient road network based on a functional hierarchy of local and regional road linkages, which meets the transport and freight needs of Kingston's residents, businesses, and through traffic.
- To integrate public transport, road, pedestrian and cycle systems with activity centres, schools and other community and social infrastructure, as a means of providing equitable and safe vehicular, pedestrian and cyclist movement and access for the community.
- To protect and enhance the amenity of Kingston's residential areas and other sensitive land uses through appropriate management of transport networks.

It is considered that this application meets these objectives.

Clause 22.15: Outdoor Advertising Signage Policy

Councils Outdoor Advertising Signage Policy seeks to ensure that excessive or inappropriate signage is avoided, particularly in sensitive locations. The policy further seeks to encourage signage that effectively promotes a product or business, and complements its local setting and other nearby signs.

The objectives of the Policy at Clause 22.15 and include:

- To ensure excellence in the design and presentation of all outdoor advertising displays.
- To ensure that commercial businesses are able to display sufficient signage to adequately identify their premises and promote their business and the goods and services they offer.
- To ensure that signs achieve maximum effectiveness without being excessive in their size, height, number or appearance.
- To protect visual amenity by avoiding visual disorder and clutter throughout the municipality.
- To encourage the development of innovative signage that is appropriate to its setting.
- To encourage, where appropriate, signs that contribute to the lively and attractive character of an area.
- To ensure that signage does not obscure or detract from the architectural and historical qualities and features of the host, adjacent and or nearby buildings.
- To ensure that the scale and form of signage is compatible with the size and style of the building, adjacent built form and land use, and the streetscape in which it is set.
- To ensure that signage is located and designed with regard to safety and the operation of the road network.
- To provide for the orderly display of signs.

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- To encourage the use of sign themes in commercial areas and to ensure that advertising signs are comparable with any advertising theme or pattern that has been developed for the area.
- To ensure that advertising signs are well designed and well maintained to contribute to the appearance of buildings and streetscapes.

More specifically, with regard to Shopping and commercial areas, it is Policy to:

- Discourage the display of animated signs, above verandah signs, sky signs, panel signs, major promotion signs, pole signs, bunting signs, high wall signs, reflective signs, and V-board signs to reduce visual clutter.
- Discourage signs that prevent views to ground level display windows.
- Discourage the proliferation of above verandah signs and upper level façade signs, particularly in areas with no or minimal above verandah signage.
- Discourage upper façade or above verandah signs particularly where the building is used for residential purposes such as shop-top housing and on larger mixed retail and residential developments.
- Discourage the display of pole signs unless the use is setback from the street, the pole sign is located within the setback area, is contained within the site and the number of pole signs is limited to one per frontage.
- Encourage a coordinated and consistent approach to be taken towards the design and location of signs in shopping centres.
- Consider in a balanced manner the appropriateness of the display of illuminated signs,
- recognising the need to be respectful of their surroundings and nearby sensitive land uses.
- Consider the number and type of signs in an area so that signs are responsive to the intensity of commercial activity, the complexity of the built form of the area and established approved signage patterns.
- In areas where there is an approved established pattern of above verandah signage, limit the size and scale of above verandah and upper level facade signage, and limit signage to advertising the business name.
- Limit under verandah (suspended) signs to one (1) per premises or frontage where appropriate.

With regard to Main Road areas, it is Policy:

- Signs along declared main roads offer opportunities for long distance visibility. A principal concern is the impact of signs on the amenity of the surrounding areas, the character of the streetscape, and road and pedestrian safety.
- Discourage the display of animated signs, sky signs, panel signs, major promotion signs, pole signs, bunting signs, high wall signs, reflective signs and V-board signs to reduce visual clutter.
- Discourage clutter of major promotional signs, pole signs, panel signs, freestanding and mobile signs, high wall signs and sky signs.
- Discourage signage which obscures major view lines.

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- Discourage the use of intermittent flashing signs or other potentially distracting elements on signs.
- Encourage a high level of visual amenity in areas adjacent to main roads to be maintained.
- Recognise that there are limited opportunities for major signage.
- Consider the scale and size of promotional signage with regard to the size, scale and bulk of buildings in the surrounding area and any adjacent residential or sensitive land use areas.
- Limit the scale and size of promotional signage so as to not dominate host buildings.
- Signs should not be greater in size than, or extend beyond any edge of host buildings.
- Only permit the display of sky signs or major promotional signs where they do not dominate the skyline or landscape, and where signage and support structures are designed so that they do not contribute to or create visual clutter.

The amount of and type of signage proposed is generally consistent with the proposed use of the land. The signage is not considered to be excessive, or dominant. The site is located within a commercial zone, and will essentially advertise towards the abutting main road.

Overall, the signs are considered to be appropriate within the streetscape. The signs will be non-illuminated, flush mounted with the building and would not dominate the skyline or landscape, and will not contribute to visual clutter.

Clause 34.03: Business 3 Zone

The purpose of the Business 3 Zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To encourage the integrated development of offices and manufacturing industries and associated commercial and industrial uses.

The proposal represents an appropriate commercial use for the building and is considered to be consistent with the above purpose.

Clause 36.04: Road Zone Category 1

The purpose of the Road Zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify significant existing roads.
- To identify land which has been acquired for a significant proposed road.

The proposal is considered to be consistent with the above purpose.

Clause 52.05: Advertising Signs

The purpose of Category 2 at Clause 52.05 is:

- To provide for adequate identification signs and signs that are appropriate to office and industrial areas.

The proposed signs are considered to be consistent with the above purpose. As highlighted earlier in this report, the signage is appropriate to the locality and streetscape, and will allow adequate identification of the proposed use of the site.

Clause 52.06: Car parking

In accordance with the Table at Clause 52.06-5 the use of land for Materials recycling requires 10% of site area to be set aside for car spaces and access lanes, but not driveways. No car parking spaces are proposed for the use, and it is envisaged that visitors to the site would utilize car parking spaces available on the street, particularly to the front of the site along the Nepean Highway service road which is designated 2 hour car parking, or public transport.

It is noted that the site is within a Business 3 Zone, and the building is clearly designed for commercial use. Regardless of which type of business occupies the site, car parking is unable to be provided on the site. With regard to the use of the site for Materials recycling, it is considered that surrounding streets, in particular the Nepean highway Service Road, are considered to be able to supply adequate car parking spaces. It is also noted that a bus route also travels along Nepean Highway, with a bus stop in close proximity to the site.

Clause 52.07: Loading and Unloading of Vehicles

The purpose of Clause 52.07 is:

- *To set aside land for loading and unloading commercial vehicles to prevent loss of amenity and adverse effect on traffic flow and road safety.*

It is considered that the proposed loading and unloading of goods during business hours to the roller door at the rear of the building via Winsome Street and the abutting laneway is appropriate and satisfies the above purpose. As the applicant suggested in the preliminary conference meeting, to assist in minimising any potential conflict with other businesses operating in the commercial strip, where possible, smaller sized delivery vehicles could be used. It is also suggested that a condition be included on any permit issued requiring a Business Management Plan be submitted and endorsed to form part of any permit issued which outlines full details of the proposal with respect to, but not limited to, expected delivery times, intended vehicle sizes, amount of deliveries to the site on a daily / weekly basis, proposed precautionary measures and the like.

Clause 52.29: Land Adjacent to a Road Zone

The purpose of Clause 52.29 is:

- To ensure appropriate access to identified roads.
- To ensure appropriate subdivision of land adjacent to identified roads.

Clause 52.29 also lists a number of Decision guidelines, which the proposal complies with.

Clause 65: Decision Guidelines

This clause of the Planning Scheme sets out other matters which must be given regard to before deciding on an application.

It is considered that the proposed development meets the requirements as set out in this Clause of the Planning Scheme.

Response to Grounds of Objection

- *Loss of amenity* – the objectors raised a number of concerns with regard to loss of amenity, specifically, the appearance of the site, and depositing of donations such as clothing, furniture and other household goods around the building outside the hours of operation, which would result in an eyesore.

The applicant has noted that there would be no external donation bins provided on the site for people to leave donations outside the building beyond the hours of operation. The applicant has also advised that surveillance cameras and sensor lights would be installed in conjunction with appropriate signage requesting that no donations be left outside the building. Staff would be provided on the site to manage donations during the hours of operation.

The applicant can be required via a Condition of any permit issued to provide a Management Plan which addresses issues such as the depositing of donations externally on the site and/or around the building.

The hours of operation proposed (Monday to Friday 9.00am to 5.00pm and Saturday 10.00am to 2.00pm) are considered reasonable, particularly within a commercial area.

- *Parking/ congestion* – no parking can be provided on the site, with car parking spaces available along the Nepean Highway service road and to a lesser extent along Winsome Street proposed to be used. As outlined previously in this report, it is considered that surrounding streets are able to provide adequate car parking, and the surrounding road network should be able to cope with any traffic generated by the proposal.

- *Inappropriate use of the site* – the site is located within a Business 3 Zone, and as such, is considered appropriate for a commercial use. Given that the site benefits from the abutting laneway and double street frontage, it lends itself to a use that would require deliveries and donations. For reasons outlined in this report, it is considered that the use should not reduce the amenity of the area, and as such, is considered to be an appropriate use for the site.

- *The use would attract the wrong type of people to the area* – as stated by the applicant, the use would attract customers from a broad demographic base. In essence, this ground of objection is not a valid planning consideration and cannot be discussed further in this report.

- *Decrease in property values* – this is not a valid ground for objection as Council is unable to determine whether property values will increase or decrease by way of this application. As such, this ground of objection is not a valid planning consideration and cannot be discussed further in this report.

General Comment

The proposal is considered appropriate for the site as evidenced by:

- The design and siting of the proposed use is considered compatible with the surrounding area;
- The proposal should not have a detrimental impact on surrounding properties (subject to appropriate conditions included on any permit issued); and
- The proposal satisfies the requirements of the Kingston Planning Scheme, including the MSS, Local Policy, Business 3 Zoning and the Schedule to the zone, Road Zone Category 1, Advertising Signage, Car Parking waiver justification, Loading and Unloading of Vehicles and Land Adjacent to a Road Zone Category 1.

It is considered that the objector's concerns have been addressed where appropriate, and on balance and subject to the inclusion of suitable conditions, the proposal is considered reasonable and warrants support.

Recommendation

That Council resolve to issue a Notice of Decision to Grant a Permit to use this site for materials recycling, with reduced car parking requirements, pursuant to Clause 52.06 of the Kingston Planning Scheme, and to erect advertising signage, subject following conditions:

1. Before the development and/or use starts amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on 21st December, 2007, but modified to show:
 - a. the provision of a Management Plan which clearly sets out measures to prevent amenity loss to surrounding properties whilst the use is operating, with the Plan to include measures to control / limit dumping of recyclable items outside the premises during and out of business operating hours, safety and lighting details, out of business hour site patrol procedures, loading / unloading times and vehicle sizes and the like;
 - b. the location of sensor lights and infrared security camera's installed in appropriate locations;
 - c. the provision of signage specifying that the leaving of donated goods outside business hours is prohibited, indicating its location, text and colours.
2. Prior to commencement of the use hereby permitted, the Management Plan required under Condition 1a) of this permit must be submitted to and approved by the Responsible Authority. This plan when endorsed must not be varied without the prior approval of the Responsible Authority. It must also be implemented to the satisfaction of the Responsible Authority.
3. The development and/or use as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
4. The amenity of the area must not be detrimentally affected by the development and/or use, through the:
 - i) Transport of materials, goods or commodities to or from the land.
 - ii) Appearance of any building, works or materials.
 - iii) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - iv) Presence of vermin.
 - v) Any other way.
5. Access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.

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6. Exterior lights must be installed in such positions to effectively illuminate all pathways, car parks and other public areas to the satisfaction of the Responsible Authority.
7. The loading and unloading of goods to and from vehicles must only be carried out on the land.
8. The use must operate only between the hours of and the delivery of goods to the premises must only be made during the hours of:
 - Monday to Friday 9:00am to 5:00pm
 - Saturday 10:00am to 2:00pm

Or otherwise as approved by the Responsible Authority in writing.

9. The development and/or use of the site shall not cause nuisance or be detrimental to the amenity of the neighbourhood by the emission of noise. In this regard any nuisance shall be assessed in accordance with the Australian Standards AS1055 and AS2107 relating to the measurement of Environmental Noise and recommended sound levels.
10. The appearance of the front of the premises must be maintained in a manner to the satisfaction of the Responsible Authority at all times, and in this regard the front windows therein must carry displays or sign writing to indicate the use of the premises and to as far as possible create and maintain the appearance in the street of an occupied premises.
11. No goods or packaging materials shall be stored or left exposed outside the building so as to be visible to the public from a road or other public place.
12. The location and details of the signs shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
13. The signs must be located wholly within the boundary of the land.
14. The signs must not contain any illumination or flashing light.
15. The signs must be constructed to the satisfaction of the Responsible Authority and maintained to the satisfaction of the Responsible Authority.
16. This permit (or part of the permit that relates to advertising signs) expires 15 years from the date of this permit.
17. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

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- The development and use are not started before two years of the date of this permit.*
- The development is not completed before four years of the date of this permit.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

*Should a planning permit issue a specified starting and completion date will be inserted.

Note: Unless no permit is required under the Planning Scheme, other signs must not be constructed or displayed without a further permit.

The meeting was addressed by Sue Lamont on behalf of objectors and a representative from St Vincent de Paul on behalf of the applicant

West/Alabaster

That the permit be refused on the following grounds.

1. The proposal would have an adverse affect on the amenity of the area.
2. The proposal is contrary to the orderly and proper planning of the area.

Lost

Mckeegan/Alabaster

That the officers recommendation be adopted

Carried

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K 48 13 Stayner Grove Moorabbin

Author: Philip Rygl-Town Planner

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	Keen Planning
Address Of Land:	No. 13 Stayner Grove, Moorabbin
Melway Ref:	77E7
Proposal	Three (3) dwellings
Contact Officer:	Phillip Rygl
File No:	KP935/07
Zoning:	Residential 3
Kingston Planning Scheme Ordinance Controls:	<u>State Planning Policy Framework</u> Clause 12: Metropolitan Development Clause 14: Settlement Clause 16.02: Housing – Medium Density Housing <u>Local Planning Policy Framework</u> Clause 21.05 MSS – Residential Land Use Clause 22.11: Residential Development Policy Clause 32.06: Residential 3 Zone & Schedule Clause 55: Two or More Dwellings on a Lot & Residential Buildings Clause 65: Decision Guidelines
Residential Policy Area:	Incremental Change
Neighbourhood Character Area:	Area 34

Reason For Application Going To Council Meeting

This application is going before Council at the request of the Ward Councillor.

The main issues associated with this application as outlined by the objectors can be summarised as follows:

- Neighbourhood Character
- Visual Bulk
- Car Parking
- Previous VCAT decision

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Development Assessment Table

Criteria	ResCode Requirement	Proposed Development Provision	Clause 22.11- Residential Policy Requirement
Private Open Space	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: 40m ² , located to the side / rear of the dwelling, achieving a minimum dimension of 5 metres for a 2 bedroom dwelling with convenient access from a living room. An additional 20m ² is required for each additional bedroom, which achieves a minimum dimension of 3 metres.	Dwelling 1 – approximately 89m ² of which 50m ² secluded private open space Dwelling 2 – 93m ² of which 53m ² is secluded private open space Dwelling 3 50m ² of secluded private open space	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas
Car Parking	One (1) space for a two bedroom dwelling Two (2) spaces for each 3 bedroom dwelling.	Dwelling one (1) has three (3) car parking spaces (within a double garage and tandem in space Dwelling two (2) has two spaces Dwelling three (3) has one space	Adequate car parking for future residents and visitors
Dwelling Setback to Street	The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.	Dwellings 1 & 2 are setback between 5.01m to 7.6m at ground level and 8.6m to 10.38m at first floor level	As per ResCode
Site Coverage	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: Maximum 50%	Site coverage is approximately 39.2%	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas

Existing Conditions

The subject site is located on the north side of Stayner Grove, Moorabbin. It is irregular in shape with a frontage width of 35.86 metres, a maximum depth of 37.15 metres, resulting in an overall area of 833.2m². The site has a fall of approximately 1

metre towards the north-east. Vehicle access to the site is via a single width crossover located on the south-west side of the Stayner Grove property frontage.

The subject site does not contain any significant vegetation.

The site is currently occupied by a single storey cream brick dwelling with associated outbuildings.

This section of street has a definable character, consisting predominantly of detached, single storey, brick dwellings with pitched roofs. Dwellings are sited with generous side setbacks, creating a regular rhythm to the streetscape. Front fences are generally constructed of brick, at varying heights.

Previous Application

Application for Planning Permit KP766/06, for three (3) double storey dwellings was refused by Council under delegation, with this decision upheld by the VCAT following an appeal by the permit applicant. The table below compares the two proposals:

The Tribunal in its decision made the following key comments:

“The inclusion of three units, rather than two as suggested in the above quotation, may not accord with the policy but a review of a cadastral plan indicates the land to be possibly larger than those around it. Moreover, as perhaps alluded to in the policy when referring to “equivalent”, the size of dwellings will be a consideration - three single bedroom units would usually have a very different built form outcome compared with three dwellings each with multiple bedroom and studies. On its face, the intent of the policy is clear and that is for a modest degree of change in this type of location.

“It is plain that three units can physically fit on the land, subject to minor changes to address driveway turning areas as raised in submissions and evidence. “

“The focus on incremental change is part of an overall strategy involving higher density development in targeted locations and less significant change in other places. That is, the intensity of new dwelling development in areas such as the review site is to be tempered when contrasted with the preferred locations for increased housing diversity in Kingston. Even though three units may be able to fit on the land, that does not mean that outcome is acceptable in terms of neighbourhood character”

“The first floors of the two dwellings would be recessed, but the attached form of the first floors and the breadth of the attached upper level (at over 15 metres) would create a built mass that is foreign in this neighbourhood that comprises modestly-spaced small homes.

I accept Mr Keen’s submission that the review site can accommodate two dwellings across its frontage given the shape of the land and typical frontages

in the area. However, even though I find aspects of the design detailing of the front units to be generally acceptable (eg. roof profile), I am not persuaded that the attached mass and extent of development across the site, in this location, is acceptable.”

“Moreover, the bulky attic form of the rear dwelling would add to perceptions as to the extent of building on the site – it is a form that would be seen in some streetscape views.

Put simply, there is too much attached double storey development proposed too close to the street coupled with the visible bulk of the attic style rear unit. In my view, the proposal does not achieve the outcome sought for incremental change areas nor sufficiently respond to the area’s character.”

“The loss of vegetation from the review site was raised as a concern in some submissions but I am satisfied that there would be opportunities for new planting. However, I consider the Scheme seeks more generous or suitably proportioned spaces than proposed, as discussed below. “

“The development proposes adequate car parking to service the occupants of each unit (given the very small size of the study to Unit 3, I find a second car space is not required). I find no reason to reject the permit application because of the parking demands that would be generated or the traffic volumes that would result in this street even when mindful of the use of this route for school traffic and the number of young families in the area.

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Proposal In Detail

It is proposed to construct three (3) dwellings, comprising two (2) attached double storey dwellings facing Stayner Grove and a single storey dwelling at the rear.

	DWELLING	ORIGINAL PROPOSAL	NEW PROPOSAL	DIFFERENCE
STOREYS	Dwelling 1 Dwelling 2 Dwelling 3	Double Double single	Double Double Single	Dwelling 3 reduced to single storey
CAR SPACES	Dwelling 1 Dwelling 2 Dwelling 3	3 2 1	3 2 1	No change
FLOOR AREA	Dwelling 1 Dwelling 2 Dwelling 3	156m ² 161m ² 138m ²	139m ² 134m ² 106m ²	17m ² less area 27m ² less area 32m ² less area
SETBACKS TO STREET	Dwelling 1 Dwelling 2 Dwelling 3	6m (min) 4.5m (min) N/A	6m (mi) 5.01m (min) N/A	no change +0.51m N/A
SECLUDED OPEN SPACE	Dwelling 1 Dwelling 2 Dwelling 3	45m ² 46m ² 58.5m ²	50m ² 53m ² 50.6m ²	+5m ² +7m ² -7.9m ²

Building Materials and colours have been nominated as:

Roof:	Roof tiles
Walls:	Face brickwork and rendered cladding
Garage doors	Tilt panel
Windows:	Not specified
Driveways:	Stone finish
Front fencing:	1.5m high brick piers with steel picket inserts
Boundary fences:	Existing boundary fences

The proposal would result in a site coverage of approximately 39.2%, and a site permeability of 30.7%.

Title Details

The applicant has completed the application form declaring that there is no restrictive covenant on the title.

Amendment To The Application Before Notification

Not applicable.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Eleven (11) objections to the proposal were received.

The grounds of concern may be summarised as follows:

- Neighbourhood Character- double storey and side by side
- Vehicular parking/ traffic congestion and related safety concerns
- Visual Bulk
- Loss of privacy - overlooking
- Font Setbacks
- Previous VCAT decision

Preliminary Conference

A preliminary conference was held on the 21st February, 2008, where the above issues were discussed in depth, but largely not resolved. The conference was attended by six (6) objectors, the ward Councillor and the permit applicant.

No resolution of the issues was achieved at the meeting.

Amendment To The Application After Notification And Re-Notification

No amendments made.

Planning Scheme Provisions

A planning permit is required to develop land for two dwellings, pursuant to Clause 32.06-4 of the Kingston Planning Scheme (the Scheme). In addition, according to ResCode at Clause 55 and the decision guidelines at Clause 65 of the Scheme, Council must consider the State Planning Policy Framework (Clause 16) and the Local Planning Policy Framework (LPPF), including the Municipal Strategic Statement of the Scheme.

Referral

No external referrals were required in respect of this application.

The application was referred to the following internal departments within Council:

- Council's Development Engineer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.
- Council's Vegetation Management Officer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.

Discussion

Kingston Planning Scheme Provisions:

Clause 12: Metropolitan Development

This section of the scheme provides specific objectives and strategies for Metropolitan Melbourne, including the following:

Clause 12.01 A more compact city seeks to:

- § Facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.
- § Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport.

Clause 12.05 A great place to be – seeks to create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity, including:

- § Promotion of good urban design to make the environment more liveable and attractive.
- § Recognition and protection of cultural identity, neighbourhood character and sense of place.
- § Improvement of community safety and encouragement of neighbourhood design that makes people feel safe.
- § Protection of heritage places and values.
- § Promotion of excellent neighbourhood design to create attractive, walkable and diverse communities.
- § Improvement of the quality and distribution of open space and ensuring the long term protection of open space.
- § Improvement of the environmental health of the bays and their catchments.

Clause 12.06 A fairer city – seeks to increase the supply of well located and affordable housing by:

- § Encouraging a significant proportion of new development, including development activity centres and strategic redevelopment sites, to be affordable for households on low to moderate incomes.

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- § Facilitate a mix of private, affordable and social housing in Transit Cities Projects.
- § Ensuring the redevelopment and renewal of public housing stock better meets community needs.

Clause 12.07 A greener city – seeks to minimise impacts on the environment to create a sustainable path for future growth and development by:

- § Ensuring that water resources are managed in a sustainable way.
- § Reduce the amount of waste generated and encourage increased reuse and recycling of waste materials.
- § Contribute to national and international efforts to reduce energy usage and greenhouse gas emission.
- § Reduce the impact of stormwater on bays and catchments.

Clause 12.08 Better transport links seeks to:

- § Manage the road system to achieve integration, choice and balance by developing an efficient and safe road network and making the most of existing infrastructure.
- § Give more priority to walking and cycling in planning urban development and in managing the road systems and neighbourhoods.

It is considered that this application meets these objectives.

Clause 14.01: Planning for Urban Settlement

This section of the Scheme seeks facilitate the orderly development of urban areas. It is considered that this application meets these objectives.

Clause 14.01-2: Planning for Urban Settlement - General Implementation

This section of the Scheme seeks to ensure that the consolidation of residential and employment activities is encouraged within existing urban areas and designated growth areas, and that development in existing residential areas should be respectful of neighbourhood character, and that higher land use densities and mixed use developments should be encouraged near railway stations, major bus terminals, transport interchanges and tram and principal bus routes.

It is considered that this application meets these objectives.

Clause 16.02: Housing - Medium Density Housing

It is the objective of the State Planning Policy Framework to encourage the development of well-designed medium-density housing which:

- § Respects the character of the neighbourhood.
- § Improves housing choice.
- § Makes better use of existing infrastructure.
- § Improve energy efficiency of housing.

It is considered that this application clearly meets these objectives.

Clause 21.05 MSS - Residential Land use

Incremental Housing Change Area

The type of housing change anticipated in these areas will take the form of extensions to existing houses, new single dwellings or the equivalent of new two dwelling developments on average sized lots. The existing single dwelling character of these areas is to be retained.

The objectives of the Municipal Strategic Statement (as relevant to this application) include:

- **Objective 1:** To provide a wide range of housing types across the municipality to increase housing diversity and cater for the changing needs of current and future populations, taking account of the differential capacity of local areas in Kingston to accommodate different types and rates of housing change.
- **Objective 2:** To ensure new residential development respects neighbourhood character and is site responsive, and that medium density dwellings are of the highest design quality.
- **Objective 3:** To preserve and enhance well landscaped/vegetated environments and protect identified significant vegetation.
- **Objective 4:** To promote more environmentally sustainable forms of residential development.
- **Objective 5:** To manage the interface between residential development and adjoining or nearby sensitive/strategic land uses.
- **Objective 6:** To ensure residential development does not exceed known physical infrastructure capacities.

Relevant strategies to achieve these objectives (as relevant to this application) include:

- Promote lower density housing in established suburban areas that do not have direct access to activity/transport nodes and “encourage” only incremental change in housing density (*incremental housing change areas*). Such areas will retain their predominantly single dwelling character and incremental change will occur in the form of single dwellings or the equivalent of dual occupancy developments on average sized lots.
- Promote new residential development which is of a high standard, responds to the local context and positively contributes to the character and identity of the local neighbourhood.
- Promote new residential development which provides a high standard of amenity and quality of life for future occupants.
- Encourage the retention of existing vegetation wherever possible.
- Improve landscape character by accommodating appropriate landscaping within new residential developments.

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- Ensure that the planning, design, siting and construction of new residential development responds to best practice environmental design guidelines for energy efficiency, waste and recycling, and stormwater management.
- Promote medium density housing development in close proximity to public transport facilities, particularly train stations.
- Ensure the siting and design of new residential development sensitively responds to interfaces with environmentally sensitive areas, including the foreshore.
- Ensure that where medium and higher density residential areas are proposed adjacent to lower density residential areas, the design of such development takes proper account of its potential amenity impacts.
- Ensure that the siting and design of new residential development is consistent with Urban Stormwater Best Practice Environmental Management Guidelines and that new development contributes to the maintenance and upgrade of local drainage infrastructure as required, where such new development will impact on the capacity of such infrastructure.
- Require the provision of car parking to satisfy the anticipated demand having regard to average car ownership levels in the area, the environmental capacity of the local street network and the proximity of public transport and nearby on and off street car parking.
- Ensure that all new medium density housing provides adequate private open space that is appropriately landscaped.

It is considered that the proposed development is consistent with the relevant objectives of Council's Municipal Strategic Statement as outlined above. The proposal is considered a good opportunity to provide a range / variety of dwelling styles to cater for the changing household types. Therefore, the proposed development assists in providing for housing diversity within the area, presenting an increase in housing density whilst being respectful to the existing area. The layout and design provides for safety and security needs for future residents, takes into account energy efficiency objectives where appropriate, provides adequate car parking and ensures that a suitable amount of open space is allocated to each dwelling.

While it is noted that the majority of dwellings within Stayner Grove are single storey, there are a few examples of double storey development within the surrounding area. It is also noted that the Tribunal in its decision on the previous application did not object to a two storey dwelling(s) per se, rather the Tribunal found that the extent of the first floor area of the front facing dwellings and their setbacks and attached form was unacceptable. The revised proposal has provided a 2m separation between the upper level areas of dwelling 1 and 2, together with increased front setbacks from 7.55 (min) to 8.6m(min). A greater use of variation in elevation walls and greater overall setbacks has also been made. While the Tribunal did not object to the provision of balconies facing the street, the new proposal has deleted these elements from the design, thereby reducing the visual impact of the first floor areas to the streetscape.

In addition, a fundamental change to the new design is that dwelling 3 (rear dwelling) has been reduced from a double storey dwelling to a single storey design. It is considered that this design change has mostly addressed Council's and the Tribunal's concerns regarding visual bulk impacts onto the adjoining properties to the rear. The single storey scale and proposed setbacks for this dwellings are considered to be sympathetic to adjoining and nearby developments and is an appropriate design outcome for this site.

It is considered that the design and siting of each dwelling is appropriate having regard to the level of articulation, reasonable side boundary setbacks and the variation in ground and first floor setbacks. The use of a low pitched roof together with varied materials and finishes will provide for a dwelling that will fit comfortably within the Stayner Grove built form context.

For reasons just outlined, it is considered that the design respects the amenity of adjoining properties as the proposal ensures that no unreasonable overlooking or overshadowing will occur. Please note, that these issues will be further discussed at a later stage within this report (see response to objector's concerns).

Average lot size within this area has been calculated to be 613.1m² which equates to 306.55m² per lot for the equivalent of a dual occupancy development. It is therefore considered that this proposal would not meet this strategy as the subject site has an area of 833.2m² and each lot is approximately 86.45m² below the average lot size for this area. However, having regard to the current design and the amendments made to the previous application, it is considered appropriate to allow this development in this instance.

Clause 22.11 - Residential Development Policy

The proposal has been assessed against the objectives and policy of the Residential Development Policy. It is considered that the proposal satisfactorily meets these requirements.

The proposal is considered unlikely to hinder the existing neighbourhood character in terms of architectural design. Although it is acknowledged that Stayner Grove predominately consists of single storey, there are other double storey dwellings found within the immediate area. It is considered that the massing and upper floor component of each dwelling is reasonable as are sited towards the front of each frontage and include varying and suitable setbacks from all relevant common boundaries. Overall, it is submitted that the proposed two (2) storey dwellings have been sensitively and consciously designed, taking into account the site's surrounding environs and incorporating appropriate materials, finishes and colours that are consistent with that found in the broader neighbourhood character.

The proposed upper storey setbacks of each dwelling from all common boundaries, comply with the provisions of the Kingston Planning Scheme.

The location and configuration of the private open space areas being provided to all dwellings are of an adequate size to be usable and allow for the provision of suitable landscaping. It is considered that the development will provide a high standard of amenity and quality of life for future occupants. Furthermore, the driveway layout is considered practical, efficient and does not pose any safety issues when vehicles are entering and exiting the site.

Clause 32.06 Residential 3 Zone

The purpose of the Residential 3 Zone includes the provision of residential development at a range of densities with a variety of dwellings to meet the housing needs of all households and to encourage residential development that respects the neighbourhood character. A planning permit is required for the development of 2 or more dwellings.

Schedule

The proposal meets the additional requirements listed in the Schedule to the Residential 3 zone.

Clause 55: Rescode

The proposal has been assessed against the objectives and standards of Clause 55 (ResCode) of the Kingston Planning Scheme. It is considered that the proposal satisfactorily meets the requirements of Rescode. There are however some areas of non-compliance which are as follows:

Clause 55.03-8: Standard B13 – Landscaping objectives

Landscape plans were referred to Council's Vegetation Management Officer who recommended that amended plans be requested via Condition 1 of approval.

Clause 65: Decision Guidelines

This clause of the Planning Scheme sets out other matters which must be given regard to before deciding on an application.

It is considered that the proposed development meets the requirements as set out in this Clause of the Planning Scheme.

Neighbourhood Character Area Guidelines (Incorporated Document):

The land is located within Area 15 of the Neighbourhood Character Guidelines. The proposal is not considered to raise any issues of non-compliance with these guidelines.

Response to Grounds of Objection

a) Neighbourhood Character & Side by Side

Neighbourhood character is the starting point of ResCode (Clause 55 of the Kingston Planning Scheme). It is acknowledged that the concept of 'neighbourhood character' is a somewhat subjective issue; however, with regard to the proposal and for the

reasons discussed below, it is considered that the development is in keeping and consistent with the surrounding character of the area. It is evident that there are other examples of two-storey dwellings located within proximity to the subject site.

Further, it is evident that there are varying styles of residential development within the general area.

The site, as specified in Council's Local Planning Policy Framework, is located within an Incremental Housing Change Area where future objectives strive to provide a wide range of housing types across the municipality to increase housing diversity and cater for the changing needs of current and future populations. Additionally, in these areas it is important to ensure new residential development respects neighbourhood character and is site responsive, and to promote lower density housing in established suburban areas that do not have direct access to activity/transport nodes and "encourage" only incremental change in housing density (*incremental housing change areas*). Such areas will retain their predominantly single dwelling character and incremental change will occur in the form of single dwellings or the equivalent of dual occupancy developments on average sized lots.

The conventional architectural style of each dwelling incorporates varying materials and design techniques, which contribute positively to reducing visual bulk whilst also remaining consistent with and reflecting existing architectural elements present within Stayner Grove

The issue of the design of the dwellings being side by side, it considered to have also been addressed by the current design. As already noted, the new proposal has provided for a 2m separation between the dwellings at first floor level, together with increased ground and first floor setbacks and removal of balconies. This is considered to have addressed the previous concerns regarding the presentation of the dwellings facing Stayner Grove.

For all of the reasons outlined above, it is considered that the proposal is respectful of adjoining properties as it contains adequate setbacks from all common boundaries, is not excessively large in built form, bulk or total building height, and as such, complies with the objectives and standards of Clause 55 that relate to neighbourhood character. It is respectfully submitted that the proposed development should therefore, not hinder the character of the area.

b) Vehicular parking/ traffic congestion and related safety concerns

Many residents have expressed concern that the proposed car parking and access arrangements onto the Stayner Grove are inappropriate and will result in a safety issue. It is important to note that during the previous VCAT hearing, the permit applicant called upon the evidence of a expert traffic engineer. The engineer made a number of suggestions to improve sight lines for vehicles using the common driveway for dwellings 2 and 3, namely setting the fence of dwelling 2 a minimum of 2m from the front boundary and using low shrub planting along the driveway. These can be imposed as conditions on the Notice of Decision. More importantly, the Tribunal in

its decision noted that it was satisfied with the traffic arrangements, subject to the above modifications being made to the plans.

With respect to car parking numbers, it is noted that each dwelling satisfies the requirements of ResCode for on-site car parking, with dwelling 1 provided with three spaces, dwelling 2 is provided with two space and dwelling 3 (two bedrooms) is provided with one space. It is considered that the number of car parking spaces provided will be sufficient and will meet the likely demand generated by future residents of the dwellings.

c) Loss of privacy

With regard to overlooking, Council acknowledges that the applicant has ensured that first floor habitable room windows of Dwelling 1 and 2 are either facing the street frontages or are provided with obscure glazing or sill heights t 1.7m above finished floor levels. Accordingly, it is submitted that the proposed development complies with the overlooking provisions of Clause 55.04-6 of the Kingston Planning Scheme and that no unreasonable overlooking is likely to occur as a result of the proposed development.

Dwelling 3 is single storey in scale and is actually designed to be cut into the site. Given the extent of existing fencing, it is considered that dwelling 3 will not result in unreasonable overlooking to adjoining properties.

d) Visual Bulk

It is noted that all side setbacks comply with the provisions of ResCode at both ground and first floor level. It is considered that the first floor area of each dwelling has been designed and located to respect the habitable room windows and secluded private open space of the adjoining properties so as to minimise visual bulk impacts and are considered appropriate. The conversion of dwelling 3 to a single storey dwelling is considered to have addressed the issues of the previous application with respect to visual bulk and it is considered that the proposal in its current formal will not result in unreasonable visual bulk impacts to adjoining properties.

General Comment

The proposed development is considered appropriate for the site as evidenced by:

- The design and siting of the proposed development to be compatible with the surrounding area;
- The proposal should not have a detrimental impact on surrounding properties (subject to appropriate conditions); and,
- The proposal satisfies the requirements of the Kingston Planning Scheme, including the MSS, Residential Development Policy, Residential 3 zoning and the Schedule to the zone, Clause 55 – Two or more dwellings on a lot and Residential Buildings and the Neighbourhood Character Area Guidelines and the Designing Contextual Housing Guidelines.

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It is considered that the revised design has substantially addressed the shortcomings of the original applications, and has responded to both the Council's and the Tribunal's concerns, namely by reducing dwelling 3 to a single storey dwelling, providing

greater front setbacks at both ground and first floor and providing a separation between dwelling 1 and 2 at first floor level to reduce the perception of visual bulk to the street.

On balance and subject to the inclusion of suitable conditions, the proposal is considered reasonable and warrants support.

Recommendation

That a Notice of Decision to Grant a Permit for the development of this site for two (2) dwellings be issued, subject following conditions:

1. Before the development starts amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on 7th August, 2007, but modified to show:
 - a) the provision of an amended landscape plan in accordance with the plan prepared by Species Landscape Architecture date February 2007 Drawing No. L1b, but modified to show the following:
 - a. replace the proposed *Malus ioensis Plena* (Bechetel Crab Apple) within the front setback with *Ulmus parvifolia* (Chinese Elm) or similar;
 - b. all vegetation proposed within the sight distance triangle area (see figure 1 within the Traffic Evidence Report prepared by O'Brien Traffic dated August 2007) , is to be higher than 1m high at maturity.
 - b) the first floor west facing windows of dwelling 1 and the first floor north and east facing windows of dwelling 2 nominated as being provided with sill heights, or provided with fixed obscure glazing, to a minimum height of 1.7m above finished floor directly below each window respectively;
 - c) the proposed front fence for dwelling 1 and 2 reduced to a maximum of 1.2m high, with suitable screen planting provided behind to afford these areas some privacy;
 - d) the proposed front fence for dwelling 2 setback a minimum of 2m from the site's south (front) property boundary to allow for improved sight lines for vehicles within the common driveway of dwelling 2 and 3;
 - e) the surface material of all driveways / accessways and car parking spaces nominated in all-weather coloured concrete sealcoat, or similar;
 - f) the provision of a full colour, finishes and building materials schedule (including samples) for all external elevations of the proposed dwellings.
2. The development and/or use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
3. Before occupation of the dwellings hereby permitted, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.

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4. Before occupation of the dwellings hereby permitted, all buildings and works and the conditions of this permit must be complied with, unless with the further prior written consent of the Responsible Authority.
5. The development of the site must be provided with stormwater treatment works which will entail the detention of stormwater on site using water sensitive urban design principles (including re-use) to reduce stormwater runoff quantity and improve discharge quality. Discussion with Councils Development Engineer on treatment options is advised prior to a design being submitted.

The stormwater system must be constructed in accordance with the approved drainage plan and maintained to the satisfaction of the Responsible Authority.

6. The development of the site must be provided with stormwater works which incorporates the use of water sensitive urban design principles to improve stormwater runoff quality and which also retains on site any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council's Development Engineer can advise on satisfactory options to achieve these desired outcomes which may include the use of an infiltration or bioretention system, rainwater tanks connected for reuse and a detention system.
7. Before the development commences, a Stormwater Management Plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction of the Responsible Authority. The Stormwater Management Plan must be prepared by a qualified person and show all details of the proposed stormwater works including all existing and proposed features that may have impact (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.).
8. Stormwater works must be provided on the site so as to prevent overflows onto adjacent properties.
9. Before the development hereby permitted commences, a drainage plan showing the method of treatment of stormwater from the development must be submitted to the Responsible Authority for approval. The plan must be prepared by a qualified person and show all drainage works required. The plan must also show all existing and proposed features that may have impact on the drainage (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.).
10. Stormwater drainage of the site must be provided so as to prevent overflows onto adjacent properties and be in accordance with the approved drainage plan.
11. Construction on the site must be restricted to the following times:
 - a. Monday to Friday 7:00am to 7:00pm; and
 - b. Saturday 9:00am to 6:00pm.

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Or otherwise as approved by the Responsible Authority in writing.

12. Before the occupation of the dwellings hereby permitted starts, or by such later date as is approved by the Responsible Authority in writing, the nature strip, kerb and channel, vehicle crossover and footpath must be reinstated to the satisfaction of the Responsible Authority.
13. Any existing vehicular crossing not in accordance with the endorsed plan must be removed and the kerb reinstated in a manner satisfactory to the Responsible Authority and any proposed vehicular crossing must be fully constructed to the Responsible Authority's standard specification.
14. Convenient taps or fixed sprinkler system must be provided to the satisfaction the Responsible Authority capable of watering all communal and private land and landscaped areas, including turf block visitor car parking where provided.
15. A street number of 100mm minimum height and contrasting in colour to its background, must be fixed at the front boundary of the property and as near as practicable to, or on the letterboxes with such numbering to be in accordance with Council's Street Numbering Policy. Separate unit numbers of 75mm minimum height must be placed adjacent to the front entrance of each dwelling. Such numbers must be clearly legible from the access driveway.
16. Prior to the occupation of the dwellings hereby approved, all boundary fences must be repaired and/or replaced as necessary to the satisfaction of the Responsible Authority, at the cost of the applicant/owner.
17. Exterior lights must be installed in such positions as to effectively illuminate all pathway and porch areas. Such lighting must be controlled by a time clock or sensor unit, and must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
18. Prior to the occupation of the dwellings hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
 - a. Constructed to the satisfaction of the Responsible Authority.
 - b. Properly formed to such levels that they can be used in accordance with the plans.
 - c. Surfaced with *an all-weather coloured concrete sealcoat* to the satisfaction of the Responsible Authority.
 - d. Drained and maintained to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
19. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the Responsible Authority.

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20. All piping and ducting above the ground floor storey of the development (other than rainwater guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.
21. Finished Floor Levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
22. External clothes drying facilities must be provided for each dwelling.
23. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and use are not started before two years of the date of this permit.*
- The development is not completed before four years of the date of this permit.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

**Should a planning permit issue a specified starting and completion date will be inserted.*

Note: It is noted the development includes storage shed to be built over the rear easement. Separate consent from Council and the relevant service authority is required to build over the easements and will need to be obtained prior to the issue of a Building Permit.

Note: Prior to the commencement of the development you are required to obtain the necessary Building Permit.

Note: The applicant/owner must provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with the planning permit.

Note: Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation, should consult Council's Vegetation Management Officer to verify if a Local Law Permit is required for the removal of such vegetation.

The meeting was addressed by Nancy Keen on behalf of objectors and Bruce Keen on behalf of the applicant

Alabaster/West

The application be refused on the following grounds.

1. The proposal would have an adverse affect on the amenity of an established residential neighbourhood.
2. The proposal constitutes an over- development of the site.
3. The proposal exhibits excessive bulk and mass
4. The proposal does not fully satisfy Clause 22.11 – Residential Development Policy of the Kingston Planning Scheme.
5. The proposal does not satisfy all of the requirements of Clause 55 of the Kingston Planning Scheme (ResCode), in particular Clause 55.02-1 Neighbourhood Character Objectives, Clause 55.02-2 Residential Policy Objectives and Clause 55.03-8 Landscaping Objectives

Carried

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K 49 48-50 Bourke Street Mentone

Author: Philip Rygl-Town Planner

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	Finley Roberts Design
Address Of Land:	No.'s 48 – 50 Bourke Street, Mentone
Melway Ref:	86 J4
Proposal	Eight (8) dwellings
Contact Officer:	Phillip Rygl
File No:	KP779/07
Zoning:	Residential 3
Kingston Planning Scheme Ordinance Controls:	<u>State Planning Policy Framework</u> Clause 12: Metropolitan Development Clause 14: Settlement Clause 16.02: Housing – Medium Density Housing <u>Local Planning Policy Framework</u> Clause 21.05 MSS – Residential Land Use Clause 22.11: Residential Development Policy Clause 32.06: Residential 3 Zone & Schedule Clause 55: Two or More Dwellings on a Lot & Residential Buildings Clause 65: Decision Guidelines
Residential Policy Area:	Incremental Change
Neighbourhood Character Area:	Area 17

Reason For Application Going To Council Meeting

This application is going before Council at the request of the Ward Councillor.

The main issues associated with this application as outlined by the objectors can be summarised as follows:

- Neighbourhood Character
- Traffic
- Two Storey form
- Impact on Vegetation
- Amenity Impacts

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Development Assessment Table

Criteria	ResCode Requirement	Proposed Development Provision	Clause 22.11- Residential Policy Requirement
Private Open Space	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: 40m ² , located to the side / rear of the dwelling, achieving a minimum dimension of 5 metres for a 2 bedroom dwelling with convenient access from a living room. An additional 20m ² is required for each additional bedroom, which achieves a minimum dimension of 3 metres.	Dwelling 1 – 77m ² (37m ² SPOS) Dwelling 2 – 40m ² Dwelling 3 - 40m ² Dwelling 4 - 62m ² Dwelling 5 - 50m ² Dwelling 6 - 45m ² Dwelling 7 - 44m ² Dwelling 8 - 94m ² (50m ² SPOS)	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas
Car Parking	Two (2) spaces for each 3 bedroom dwelling.	Each dwelling is provided with a minimum two (2) on-site car parking spaces. Two (2) on-site visitor car parking spaces are provided	Adequate car parking for future residents and visitors
Dwelling Setback to Street	The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.	Dwelling 1 – 8.2m Dwelling 8 – 9m	As per ResCode
Site Coverage	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: Maximum 50%	Site coverage is approximately 39.78%	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas

Existing Conditions

The subject site is located on the east side of Bourke Street, Mentone and consists of two allotments (No's. 48 & 50). Combined, the site is rectangular in shape with a

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combined 30.48m frontage, a maximum depth of 80.47m, resulting in an overall area of 2,542m². The site has a steady fall from front to rear of approximately 4.67m. Each site currently supports single dwellings, with associated outbuilding and swimming pools.

The subject site contains a number of large established vegetation.

The general area consists predominately of detached, single storey and double storey dwellings, including recent multi-dwelling development.

Proposal In Detail

It is proposed to construct eight (8) dwellings, comprising four (4) double storey dwellings towards the front of the site and four (4) single storey dwellings towards the rear of the site.

Key elements of the proposal are as follows:

Dwelling	Floor Area (excluding garage / verandah)	Private Open Space	No. of Bedrooms	Car Parking Spaces
1	Ground: 108m ² First Floor: 99m ²	Dwelling 1 – 77m ² (37m ² SPOS)	Three (3)	Three (3)
2	Ground:93m ² First: 65m ²	Dwelling 2 – 40m ²	Two (2)	Two (2)
3	Ground:117m ²	Dwelling 3 - 40m ²	Two (2)	Two (2)
4	Ground:151m ²	Dwelling 4 - 62m ²	Three (3)	Two (2)
5	Ground:113m ²	Dwelling 5 - 50m ²	Two (2)	Two (2)
6	Ground:113m ²	Dwelling 6 - 45m ²	Two (2)	Two (2)
7	Ground:93m ² First:65m ²	Dwelling 7 - 44m ²	Two (2)	Two (2)
8	Ground:101m ² First: 86m ²	Dwelling 8 - 94m ² (50m ² SPOS)	Three (3)	Three (3)

Building Materials and colours have been nominated as:

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Roof:	Roof tiles
Walls:	Rendered brickwork and light weight cladding, feature stone & weatherboard
Garage doors	Panel lift
Windows:	Powder coated aluminium
Driveways:	Concrete
Front fencing:	1.2m timber picket
Boundary fences:	Existing boundary timber

The proposal would result in a site coverage of approximately 39.78%, and a site permeability of 39.43%.

Title Details

The applicant has completed the application form declaring that there is no restrictive covenant on the title.

Amendment To The Application Before Notification

Not applicable.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Seven (7) objections to the proposal were received.

The grounds of concern may be summarised as follows:

- Neighbourhood Character
- Site Coverage
- Overdevelopment
- Vehicular parking/ traffic congestion and related safety concerns
- Loss of privacy – overlooking/overshadowing
- Impact on vegetation
- Font Setbacks
- Infrastructure – drainage & electricity

Preliminary Conference

A preliminary conference was held on the 26th February, 2008, where the above issues were discussed in depth, but largely not resolved. The conference was attended by seven (7) objectors, the permit applicant and Council's planning officer.

Amendment To The Application After Notification And Re-Notification

No Amendments Made.

Planning Scheme Provisions

A planning permit is required to develop land for two dwellings, pursuant to Clause 32.01-4 of the Kingston Planning Scheme (the Scheme). In addition, according to ResCode at Clause 55 and the decision guidelines at Clause 65 of the Scheme, Council must consider the State Planning Policy Framework (Clause 16) and the Local Planning Policy Framework (LPPF), including the Municipal Strategic Statement of the Scheme.

Referral

No external referrals were required in respect of this application.

The application was referred to the following internal departments within Council:

- Council's Development Engineer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.
- Council's Vegetation Management Officer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.

Discussion

Kingston Planning Scheme Provisions:

Clause 12: Metropolitan Development

This section of the scheme provides specific objectives and strategies for Metropolitan Melbourne, including the following:

Clause 12.01 A more compact city seeks to:

- § Facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.
- § Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport.

Clause 12.05 A great place to be – seeks to create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity, including:

- § Promotion of good urban design to make the environment more liveable and attractive.
- § Recognition and protection of cultural identity, neighbourhood character and sense of place.

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- § Improvement of community safety and encouragement of neighbourhood design that makes people feel safe.
- § Protection of heritage places and values.
- § Promotion of excellent neighbourhood design to create attractive, walkable and diverse communities.
- § Improvement of the quality and distribution of open space and ensuring the long term protection of open space.
- § Improvement of the environmental health of the bays and their catchments.

Clause 12.06 A fairer city – seeks to increase the supply of well located and affordable housing by:

- § Encouraging a significant proportion of new development, including development activity centres and strategic redevelopment sites, to be affordable for households on low to moderate incomes.
- § Facilitate a mix of private, affordable and social housing in Transit Cities Projects.
- § Ensuring the redevelopment and renewal of public housing stock better meets community needs.

Clause 12.07 A greener city – seeks to minimise impacts on the environment to create a sustainable path for future growth and development by:

- § Ensuring that water resources are managed in a sustainable way.
- § Reduce the amount of waste generated and encourage increased reuse and recycling of waste materials.
- § Contribute to national and international efforts to reduce energy usage and greenhouse gas emission.
- § Reduce the impact of stormwater on bays and catchments.

Clause 12.08 Better transport links seeks to:

- § Manage the road system to achieve integration, choice and balance by developing an efficient and safe road network and making the most of existing infrastructure.
- § Give more priority to walking and cycling in planning urban development and in managing the road systems and neighbourhoods.

It is considered that this application meets these objectives.

Clause 14.01: Planning for Urban Settlement

This section of the Scheme seeks facilitate the orderly development of urban areas. It is considered that this application meets these objectives.

Clause 14.01-2: Planning for Urban Settlement - General Implementation

This section of the Scheme seeks to ensure that the consolidation of residential and employment activities is encouraged within existing urban areas and designated growth areas, and that development in existing residential areas should be respectful of neighbourhood character, and that higher land use densities and mixed use developments should be encouraged near railway stations, major bus terminals, transport interchanges and tram and principal bus routes.

It is considered that this application meets these objectives.

Clause 16.02: Housing - Medium Density Housing

It is the objective of the State Planning Policy Framework to encourage the development of well-designed medium-density housing which:

- § Respects the character of the neighbourhood.
- § Improves housing choice.
- § Makes better use of existing infrastructure.
- § Improve energy efficiency of housing.

It is considered that this application clearly meets these objectives.

Clause 21.05 MSS - Residential Land use

Incremental Housing Change Area

The type of housing change anticipated in these areas will take the form of extensions to existing houses, new single dwellings or the equivalent of new two dwelling developments on average sized lots. The existing single dwelling character of these areas is to be retained.

The objectives of the Municipal Strategic Statement (as relevant to this application) include:

- **Objective 1:** To provide a wide range of housing types across the municipality to increase housing diversity and cater for the changing needs of current and future populations, taking account of the differential capacity of local areas in Kingston to accommodate different types and rates of housing change.
- **Objective 2:** To ensure new residential development respects neighbourhood character and is site responsive, and that medium density dwellings are of the highest design quality.
- **Objective 3:** To preserve and enhance well landscaped/vegetated environments and protect identified significant vegetation.
- **Objective 4:** To promote more environmentally sustainable forms of residential development.
- **Objective 5:** To manage the interface between residential development and adjoining or nearby sensitive/strategic land uses.
- **Objective 6:** To ensure residential development does not exceed known physical infrastructure capacities.

Relevant strategies to achieve these objectives (as relevant to this application) include:

- Promote lower density housing in established suburban areas that do not have direct access to activity/transport nodes and “encourage” only incremental change in housing density (*incremental housing change areas*). Such areas will retain their predominantly single dwelling character and incremental change will occur in the form of single dwellings or the equivalent of dual occupancy

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developments on average sized lots.

- Promote new residential development which is of a high standard, responds to the local context and positively contributes to the character and identity of the local neighbourhood.
- Promote new residential development which provides a high standard of amenity and quality of life for future occupants.
- Encourage the retention of existing vegetation wherever possible.
- Improve landscape character by accommodating appropriate landscaping within new residential developments.
- Ensure that the planning, design, siting and construction of new residential development responds to best practice environmental design guidelines for energy efficiency, waste and recycling, and stormwater management.
- Promote medium density housing development in close proximity to public transport facilities, particularly train stations.
- Ensure the siting and design of new residential development sensitively responds to interfaces with environmentally sensitive areas, including the foreshore.
- Ensure that where medium and higher density residential areas are proposed adjacent to lower density residential areas, the design of such development takes proper account of its potential amenity impacts.
- Ensure that the siting and design of new residential development is consistent with Urban Stormwater Best Practice Environmental Management Guidelines and that new development contributes to the maintenance and upgrade of local drainage infrastructure as required, where such new development will impact on the capacity of such infrastructure.
- Require the provision of car parking to satisfy the anticipated demand having regard to average car ownership levels in the area, the environmental capacity of the local street network and the proximity of public transport and nearby on and off street car parking.
- Ensure that all new medium density housing provides adequate private open space that is appropriately landscaped.

It is considered that the proposed development is consistent with the relevant objectives of Council's Municipal Strategic Statement as outlined above. The proposal is considered a good opportunity to provide a range / variety of dwelling styles to cater for the changing household types. Therefore, the proposed development assists in providing for housing diversity within the area, presenting an increase in housing density whilst being respectful to the existing area. The layout and design provides for safety and security needs for future residents, takes into account energy efficiency objectives where appropriate, provides adequate car parking and ensures that a suitable amount of open space is allocated to each dwelling. It is noted that there currently exists a variety in dwelling styles within Bourke Street, consisting of both double and single storey dwellings. The design of the front dwellings facing Bourke Street reflect the detached single dwelling presentation, and the roof forms, elevations and materials are consistent with the existing character of the area.

While Council policy discourages two storey to the rear, in this instance the two storey form of dwelling 2 and 7 are considered to be an appropriate design response. These dwellings have been designed so that there are no walls to be built on the boundaries, the upper level component of each dwelling is reasonably well articulated and provided with generous setbacks of 2.74m to their respective shared boundaries. All upper level windows have been treated to limit overlooking and a variation in materials and finishes are proposed to further reduce visual bulk impacts to adjoining properties.

The proposal does not meet the average lot size calculation, as the proposal results in a density of a:317.75m², whereas the average lot size has been calculated at 1:347.45m². However, it is noted that the area is within 10% of the average lot size.

Clause 22.11 - Residential Development Policy

The proposal has been assessed against the objectives and policy of the Residential Development Policy. It is considered that the proposal satisfactorily meets these requirements.

The proposal is considered unlikely to hinder the existing neighbourhood character in terms of architectural design. It is considered that the massing and upper floor component of each dwelling is reasonable as are sited towards the front of each frontage and include varying and suitable setbacks from all relevant common boundaries. Overall, it is submitted that the proposed two (2) storey dwellings have been sensitively and consciously designed, taking into account the site's surrounding environs and incorporating appropriate materials, finishes and colours that are consistent with that found in the broader neighbourhood character.

The proposed upper storey setbacks of each dwelling from all common boundaries, comply with the provisions of the Kingston Planning Scheme.

The location and configuration of the private open space areas being provided to all dwellings are of an adequate size to be usable and allow for the provision of suitable landscaping. It is considered that the development will provide a high standard of amenity and quality of life for future occupants. Furthermore, the driveway layout is considered practical, efficient and does not pose any safety issues when vehicles are entering and exiting the site.

The applicant has ensured that no significant adverse amenity impacts, such as unreasonable overlooking or overshadowing, will occur as a result of the proposed development by sensitively locating all upper storey habitable room windows and ensuring that all dwellings are modest in height and built form.

Clause 32.06 Residential 3 Zone

The purpose of the Residential 3 Zone includes the provision of residential development at a range of densities with a variety of dwellings to meet the housing needs of all households and to encourage residential development that respects the neighbourhood character. A planning permit is required for the development of 2 or more dwellings.

Schedule

The proposal meets the additional requirements listed in the Schedule to the Residential 3 zone.

Clause 55: Rescode

The proposal has been assessed against the objectives and standards of Clause 55 (ResCode) of the Kingston Planning Scheme. It is considered that the proposal satisfactorily meets the requirements of Rescode. There are however some areas of non-compliance which are as follows:

Clause 55.03-1: Standard B6 - Front Setback

It is noted that dwelling 1 does not strictly meet the minimum front setback requirement under this standard. The proposed varied setback, with a minimum of 8.2m, is marginally short of the 8.3m required. However, given that the variation is only trivial (ie. 10cm) and that there are varied setbacks in the street, including setbacks of 7m or less, it is considered appropriate to vary the standard in this instance.

Clause 55.03-8: Standard B13 – Landscaping objectives

Landscape plans were referred to Council's Vegetation Management Officer who recommended that amended plans be requested via Condition 1 of approval.

Clause 65: Decision Guidelines

This clause of the Planning Scheme sets out other matters which must be given regard to before deciding on an application.

It is considered that the proposed development meets the requirements as set out in this Clause of the Planning Scheme.

Neighbourhood Character Area Guidelines (Incorporated Document):

The land is located within Area 17 of the Neighbourhood Character Guidelines. The proposal is not considered to raise any issues of non-compliance with these guidelines.

Response to Grounds of Objection

a) Neighbourhood Character

Neighbourhood character is the starting point of ResCode (Clause 55 of the Kingston Planning Scheme). It is acknowledged that the concept of 'neighbourhood character' is a somewhat subjective issue; however, with regard to the proposal and for the reasons discussed below, it is considered that the development is in keeping and consistent with the surrounding character of the area. It is evident that there are other examples of two-storey dwellings located within proximity to the subject site. Further, it is evident that there are varying styles of residential development within the general area.

The site, as specified in Council's Local Planning Policy Framework, is located within an Incremental Housing Change Area where future objectives strive to provide a wide range of housing types across the municipality to increase housing diversity and cater for the changing needs of current and future populations. Additionally, in these areas it is important to ensure new residential development respects neighbourhood character and is site responsive, and to promote lower density housing in established suburban areas that do not have direct access to activity/transport nodes and "encourage" only incremental change in housing density (*incremental housing change areas*). Such areas will retain their predominantly single dwelling character and incremental change will occur in the form of single dwellings or the equivalent of dual occupancy developments on average sized lots.

The proposal in its current design will retain the appearance of the single dwelling character for Bourke Street, by providing a reasonable separation between the dwellings, and off-setting the garage of dwelling 8 from the southern boundary.

The conventional architectural style of each dwelling incorporates varying materials and design techniques, which contribute positively to reducing visual bulk whilst also remaining consistent with and reflecting existing architectural elements present within Bourke Street.

For all of the reasons outlined above, it is considered that the proposal is respectful of adjoining properties as it contains adequate setbacks from all common boundaries, is not excessively large in built form, bulk or total building height, and as such, complies with the objectives and standards of Clause 55 that relate to neighbourhood character. It is respectfully submitted that the proposed development should therefore, not hinder the character of the area.

b) Overdevelopment

The issue of overdevelopment is one where there are a number of factors associated with the application that may lead to, what is generally termed, as overdevelopment. Consideration must be given to how a development responds to issues such as site coverage, building setbacks, visual bulk impacts, retention/provision of tree planting and landscaping, provision of car parking and many others. It is erroneous to have regard purely to the number of dwellings on a site, to assess whether a proposal is an overdevelopment. This is highlighted by the fact that when ResCode was introduced, replacing the Good Design Guide, the site density formula was removed.

While looking at a development of eight dwellings may initially seem a higher intensity development, one must consider that other relevant matters that have been discussed in this report that suggest the proposal is an appropriate planning outcome and not an overdevelopment of the site.

c) Vehicular parking/ traffic congestion and related safety concerns

Many residents have expressed concern that the proposed car parking and access arrangements. It is firstly important to note that each dwelling provides for a

minimum of two (2) on-site car parking spaces, with dwellings 1 and 8 providing three spaces, in accordance with the ResCode provisions. In addition to this, two (2) visitor car parking spaces are provided towards the rear of the site, which is in excess of the minimum one (1) space required under ResCode. As the majority of dwellings are two bedroom (dwellings 2, 3, 4, 6 & 7), the actual provision of car parking exceeds the requirements of the provisions which require only one (1) car parking space for these dwellings. There is also suitable separation between the three (3) crossovers to allow for on-street parking directly opposite the site within Bourke Street. It is considered that there is appropriate provision on-site for resident and visitor parking in light of the above.

With respect to traffic concerns, with the exception of dwelling 1 and 8 which front Bourke Street, the remaining dwellings will be able to enter and exit the site in a forwards movement. The proposed shared accessway has been widened to 5m for a length of 7m to allow for two vehicle movements (ie. A car entering and a car exiting simultaneously). It is therefore considered that the proposal will not result in an unreasonable impact on the traffic safety or movements within Bourke Street and the surrounding road network.

d) Loss of privacy

With regard to overlooking, Council acknowledges that the applicant has ensured that first floor habitable room windows of each are either facing the street frontages or are provided with obscure glazing or sill heights at 1.7m above finished floor levels. Accordingly, it is submitted that the proposed development complies with the overlooking provisions of Clause 55.04-6 of the Kingston Planning Scheme and that no unreasonable overlooking is likely to occur as a result of the proposed development.

e) Overshadowing

The proposal has been assessed against the provisions of ResCode for overshadowing and the proposal fully complies with the requirements set out for limiting overshadowing of the secluded open space of adjoining properties. Where the proposed dwellings are located opposite the habitable room windows of adjoining properties, the dwellings have been set back from the shared boundaries to reduce overshadowing impacts.

f) Site Coverage

The proposal will result in a total site coverage of 39.78% of the site, with a pervious surface area of 39.43%. The total surface site coverage areas are considered to be acceptable, particularly given that they are well within the 50% (site coverage) and 20% (impervious surface) requirements of ResCode.

g) Impact on vegetation

The application has been referred to Council's Vegetation Management Officer (VMO) for consideration and comment. Two (2) existing trees have been highlighted

by Council's VMO for retention, including a Peppercorn Tree located in the front setback of No. 48 Bourke Street, and a Weeping Elm located at No. 50 Bourke Street. Appropriate conditions are to be imposed on the permit to ensure that these trees are nominated as being retained, and suitable tree protection measures are also be undertaken for these trees.

There is also a large tree located adjacent to the common boundary with No. 46 Bourke Street which may be impacted by the proposal. It is recommended that dwelling 7 be redesigned so as to increase the setback of this dwelling to the common boundary to limit the impact of the proposal on this tree. Again, this will be imposed as a condition on the permit.

Subject to the above changes, Council's Vegetation Management Officer is satisfied with the level of landscaping provided on site.

h). Infrastructure – drainage & electricity

It is noted that all future dwellings on this site will be required to be connected to the appropriate utilities. It is not envisaged that the proposal will create an unreasonable impact on the existing infrastructure available in this area. In addition, conditions on the permit will require the provision of appropriate on-site retention of storm water to limit overflow into the existing drainage infrastructure.

General Comment

The proposed development is considered appropriate for the site as evidenced by:

- The design and siting of the proposed development to be compatible with the surrounding area;
- The proposal should not have a detrimental impact on surrounding properties (subject to appropriate conditions); and,
- The proposal satisfies the requirements of the Kingston Planning Scheme, including the MSS, Residential Development Policy, Residential 3 zoning and the Schedule to the zone, Clause 55 – Two or more dwellings on a lot and Residential Buildings and the Neighbourhood Character Area Guidelines and the Designing Contextual Housing Guidelines.

On balance and subject to the inclusion of suitable conditions, the proposal is considered reasonable and warrants support.

Recommendation

That a Notice of Decision to Grant a Permit for the development of this site for eight (8) dwellings be issued, subject following conditions:

1. Before the development starts amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on 7th August, 2007, but modified to show:
 - a) the provision of a landscape plan in accordance with the submitted development plan and the City of Kingston Landscape Plan Checklist, with such plans to be prepared by a suitably qualified landscape professional and incorporating:
 - i. the retention of the *Schinus areira* (Peppercorn Tree) in the front setback of No. 48 Bourke Street and the *Ulmus glabra 'Pendula'* (Weeping Elm) at No. 50 Bourke Street;
 - ii. the retention of the existing conifers located along the site's north (side) property boundary adjacent to dwellings 2, 3 and 4;
 - iii. an associated planting schedule showing the proposed location, species type, mature height and width, pot sizes and number of species to be planted on the site. The schedule must be shown on the plan;
 - iv. the delineation of all garden beds, paving, grassed areas, retaining walls, fences and other landscape works including areas of cut and fill throughout the development;
 - v. all existing trees on the site and within three (3) metres to the boundary of the site on adjoining properties, accurately illustrated to represent actual canopy width and labelled with botanical name, height and whether the tree is proposed to be retained or removed;
 - vi. a range of plant types from ground covers to large shrubs and trees;
 - vii. adequate planting densities (e.g.: plants with a mature width of 1 metre, planted at 1 metre intervals);
 - viii. the provision of two (2) suitable medium sized (at maturity) canopy trees within the front setback of the property and one (1) small (at maturity) tree within the secluded open space area of each unit. Species chosen must be approved by the Responsible Authority.
 - ix. sustainable lawn areas and plant species taking current water restrictions into consideration;
 - x. all trees provided at a minimum of two (2) metres in height at time of planting;
 - xi. medium to large shrubs to be provided at a minimum pot size of 200mm;
 - xii. the provision of notes on the landscape plan regarding site preparation, including the removal of all weeds, proposed mulch, soil types and thickness, subsoil preparation and any specific maintenance requirements;

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- xiii. a notation on the plans showing the tree protection measures and the tree protection zone drawn on the plans.
- b. amendments to the plans in accordance with the requirements of Conditions 2 and 3 of this permit;
- c. the removal of the existing trees located at the north-east and south-east corners of the site and their replacement is suitable canopy trees;
- d. the garage door of each dwelling nominated as a panel lift or similar;
- e. the surface material of all driveways / accessways and car parking spaces nominated in all-weather coloured concrete sealcoat, or similar;
- f. the provision of a full colour, finishes and building materials schedule (including samples) for all external elevations of the proposed dwellings.
- 2) The *Schinus areira* (Peppercorn Tree) located in the front setback of No. 48 Bourke Street, must be retained and protected to the satisfaction of the Responsible Authority. The following measures must be undertaken to protect this tree and to the satisfaction of the Responsible Authority:
- a) The existing concrete driveway **must not** be removed during demolition or building construction within an 8 metre radius of this tree. The concrete driveway may be removed and replaced at the conclusion of the building works (landscaping stage), and the concrete driveway must be removed by hand to avoid any damage to the root system of the tree.
- b) Council's Vegetation Management Officers must be contacted prior to demolition and at the conclusion of the building works to advise on site of the protection requirements of the Peppercorn Tree.
- c) The tree is to be fenced with a cyclone wire mesh panel fence (or similar) to a radial distance of 6 metres from the proposed driveway. The fence must be a minimum of 1.5 metres in height and be able to restrict access to pedestrians and machinery. The fence must be securely attached to the ground using concrete pads or similar. The fence must remain in place until the conclusion of the development.
- d) Within the fenced area the following must occur:
- i) No soil levels shall be altered;
- ii) No building materials, chemicals or refuse can be stored within this area;
- iii) All services must be located outside of this area or bored underneath the root system at a minimum depth of 800mm;
- iv) Nothing shall be attached to the tree;
- v) A layer of mulch must be laid over the root system to a depth of 100mm using an organic mulch (woodchips or similar);
- vi) A sign must be attached to the fence stating that the area is a TREE PROTECTION ZONE and the fence must not be moved or altered in any other way.
- e) The tree must be formatively pruned to improve the form of the tree. All of the Ivy within the tree must be removed. All pruning works must be in accordance with the Australian Standard (AS4373: 2007 – Pruning of Amenity Trees) and by a suitably qualified Arborist.

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- f) The existing rock wall adjacent to the tree must be removed by hand. A replacement retaining wall must be installed no closer than the existing rock wall. The removal of the wall and reinstatement of a new retaining wall must be over seen by a qualified Arborist and Council's Vegetation Management Officers.
3. The *Ulmus glabra 'Pendula'* (Weeping Elm) located at No. 50 Bourke Street, must be retained and transplanted within the landscape. The following must occur for the successful transplanting of this tree:
 - a) The existing brick wall between 48 and 50 Bourke Street must be removed by hand (including footings);
 - b) The tree must be formatively pruned by a qualified Arborist prior to the removal of the tree;
 - c) A qualified Arborist or company who have experience in transplanting large trees must be engaged to undertake the removal and replanting of the Elm Tree. The Arborist or company must discuss with transplanting of the tree prior to the demolition works;
 - d) The Elm Tree must be moved and protected prior to any building works beginning on site; and
 - e) A Management Plan must be submitted to the Responsible Authority which details what is required for the successful establishment of the tree. This management plan must be submitted to Council prior to the commencement of the development. Once approved, the management plan will be endorsed under this permit.
4. The development and/or use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
5. Before occupation of the dwellings hereby permitted, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.
6. Before occupation of the dwellings hereby permitted, all buildings and works and the conditions of this permit must be complied with, unless with the further prior written consent of the Responsible Authority.
7. The development of the site must be provided with stormwater treatment works which will entail the detention of stormwater on site using water sensitive urban design principles (including re-use) to reduce stormwater runoff quantity and improve discharge quality. Discussion with Councils Development Engineer on treatment options is advised prior to a design being submitted.

The stormwater system must be constructed in accordance with the approved drainage plan and maintained to the satisfaction of the Responsible Authority.
8. The development of the site must be provided with stormwater works which incorporates the use of water sensitive urban design principles to improve stormwater runoff quality and which also retains on site any increase in runoff

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- as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council's Development Engineer can advise on satisfactory options to achieve these desired outcomes which may include the use of an infiltration or bioretention system, rainwater tanks connected for reuse and a detention system.
9. Before the development commences, a Stormwater Management Plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction of the Responsible Authority. The Stormwater Management Plan must be prepared by a qualified person and show all details of the proposed stormwater works including all existing and proposed features that may have impact (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.).
 10. Stormwater works must be provided on the site so as to prevent overflows onto adjacent properties.
 11. Construction on the site must be restricted to the following times:
 - c. Monday to Friday 7:00am to 7:00pm; and
 - d. Saturday 9:00am to 6:00pm.Or otherwise as approved by the Responsible Authority in writing.
 12. Before the occupation of the dwellings hereby permitted starts, or by such later date as is approved by the Responsible Authority in writing, the nature strip, kerb and channel, vehicle crossover and footpath must be reinstated to the satisfaction of the Responsible Authority.
 13. Any existing vehicular crossing not in accordance with the endorsed plan must be removed and the kerb reinstated in a manner satisfactory to the Responsible Authority and any proposed vehicular crossing must be fully constructed to the Responsible Authority's standard specification.
 14. Convenient taps or fixed sprinkler system must be provided to the satisfaction the Responsible Authority capable of watering all communal and private land and landscaped areas, including turf block visitor car parking where provided.
 15. A street number of 100mm minimum height and contrasting in colour to its background, must be fixed at the front boundary of the property and as near as practicable to, or on the letterboxes with such numbering to be in accordance with Council's Street Numbering Policy. Separate unit numbers of 75mm minimum height must be placed adjacent to the front entrance of each dwelling. Such numbers must be clearly legible from the access driveway.
 16. Prior to the occupation of the dwellings hereby approved, all boundary fences must be repaired and/or replaced as necessary to the satisfaction of the Responsible Authority, at the cost of the applicant/owner.
 17. Exterior lights must be installed in such positions as to effectively illuminate all pathway and porch areas. Such lighting must be controlled by a time clock or sensor unit, and must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.

18. Prior to the occupation of the dwellings hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
- a) Constructed to the satisfaction of the Responsible Authority.
 - b) Properly formed to such levels that they can be used in accordance with the plans.
 - c) Surfaced with *an all-weather coloured concrete sealcoat* to the satisfaction of the Responsible Authority.
 - d) Drained and maintained to the satisfaction of the Responsible Authority.
- Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
19. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the Responsible Authority.
20. All piping and ducting above the ground floor storey of the development (other than rainwater guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.
21. Finished Floor Levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
22. External clothes drying facilities must be provided for each dwelling.
23. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and use are not started before two years of the date of this permit.*
- The development is not completed before four years of the date of this permit.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

**Should a planning permit issue a specified starting and completion date will be inserted.*

Note: It is noted the development includes storage shed to be built over the rear easement. Separate consent from Council and the relevant service authority is required to build over the easements and will need to be obtained prior to the issue of a Building Permit.

Note: Prior to the commencement of the development you are required to obtain the necessary Building Permit.

Note: The applicant/owner must provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with the planning permit.

Note: Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation, should consult Council's Vegetation Management Officer to verify if a Local Law Permit is required for the removal of such vegetation.

The meeting was addressed by Tony Bedwell on behalf of objectors and Michael McQueen on behalf of the applicant

Mckeegan/West

The application be refused on the following grounds.

1. The proposal would have an adverse affect on the amenity of an established residential neighbourhood.
2. The proposal constitutes an over- development of the site.
3. The proposal exhibits excessive bulk and mass
4. The proposal does not fully satisfy Clause 22.11 – Residential Development Policy of the Kingston Planning Scheme.
5. The proposal does not satisfy all of the requirements of Clause 55 of the Kingston Planning Scheme (ResCode), in particular Clause 55.02-1 Neighbourhood Character Objectives and Clause 55.03-8 Landscaping Objectives

Carried

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K 50 5 Avenza Street Mentone

Author: Ian Nice-Manager Planning

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	Ammache Architects
Address Of Land:	No.5 (Lot 14 Section D on LP2701) Avenza Street, Mordialloc
Melway Ref:	87C6
Proposal	Three (3) dwellings
Contact Officer:	Ian Nice
File No:	KP457/07
Zoning:	Residential 3 Zone
Kingston Planning Scheme Ordinance Controls:	<u>State Planning Policy Framework</u> Clause 12: Metropolitan Development Clause 14: Settlement Clause 16.02: Housing – Medium Density Housing <u>Local Planning Policy Framework</u> Clause 21.05 MSS – Residential Land Use Clause 22.11: Residential Development Policy Clause 32.06: Residential 3 Zone & Schedule Clause 55: Two or More Dwellings on a Lot & Residential Buildings Clause 65: Decision Guidelines
Residential Policy Area:	Incremental Change
Neighbourhood Character Area:	Area 14
Decision By:	9 th November 2007
Nett Days:	211 @ 8 th April 2008

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Development Assessment Table

Criteria	ResCode Requirement	Proposed Development Provision	Clause 22.11- Residential Policy Requirement
Private Open Space	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: 40m ² , located to the side / rear of the dwelling, achieving a minimum dimension of 5 metres for a 2 bedroom dwelling with convenient access from a living room. An additional 20m ² is required for each additional bedroom, which achieves a minimum dimension of 3 metres.	Dwelling 1 – approx.85m ² of which 60m ² is secluded private open space Dwelling 2 – approx.85m ² of which 60m ² is secluded private open space Dwelling 3 – 42m ² of which all is secluded private open space	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas
Car Parking	Two (2) spaces for each 3 bedroom dwelling.	Dwelling 1 – two (2) car spaces – one (1) in single garage and one (1) in tandem Dwelling 2 – two (2) car spaces – one (1) in single garage and one (1) in tandem Dwelling 3 – one (1) car space in single garage	Adequate car parking for future residents and visitors
Dwelling Setback to Street	The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.	Dwelling 2 (closest to the street) – 7.1 metres with porch encroaching to 5.7 metres	As per ResCode
Site Coverage	Incremental Housing Change requirements – Schedule to the Residential 3 Zone: Maximum 50%	Site coverage is 43%	As per the Schedule to the Residential 3 Zone for Incremental Housing Change Areas

Existing Conditions

The site is located on the western side of Avenza Street in Mentone. It is regular in shape with a frontage to Avenza Street of 20.12 metres, a depth of 40.23 metres and an overall area of 809m². The site has a moderate slope from east to west, with a fall of between 1.5 metres and 1.7 metres over its length. The land is currently vacant with the only feature of any note being a rather large, double stemmed, native tree (Red flowering gum) located on the northern property boundary and 13 metres from the sites rear property boundary. The existing vehicle crossover to the site is located at its northern side, while the front property boundary is unfenced.

The surrounding area is zoned, developed and used for residential purposes, comprising predominately single storey detached dwellings, although there are some medium density developments in the general area, as well as some two storey dwellings in the general area. Immediate surrounding land comprises the following:

- The abutting property to the south (No.3 Avenza Street) contains a single storey, detached, brick dwelling, setback 6.8m from the Avenza Street property frontage.
- The abutting property to the north (No.7 Avenza Street) contains a single storey, detached, brick dwelling, setback 7.6m from the Avenza Street property frontage.
- Dwellings on abutting properties to the rear are single storey.
- Immediate properties on the opposite side of Avenza Street are single storey.

In the broader context, the site is located approximately 170m (measured in a direct line) from the Thrift Park shopping centre, and approximately 1 km from the Mentone shopping centre and railway station.

Proposal In Detail

It is proposed to develop the site for three (3) dwellings, comprising two (2) attached double storey duplex style dwellings at the front of the site and one (1) single storey dwelling to their rear.

Key elements of the proposal are as follows:

Dwelling	Floor Area (excluding garage / verandah)	Private Open Space	No. of Bedrooms	Car Parking Spaces
1	152m ²	85m ² (including 60m ² of secluded private open space)	3	2
2	151m ²	85m ² (including 60m ² of secluded private open space)	3	2
3	99m ²	42m ² (of secluded private open space)	2	1

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Building Materials and colours have been nominated as:

Roof:	Tiled 25° pitch
Walls:	Brick, rendered at the upper level
Garage doors	Tilt panel timber door
Windows:	Unspecified
Driveways:	Coloured concrete
Front fencing:	Unfenced
Boundary fences:	Timber palings, part brick boundary construction

The proposal would result in a site coverage of 44%, and a site permeability of 36.75%.

Title Details

The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the title.

Amendment To The Application Before Notification

An application pursuant to Section 50 of the Planning and Environment Act 1987 was received on 8th August 2007. The amendment includes:

- Alterations to the facade of dwellings 1 and 2;
- Alterations to the roof form of dwellings 1 and 2; and
- Provision of a vehicle reversing area for dwelling 3, and consequent reduction and redesign of that dwelling.

Council consented to accept the amended application.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Six (6) objections to the proposal were received.

The grounds of concern may be summarised as follows:

- Overdevelopment of the site
- Excessive and unacceptable visual bulk
- Proposal out of character with the streetscape and neighbourhood
- Infrastructure in the area already stretched
- Excessive and unreasonable overlooking
- No water tanks/ low energy rating
- Insufficient on site car parking/ no visitor parking/ tandem spaces not practical

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- Increased on street parking in dangerous area (opposite Darling Street)
- Insufficient landscaping areas
- Overshadowing of abutting properties
- Garages dominant to street frontage
- Development too close to existing tree(s)
- Increased traffic in area, to be further increased by Chiquita Park development (street also used as a “rat run” between Warrigal and Lower Dandenong Roads)

Preliminary Conference

A preliminary conference between the applicant, objectors and Council representatives was held on 3rd October 2007. The main issues raised in the written objections were further discussed. The applicant offered to address several issues such as screening to 1st floor windows and reduced wall heights on boundaries. However, the overriding concerns related to the two storey nature and bulk of the development and as such, there was no resolution and the objections remain outstanding.

Amendment To The Application After Notification And Re-Notification

An application pursuant to Section 57A of the Planning and Environment Act 1987 was received on 21 Nov 2007 The amendment includes:

- A reduction in the upper level area of dwellings 1 and 2; and
- A redesign of the external facade of dwellings 1 and 2, so that the dwellings appear as individual dwellings rather than one single bulky building form when viewed from the streetscape.

Notification of the amended application pursuant to Section 52 of the Planning and Environment Act 1987 was not required as the redesign reduces the upper level component of the two double storey dwellings, and furthermore reduces visual bulk resulting in a proposal that blends with the streetscape.

Planning Scheme Provisions

A planning permit is required to develop land for two dwellings, pursuant to Clause 32.06-4 of the Kingston Planning Scheme (the Scheme). In addition, according to ResCode at Clause 55 and the decision guidelines at Clause 65 of the Scheme, Council must consider the State Planning Policy Framework (Clause 16) and the Local Planning Policy Framework (LPPF), including the Municipal Strategic Statement of the Scheme.

Other

The land is located in an ‘Incremental Change Area’ as identified by the Residential Land Use Framework Plan that forms part of the Municipal Strategic Statement.

Referral

The application was referred to the following internal departments within Council (where appropriate amended applications have been re-referred):

- Council's Development Engineer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.

- Council's Vegetation Management Officer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.

Discussion

Kingston Planning Scheme Provisions:

Clause 12: Metropolitan Development

This section of the scheme provides specific objectives and strategies for Metropolitan Melbourne, including the following:

Clause 12.01 A more compact city seeks to:

- § Facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.
- § Locate a substantial proportion of new housing in or close to activity centres and other strategic redevelopment sites that offer good access to services and transport.

Clause 12.05 A great place to be – seeks to create urban environments that are of better quality, safer and more functional, provide more open space and an easily recognisable sense of place and cultural identity, including:

- § Promotion of good urban design to make the environment more liveable and attractive.
- § Recognition and protection of cultural identity, neighbourhood character and sense of place.
- § Improvement of community safety and encouragement of neighbourhood design that makes people feel safe.
- § Protection of heritage places and values.
- § Promotion of excellent neighbourhood design to create attractive, walkable and diverse communities.
- § Improvement of the quality and distribution of open space and ensuring the long term protection of open space.
- § Improvement of the environmental health of the bays and their catchments.

Clause 12.06 A fairer city – seeks to increase the supply of well located and affordable housing by:

- § Encouraging a significant proportion of new development, including development activity centres and strategic redevelopment sites, to be affordable for households on low to moderate incomes.

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- § Facilitate a mix of private, affordable and social housing in Transit Cities Projects.
- § Ensuring the redevelopment and renewal of public housing stock better meets community needs.

Clause 12.07 A greener city – seeks to minimise impacts on the environment to create a sustainable path for future growth and development by:

- § Ensuring that water resources are managed in a sustainable way.
- § Reduce the amount of waste generated and encourage increased reuse and recycling of waste materials.
- § Contribute to national and international efforts to reduce energy usage and greenhouse gas emission.
- § Reduce the impact of stormwater on bays and catchments.

Clause 12.08 Better transport links seeks to:

- § Manage the road system to achieve integration, choice and balance by developing an efficient and safe road network and making the most of existing infrastructure.
- § Give more priority to walking and cycling in planning urban development and in managing the road systems and neighbourhoods.

It is considered that this application meets these objectives.

Clause 14.01: Planning for Urban Settlement

This section of the Scheme seeks facilitate the orderly development of urban areas. It is considered that this application meets these objectives.

Clause 14.01-2: Planning for Urban Settlement - General Implementation

This section of the Scheme seeks to ensure that the consolidation of residential and employment activities is encouraged within existing urban areas and designated growth areas, and that development in existing residential areas should be respectful of neighbourhood character, and that higher land use densities and mixed use developments should be encouraged near railway stations, major bus terminals, transport interchanges and tram and principal bus routes.

It is considered that this application meets these objectives.

Clause 16.02: Housing - Medium Density Housing

It is the objective of the State Planning Policy Framework to encourage the development of well-designed medium-density housing which:

- § Respects the character of the neighbourhood.
- § Improves housing choice.
- § Makes better use of existing infrastructure.
- § Improve energy efficiency of housing.

It is considered that this application clearly meets these objectives.

Clause 21.05 MSS - Residential Land use

Incremental Housing Change Area

The type of housing change anticipated in these areas will take the form of extensions to existing houses, new single dwellings or the equivalent of new two dwelling developments on average sized lots. The existing single dwelling character of these areas is to be retained.

The objectives of the Municipal Strategic Statement (as relevant to this application) include:

- **Objective 1:** To provide a wide range of housing types across the municipality to increase housing diversity and cater for the changing needs of current and future populations, taking account of the differential capacity of local areas in Kingston to accommodate different types and rates of housing change.
- **Objective 2:** To ensure new residential development respects neighbourhood character and is site responsive, and that medium density dwellings are of the highest design quality.
- **Objective 3:** To preserve and enhance well landscaped/vegetated environments and protect identified significant vegetation.
- **Objective 4:** To promote more environmentally sustainable forms of residential development.
- **Objective 5:** To manage the interface between residential development and adjoining or nearby sensitive/strategic land uses.
- **Objective 6:** To ensure residential development does not exceed known physical infrastructure capacities.

Relevant strategies to achieve these objectives (as relevant to this application) include:

- Promote lower density housing in established suburban areas that do not have direct access to activity/transport nodes and “encourage” only incremental change in housing density (*incremental housing change areas*). Such areas will retain their predominantly single dwelling character and incremental change will occur in the form of single dwellings or the equivalent of dual occupancy developments on average sized lots.
- Promote new residential development which is of a high standard, responds to the local context and positively contributes to the character and identity of the local neighbourhood.
- Promote new residential development which provides a high standard of amenity and quality of life for future occupants.
- Encourage the retention of existing vegetation wherever possible.
- Improve landscape character by accommodating appropriate landscaping within new residential developments.

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- Ensure that the planning, design, siting and construction of new residential development responds to best practice environmental design guidelines for energy efficiency, waste and recycling, and stormwater management.
- Promote medium density housing development in close proximity to public transport facilities, particularly train stations.
- Ensure the siting and design of new residential development sensitively responds to interfaces with environmentally sensitive areas, including the foreshore.
- Ensure that where medium and higher density residential areas are proposed adjacent to lower density residential areas, the design of such development takes proper account of its potential amenity impacts.
- Ensure that the siting and design of new residential development is consistent with Urban Stormwater Best Practice Environmental Management Guidelines and that new development contributes to the maintenance and upgrade of local drainage infrastructure as required, where such new development will impact on the capacity of such infrastructure.
- Require the provision of car parking to satisfy the anticipated demand having regard to average car ownership levels in the area, the environmental capacity of the local street network and the proximity of public transport and nearby on and off street car parking.
- Ensure that all new medium density housing provides adequate private open space that is appropriately landscaped.

It is considered that the proposed development is consistent with the relevant objectives of Council's Municipal Strategic Statement as outlined above. The proposal creates an adequate standard of amenity for the future occupants of each dwelling, as well as for occupants of existing dwellings in the immediate area. It is considered that the development will have minimal impact on the existing streetscape character, and the broader local neighbourhood character.

Average lot size within this area has been calculated to be 694.9m² which results in a suggested development density of 1 dwelling per 347.45m². As the site has an overall area of 809m² the development density would be calculated at 1 dwelling per 269.66m². The site is an awkward size lot, in that it is greater than the average size nominated for the area, yet also smaller than that considered appropriate for 3 dwellings under the above policy. This in itself should not be the overriding consideration in the assessment of any application, but rather to be used as a guide for what is considered an acceptable density outcome. Other factors need to be considered. In this case, there may be some justification for a slightly increased density given the site's close proximity to Thrift Park shopping centre and reasonably good public transport (bus along Warrigal Road and Lower Dandenong Road with short connection to Mentone railway station).

Overall, it is considered that the development proposes an appropriate number of dwellings on this site as demonstrated by its overall compliance with ResCode and the Schedule to the Residential 3 Zone requirements.

Clause 22.11 - Residential Development Policy

The proposal has been assessed against the objectives and policy of the Residential Development Policy. It is considered that the proposal satisfactorily meets these requirements. There are however some areas of non-compliance which are as follows:

- Single dwelling and dual occupancy developments are encouraged within Incremental Housing Change areas, however, it is proposed to construct three (3) dwellings on the land.
- The garages for dwellings 1 and 2 are both located at the front of the site, with the garage for dwelling 1 sited forward of the dwellings front wall, though behind the proposed entry porch.

Clause 32.01: Residential 3 Zone

The purpose of the Residential 3 zone includes the provision of residential development at a range of densities with a variety of dwellings to meet the housing needs of all households. A planning permit is required for the development of 2 or more dwellings.

Schedule

The proposal meets the additional requirements listed in the Schedule to the Residential 3 zone.

Clause 55: Rescode

The proposal has been assessed against the objectives and standards of Clause 55 (ResCode) of the Kingston Planning Scheme. It is considered that the proposal satisfactorily meets the requirements of Rescode. There are however some areas of non-compliance which are as follows:

Clause 55.02 - Neighbourhood Character & Infrastructure

Standard B1 Neighbourhood Character – The proposal originally presented to Council and advertised to surrounding properties displayed excessive visual bulk, with dwellings 1 and 2 having a larger, poorly articulated upper level component that presented as one large bulky building form within the streetscape. The amended proposal represents an improved building form that has a smaller, more articulated upper level component, and presents well to the street and abutting properties. The new design is considered to blend in with the streetscape and is appropriate in terms of the broader neighbourhood character.

Standard B2 Residential Policy - As highlighted earlier in this report, there are two minor objectives/policy requirements of Clause 22.11 Residential Development Policy the proposal does not comply with. Firstly, single dwelling and dual occupancy developments are encouraged within Incremental Housing Change areas, however, it is proposed to construct three (3) dwellings on the land. As highlighted earlier in this report, there may be some justification for a slightly increased density given the site's close proximity to Thrift Park shopping centre and reasonably good public transport (bus along Warrigal Road and Lower Dandenong Road with short connection to Mentone railway station). Secondly, the garages for dwellings 1 and 2

are both located at the front of the site, with the garage for dwelling 1 sited marginally forward of the dwelling front wall. However, the front setback for both dwellings 1 and 2 are staggered, and both dwellings entry porch protrude closer to the frontage than the garage door. It is considered that with these design elements, the garages will not dominate the streetscape.

Clause 55.03 - Site Layout and Building Massing

Standard B6 Street Setback - requires that any new dwelling on this allotment be setback 7.2m. Having regard though to the layout of the proposed dwellings and the street configuration, it is considered that the proposal in its submitted format will respect the neighbourhood character and is considered appropriate.

Standard B14 Access – The amount of street frontage taken up by crossovers would be in the order of 41%, which exceeds the 33% (for frontages wider than 20m) specified in Standard B14. Although a standard does not have to be met, the relevant objective must be met and has been achieved.

Clause 55.04 - Amenity Impacts

Standard B22 Overlooking – In general, the proposal has been well designed in respect to minimising overlooking, however, in response to several concerns from objectors concerns the following additional screening can be added to the following first floor windows:

- Dwelling 1's west facing bedroom window;
- Dwelling 2's west and south facing bedroom 2 windows; and
- Dwelling 2's south facing stairwell window.

Clause 65: Decision Guidelines

This clause of the Planning Scheme sets out other matters which must be given regard to before deciding on an application.

It is considered that the proposed development meets the requirements as set out in this Clause of the Planning Scheme.

Neighbourhood Character Area Guidelines (Incorporated Document):

The land is located within Area 14 of the Neighbourhood Character Guidelines. There are two elements considered to make a major contribution to this neighbourhood character area, as follows:

- *Perceived Lot Pattern – 12m frontage and 40m depth.* While the site does have a 40m depth, its frontage of 20m is far greater than 12m.
- *Building placement – Narrow side setback 1-2m, front setback 5-9m, wider side setback 3-5m.* The proposal would satisfy the wider side setback and front setback distances. It would not satisfy the narrower side setback as dwelling 1 would be constructed to the side boundary. Given that the upper level of

dwelling 1 would be well set in from the lower level, and has overall been well articulated, the impact of construction of the side boundary would be minimal, and is not considered to be an issue.

Designing Contextual Housing Guidelines – April 2003 (Reference Document):

The Designing Contextual Housing Guidelines supplement the Kingston Neighbourhood Character Guidelines, Residential Development Policy and ResCode provisions and offer a range of design techniques and suggestions to assist with residential design which is responsive to local character. It is considered that the proposed development does not raise any issues of non-compliance with these guidelines.

Response to Grounds of Objection

It is considered that the majority of the objectors concerns with regard to overdevelopment, neighbourhood character, overlooking and on-site parking have been adequately addressed in the ResCode section this report. However, with respect to the other grounds of objection the following comments are made:

- *Infrastructure in the area already stretched*

The proposal has been referred to Council's Development Approvals Engineer, who has no concerns with the proposal, and only requires three standard conditions on any approval issued. The proposal is unlikely to have any significant impact on infrastructure in the area.

- *No water tanks/ low energy rating*

Water tanks have not been proposed, however, Council's Landscape Architect has required a modification to the Landscape Plan to show "sustainable lawn areas and plant species taking current water restrictions into consideration". An Energy Rating report has not been submitted by the applicant, however it is noted that main habitable rooms within each dwelling would achieve a good access to northern sunlight.

- *Increase of street parking in dangerous area (opposite Darling Street)*

Each dwelling would have an adequate number of car parking spaces that complies with ResCode. It is unlikely that the development would result in any excessive street parking.

- *Insufficient landscaping areas*

It is considered that the development proposes adequate side, rear and frontage setbacks to provide for landscaping, including the provision of spreading canopy trees.

- *Overshadowing of abutting properties*

The development would not excessively overshadow any of the abutting properties. The amount of overshadowing proposed is in accordance with the ResCode standard.

- *Development too close to existing tree(s)*

A Condition would be placed on any approval issued requiring a Tree Protection Zone around the existing Red Flowering Gum on the site.

- *Increased traffic in area, to be further increased by Chiquita Park development (street also used as a “rat run” between Warrigal and Lower Dandenong Roads)*

Concern has been raised regarding increased traffic in the area, particularly as Avenza Street appears to be used as a “rat run” between Warrigal Rod and Lower Dandenong Road, and further traffic lively from the Chiquita Park development. It appears that traffic is a broader issue, with the proposal unlikely to significantly increase traffic on its own.

General Comment

The proposed development is considered appropriate for the site as evidenced by:

- The design and siting of the proposed development to be compatible with the surrounding area;
- The proposal should not have a detrimental impact on surrounding properties (subject to appropriate conditions); and,
- The proposal satisfies the requirements of the Kingston Planning Scheme, including the MSS, Residential Development Policy, Residential 3 zoning and the Schedule to the zone, Clause 55 – Two or more dwellings on a lot and Residential Buildings and the Neighbourhood Character Area Guidelines and the Designing Contextual Housing Guidelines.

On balance and subject to the inclusion of suitable conditions, the proposal is considered reasonable and warrants support.

Recommendation

That a Notice of Decision to Grant a Permit for the development of this site for three (3) dwellings be issued, subject following conditions:

1. Before the development starts amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council, but modified to show:
 - a) the provision of an improved landscape plan in accordance with the submitted development plan and the City of Kingston Landscape Plan checklist, with such plans to be prepared by a suitably qualified landscape professional and incorporating:
 - i. an associated planting schedule showing the proposed location, species type, mature height and width, pot sizes and number of species to be planted on the site;
 - ii. the delineation of all the garden beds, paved and grassed areas throughout the development;
 - iii. all existing trees on the site and close to the boundary on adjoining properties, accurately illustrated to represent canopy width and labelled with botanical name, height and whether the tree is to be retained or removed;
 - iv. a range of plant types from ground covers to large shrubs and trees;
 - v. adequate planting densities (i.e: plants with a mature width of 1 metre, planted at 1 metre intervals);
 - vi. the provision of two (2) suitable spreading canopy trees located within the front setback area and within the private open space area of dwelling 2 and 3;
 - vii. sustainable lawn areas and plant species taking current water restrictions into consideration;
 - viii. all trees provided at a minimum of 2 metres high at time of planting;
 - ix. medium to large shrubs and trees to be provided in pot sizes of 200mm;
 - x. the provision of notes regarding site preparation including the removal of all weeds, proposed mulch, soil types and thickness, subsoil preparation and any specific maintenance requirements; and
 - xi. the provision of notations which include the details of the tree protection measures contained in condition 3.
 - b) fully dimensioned elevation drawings showing all building elevations (north, south, east and west) for proposed "Option E" and incorporating

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- the modified windows as outlined in Conditions 1h), i) and j); of this permit
- c the door of each garage nominated as a panel lift door, or similar;
 - d the provision of a full colour, finishes and building materials schedule (including samples) for all external elevations of the proposed dwellings;
 - e. the driveway for dwelling 3, along the site south property boundary varied in alignment (meandering) and reduced to 2.6 metres in width with the additional areas created devoted to landscaping;
 - f. dwelling 3's reversing area (to the south of dwelling 3 bedroom 2) extended by 200mm to provide a fully functioning reversing area for dwelling 3 so that vehicles may exit the site in a forwards direction;
 - g. the provision of a wheel stop at the northern end of the reversing area outlined in Condition 1f) to prevent vehicles colliding with the adjacent dwelling 3 wall;
 - h. the bedroom 3 window on the first floor western elevation of dwelling 1 provided with fixed obscure glazing, or a minimum sill height of at least 1.7 metres above the first floor finished floor level;
 - i. the bedroom 2 window on the first floor western and southern elevation of dwelling 2 provided with fixed obscure glazing, or a minimum sill height of at least 1.7 metres above the first floor finished floor level;
 - j. the stairwell window on the first floor southern elevation of dwelling 1 and dwelling 2 provided with fixed obscure glazing, and the bedroom 2 window of dwelling 2 provided with fixed obscure glazing or provided with a minimum sill height of at least 1.7 metres above the first floor finished floor level;
 - k. the north, south and west property boundary fences replaced with a new 1.8 metre high timber paling fence ,each with a boxed 450mm trellis extension at the full cost of the developer/ applicant; and
 - l. the front paths to dwellings 1 and 2 entrances further separated from the driveways and reduced in width to improve the appearance of the front setback area. and
 - m. The brick wall of dwelling 1 facing to the north boundary be rendered, with the render colour nominated
2. The development and/or use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
 3. Prior to the commencement of the development hereby permitted a Tree Protection Zone (TPZ) of 6.5m must be observed surrounding the Red Flowering Gum (*Corymbia ficifolia*). A tree protection fence is to be established at a distance of 3m from the base of the tree. The fence is to be a 1.2 metre high temporary fence constructed using steel or timber posts fixed in the ground or to a concrete pad, with the fence's side panels to be constructed of cyclone mesh wire or similar strong metal mesh or netting. A layer of well composted organic mulch must be provided to a depth of 100mm within the TPZ, and a warning sign must be displayed on the fence stating: "TREE

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PROTECTION FENCING – KEEP OUT!” Within 6.5m Tree Protection Zone an arborist must be employed to oversee any earthworks. All workers on the site must be advise of and observe the following:

- a) The existing soil level must not be altered by either fill or excavation;
- b) the soil must not be compacted or the soil’s drainage changed;
- c) no fuels, oils, chemicals, poisons, rubbish and other materials harmful to trees are to be stored or dispersed;
- d) no storage of equipment, machinery or material is to occur;
- e) any construction must have tree sensitive design such as “pier and beam”. Strip footings must not be used (refer to vegetation audit prepared by Peter Harrison 04/08/08);
- g) open trenching to lay underground services e.g. drainage, water, gas, etc. must not be used;
- h) tree roots with a diameter greater than 40mm must not be severed or injured unless approved by Council’s Vegetation Officer and undertaken by a qualified arborist;
- i) any surface covering must be porous and flexible; and
- j) machinery must not be used to remove any existing concrete, bricks or other materials.

without the further consent in writing of Council’s Vegetation Management Officer.

4. Prior to the occupation of the dwellings hereby permitted, the new fence/s required under Condition 1k) of this permit must be erected to Council’s satisfaction, at the applicant/owners cost.
5. Before occupation of the dwellings hereby permitted, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.
6. Before occupation of the dwellings hereby permitted, all buildings and works and the conditions of this permit must be complied with, unless with the further prior written consent of the Responsible Authority.
7. The development of the site must be provided with stormwater works which incorporates the use of water sensitive urban design principles to improve stormwater runoff quality and which also retains on site any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council’s Development Engineer can advise on satisfactory options to achieve these desired outcomes which may include the use of an infiltration or bioretention system, rainwater tanks connected for reuse and a detention system.
8. Before the development commences, a Stormwater Management Plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction of the Responsible Authority. The Stormwater Management Plan must be prepared by a qualified person and show all details of the

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- proposed stormwater works including all existing and proposed features that may have impact (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary, surface levels, etc.).
9. Stormwater drainage of the site must be provided so as to prevent overflows onto adjacent properties.
 10. Construction on the site must be restricted to the following times:
 - a) Monday to Friday 7:00am to 7:00pm; and
 - b) Saturday 9:00am to 6:00pm.Or otherwise as approved by the Responsible Authority in writing.
 11. Before the occupation of the dwellings hereby permitted starts, or by such later date as is approved by the Responsible Authority in writing, the nature strip, kerb and channel, vehicle crossover and footpath must reinstated to the satisfaction of the Responsible Authority.
 12. Any existing vehicular crossing not in accordance with the endorsed plan must be removed and the kerb reinstated in a manner satisfactory to the Responsible Authority and any proposed vehicular crossing must be fully constructed to the Responsible Authority's standard specification.
 13. Convenient taps or fixed sprinkler system must be provided to the satisfaction the Responsible Authority capable of watering all communal and private land and landscaped areas, including turf block visitor car parking where provided.
 14. A street number of 100mm minimum height and contrasting in colour to its background, must be fixed at the front boundary of the property and as near as practicable to, or on the letterboxes with such numbering to be in accordance with Council's Street Numbering Policy. Separate unit numbers of 75mm minimum height must be placed adjacent to the front entrance of each dwelling. Such numbers must be clearly legible from the access driveway.
 15. Prior to the occupation of the dwellings hereby approved, all boundary fences must be repaired and/or replaced as necessary to the satisfaction of the Responsible Authority, at the cost of the applicant/owner. All fencing and boundary wall finishing as required pursuant to conditions 1k) of this permit are to be at the whole cost of the applicant/owner.
 16. Exterior lights must be installed in such positions as to effectively illuminate all pathway and porch areas. Such lighting must be controlled by a time clock or sensor unit, and must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
 17. Prior to the occupation of the dwellings hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
 - a. Constructed to the satisfaction of the Responsible Authority.
 - b. Properly formed to such levels that they can be used in accordance with the plans.

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-
- c. Surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority.
 - d. Drained and maintained to the satisfaction of the Responsible Authority.
- Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
- 18. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the Responsible Authority.
 - 19. All piping and ducting above the ground floor storey of the development (other than rainwater guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.
 - 20. Finished Floor Levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
 - 21. External clothes drying facilities must be provided for each dwelling.
 - 22. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

NOD:

Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and use are not started before two years of the date of this permit.*
- The development is not completed before four years of the date of this permit.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

**Should a planning permit issue a specified starting and completion date will be inserted.*

Note: It is noted that the development includes a storage shed and eaves to be built over an easement. Separate consent from Council and the relevant service authority is required to build over the easement and will need to be obtained prior to the issue of a building permit.

Note: Prior to the commencement of the development you are required to obtain the necessary Building Permit.

Note: The applicant/owner must provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with the planning permit.

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Note: Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation, should consult Council's Vegetation Management Officer to verify if a Local Law Permit is required for the removal of such vegetation.

The meeting was addressed by Marilyn Stapleton on behalf of objectors and Michael Debbin on behalf of the applicant

West/Alabaster

The matter be deferred

Carried

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K 51 405 Station Street Bonbeach

Author: Sebastian Lorenzo-Town Planner

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant	Ammache Architects
Address Of Land	No.405 (Lot 69 on PS005351) Station Street, Bonbeach
Proposal	Fifteen (15) Dwellings
Planning Officer	Sebastian Lorenzo
Reference No.	KP511/07
Zone / Overlays	Clause 32.01: Residential 1 Zone & Schedule
Decision Date By	
Statutory Days	
Considered Plan References/Date Received	

Site & Surrounds

The subject site is located on the east side of Station Street, Bonbeach. The site is an angled rectangular shape with a frontage of 15.25 metres to Station Street, a maximum length of metres, a maximum width of 15.25 metres, resulting in an overall area of 100.58m². 100.58 metres and an overall area of approximately 1470m².

The site is currently occupied by two (2) dwellings and associated out buildings. The subject site does not contain any significant vegetation. It does have The site has a fall of approximately 1.3 metres from north-west corner of the site to the south-east corner of the site. Vehicle access to the site is via an existing crossover located at in the south-west corner of the of the Station site's Street property frontage.

This section of street has a varied character, including single and double storey dwellings along Station Street, although immediately abutting the site, the predominate built for is single storey dwellings. Dwellings comprise of a mix of weatherboard and brick dwellings, with tiled pitched roofs. Dwellings are sited with generous side setbacks, creating a regular rhythm to the streetscape.

Title Details

The applicant has completed a restrictive covenant declaration form declaring that there is no restrictive covenant on the title.

Proposal

It is proposed to demolish the existing dwellings and outbuildings on the land and construct fifteen (15) dwellings on this site in the form of an apartment style development comprising two (2) apartment blocks. The proposed dwellings include a mix of one (1), two (2) and three (3) bedroom dwellings at ground and first floor

level. The proposal is also provided a basement car park and common and private open space at ground floor level.

Relevant History

There is no relevant planning history relating to this site.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining a notice on site for fourteen (14) days. Nine (9) objections to the proposal were received. The main grounds of objection concern may be summarised as follows:

- Loss of privacy
- Overshadowing
- Parking and traffic concerns
- Neighbourhood character
- Title boundary concerns

Preliminary Conference

A preliminary conference was held on Tuesday 11th December, 2007, where the above issues were discussed.

The above concerns were unable to be resolved at the conference, and the objections still stand.

Referrals

No external referrals were required in respect of this application.

The application was referred to the following internal departments within Council (where appropriate amended applications have been re-referred):

- Council's Development Engineer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.
- Council's Vegetation Management Officer who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.
- Council's Traffic Engineering Department who advised of no objection, subject to the inclusion of a number of conditions on any permit issued.

Relevant Policies

State Planning Policy Framework (SPPF)

Clause 12 (Metropolitan Development)

Clause 14 (Settlement)

Clause 16 (Housing)

Clause 19 (Particular Uses and Development)

Local Planning Policy Framework (LPPF)

Clause 21.05 (Residential Land Use)

Zoning

The site is located in the following Zone:

Clause 32.01 (Residential 1 Zone)

Overlays

There are no overlay controls that apply to this site.

Particular Provisions

Clause 55 (Two or More Dwellings on a Lot & Residential Buildings)

General Provisions

Clause 65 (Decision Guidelines)

Other

Neighbourhood Character Area Guidelines (Incorporated Document). The land is located within Area 74 of the Neighbourhood Character Guidelines. The proposal is generally in accordance with the applicable character profile. Any areas of non-compliance are discussed in the following sections of this report.

Planning Considerations

Clause 21.05: Residential Land Use

The subject site is located within the Increased Housing Diversity Area of the Residential Land Use Framework Plan.

Amongst other things, in Increased Housing Diversity Areas, it is policy to:

- encourage new medium density housing comprising a variety of housing types and layouts which respond to the established but evolving urban character;
- encourage the design of new medium density housing proposals that display sensitivity to the existing residential context and amenity standards in these areas.

It is considered that the proposed development arguably satisfies the intention of the Increased Housing Diversity Areas of the Kingston Planning Scheme. The proposal provides a variety of medium density housing incorporating one (1), two (2) and three (3) bedroom dwellings at ground and first floor levels in an apartment style building development.

However, it is considered that the proposal does not adequately sensitively respond to the existing residential context and amenity standards particularly with regards to the two (2) storey built form from the middle through to the rear of the site. It is considered that two (2) storey built form to the middle/rear of the site should be deleted from the proposal which should assist in reducing adverse amenity impacts of the proposal to adjoining properties.

It should be noted that the two (2) storey component of the proposal located towards the front of the site is generally considered acceptable in this instance given the site's location in close proximity to reasonable public transport networks and the Carrum Activity Centre. Furthermore, it is considered that the amenity impacts to adjoining properties by the two (2) storey component at the front of the site are considerably less than the adverse amenity impacts as a result of the two (2) storey component to the middle/rear of the site.

Clause 22.11: Residential Development Policy

As discussed above, the site is located within an Increased Housing Diversity Area. Council's Residential Development Policy encourages increased densities and a wider diversity in housing types and sizes, particularly in areas which are within convenient walking distance of public transport and activity centres. As relevant to this application, it is policy to;

- Encourage all new residential development to respond positively and creatively to neighbourhood character. Unless a preferred character is specified, the existing character is that which is to be considered;
- In areas where building placement makes a major contribution to neighbourhood character, design new development to reinforce the established rhythm of buildings in the street and retain the existing single dwelling character of the streetscape;
- Encourage the two storey component of new medium density housing to be located towards the front of a site;
- Ensure that two storey dwellings are designed to respond to the character of the local neighbourhood. Where the local neighbourhood is characterised by single storey development and this characteristic makes a major or critical contribution to neighbourhood character, new two storey development should incorporate rooms within the roof form of attic style dwellings, and should set the second storey building envelope back from the ground level envelope;
- Ensure that any upper storey components towards the rear of sites are sensitively designed to avoid unreasonable adverse amenity impacts on neighbours;
- Encourage well articulated and graduated elevations in order to avoid 'box-like' double storey designs, thus reducing visual bulk;
- Ensure that the siting of new buildings respects the amenity of adjoining neighbours with regard to rear yards and garden outlooks from habitable living room windows;
- Ensure that the design and layout of new dwellings incorporate features which minimise overlooking of adjacent properties;

- Address potential overlooking through site layout planning as well as individual dwelling planning.

In response to the above, it is considered that subject to the deletion of the upper storey component of the proposal to the middle/rear of the site (dwelling 13, dwelling 14 and dwelling 15) the proposal arguably satisfies the above policy directions and could be supported. The deletion of the dwellings would render the Eastern portion of the site comprising single storey dwellings only. This should result in a development which is far more in keeping with it's surrounds and one which should have far less adverse impact on surrounding and nearby properties.

Clause 32.01: Residential 1 Zone: The purpose of the Residential 1 zone includes the provision of residential development at a range of densities with a variety of dwellings to meet the housing needs of all households. A planning permit is required for the development of 2 or more dwellings.

Clause 55: Rescode:

The proposal has been assessed against the objectives and standards of Clause 55 (ResCode) of the Kingston Planning Scheme. It is considered that the proposal subject to modification can meet the requirements of Rescode. There are, however, some areas of non-compliance, which are as follows:

Clause 55.02 - Neighbourhood Character & Infrastructure:

Standard B1 Neighbourhood Character – While concerns have been raised with regard to the two (2) storey built form of the proposal, it is considered that the proposal if modified as described earlier in this report, can adequately respond to the existing and emerging neighbourhood character of the area. Furthermore, while properties adjoining the subject site are generally single storey in built form, there are a number of double storey dwellings in the immediate vicinity of the subject site and many more in the wider area. Therefore, it is considered that the two (2) storey component to the front of the site could be appropriate, however, as discussed earlier in this report suitable conditions requiring the deletion of three dwellings (dwelling 13, dwelling 14 and dwelling 15) from the proposal should be included in any permit issued.

Clause 55.03 - Site Layout and Building Massing:

Standard B13 Landscaping - Landscape plans were referred to Council's Vegetation Management Officer who recommended that amended plans be requested via Condition 1 of approval.

Standard B14 Access – with the deletion of dwelling 13, dwelling 14 and dwelling 15, and the retention of the basement as proposed on the plans, there would be more car spaces provided per dwelling. In number terms, there would still be 24 car spaces within the basement car park and twelve dwellings proposed. Three (3) visitor car spaces would be included in this number. A suitable condition should be included on any permit issued. which requires all vehicles to be able to enter and exit the site in a forwards direction without the need for multiple manouvers.

Clause 55.04 - Amenity Impact

Standard B17 Side and Rear Setbacks – requires walls to be adequately setback from side and rear boundaries. It is considered that the setback proposed for dwelling 14 and dwelling 15 are not adequate. However, as previously discussed, dwelling 13, dwelling 14 and dwelling 15 should be deleted from the proposal through the inclusion of a suitable condition being placed on any permit issued.

Standard B20 North Facing Windows – dwelling 9, dwelling 10, dwelling 11 and dwelling 12, all located at the first floor level of the proposed development, have been adequately setback from the north facing habitable room windows on the adjoining properties to the south of the subject site.

Standard B21 Overshadowing Open Space – concerns are raised with regard to the level of overshadowing caused by the proposed upper level component of the development, particularly to the adjoining properties to the south of the subject site. The applicant has provided in depth shadow diagrams and cross sections which provide details of the impact of shadows on adjoining properties. It is considered that overall, the objectives of the overshadowing provisions have been satisfied and the the proposal as required to be amended should not unduly overshadow the adjoining properties, particularly to the south of the subject site.

Response to Grounds of Objection

The majority of the grounds of objection have been discussed throughout the course of this report. In response to the grounds of objection an assessment of the proposal confirms that:

- The proposal adequately satisfies the policy directions and objectives of the Kingston Planning Scheme including the State Planning Policy Framework and the Local Planning Policy Framework;
- The site has great access to various forms of transportation including public and private transport modes and networks;
- The height, scale and overall built form is considered appropriate with regards to the existing and emerging character of the immediate area;
- The development is considered to provide adequate car parking on site for the future residents and visitors to the site;
- It is considered that the existing road network will adequately handle any potential increase in traffic movements to and from the site and in the immediate vicinity of the subject site as a result of the proposed development.
- The proposal is provides a high standard of amenity to existing and future residents of the site and adjoining properties;
- Suitable breaks in the built form have been provided so as to reduce the impact on adjoining properties;
- Overshadowing and overlooking has been treated through screening measures or increased side/rear setbacks;

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Overall the development is consistent with the amenity based provisions of the Kingston Planning Scheme. The proposal, subject to the inclusion of suitable planning conditions should be supported.

Conclusion

It is considered that the objectors' concerns have been addressed where appropriate.

The proposed development as required to be amended, is considered appropriate for the site as evidenced by:

- The design and siting of the proposed development to be compatible with the surrounding area;
- The proposal should not have a detrimental impact on surrounding properties (subject to appropriate conditions); and,
- The proposal generally satisfies the requirements of the Kingston Planning Scheme, including the MSS, Residential Development Policy (inclusive of the Neighbourhood Character Area Guidelines and the Designing Contextual Housing Guidelines), Residential 1 zoning and the Schedule to the zone, Clause 55 – Two or more dwellings on a lot and Residential Buildings, and Clause 65 – Decision Guidelines (subject to appropriate conditions).

On balance and subject to the inclusion of suitable conditions, the proposal is considered reasonable and warrants support.

Recommendation

That a Notice of Decision to Grant a Permit for the development of this site for twelve (12) dwellings be issued, subject following conditions:

1. Before the development starts amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted to Council on , but modified to show:
 - a) the provision of an improved landscape plan and associated planting schedule for the site showing the proposed location, species type, mature height and width, pot sizes and number of species be planted on the site, with such plans to be prepared by a suitably qualified landscape professional and incorporating:
 - i. the *Acacia melanoxylon* trees to be planted must be replaced with one of the following:
 - b. *Angophora costata* (Smooth Bark Apple Myrtle)
 - c. *Corymbia citriodora* (Lemon Scented Gum)
 - d. *Corymbia maculata* (Spotted Gum)
 - e. *Eucalyptus leucoxylon* (Yellow Gum)
 - ii. the correct number of trees proposed in the Common Open Space area;
 - iii. the removal of the proposed species *Pittosporum 'Silver Sheen'* and replaced with a *Banksia marginata* (Silver Banksia) or other similar native tree that is tolerant of salt wind.
 - b) dwelling 13, dwelling 14 and dwelling 15 all deleted from the proposed development resulting in only single storey development at the eastern side of the site;
 - c) the provision of elevation plans of the revised single storey dwelling at the eastern side of the site;
 - d) all car spaces within the basement car park provided with a fully workable reversing area so that all vehicles can exit the site in a forwards direction;
 - e) the provision of an elevation plan of the front fencing, which full provides details of its height, building materials and colours;
 - f) the surface material of all driveways / accessways and car parking spaces nominated in all-weather coloured concrete sealcoat, or similar;
 - g) the provision of a full colour, finishes and building materials schedule (including samples) for all external elevations of the proposed dwellings, and;

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- h) all upper level balconies provided with 1.7m high permanently fixed selected timber balustrades around them with their design to prevent overlooking into abutting nearby properties; and
 - i) the provision of full details of all permanently fixed 1.7m high selected timber balustrades to balconies;
2. The development and/or use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
3. Before occupation of the dwellings hereby permitted, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. The landscaping must then be maintained to the satisfaction of the Responsible Authority.
4. Before occupation of the dwellings hereby permitted, all buildings and works and the conditions of this permit must be complied with, unless with the further prior written consent of the Responsible Authority.
5. The development of the site must be provided with stormwater works which incorporates the use of water sensitive urban design principles to improve stormwater runoff quality and which also retains on site any increase in runoff as a result of the approved development. The system must be maintained to the satisfaction of the Responsible Authority. Council's Development Engineer can advise on satisfactory options to achieve these desired outcomes which may include the use of an infiltration or bioretention system, rainwater tanks connected for reuse and a detention system.
6. Before the development commences, a Stormwater Management Plan showing the stormwater works to the nominated point of discharge must be prepared to the satisfaction of the Responsible Authority. The Stormwater Management Plan must be prepared by a qualified person and show all details of the proposed stormwater works including all existing and proposed features that may have impact (e.g. trees to be retained, crossings, services, fences, abutting buildings, existing boundary surface levels, etc.).
7. Stormwater works must be provided on the site so as to prevent overflows onto adjacent properties.
8. Construction on the site must be restricted to the following times:
 - a) Monday to Friday 7:00am to 7:00pm; and
 - b) Saturday 9:00am to 6:00pm.Or otherwise as approved by the Responsible Authority in writing.
9. Before the occupation of the dwellings hereby permitted starts, or by such later date as is approved by the Responsible Authority in writing, the nature strip, kerb and channel, vehicle crossover and footpath must be reinstated to the satisfaction of the Responsible Authority.
10. Any existing vehicular crossing not in accordance with the endorsed plan must be removed and the kerb reinstated in a manner satisfactory to the Responsible Authority and any proposed vehicular crossing must be fully constructed to the Responsible Authority's standard specification.

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11. Convenient taps or fixed sprinkler system must be provided to the satisfaction the Responsible Authority capable of watering all communal and private land and landscaped areas, including turf block visitor car parking where provided.
12. A street number of 100mm minimum height and contrasting in colour to its background, must be fixed at the front boundary of the property and as near as practicable to, or on the letterboxes with such numbering to be in accordance with Council's Street Numbering Policy. Separate unit numbers of 75mm minimum height must be placed adjacent to the front entrance of each dwelling. Such numbers must be clearly legible from the access driveway.
13. Prior to the occupation of the dwellings hereby approved, all boundary fences must be repaired and/or replaced as necessary to the satisfaction of the Responsible Authority, at the cost of the applicant/owner. All fencing and boundary wall finishing as required pursuant to conditions 1g), 1h) and 1i) of this permit are to be at the whole cost of the applicant/owner.
14. Exterior lights must be installed in such positions as to effectively illuminate all pathway and porch areas. Such lighting must be controlled by a time clock or sensor unit, and must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.
15. Prior to the occupation of the dwellings hereby permitted, areas set aside for parking vehicles, access lanes and paths as shown on the endorsed plans must be:
 - a. Constructed to the satisfaction of the Responsible Authority.
 - b. Properly formed to such levels that they can be used in accordance with the plans.
 - c. Surfaced with *an all-weather, coloured concrete, sealcoat* to the satisfaction of the Responsible Authority.
 - d. Drained and maintained to the satisfaction of the Responsible Authority.
 - e. Line-marked to indicate each car space, loading bay and all access lanes and, if necessary, the direction in which vehicles are to travel to the satisfaction of the Responsible Authority.
 - f. In accordance with any Council adopted guidelines for the construction of car parks.

Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.
16. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the Responsible Authority.
17. All piping and ducting above the ground floor storey of the development (other than rainwater guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.
18. Finished Floor Levels shown on the endorsed plans must not be altered or modified without the prior written consent of the Responsible Authority.
19. External clothes drying facilities must be provided for each dwelling.

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20. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

NOD:

Expiry of permit:

In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:

- The development and use are not started before two years of the date of this permit.*
- The development is not completed before four years of the date of this permit.*

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within three months afterwards.

**Should a planning permit issue a specified starting and completion date will be inserted.*

Note: Prior to the commencement of the development you are required to obtain the necessary Building Permit.

Note: The applicant/owner must provide a copy of this planning permit to any appointed Building Surveyor. It is the responsibility of the applicant/owner and Building Surveyor to ensure that all building development works approved by any building permit is consistent with the planning permit.

Note: Before removing/pruning any vegetation from the site, the applicant or any contractor engaged to remove vegetation, should consult Council's Vegetation Management Officer to verify if a Local Law Permit is required for the removal of such vegetation.

The meeting was addressed by Graham Linley on behalf of objectors and Michael Debbin on behalf of the applicant

McKeegan/Petchey

The application be refused on the following grounds.

1. The proposal would have an adverse affect on the amenity of an established residential neighbourhood.
2. The proposal constitutes an over- development of the site.
3. The proposal exhibits excessive bulk and mass
4. The proposal does not satisfy all of the requirements of Clause 55 of the Kingston Planning Scheme (ResCode), in particular Clause 55.02-1 Neighbourhood Character Objectives, Clause 55.02-2 Residential Policy Objectives, Clause 55.04-1 Side and Rear Setbacks Objectives, Clause 55.04-5 Overshadowing Open Space Objectives and Clause 55.03-8 Landscaping Objectives

Carried

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K 52 295 – 315 Kingston Road, Clarinda

Author: Jonathan Guttman, Manager Strategic Planning

Approved By: Tony Rijs-General Manager Environmental Sustainability

Applicant:	Contour Consultants Australia Pty Ltd
Application No.	KP881/07
Location:	No. 295 - 315 Kingston Road, Clarinda
Melways Ref:	79A11
Proposal:	Use and Development of the land for the purpose of a Refuse Transfer Station in conjunction with a Materials Recycling Facility, the Display of Floodlit Business Identification Signs, Reduction in the Car Parking Requirements of Clause 52.06, Removal of Native Vegetation and Alteration of Access to a Road Zone.
Zoning:	Special Use Zone (Schedule No. 2)
Kingston Planning Scheme Ordinance Controls:	<p>Clause 12.01 – Protection of Catchments, Waterways and Ground Water</p> <p>Clause 15.04 – Air Quality</p> <p>Clause 15.05 – Noise Abatement</p> <p>Clause 15.06 – Soil Contamination</p> <p>Clause 15.09 – Conservation of Native Flora and Fauna</p> <p>Clause 17.03 – Industry</p> <p>Clause 18.09 – Water supply, sewerage and drainage</p> <p>Clause 18.10 – Waste Management</p> <p>Clause 19.03 – Design and Built Form</p> <p>Clause 21.03 – Land Use Challenges for the New Millennium</p> <p>Clause 21.04 – Vision</p> <p>Clause 21.07 – Industrial Land Use</p> <p>Clause 21.10 – Non Urban Areas</p> <p>Clause 21.12 – Transport, Movement and Access</p> <p>Clause 22.03 – Sandbelt Open Space Policy</p> <p>Clause 22.04 - South East Non Urban Area Policy</p> <p>Clause 22.15 - Outdoor Advertising Signage Policy</p> <p>Clause 37.01- Special Use Zone (Schedule 2)</p> <p>Clause 52.05: Advertising Signs</p> <p>Clause 52.06: Car Parking</p> <p>Clause 52.29: Land Adjacent to a Road Zone (Category 1)</p> <p>Clause 57: Metropolitan Green Wedge Land</p> <p>Clause 65.01: Decision Guidelines</p> <p>Clause 66.02: Referrals</p>

Background

Council previously resolved as a matter of Urgent Business at its Ordinary Council Meeting on the 17th December, 2007 as follows:

‘That Council resolve to write to the Minister for Planning pursuant to Section 97C of the Planning and Environment Act 1987, requesting that the Minister for Planning

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decide Planning Permit Application KP881/07, for a Materials Recycling and Refuse Transfer Facility at 293 – 315 Kingston Road, Clarinda’.

A letter was subsequently prepared to the Minister in accordance with the above resolution on the 24th December, 2007. At the time of finalising this report no response from the Minister had been received in relation to this request.

Council was subsequently notified in February, 2008, that the permit applicant had lodged with the VCAT an Application for Review against Council’s Failure to Determine the Application. Council is now aware that this matter has been scheduled for a hearing to commence on the 23rd June, 2008.

Accordingly this report ascertains the position that Council will take at the upcoming VCAT hearing.

Main Issue

The primary issues associated with the proposal, is whether or not the use of the land for materials recycling and a refuse transfer station should be pursued in the proposed location.

In forming a view in relation to the above question the following information is before Council to assist it with this consideration:

- § The provisions of the Kingston Planning Scheme.
- § Divergent views expressed by the permit applicant and segments of the surrounding community with respect to the appropriateness of the use.
- § The comments received by State Government Departments and Agencies either in a referral capacity or with a specific interest in the proposal.
- § Previous reports of Panels who have considered the implications associated with the proposed activities.

As indicated, this report seeks direction from Council in relation to how it wishes to advance its position in relation to the proposal and in so doing it is submitted that this consideration requires a careful balancing of all the above aspects.

Existing Conditions

The subject site is located on the north side of Kingston Road, Clarinda approximately 160 metres west of the intersection with Clayton Road. The site has existing abuttal’s with Victory Road to the north and Peace Road to the west. The subject land has a frontage to Kingston Road of 342.74 metres, a depth which varies between 535.79 metres and 541.51 metres and a frontage to Victory Road of approximately 406.92 metres. This provides the subject site with an overall area of 21.4 hectares leaving it as one of the more significant parcels of land within the municipality.

The application indicates that the *‘subject land has over the last 15 years been utilised for sand extraction in accordance with Works Approval 506 and currently contains a series of sand extraction pits, mounds, water storage ponds and slime dams. Two water storage ponds are located along the north boundary (victory Road) and the slime dams are located along the west boundary (Peace Road).*

Sections of the site are bordered by bunds established in the early stages of the sand extraction use. These bunds are approximately 5 metres high (above natural surrounding ground level) with the working surface of the site currently at approximately 5-7 metres below the natural ground level surrounding the site’.

A vacant dwelling is located in the south-east corner of the site with frontage to Kingston Road’.

The application further describes the surrounding activities as follows:

‘Directly to the north of the site, across Victory Road are the Elder Street Landfill and the Baxter Tip [Now understood to be Transpacific Industries Tip].

Abutting the east boundary of the site are a range of urban and non-urban land uses, including an egg farm, market gardens and associated dwellings, a reception centre, warehousing and an accident and vehicle repair centre and concrete batching plant.

To the south of the site, across Kingston Road is the Heatherton Christian College, a Telstra substation and an indoor plant nursery, A number of market gardens are also located directly to the south and west of the subject site.’

Recent Site History

Beyond the context established in the previous section the following Planning considerations have been relevant over recent times in relation to the subject land.

Planning Permit Application KP184/04

This Planning Permit Application sought to undertake essentially the same land uses proposed as part of the current proposal. The application was ‘called in’ by the Minister for Planning who appointed an Advisory Committee to consider the Permit Application in conjunction with another proposal seeking to undertake similar activities. The Committee found that:

‘The Committee considers that the real and substantive purpose of the proposal is Material Recycling and any Refuse Transfer Station activity is, at best, ancillary as it is necessary adjunct to that primary use. Therefore the proposal is prohibited under Clause 57 Green Wedge provisions’.

As a consequence of this determination by the Advisory Committee the Minister for Planning wrote to Council notifying Council that he had refused the applications on the grounds that the proposal was prohibited.

The issue of whether or not the use of the land was prohibited relied on considerations of whether or not an association could be sufficiently demonstrated between materials recycling and a refuse transfer station. This matter was subsequently considered by a Panel considering an application by the same company seeking a permit in this instance in May 2007 as part of Planning Permit Application KP340/04. The panel in

this instance determined that the required 'in conjunction' test was satisfied and the proposal could proceed.

The above application KP340/04 was subsequently considered by a Panel who provided recommendations to the Minister for Planning. Having considered the Panels Report the Minister for Planning resolved to grant a permit. The permit was subsequently issued by the Minister for Planning on the 31st October, 2007 with a condition requiring the use to cease by the 30th April, 2009.

It is understood that a permit is now sought by the Alex Fraser Group to essentially move its operation required to cease by 30th April, 2009, from its Dingley location to the subject land.

Proposal

The permit applicant has described the proposal as follows in its supporting 'Town Planning and Urban Context Report':

'The proposal is for the use and development of a refuse transfer station in conjunction with a materials recycling facility on land at 215 – 295 Kingston Road, Clarinda.

The site will accept construction and demolition and commercial and industrial waste. It is proposed that the transfer station and materials recycling facility will operate for a period of 25 years having regard to the expected continuation of landfill and quasi-industrial activity in the area'.

The proposal provides for vehicle access from Kingston Road via a formally created signalised entry treatment. The proposed roadway leading into the site will be surfaced with bitumen up to a proposed wheel wash bay area with crushed rock hard stand surface beyond this point on the internal road network.

The proposal will further provide the following:

- § Weigh bridge, wheel wash facility, water dousing bar and truck parking area located approximately 60 metres into the site.
- § A site office proximate to the entry of the site will be provided to allow for the monitoring of incoming and outgoing vehicles. It is understood that a total of 20 car spaces will be associated with this facility.
- § A public transfer tipping area is to be provided to provide for small vehicle loads of materials.
- § A maintenance workshop will be located in the central part of the site.
- § The separating and processing plant is to be located in the centre of the site.
- § A number of the existing water storage ponds are to be retained and the existing slimes will assist to form part of the '*product enhancement process*'.
- § The site will also be provided with a dedicated area for the sorting and recycling area where co-mingled waste can be sorted.
- § A proposed business identification sign is to be located within the proposed traffic island on Kingston Road. The sign is to be internally illuminated.

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§ The existing bunding around the subject land is proposed to be heavily planted with a range of native vegetation from grasses, shrubs to trees as depicted on the plans submitted.

A plan illustrating the manner in which the site is to be laid out is provided in Attachment 1 to this report.

The permit applicant has provided through its Town Planning Report a detailed description of the operation details of the proposed use. The information provided outlines the range of materials the facility will accept, the manner in which materials will be sorted and separated and as appropriate transferred from the site and the scale of the administrative aspects of the proposal. To accompany the proposal in the Town Planning Report and a detailed Site Management Plan has also been submitted with the application.

Planning Scheme Requirements:

Pursuant to Clause 37.01 (Schedule 2) of the Kingston Planning Scheme, a planning permit is required to use and develop land for both a Materials Recycling Facility and a Refuse Transfer Station.

In addition pursuant to Clause 37.01-4 a Planning Permit is required to construct a building or construct and carry out building and/or carry out works unless the schedule to the zone specifies otherwise. In this instance the schedule to the zone does not prescribe that a permit is not required for such activities.

A planning permit is also required pursuant to Clause 44.04-1 as a component of the subject land is covered by a Land Subject to Inundation Overlay.

In accordance with Clause 52.05 of the Scheme, a planning permit is required to display Business Identification signage.

A planning permit is also sought to reduce car parking requirements pursuant to Clause 52.06-1 of the Kingston Planning Scheme.

A planning permit is also required pursuant to Clause 52.17 to remove, destroy or lop native vegetation.

A planning permit is also required pursuant to Clause 52.29 to create or alter access to a Road Zone, Category 1.

In addition to the planning scheme controls identified on Page 1 of this report a number of the policies contained within the State Planning Policy Framework (SPPF) and Local Planning Policy Framework (LPPF), including Council's Municipal Strategic Statement (MSS) are considered relevant in the consideration of this proposal. These include:

State Planning Policy Framework

§ Clause 15.01 Protection of Catchments, Waterways and Groundwater

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- § Clause 15.04 Air Quality
- § Clause 15.05 Noise Abatement
- § Clause 15.06 Soil contamination
- § Clause 15.09 Conservation of Native Flora and Fauna
- § Clause 17.03 Industry
- § Clause 18.09 Water supply, sewerage and drainage
- § Clause 18.10 Waste Management
- § Clause 19.03 Design and Built Form

Local Planning Policy Framework

- Clause 21.03 Land Use Challenges for the New Millennium
- Clause 21.04 Vision
- Clause 21.07 Industrial Land Use
- Clause 21.10 Non urban areas
- Clause 21.12 Transport, Movement and Access
- Clause 22.03 Sandbelt Open Space Policy
- Clause 22.04 South East Non Urban Area Policy
- Clause 22.15: Outdoor Advertising Signage Policy

Amendment to the Application before Notification

No amendments were made to the proposal prior to the advertising period.

Advertising

The proposal was advertised by sending notices to surrounding property owners and occupiers and notifying parties who had shown an interest in the previous application associated with the land. A notice on site was also maintained for fourteen (14) days. The application was also advertised through the public notice section of the relevant Leader Newspapers. Council records indicate the following was received in relation to the application:

- Eighteen (18) letters objecting to the proposal
- One (1) letter not objecting to the proposal
- One (1) letter providing neither support or opposition to the proposal
- An objection signed by approximately 136 parties opposing the proposal.

Councillors have previously been provided with a copy of the objections from all parties. Having reviewed the objections it is the view of Officers that many of the matters raised accord with the considerations of the Panel whom considered Planning Permit Application KP340/04 (Dingley), namely:

- Whether or not the proposal accords with Planning Policy
- Issues associated with potential Off-Site impacts
- Issues associated with buffer distances from sensitive uses
- Noise related considerations
- Traffic and Car Parking Management

Referrals

Council has received a number of comments from State Government agencies / authorities who play a significant role in assisting Council to consider this proposal. The views of these agencies are briefly summarised below.

Melbourne Water

Melbourne Water does not object to the proposal subject to the inclusion of a number of conditions and footnotes on any planning permit issued.

EPA Victoria

The EPA has no objection to the issuing of a planning permit for the development subject to a number of conditions outlined in its referral response.

Given the expertise contained within the EPA to assist Council in determining such proposals and its ongoing role in monitoring the sites operations should the proposal proceed, it is felt appropriate that the following extract from the EPA's letter is highlighted:

'As you are aware EPA's submission to the 2005 Minister appointed Planning Panel outlined that EPA believed, subject to the incorporation of best practice environmental management, this site would be suitable for the development as a C&D recycling facility and waste transfer station. EPA still holds this view.

We note that the application appears to entail all the environmental controls put forward to the Planning Panel by Alex Fraser. Furthermore, in addition to those controls, full enclosure of the crushing plant to limit dust emissions is now proposed. We see this action as a constructive measure beyond contemporary industry Best Practice. It should give greater surety for dust and possible noise emission attenuation and further increase the likelihood that the operations will not have an adverse impact on sensitive land uses.'

Department of Sustainability and Environment

'The Department and Parks Victoria have considered the application and have no objection to this proposal provided the applicant does not carry out any activities that may impact on the outcomes stated in the Sandbelt Open Space Project Development Plan 1994.'

VicRoads

Council has received three letters from VicRoads in relation to this application the first dated 28th December, 2008, the second dated 27th February, 2008 and the third dated 31st March 2008. The most recent letter was sent directly to the VCAT which Council was copied into.

Following the above correspondence it is apparent that VicRoads have withdrawn their initial objection to the proposal subject to a number of detailed conditions regarding work to be undertaken regarding issues associated with accessing the subject land. It does however appear that following discussions between the permit applicants representatives and VicRoads, the proposal no longer seeks to provide for a fully signalled intersection on the sites Kingston Road frontage.

In addition to the above comments from State Government agencies / authorities, the following letters were submitted with the application:

Sustainability Victoria

A letter from Sustainability Victoria dated 17th September, 2007 to the State Department of Innovation, Industry and Regional Development was submitted which highlighted the importance of the proposal in relation to its ability to contribute to the Towards Zero Waste Strategy given its significant recycling role. The letter identifies that:

- § *The South Eastern region generates the majority of C&D Waste (53%) but currently only has 21% of the recycling capacity. Over 90% of the South East's capacity is provided by the Alex Fraser Group facility at Tootal Road, Dingley. The Dingley site is currently scheduled to close at the end of 2007 therefore creating a significant shortfall in recycling capacity in the South East.*
- § *Sustainability Victoria acknowledges that Alex Fraser Group's contribution to recycling of C&D waste has been, and continues to be, significant (e.g. 1.1 million tonnes of C&D waste recycled in 2005/06 or 18% of Victoria's total recycling) and we strongly support the company's expansion of activity in the SE.*
- § *I understand that Alex Fraser has prepared a new proposal for a purpose built, state of the art transfer station and recycling facility for a site in Kingston Road, Clarinda. I am advised that the new facility will feature an enclosed operating plant and leading edge dust monitoring systems. In May 2007 Sustainability Victoria allocated \$500,000 of funding under our Commercial and Industrial Resource Recovery Grants Program towards the establishment of this facility.*

EPA Victoria

The EPA provided a letter dated 17th September, 2007 to the Department of Innovation, Industry and Regional Development providing support for the activity proposed, the appropriateness of the proposal in relation to its location and the measures incorporated to manage the operations of the use.

Response to Grounds of Objection

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In responding to the above grounds of objection, Officers wish to remind Council that in the instance of the current proposal a substantive assessment of many of the issues raised by the objectors has already occurred through the following planning processes:

- Advisory Committee and Panel Report consideration regarding Planning Permit Application KP184/04; and
- The Stage 1 and Stage 2 Panel Report(s) considering Planning Permit Application KP340/04.

In addition to the above, as identified earlier Council has also received substantial comment from referral agencies it relies upon to assist it with technical considerations on a number of the matters raised by objectors.

The existence of the above material has substantially assisted Council Officers in further consideration the proposal presently before Council.

1. Whether or not the proposal accords with Planning Policy

This matter is explored in a subsequent section of the policy content relevant to the proposal.

2. Issues associated with potential off-site impacts

The operational aspects associated with the proposed land use were considered in substantive detail previously with the Panels (KP340/04) having considered expert evidence that was subject to extensive cross-examination. Importantly this analysis related to the same company who is presently seeking a permit.

The following was reflected in the report by the Panel considering Planning Permit KP340/04:

- *‘Alex Fraser has made considerable progress in managing its dust emissions since 2004, and is recognised by EPA as employing best practice, however the Panel finds that insufficient attention has been paid to maintaining stockpile heights to an acceptable level (Pg 32)’.*
- *‘The EPA confirmed that as a result of the measures implemented by Alex Fraser the site uses best practice environmental management. However, because the site is closer to the residential zone than EPA would prefer, it recommends implementation of two additional measures, namely enclosing the crusher and sealing the road with a superior surfacing material. It is also recommended that real-time continuous monitoring of PM10 continues and if a permit is granted this monitoring should be included in the conditions (Pg 31)’.*
- *‘As Dr. Bellair based his assessments on measurements made before the dousing bar was installed, it is likely that the levels have been further reduced*

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and this provides the Panel with additional surety that Alex Fraser is operating well within acceptable limits (Pg 33)'.

- *'The Panel accepts the evidence that as long as ongoing control of emissions from the Alex Fraser's operations are maintained, the general community health risk posed by emissions of respirable crystalline silica is negligible (Pg 35)'.*
- *The Panel accepts that the results of analysis show that asbestos contamination at the site is low and Alex Fraser has procedures in place to reduce the risk of asbestos contaminated material being accepted (Pg 36)'.*
- *The Panel concludes that:*
 - *Based on expert assessments the air emission from the site are below intervention levels and not at a level that poses a health risk to nearby residents.*
 - *Alex Fraser has implemented best practice to reduce its off-site dust emissions with the notable exception that the stockpiles are above an acceptable height.*
 - *There are multiple sources of dust in the vicinity of the site and Alex Fraser's contribution to the overall levels appears to be relatively small (Pg 39)'.*

Although the proposal currently before Council relates to a different site the following is apparent:

- The proposed operator has continued to improve its operational practices to a point whereby they have clearly satisfied an expert Panel and the EPA and subsequently the Planning Minister that a permit could issue (subject to conditions) to allow the use to continue on a temporary basis.
- The operation proposed under the current proposal improves on the existing situation in Dingley by internalising the concrete recycling component of the use and instigating management techniques including the use of a dousing bar, real time dust monitoring and additional management procedures that produce a 'best operational practice' outcome.
- Concerns expressed by the Panel previously in relation to the heights of the stockpiles can be managed by permit condition and to a large degree will be overcome given the sites bunding and depressed nature of the locations where the stockpiling will be positioned.

Based on the above review of issues associated with potential off site amenity implications associated with the proposed use and the advice of the EPA, Council Officers do not believe that the application could be refused on such grounds.

3. Issues associated with buffer distances from sensitive uses

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Once again it is useful to consider the examination of the Panel who considered Planning Permit Application KP340/04 particularly given in this instance the existing operation was located much closer to Residentially Zoned land. The Panel in this instance stated:

- *Clause 52.10 does not specify a threshold distance for concrete crushing. However, after considering buffer distances for other similar activities in the Buffer Distance Guidelines, the EPA advised a buffer distance of 300 metres between the concrete crushing plant and residents would provide adequate amenity protection from adverse impacts (Pg 37).'*

Material submitted with the proposal indicates the concrete recycling facility would generally exceed 300 metres from any residential activity or the Heatherton Christian College. Irrespective of this spatial circumstance, what must be taken into account in considering this proposal as distinct from the previous application in Dingley is that:

- As mentioned in the previous section substantive consideration was given to the likely 'off site impacts' associated with the proposal which after all are the primary reason for establishing buffers.
- The crushing operation will be internalised and the site monitoring and management regime will exceed that presently occurring.
- The cross section information provided with the application reinforces that unlike the concrete batching plant located near the corner of Clayton and Victory Road which is highly visible, the proposal in this instance will at its maximum height still be 2 metres below the level of the existing bunds which are proposed to be landscaped.

Council further believe that had EPA Victoria held concerns regarding the buffer distances from the operation and nearby sensitive uses the proposal would not have received its conditional support.

For the above reasons it is not considered that the proposal could be opposed on the grounds of having insufficient buffer distances.

4. Noise related considerations

In considering issues associated with noise the proposal before Council is substantially different to that considered in Dingley and this is perhaps best evidenced through the recommendations of the Dingley Panel to utilise 'shipping containers' lined with acoustic foam to manage the noise exposure of a property in close proximity to that existing operation. For reasons identified above the circumstances presented on the subject land are substantially different to those which prevailed in Dingley.

One aspect which is however recommended through the EPA's permit conditions is to limit the noise limits to be in accordance with those specific under State Environment

Protection Policy No N-1 as they relate to the control of noise from Commerce, Industry and Trade.

Beyond including such a condition should a Planning Permit issue considerations regarding noise were modelled under the proposed use. The conclusions of the Burton Acoustic Group Report (30th May, 2007) where as follows:

- *‘The location of the fixed plant and the increased bunding around the quarry perimeter serve to provide significant barrier attenuation. The effective noise level with the total site in operations and under winds favourable to propagation are well under the SEPP N-1 Noise Limits for operation between 7am and 6 pm Monday to Saturday.*

The recommended reduced levels of activity outside normal hours of operation are calculated to reduce the noise levels to the relevant Noise Limits during those periods.’

Council Officers believe that based on the information presented the use will operate within the prescribed noise levels and as recommended by the EPA relevant conditions can be included on the Planning Permit in relation to this matter.

5. Traffic and Car Parking Management

In relation to the issue of car parking provision, Council Officers support the view of the Traffic Report that 20 car spaces is sufficient to provide for staff and visitors to the facility. It is recognised that due to the substantive size of the site should a permit issue and the use proceed, additional areas could be allocated for such purposes if required.

The Traffic Report further identifies that the proposed use will generate an anticipated additional volume of 400 predominantly truck vehicle movements per day, with the peak operating periods generally being outside morning and afternoon community peaks.

Subsequent to this report being compiled it is understood that the traffic representative of the applicant has held discussions with VicRoads which has lead to VicRoads developing a list of conditions it wishes to impose on the Planning Permit to ensure the operational requirements of Kingston Road are maintained. It is understood that based on the applicant providing VicRoads with the additional information it will be able to determine the extent of works required on Kingston Road to maintain its operational capacity.

Preliminary Conference

No preliminary conference was held in relation to this proposal as Council resolved to request that the matter be called in and determined by the Minister for Planning.

Planning Assessment

The following section will consider the application against the relevant sections of the State Planning Policy Framework, Local Planning Policy Framework (including the MSS), zoning objectives and Particular Provisions of the Kingston Planning Scheme.

State Planning Policy Framework

Clause 12.02: Better Management of Metropolitan Growth

Officers believe that in considering this policy the ‘threshold’ question is clearly whether or not the proposed use should be located in the non urban area. Officers are aware that the Minister has appointed a Panel to review Waste Management and Material Recycling Facility provisions in Planning Schemes, however this Panel is yet to report.

It is considered that the Panel who considered Planning Permit KP340/04 went some way to answering this question by recognising that greater merit existed in developing a ‘waste hub’ in Kingston, north of Heatherton Road. For this reason Officers believe that sufficient basis exists in State Policy to give considering to the proposed use premised on the basis that an immediate relationship remains with extractive industry and land filling operations. It is noted that these operations (extractive industry and land fill) were in fact identified ‘features’ of the South East Green Wedge identified through Policy 2.4 of Melbourne 2030.

Clause 12.04: A More Prosperous City

It is considered that the thrusts of this State Planning Policy would recognise that the proposed use given its ability to positively influence resource management warrant recognition.

Clause 12.07: A Greener City

As identified earlier in this report, Sustainability Victoria have identified this proposal as being most significant in relation to assisting in reducing the amount of waste sent directly to landfill. Beyond this obvious synergy with this policy the strategic location of the transfer and recycling facility (given its collocation with active landfill sites) requires consideration based on broader environmental consequences associated with transportation costs should such a relationship not exist. Further it is of relevance to consider the broader environmental cost given the regulatory/pricing system is still such that for the waste producer land filling remains a cheaper commercial option than recycling / reuse activities as proposed through the application. This proposal provides a most necessary and effective alternative to landfill strongly aligned with Government Towards Zero Waste Objectives.

Clause 15.01: Protection of Catchments, Waterways and Groundwater

The application states that no water discharge will occur on the site and an active effort will be made to collect and reuse water for the various activities proposed on the subject land.

Clause 15.04: Air Quality

In respect to this issue it has been covered in some detail in earlier sections of the report.

Clause 15.05: Noise Abatement

Discussion regarding this consideration has been included in an earlier section of this report.

Clause 15.09: Conservation of Native Flora and Fauna

It is submitted that should the proposal proceed it will make substantive improvements to the visible landscape values of the subject land based on the extent of landscaping proposed on the sites periphery.

Clause 17.03 Industry

The report has previously commented on issues raised by this SPP in relation compliance with EPA regulations around Buffers and Air Omissions.

Clause 18.09: Water Supply, Sewerage and Drainage

As previously stated the proposed development has been considered by Melbourne Water and the EPA who have both subject to conditions, supported the application receiving a Planning Permit.

Clause 19.03: Design and Built Form

The proposal has been submitted with an accompanying Landscape Plan. The plan clearly illustrates the significant extent of landscaping proposed along all site perimeters. The implementation of the landscape plan would provide for a substantially improved presentation to the site.

As previously identified the site plant and equipment associated with the proposal would essentially be hidden by the existing bund and as such would not be highly visible from the surrounding area. Thus the presentation of this proposal when compared with the prominence of other 'man made' structures in the immediate area will be substantially different.

Local Planning Policy Framework (including the MSS)

Clause 21.03: Land Use Challenges for the New Millennium

This section of Council's MSS highlights the diversity of activities which have and in the instance of land filling will continue for some time. It would appear that should the use proceed its existence be tied to the cessation of tipping activities in the immediate area thus allowing the primary policy influencing this location at that time to be affectively transitioned.

Clause 21.04: Vision

The relevance to this clause is a recognition that the site is located in the Non Urban Area.

Clause 21.10: Non Urban Areas

It is considered that an overarching direction arising through this policy is the transition phase still occurring in relation to extraction and land filling which is occurred within the immediate area. As such a key policy consideration arising is whether the proposed use could co-exist as proposed during this transitional period. For a number of environmental and transportation reasons the basis for this co-existence with a precinct that continues in the short to medium term to perform an active land filling role is considered to have planning benefit.

What is also clear through policy is irrespective of the nature of the uses to be advanced consideration should be given to incremental improvements to the visual landscape where opportunities are presented.

Clause 22.03: Sandbelt Open Space Project Policy

A key distinction associated with the subject land when compared which other areas proximate to the subject land is that it does not hold the status of being 'Core' Parkland. As such the land is not covered by a Public Acquisition Overlay for this purpose nor is it owned by a public authority and identified as land which is planned by a public authority to make a contribution to the 'core' parkland area. Council Officers therefore wish to clearly distinguish the planning policies applicable to the subject land from those identified for the site which the Delta Group sought to place a similar facility on which has been identified as 'Core' parkland further west along Kingston Road.

If it is accepted that the use of the land is of a temporary nature linked to the cessation of surrounding land filling activities, it would appear that opportunities now presented to landscape the bunds of the subject land are as a minimum a progressive step in addressing the intentions of this policy given the private nature of the land ownership.

Clause 22.04: South East Non Urban Policy

It is apparent that this policy was designed to apply through the South East Green Wedge and provide some guidance to decision making. The northern tip of the South East Green Wedge is however substantially different from those components through the Cities of Frankston, Dandenong and Casey. These differences are most predominantly reinforced through policy acknowledgements of activities including sand extraction and land filling which are identified preferred activities within the policy area in parts of Kingston.

It is considered that the physical presentation of the visible parts of the site will build strongly on policy objectives to improve the landscape presentation of the area and introduce an activity, which importantly does not generate a significant visual impact.

Clause 22.15: Outdoor Advertising Signage Policy

Insufficient detail has been provided with the application at this time to provide an opportunity for Council to consider the contents of the sign and as such it is recommended that permit conditions seek further detail of the proposed signage.

Zoning Provisions

Clause 37.01: Special Use Zone (Schedule 2)

The purpose of this schedule to the Special Use Zone is as follows:

- § To recognise or provide for the use and development of land for extractive industry.
- § To encourage interim use of the land compatible with the use and development of nearby land.
- § To encourage land management practice and rehabilitation that minimises adverse impact on the use and development of land.

It is considered that the use of the land for materials recycling and a refuse transfer station responds appropriately to the second purpose identified above given its relationship with the surrounding land filling activities. Further the consideration of the activity as 'interim' can and in this instance should be linked to the cessation of 'land filling activities' in the immediate area.

In relation to the third purpose which is to '*minimise adverse impact on the use and development of land*' much of this report has presented context from earlier Panel/Advisory Committee reports whereby this matter was considered in substantive detail. It is apparent that these earlier considerations and the subsequent advice from agencies including EPA Victoria is that the use of the land will not generate adverse amenity impacts on surrounding land.

In relation to issues of rehabilitation or 'end use' it is considered that this matter will be given more formal consideration as part of Council's Northern Non Urban Area planning process.

Importantly Council Officers wish to draw a distinction between the zoning of the subject land and the land located south of Kingston/Heatherton Road located in the Green Wedge Zone. It is apparent that predominately in the southern area activities such as land filling have not and will not in the future be pursued with the intensity that has occurred in the area included in the Special Use Zone Schedule 2. As such it remains appropriate that this distinction in land zoning is recognised given the length of time activities are scheduled to remain. Further as Council has continuously advocated since the inception of the Green Wedge Protection measures, strategic work is required to be completed prior to considerations about alternate zoning approaches for this area.

Overlays

Clause 44.04: Land Subject to Inundation Overlay (LSIO):

Melbourne Water who is responsible for managing land within the LSIO area has subject to Planning Permit conditions provided support to the proposal.

Particular Provisions

Clause 52.05 – Advertising Signs:

As discussed it is considered that additional information is required through permit conditions in relation to the proposed advertising sign.

Clause 52.06 – Car Parking:

Comments in relation to car parking have been made in response to concerns expressed by objectors in a previous section to this report.

Clause 52.10 – Uses with Adverse Amenity Potential:

Comments in relation to appropriate buffers from the proposed use have been provided previously in the report in relation to concerns expressed by objectors.

Clause 52.17 – Native Vegetation:

The applicant has recently provided details as part of the application indicating the extent of vegetation to be removed through the proposal. In considering the application of Clause 52.17 it is of note that the landscape concept plan provided indicates a substantial concentration of new landscaping around the perimeter of the site. Further clarification should be sought through conditions within any permit which issues as to the amounts of the different trees proposed so a more effective assessment can be undertaken against the provisions of this clause.

Clause 52.29 – Land Adjacent to Road Zone, Category 1:

Comments in relation to access to the site have been dealt with in response earlier to objector concerns. It is noted that VicRoads have conditionally approved the proposal based on a Kingston Road access to the subject land.

Clause 57 – Metropolitan Green Wedge Land:

The Panel considering Planning Permit Application KP340/04 gave consideration in its deliberations to whether or not the requirement for a Materials Recycling Facility to be used in conjunction with a Refuse Transfer Station was met. The subsequent actions of the Planning Minister in issuing the permit illustrates that the critical ‘in conjunction’ with test was met. It is considered that the current proposal clearly illustrates both these purposes on the land in a manner which is substantially more formalised than the existing Dingley operation.

In relation to Clause 57 more broadly, it is apparent that its intended application is to land outside the Urban Growth Boundary. Having said this a significant part of Kingston’s Non Urban Area has been used for purposes including aviation, land

filling and refuse transfer, however, none of these activities are identified in this provisions purpose. It is considered that these omissions in themselves illustrate the potential lack of clarity a 'generic' provision such as Clause 57 has in providing meaning to local and legitimised land use activities occurring in Kingston's Non Urban Area and ones which are identified by Melbourne 2030 as features of the South East Green Wedge. As such in this instance greater weight should be afforded to the still relevant differentiation between the Green Wedge Zone and Special Use Zone (Schedule 2) both used in the City of Kingston, however, for distinctly different purposes.

Draft Planning Work

At both a metropolitan and local level current planning work is being advanced which has some relevance to the short, medium and longer term direction of the area covered by the subject land.

Draft Metropolitan Waste and Resource Recovery Strategic Plan

This draft plan reinforces the following of relevance to the current proposal:

- § Construction and Demolition targets identified for 2013-2014 as part of the Towards Zero Waste strategy require a 15% increase from the 2008-2009 figures.
- § Some of the opportunities in the area of Construction and Demolition waste stream have been identified:
 - *Infrastructure is required to process increasing quantities of mixed C&D waste streams, particularly in the east and south-east areas of metropolitan Melbourne.*
 - *Locating new reprocessing facilities will depend on suitable and appropriately zoned land being available across the metropolitan area (pg 18)*
 - *Supporting and promoting new and improved infrastructure to process mixed C&D waste streams. New facilities in the east and south-east of the metropolitan area will be a priority (pg 18)*
- § The current Advisory Committee work in relation to reviewing the existing definitions for waste and recycling facilities and the appropriateness of land use controls was identified through the Plan. The Metropolitan Waste Management Group have identified that they play a role in developing an assessment matrix to assist in assessing proposals in accordance with a future revised set of planning provisions.
- § Council's draft Northern Non Urban Framework Planning work is identified in the plan.
- § The Plan identifies the following filling timelines for key sites identified in the City of Kingston:
 - TPI Clayton (Putrescible) post 2020
 - Clayton Regional Site 2017 closure
 - TPI Victory Road 2011 closure
 - TPI Carroll Road 2014 closure
 - TPI Heatherton post 2020

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The above draft Metropolitan Waste and Resource Recovery Strategic Plan provides an indication of the continual role of land filling in the Kingston area and the increased challenges associated with meeting Towards Zero Waste Objectives given not only are targets increasing but so is demand generated by metropolitan population increase.

Draft Northern Non urban Area Framework Plan

Council's draft Northern Non Urban Area Framework Plan examines the subject land and its surrounds in some detail. The Plan which was released prior to the draft Metropolitan Waste Management Plan also provides some indication as to the likely extent of ongoing land filling activities in the immediate area. The draft Northern Non Urban Framework plan identifies:

- § The interests which the owner of the subject land has continuously expressed in relation to operating a recycling facility from the subject land. And in regard to this the consideration reference to the existence of Planning Permit Application KP340/04 was discussed in the draft plan.
- § Opportunities in the longer term to create an 'employment zone' generally between Clayton Road and Old Dandenong Road, south of the Victory Road alignment in the identified 'Enterprise Sites Precinct'. The basis for encouraging this land use re-direction in the future is as follows:
 - To provide sufficient incentive for rehabilitation of much of the precinct.
 - A recognition that particularly to the east of the subject land at present a disparate range of predominantly urban activities occur and are likely to be entrenched until such time as a more strategic approach is able to be applied to the precinct.
- § Importantly also the draft Plan identifies the area located on the east side of Clayton Road as being suited in the future as a resource recovery precinct aligned with the areas historical land filling role.

Council Officers believe that a particularly important consideration regarding the subject land is the desired transition through the draft plan with respect to the longer term strategic location for resource recovery activities once land filling west of Clayton Road ceases in the non urban area.

In its submission to Council regarding the draft Northern Non Urban Framework Plan, representatives of the owner of the land stated:

'Our [Alex Fraser] experience as industry leaders has confirmed that the above site is not only highly suited to the proposed use, it is largely unique in terms of its locational and physical attributes. These enable a facility to be developed and operated without off site or environmental impacts.'

'Alex Fraser Group notes that its proposal for use of the land is in effect for a period that is coincidental to the expected landfill activity and will not prejudice alternate use of the land (if zoning and planning policy will permit) for employment uses in the manner contemplated by the draft policy'

Based on previous considerations regarding proposals of the nature proposed by this applicant and others it is considered that the subject land does present some significant advantages in accommodating such a proposal. In addition as identified through this report the Alex Fraser Group have identified the suitability of the operation being linked to the continuation of landfill activity in the immediate area which remains an important factor linked to the life of any future permit. When such activities cease it is considered that the medium to longer term transition sought through the draft Northern Non Urban Framework Plan can be accomplished.

General Comment

The considerations before Council in formulating a position in relation to this proposal are to a substantive degree assisted by the following:

- § The advice on the application by external agencies including Melbourne Water, DSE and VicRoads.
- § The views expressed by Sustainability Victoria and EPA Victoria illustrating in the first instance significant financial support for the proposal and in the instance of the EPA, a recognition of the 'Best Practice' status of the operation.
- § The considerations by the Panel considering Planning Permit Application KP340/04 which considered the merits of an existing proposal being operated by the same company in Tootals Road, Dingley. This deliberation involved an experienced Panel which heard a significant amount of evidence that was subject to rigorous examination throughout the course of this and earlier hearings.

In relation to the last point it is of relevance to consider the following extracts of the Panel's report which raise issues that should assist Council in considering the present matter:

With respect to categorising the Activity with State Policy:

'There is clear State policy support for recycling and to establish new facilities to serve Melbourne's south- east – the Tootal Road facility has an established role in the recycling network and planning policy supports the maintenance (and enhancement) of this capacity. There is policy support for the issue of a short-term permit to allow sufficient time to secure another site, for permits to be issued and to relocate the facility (Pg 3).'

In relation to Kingston's Non Urban Area the Panel noted:

'The Heatherton-Dingley non-urban area is far from a typical green wedge area, with sand resources and metropolitan landfills in the Heatherton-Dingley non-urban area identified as a key feature of the South Eastern Green Wedge (Pg 11).'

More broadly in relation to where such activities should be considered the Panel noted:

'Unlike other parts of the Kingston non-urban area where sand extraction and landfill will be dominant activities for decades to come, extraction-filling cycle is well advanced in the subject site's immediate environs (Pg 24).'

'It appears to the Panel that planning for a long-term 'waste hub' in the Kingston non-urban area has much greater merit than undermining long established planning strategies through industrialisation of green wedge land as a result of ad hoc permit decisions to meet the immediate need to maintain recycling facilities in the region. The Panel's understanding of the area suggests that the land south of Heatherton Road where extraction and filling is nearing completion, is less suited to this function than areas to the north (Pg 57).'

Based on the above comments, Officers believe the issue of whether or not the use could exist in non urban areas has been the subject of substantial consideration and what becomes most evident is that a relationship with continual extraction and filling operations is most important.

The Panel then sought to explore considerations regarding the challenges associated with finding sites for such proposals:

'the Panel recognises that large sites for uses with potential for significant off-site impacts – such as concrete crushing – are not readily available, particularly if land zoned for industry is excluded due to cost or location relative to feedstock (Pg 18).'

'The Panel has found the Tootal Road facility currently fulfils an important role in the recycling network. Further, there is strong policy support for additional C&D materials recycling facilities to serve the south-eastern area of Melbourne but the cost of the large sites necessary to accommodate the use and the need to manage potential off-site impacts means it is difficult to find suitable sites in urban areas (Pg 24).'

Beyond the above challenges it becomes important in the context of this application for Council to consider what site requirements would be useful in determining an appropriate location for such facilities. In addition to identifying an alignment with active land filling activities it is useful to consider what the Panel identified as constraints in relation to the existing Dingley site, the Panel commented:

'The proposal's [Dingley] visual noise and dust impacts on adjacent GWZ land would be very difficult to mitigate due to the site's elevation and limited size (Pg 56).'

The circumstance however under the proposal before Council mitigate directly against the above concerns raised by the Panel as a result of the following:

- § The subject land has an area exceeding 21 hectares which provides opportunities to provide substantial setbacks from all adjacent site interfaces.
- § The proposal would result in the siting of the facility within an extracted site surrounded by substantial landscaped perimeter bund walls. The significance

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of this is based on the sections provided as part of the proposal which clearly illustrate that the operations on the site would be affectively hidden from its surrounds.

- § The proposed recycling facility would become a fully internalised operation that would further reduce the ‘off site’ implications from that presently occurring.
- § The facility will be purpose built and will incorporate both infrastructure and management mechanisms to ensure amenity implications are mitigated.

In relation to the direct amenity implications associated with the proposed use these issues were substantively explored by the previous Panel consideration KP340/04 through Section 5 of its September 2007 report. In summation it found:

In relation to Dust - ‘The EPA confirmed that as a result of the measures implemented by Alex Fraser the site uses best practise environmental management. However, because the site is closer to the residential zone than EPA would prefer it recommends implementation of two additional measures, namely enclosing the crusher and sealing the road with a superior surfacing material (Pg 31)’

Alex Fraser has made considerable progress in managing its dust emissions since 2004, and is recognised by the EPA as employing best practice, however the Panel finds that insufficient attention has been paid to maintaining stockpile heights to an accepted level (as specified in the EPA PAN))Pg 32)’

In relation to Respirable Crystalline Silica (RCS) – ‘The Panel found that as long as ongoing control of emissions from the Alex Fraser’s operations are maintained, the general community health risk posed by emissions of respirable crystalline silica is negligible (Pg 35)’.

In relation to Asbestos Contamination – ‘The Panel accepts the results of the analysis shown that asbestos contamination at the site is low and Alex Fraser has procedures in place to reduce the risk of asbestos contaminated material being accepted (Pg 36)’.

In relation to Buffers – ‘Based on the above the Panel tends to accept that the Buffer distance should be the more conservative distance of 300 metres, as recommended by the EPA (Pg 38)’.

In relation to noise (recognising the different context in relation to proximity to residential areas under this proposal) – ‘The Applicant contended that anecdotal evidence about unacceptable levels in the residential zone is not supported by measurement. The Panel agrees (Pg 43)’.

‘The Panel accepts that the management regime now in place on the site [Dingley] is best practice in the industry and appears to exceed the rigor of practises adopted by some other uses in the area (PG 56)’.

In summary, although the context for the above comments relates to the Dingley proposal, it is submitted that the circumstances presented under the current proposal

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both in relation to the advantages of the location of the land and the attention given to the operation (ie dust monitoring, dousing facilities, internalising the recycling operations, site entry monitoring requirements) are again substantially improved from the existing operation in Dingley. In addition much has been learnt about the operation of this use through the Panel examinations and tailored conditions can be introduced to govern its operation.

Having sought to balance the concerns expressed by the objectors with the merits of the proposal, Officers believe that examining the proposal holistically necessarily requires a recognition of the not insignificant existing feedback received from the State Government and its related agencies supporting the proposal. This has included identifying the benefits of the proposal by both the State Government's agency responsible for facilitating waste initiatives (Sustainability Victoria) and the State agency responsible for regulating them, the EPA. It would now further appear based on the most recent draft policy document released by the State Government (Draft Metropolitan Waste and Recovery Resource Strategic Plan) that the importance of the proposal in addressing State policies is further reinforced.

These comments from the State Government have lead Officers to determine that this project should be viewed as one which delivers substantive environmental benefits which are significant at a metropolitan level and these benefits are delivered in a manner that has now been rigorously tested and is recognised as industry best practice. Beyond the rigorous critique of previous Panels, the Minister Planning in interpreting the policy content before him deemed it sufficiently appropriate to grant rather than refuse a Planning Permit, to allow the Dingley operation to continue and not immediately cease.

To conclude, Council Officers believe that significant attention at the upcoming Tribunal Hearing needs to be given to applicable permit conditions in particular ensuring that issues previously raised in relation to this operation are suitably addressed (ie dust monitoring regime, hours of operation, appropriate stockpile heights). In addition what is of critical importance is to ensure that the broadly accepted principal that this use should cease to exist once immediate land filling operations cease is rigorously enforced through a legally binding agreement. It is considered that by approaching the proposal in this way its role in Council's forward planning for the area is appropriately identified.

Recommendation:

That Council resolve to support the proposal, subject to the following conditions and any additional conditions or modifications, Council Officers deem to be relevant for consideration by the VCAT in relation to matter P481/2008 as draft Planning Permit conditions, following further discussions with the permit applicant:

1. Before the development and/or use starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted with the application but modified to show and/or include:
 - a) full details including location, size and method of floodlighting any signage proposed as part of the application;
 - b) full details are provided of all road pavement treatments through the subject site.
 - c) provision of a detailed construction staging plan.
 - d) a response to the Native Vegetation Management Framework which provides:
 - i) a plan showing and describing in detail all native vegetation proposed to be removed;
 - ii) details of how the proposed landscaping for the site suitably addresses any required offsets through the provision of an offset plan
 - iv) the offset plan must include details of the following:
 - means of calculating the offsets
 - locations where offsets will be provided
 - type of offsets to be provided
 - means of interim protection for newly established vegetation until established
 - methods of permanent protection for the offsets
 - persons responsible for implementing and monitoring the offset plans
 - time frames for implementing the offset plans
2. Before the development and/or use starts a suitable landscape plan for the whole site must be submitted to, and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be drawn to scale with dimensions and three copies must be provided. The plans must be developed substantially in accordance with the landscape concept plan received by Council on 2nd November, 2007, with the application but modified to show and/or include:

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- a) A planting schedule which is modified to accurately illustrate the amount of each of the indicated species to be planted on the subject land.
 - b) The incorporation of additional detail to illustrate that indigenous species of the region are being utilised to maximise biodiversity value.
 - c) The plan substantially enhanced so it is clear which species are proposed in which locations.
 - d) The use of Eucalyptus ovata to lower lying areas (base of bunds).
 - e) Details of the proposed maintenance regime (including mulching method) for the landscaping during its establishment.
3. The development and use as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
 4. The use must cease and associated building signs removed 20 years from the date of issue of this permit.

Machinery

5. No plant or equipment used for crushing waste concrete, stone or masonry may be installed or used on the land other than the one mobile concrete crushing and screening machine described in the material lodged with the application.
6. No plant or equipment for blending products to produce products used in the construction industry may be installed on the land without the further written consent of the Responsible Authority,
7. The pug mill must be equipped with sufficient controls to prevent dust emissions and, without limiting the requirements of this condition:
 - Suitable shrouds must be installed on the pug mill to prevent dust emissions; and
 - A fabric filter dust collector must be fitted to the pug mill and maintained in good working order to prevent visible dust from being emitted, as required by the Environment Protection Authority Victoria (EPA) publication 628 June 1998 *'Environmental Guidelines for the Concrete Batching Industry'*.
8. The main concrete crusher must be equipped with sufficient controls and devices to prevent dust emissions.

Site and Environmental Management Plan

9. A Site and Environmental Management Plan must be lodged with the Responsible Authority for its approval. Once endorsed by the Responsible Authority, the SEMP will form part of this permit. The SEMP must be generally in accordance with the Site Management Plan and Environmental Plan submitted with the application but modified to show:
 - Specify that the height of stockpiles must not exceed a level of [To be determined] metres (AHD).

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- Require compliance with the procedures outlined in the Recycling Construction and Demolition Material: Guidance on Complying with the Occupational Health and Safety (Asbestos) Regulations 2003.
 - 10. The use and development of the land must adhere to the requirements, recommendations, operating practices and procedures set out in the endorsed Site and Environmental Management Plan.
 - 11. Notwithstanding anything to the contrary, the processes, plant and equipment and procedures conducted on the land in association with the materials recycling facility and refuse transfer station must be operated pursuant to best practice.
 - 12. No polluted waters, including sullage waters or sediment laden waters from the land maybe discharged from the site.
 - 13. A comprehensive traffic assessment must be undertaken five (5) years after the commencement of the use which examines any additional traffic mitigation works that may be required beyond those identified by VicRoads at the commencement of the use.

Conditions required by Vic Roads

- 14. Prior to endorsement of the plans and any works authorized by this permit, the applicant must arrange for a updated Traffic Impact Assessment Report (TIAR) to be prepared to the satisfaction of VicRoads. The report must include the following;
 - (a) For the critical design period (AM and PM peak), a pre and post-development traffic analysis to be provided to determine the impact by the development generated traffic on Kingston Road and the proposed access arrangement (eg. SIDRA and/or first-principles). The analysis should include an account of the actual measured gaps during the peak periods.
 - (b) An investigation into the feasibility and provision of two through stand-up lanes for Kingston Road, on both approaches to the Kingston Road/site access intersection, as well as a 4 lane two-way carriageway between the subject intersection and the Kingston Road/Clayton Rd signalised intersection.
 - (c) A road safety analysis on the proposed access arrangement, including available sight distance and the effects of queuing and delays.
 - (d) Swept paths for appropriate Austroads Design Vehicles that are expected to access the site must be provided to demonstrate that all necessary manoeuvres can be undertaken safely.
- 15. Prior to commencement of any use or any roadworks authorised by this permit the applicant must :

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- (a) Prepare functional layout plans for the unsignalised access arrangement on Kingston Road for the development to the satisfaction of VicRoads.
 - (b) Subsequent to the approval of the functional layout plans, prepare detailed engineering plans for the roadworks along Kingston Road, to the satisfaction of VicRoads. Detailed design matters such as bus stop locations, median widths, DDA compliance, lane widths, drainage etc will be approved at this stage.
16. The applicant must engage VicRoads pre-qualified contractors to undertake all roadworks along Kingston Road.
 17. Before the commencement of any roadworks authorised by this permit, the developer must
 - i. Provide a bank guarantee (in the name of the developer/owner) without a termination date, to VicRoads for the estimated cost of works.
 - ii Provide evidence that the Contractor has a public liability insurance policy for at least \$10 million, effective for the duration of the works.
 - iii Provide VicRoads with the name, address, business and out-of-hours telephone numbers of the principal roadworks contractor.
 18. Prior to the commencement of any roadworks in, on, under or over the Kingston Road reservation the applicant must have first applied for and received written consent from VicRoads for those works in accordance with Section 63 of the Road Management Act 2004.
 19. Prior to the commencement of any roadworks along Kingston Road authorised by this permit the applicant must provide a payment to VicRoads of the pre-estimate certification audit fee.
 20. Where the roadworks associated with the access arrangement to Kingston Road (including footpath and nature strip) lie within the property, the applicant must arrange for the plan of subdivision to show the land abutting the road, which is affected by the roadworks, labelled as "ROAD" which vests in the Roads Corporation upon certification of the plan of subdivision.
 21. The applicant must pay the full cost of all roadworks, drainage, service relocations, public lighting and modifications, and any other costs associated with the development.
 22. Prior to the commencement of any use authorised by this permit the applicant must complete all roadworks along Kingston Road in accordance with approved plans and to the satisfaction of VicRoads.

Conditions required by Melbourne Water

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23. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
24. No fill or building materials shall be dumped on Melbourne Water's land during or when construction is complete.
25. The applicant must arrange and fund any new fencing along the common boundary with Melbourne Water's drainage reserve to Melbourne Water's satisfaction.
26. Prior to the commencement of works, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

Conditions required by EPA Victoria

27. The proposal must comply with the '*Guide To Best Practice At Resource Recovery And Waste Transfer Facilities*' (Eco-Recycle Victoria, July 2004) and also adopt "Best Practice Measures" in preventing any adverse environmental impacts from the proposed transfer station, both during construction and ongoing operation.
28. To confirm that the proposal is consistent with the South Eastern Regional Waste Management Plan ("SERWMP"). Pursuant to section 50 RA(4) of the *Environment Protection Act 1970* ("the Act"), the proponent of any such application should not do anything that is inconsistent with the relevant Regional Waste Management Plan ("RWMP").
29. Litter control fencing or screens must be established and maintained adjacent the unloading area, waste disposal pit area and driveways to trap windblown litter which may be generated as a result of unsecured loads or the unloading of vehicles.
30. Management and operation of the transfer station must include collection of litter from outside the transfer station area including roads adjacent the facility. Suitable precautions, such as the installation and regular maintenance of a litter entrapment device, should be taken to ensure that litter is prevented from entering the stormwater drainage system.
31. Wastes must not be burnt at the premises.
32. Odour offensive to the senses of human beings must not be discharged beyond the boundaries of the site.
33. There must be no visible dust emissions beyond the boundaries of the site.
34. The premises must be managed in accordance with a Environment Improvement Plan ('EIP') to be approved by the responsible authority. The EIP must include detailed measures to implement Best Practice and must be

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revised after 12 months and thereafter revised and submitted to the responsible authority at a frequency of [*to be nominated by the responsibility authority*].

35. Noise emissions must comply with the noise limits specified in the *State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade) No N-1*.
36. There must be no discharge of wastewater or contaminated stormwater to the stormwater drainage system.
37. Only clean fill material as defined in EPA Publication No.448 "*Classification of Wastes*" must be used in the development of the site.
38. Waste oil and collection area must be roofed and banded in accordance with EPA Technical Guideline "*Bunding*" Publication No 347.

Dust

39. The use must be conducted and operated so that no visible dust emissions are detectable beyond the site's boundaries.
40. The maximum height of all operating areas and stockpiles of materials stored on site must not exceed [To be determined] metres (AHD).
41. If at any time the requirements or recommendations of the Site or Environmental Management Plans cannot be implemented for any period the uses must not operate for that period.
42. All roads, access ways and hard stand areas within the site where it is anticipated that heavy machinery will work must be formed and surfaced with asphalt, crushed rock or other suitable product to the satisfaction of the Responsible Authority.
43. All conveyance belts and other automated product transport device or contraption on the site must be shielded from the prevailing winds to the satisfaction of the Responsible Authority after consultation with EPA.
44. All waste material delivered to the site must be delivered directly to the appropriate stockpile, except that waste from households may be delivered to a location designated on the endorsed plan.
45. The main access way to the site must be fitted with a dousing bar and all incoming trucks must pass under the operating wetting bar.

Dust Measurement

46. The operator must continuously monitor (in real time) the levels of PM10 emitted from the land in the vicinity of the hardstand areas and concrete crushing machinery while the site is operating. The location of fixed PM10 monitors must be determined after consultation with the EPA and then

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maintained in good working order in the agreed locations. The monitoring system should include alarm to warn when dust conditions are unacceptable. The operation of the site must have regard to the information derived from PM IQ real-time monitoring.

47. The information collected by the measuring equipment must be provided to the Responsible Authority or EPA within 24 hours of a request for the data.
48. The operator must maintain a Davis or equivalent weather station, measuring wind speed and direction and ambient temperature, on the site in a location to the satisfaction of the Responsible Authority. The data from the weather station must be made available to the Responsible Authority and the EPA on request

Amenity

49. The amenity of the area must not be detrimentally affected by the development and/or use, through the:
- Transport of materials, goods or commodities to or from the land.
 - Appearance of any building, works or materials.
 - Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil,
 - Presence of vermin.
 - In any other way.

Operating Hours

50. Except with the consent of the Responsible Authority, no plant and equipment may be operated on the site except between the following hours:

Monday to Friday	Between 6 am and 5 pm
Saturday	Between 6 am and 1 pm

The use must not operate on Christmas Day, Good Friday or Anzac Day.

51. No vehicles may enter the land from Victory Road.

Acoustic Requirements

52. The noise emissions from the site must comply with the *State Environment Protection Policy (Control of Noise from Commerce Industry and Trade)* No N-1. Compliance with SEPP N 1 noise limits must be confirmed by a report by an acoustics specialist if equipment and/or operating procedures change.
53. The following acoustic measures must be undertaken:
- Smart alarms which adjust the reversing beepers noise levels to take account of low background noise conditions must be used on all mobile machinery and vehicles. Alternatively, broadband type reversing beepers may be fitted to mobile equipment.

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- All mechanical equipment must be regularly maintained and must use industry standard mufflers.

Lighting

54. Where outdoor lighting is provided, it must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.

Internal roads, car parking and loading bays

55. Before the use allowed by this permit starts, areas set aside for parking vehicles, loading bays, access lanes and paths as shown on the endorsed plans must be:

- Constructed to the satisfaction of the Responsible Authority.
- Properly formed to levels so that they can be used in accordance with the plans.
- Surfaced with a suitable all-weather material or substance to the satisfaction of the Responsible Authority.
- Drained and-maintained to the satisfaction of the Responsible Authority.
- Suitably marked to indicate each car space, loading bay and all access lanes and, if necessary, the directions in which vehicles are to travel to the satisfaction of the Responsible Authority.

56. Parking areas and access lanes must be kept available for these purposes at all times and maintained to the satisfaction of the Responsible Authority.

57. All roads and vehicle access ways within the site are to be surfaced with suitable all-weather materials or substances to the satisfaction of the Responsible Authority and must then be maintained in good condition to the satisfaction of the Responsible Authority.

58. A sign(s) to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority.

Loading and unloading

59. The loading and unloading of goods to and from vehicles must only be carried out on the land.

60. Once the development and/or use has started it must be continued and completed to the satisfaction of the Responsible Authority.

61. Subject to any other provision in this permit relating to expiry, this permit will expire if one of the following circumstances applies:

- Both uses are not started within two years of the date of this permit; or
- The Refuse Transfer Station ceases to operate; or

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- The two uses permitted under this permit cease to have a genuine, close and continuing functional relationship with each other; or
- The development is not completed within two years of the commencement of the development.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards but may not extend the permit beyond the time specified in Condition 4 of this permit.

Site Rehabilitation

62. On the expiry of this permit; all plant and equipment, stock piles and all site signage shall be removed from the land to the satisfaction of the responsible authority.

Footnote:

If further information is required in relation to Melbourne Water's conditions shown above, please contact Land Development on telephone 9235 2517 quoting Melbourne Water's Reference 148114.

The meeting was addressed by Carol Dawson on behalf of objectors. No person spoke on behalf of the applicant

Athanasopoulos/Alabaster

The matter be deferred.

Carried

Petchey/McKeegan

That a 1 hour extension of time be granted to consider the Council agenda.

Carried

Petchey/Mckeegan

That item K59 76- 78 Balcombe Road, Mentone be brought forward.

Carried

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K 59 76- 78 Balcombe Road, Mentone

APPLICANT:	<i>Marble Swirl Holdings Pty Ltd</i>
ADDRESS OF LAND:	<i>No. 76-78 Balcombe Road, Mentone</i>
Melway Ref:	<i>86K6</i>
PROPOSAL:	<i>Development and Use of the land for the purpose of a hotel, including a gymnasium, retail premises, supermarket, residential units, underground car park, altering access to a Road Zone Category 1 and a dispensation in the car parking requirements.</i>
CONTACT OFFICER:	<i>Ian Nice/Sherie Kirby</i>
FILE NO:	<i>KP102/07</i>
ZONING:	<i>Business 2 Zone & Residential 1 (No. 5 Swanston Street, Mentone).</i>

Introduction.

This report is before Council to consider amended plans that have been received following the Refusal of Planning Application No. KP102/07. The applicant is seeking Council's "in-principle" support for the revised plans, in order to determine whether to formally substitute plans prior to the refused application being heard by the Victorian and Civil Administrative Tribunal (VCAT), commencing 19th May 2008.

History.

Planning Permit Application No. KP102/07 was received by Council on 16th February, 2007. The proposal considered by Council is for a five (5) storey mixed use development located at 76-78 Balcombe Road, Mentone (corner of Balcombe Road and Swanston Street, Mentone). The site is comprised of four (4) separate allotments with a total area of approximately 4823m². The subject site is zoned Business 2 and is located within the Mentone Activity Centre (Major Activity Centre).

The proposed development is to include the following uses and works:

- one (1) basement storage level;
- two (2) basement car parking levels providing 268 on site car spaces;
- an Aldi supermarket at ground floor level;
- four (4) retail premises at ground floor level;
- a residential hotel with 65 rooms (including a restaurant/bar located at ground level);
- a gymnasium at ground and first floor level (including associated café located at ground level);
- a commercial tenancy at first floor level;
- a conference facility at second floor level;
- fifty-six (56) dwellings;
- altering access to a Road Zone Category 1 road (Balcombe Road);
- the erection of business identification signage;
- a reduction in the car parking requirements pursuant to Clause 52.06 of the Kingston Planning Scheme; and

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- a reduction in the bicycle parking requirements pursuant to Clause 52.34 of the Kingston Planning Scheme.

Advertising

The proposal was advertised by sending notices to adjoining and opposite property owners and occupiers and by maintaining four (4) notices on site for fourteen (14) days. The applicant was also required to place an ad in the local newspaper for two (2) consecutive editions. One hundred and forty-five (145) objections to the proposal were received. The main grounds of objection can be summarised into three (3) main points as follows:

- Overdevelopment of the site (including height, scale, visual bulk and mass, neighbourhood character, heritage concerns, drainage concerns etc);
- Car parking and Traffic Concerns (including lack of car parking, increase in traffic movements etc); and
- Amenity based concerns (including overshadowing, overlooking, safety concerns, visual impact concerns etc).

An amended application (including the proposal description) was subsequently submitted, showing a number of design modifications which can be summarised as follows:

- Top level of development removed (originally advertised plans were for a six (6) storey development);
- Introduction of a podium form that links with the street edge character of the Mentone Activity Centre;
- Overall built form reduced, including the removal of the verandah projections to reinforce the podium form to both Balcombe Road and Swanston Street, and reduce massing to the northern interface;
- Ground floor setback increased to Swanston Street and at street interface to increase width of footpath;
- Landscape buffer provided to northern residential interface and to several upper level courtyards. Northwest corner of 'Gymnasium' further setback from northern site boundary;
- Pool re-located to north-south orientation to decrease massing impact to neighbouring sites;
- Total number of 'Residential Hotel' rooms decreased from 69 to 65 to provide increased internal amenity and reduce massing impact to neighbouring sites; and
- Total number of residential units decreased from 78 to 56.

Re-advertising of the amended application was conducted pursuant to Section 52 of the Planning and Environment Act 1987 by sending notices to adjoining and opposite property owners and occupiers as well as all parties which had lodged an objection to the originally advertised application.

The notification was carried out correctly.

Council received a further forty-seven (47) objections to the proposal. Again, the main grounds of objection can be summarised into three (3) main points as follows:

- Overdevelopment of the site (including height, scale, visual bulk and mass, neighbourhood character, heritage concerns, drainage concerns etc);

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- Car parking and Traffic Concerns (including lack of car parking, increase in traffic movements etc); and
- Amenity based concerns (including overshadowing, overlooking, safety concerns, visual impact concerns etc)

It is noted that all outstanding objections to all notification processes were considered in the assessment of this application.

Preliminary Conference

Two (2) preliminary conferences were held with regard to this application, where the above issues were discussed. The first preliminary conference was held on Tuesday 23rd October, 2007. It is noted that the traffic engineer acting on behalf of the applicant was not in attendance at this meeting. Subsequently, a second preliminary conference was organised for Tuesday 20th November, 2007, with the traffic consultant present.

The abovementioned issues and concerns were unable to be resolved at either of the preliminary conferences held, and all objections still stand.

Original Decision.

On the 24th December, 2007, the application was refused at the direction of Council, subject to the following grounds:

1. The proposal is contrary to the orderly and proper planning of the area.
2. The proposal constitutes an overdevelopment of the site.
3. The proposal would detract from the visual amenity of the locality and the streetscape.
4. The proposal is inconsistent with the relevant policies under Clause 19.03 (Design and Built Form) of the Kingston Planning Scheme.
5. The proposal would detrimentally affect the amenity of the neighbourhood.
6. The proposal exhibits excessive building scale, massing and height to the detriment of the character of the area.
7. The traffic generated by the proposal would aggravate an existing traffic problem in the locality and would cause wider traffic problems in the surrounding road network.

VCAT Appeal.

The applicant has lodged an appeal against Council's decision to refuse the application. A hearing date has been set down for 19th May, 2008, for three (3) days. A substantial number of objectors have submitted "statements of grounds" indicating that they would like to become a party to the forthcoming Application for Review Hearing.

Revised Proposal.

Following discussions between the applicant and Council officers, amended plans have been submitted by the permit applicant seeking Council's consideration of the amended proposal.

- The removal of the uppermost level of the building, resulting in a four (4)-storey building (ground and three levels above). The removal of this uppermost level results in the loss of seventeen (17) residential units; 39 units remain.
- No.5 Swanston Street, Mentone is proposed to be included as part of the application. Its purpose for this application is to accommodate activity associated with delivery vehicles (ensuring delivery trucks enter and exit the site in a forwards direction) along with access to the basement car park.
- WOO (Rev 0) Cover Sheet: Perspectives & Development Area Breakdown (previously Rev B)
 - Perspectives revised to reflect amendments.
 - Areas Schedule amended to reflect changes.

NOTE: Previous TPOI: Rev C Proposed Basement 03-Apartment Storage is no longer relevant as the level has been removed and storage areas relocated to basement levels.
- TPO2 (Rev F): Proposed Lower Basement Site *Plan* (previously Rev C)

Basement car park amended to improve circulation of traffic and accommodate relocated access ramp. This includes utilising part of No.5 Swanston Street, Mentone.
- TPO3 (Rev F): Proposed Basement Site Plan (previously Rev C).

Basement car park amended to improve circulation of traffic and accommodate relocated access ramp. This includes utilising part of No.5 Swanston Street, Mentone

 - Boom gates introduced to limit access to lower basement level.

Public lifts relocated for convenience purposes and size of lifts increased.

- TPO4 (Rev M): Proposed Ground Floor Site Plan (previously Rev C)
 - The inclusion of No.5 Swanston Street into the application.
 - The removal of the indented spaces along Swanston Street and the inclusion of a porte-cochere to accommodate 'set down / pick up' associated with the 'residential hotel'. This brings all drop off / pick up activity off Swanston *Street*. Internals of building amended to accommodate change.

- Re-orientation and redesign of the loading dock to ensure delivery vehicles enter and exit the site in a forward direction.

- A brick pattern or similar finish provided in proximity of the loading dock to show separation of use from vehicle access ramp, highlighting that this is not a pedestrian active area. Sliding door provided at entry for delivery vehicles to screen area while not in use.

Ramp to basement carpark slightly relocated, straightened and grade of ramp softened to improve accesses to basement levels. Ramp to the basement car park positioned approximately 7 metres from Swanston Street frontage to improve sightlines for vehicles exiting onto Swanston Street. Speed hump introduced as traffic calming measure.

- Warning light system introduced to ramp to warn exiting vehicles when deliver truck is utilising the reversing bay.

New 3,0 metre high acoustic fence introduced along the entire northern title boundary.

- Setback of western portion of building from northern title boundary increased from 2.2 metres to 2.7 metres.

- Reduction in area to Retail 01-04 and 'Hotel Restaurant/bar' and slight alterations to pedestrian entries at street level. Public lifts increased in size and repositioned for convenience purposes.

- TPO5 (Rev j): Proposed First Floor Plan (previously Rev F)
 - Landscape courtyard area increased.

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- TPO6 (Rev I): Proposed Second Floor Plan (previously Rev F)
 - Length of 'Gym/Hotel Pool' reduced from 20 metres to 15 metres. The pool is now setback approximately 9.6 metres from the northern title boundary, includes screening where required and landscape buffer to its north and east.
 - Acoustic treatment proposed around pool/terrace area.
 - TPO7 (Rev I): Proposed Third Floor Plan (previously Rev F)
 - Remains unchanged
- NOTE: Previous TPOS—Rev E: Proposed Fourth Floor Site Plan is no longer relevant as the entire floor level has been removed.
- TPO9 (Rev H): Proposed Roof Plan (previously Rev C)
 - Roof plan amended to reflect changes to built form.
 - TP10 (Rev I): Proposed Elevations (previously Rev E)
 - Elevations amended to reflect introduction of porte-cochere and revised loading arrangement to Swanston Street and removal of the uppermost level.

To assist in the Council's consideration of the revised proposal, the following table is provided which is a comparison of the two proposals:

	CONSIDERED PROPOSAL	NEW PROPOSAL	DIFFERENCE
DATE	28 th September, 2007	18 th April, 2008	
LEVELS	5 levels	4 levels	- one level
APARTMENTS	56	39	- 17
SUPERMARKET	949m ²	1027m ²	+ 78m ²
HOTEL	65 rooms	65 rooms	No change
CAR PARKING SPACES (TOTAL)	268	263	- 5
OVERALL HEIGHT (AHD)	38.5 metres	35.5 metres	3.0 metres less

The main differences between the original and revised proposal are:

- * a reduction in the overall number of levels from a total of five (5) to four (4);
- * a reduction in the overall number of apartments from 56 to 39;
- * a reduction in the overall height of the building by 3.0 metres;

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- * improved loading and unloading bay area at No. 5 Swanston Street and
- * no change in the ground floor building site area (82%).

Assessment.

The following assessment of the revised proposal from Council's representative, Mr Peter Soding, of Tixxis Pty Ltd provides a brief overview of the design changes that have taken place which he believes have largely addressed Council's grounds of refusal to the original design proposal:

In my view the explanation of the changes proposed are not fully explained in the applicant submission however what is evident from the plans and material is that the applicant has again made some significant changes to accommodate the issues raised by Council's refusal. I understand it is the second significant change being made to the application.

I make the following observations:

- *The land at 5 Swanston Street Mentone has been incorporated into the application land solving a number of identified issues.*
- *Revised and improved loading and unloading access is provided to enable vehicles to enter and leave the site in forward motion.*
- *Access to the land from Swanston Street is revised.*
- *A porte cochere is provided to Swanston Street improving the streetscape presentation and efficiency of the Hotel use on the land.*
- *The majority of amendments that were suggested in the officers' recommendation have been accommodated into the plans, including privacy issues to the northern elevation.*
- *One basement level has been deleted.*
- *The ground floor has been re-planned to accommodate the porte cochere and access. Retail areas have been modified that result in greater supermarket floor area (121 sq. m.) reduction in other retail (20 sq m.)but an increase by 1 in the number of tenancies, reduction in hotel foyer and back of house areas.*
- *One whole floor of the proposal (being fourth floor) the uppermost level) has been deleted.*
- *Thirty Nine dwellings are now proposed (was 56 dwellings).*
- *Reduction in pool length.*
- *Increase in upper level landscape.*
- *Acoustic fence along north boundary at ground level.*

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- *With the reduction of dwellings (17) the number of car spaces on site has been reduced by only 5.*

On this basis I am of the view that on the formal substitution of the plans at the Tribunal and the incorporation of additional land the ability to adequately defend Council's refusal will be extremely difficult.

It is my opinion that Council should consider reviewing its position with a view to supporting the proposal subject to a number of additional conditions not included in the officers' recommendation.

These additional conditions being:

- 1. Acoustic treatment to the upper levels of the development that faces the railway line to protect future residents from train noise.*
- 2. Widening of the crossover to Swanston Street to allow a separate left and right turn movement from the driveway and ramp.*
- 3. A mountable splitter island within the driveway at the site boundary to clearly designate ingress and egress.*
- 4. A restriction on the use of the outdoor gym area at ground level to between 8.00AM and 8.00 PM daily.*
- 5. More specific detail on the proposed storage for the residential component of the building.*
- 6. A loading and unloading management plan that would seek to incorporate conditions 8 through 12 of the officers report but also include a requirement that:*
 - o Increase in the size of the loading bay that would allow a larger (14 metre) vehicle and a smaller delivery van to be present in the loading area at any one time. (This would reduce the commercial floor area on the ground level by a small amount).*
 - o The doors to the loading area remain closed at all times (other than when receiving deliveries).*
 - o Cleanliness/housekeeping of the area.*
 - o Sliding access doors along the northern opening to close off the loading area at the ramp/driveway.*
 - o Warning light system on Swanston Street to notify when truck(s) are entering leaving or circulating on site.*
 - o Availability of the loading area for all uses on site.*

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7. Reduction in the length of sloping roof to the rear (as depicted on Section 01) and the use of non reflective materials.

I also make the observation that the critical issues raised by the Planning Scheme have been extensively dealt with in the officers report which the Tribunal will have a copy of. Critically:

- There is clear policy support both at the State and Local policy framework level.*
- There are a number of decisions of the Tribunal that would support such a proposal in a major activity centre.*
- The extremely well regarded urban design expert retained by Council to give advice was (as I read the report) comfortable with the previously considered higher building and design. With the reduction by a further floor the ability to argue scale and bulk is significantly diminished.*
- The building as it faces the adjoining residential area is highly modulated and well articulated.*
- The transition to the adjoining more sensitive development is an appropriate response to the site and the area.*
- Privacy issues have been accommodated.*
- The parking and access to the land has been improved (and will be further improved if the above issues are adopted).*
- Loading and related issues have been significantly improved.*
- There are a number of other matters (as raised in the officer's report) that would support the proposal.*

As noted above I am of the view that the Council's decision to refuse is not able to be strongly argued and should be revisited with a view to supporting the proposal subject to revised conditions as outlined.

Process

If Council decides to give its in-principle support to the revised proposal, the applicant has indicated that they would formally substitute these plans as part of the Tribunal process prior to the VCAT hearing. This would involve the circulation of the revised plans to all original objectors to the application and parties to the hearing. Council would then reconsider any substituted plans and inform all objectors and parties to the hearing that it has altered its position on the proposal and would support the application, subject to any additional amendments and conditions that it considers appropriate.

All objectors to the application would have the right to become parties to the hearing if they do not agree with Council's decision to alter its decision and support the application.

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Recommendation

That Council determine to give its **in-principle** support to the revised proposal received by Council on 18th April, 2008, at four (4) storeys, subject to any further amendments or conditions it considers appropriate should the formal substitution of plans be undertaken by the permit applicant.

The meeting was addressed by Peter Lay on behalf of objectors. No one spoke on behalf of the applicant

West/Petchey

That Council determine **not** to give its **in-principle** support to the revised proposal received by Council on 18th April, 2008, at four (4) storeys.

Carried

K53 Amendment C73 to the Kingston Planning Scheme – Highett Activity Centre

Author: Rita Astill – Strategic Planner

Approved by: Tony Rijs – General Manager Environmental Sustainability

1. Purpose of Report

The purpose of this report is to provide Council with the findings of the Independent Panel that considered Planning Scheme Amendment C73 to the Kingston Planning Scheme. The report recommends that Council adopt the Planning Scheme Amendment with changes recommended by the Panel and submit Planning Scheme Amendment C73 to the Minister for Planning for approval.

2. Background

On 29 May 2006, Kingston City Council resolved to request the Minister for Planning to introduce interim structure planning controls for the Highett Activity Centre. The Minister for Planning approved the controls on 30 October 2006, via Amendment C66. The interim structure planning controls implement the objectives and strategies of the Highett Structure Plan, May 2006 which was adopted by Council on 27 March 2006, after extensive community consultation. It is noted that the interim controls are set to lapse on the 31 October, 2008.

Amendment C73 seeks to permanently implement Amendment C66 to the Kingston Planning Scheme and rezone land in accordance with the recommendations of the Highett Structure Plan. Council has previously considered a report at its 24 September 2007 Ordinary Council Meeting and also at its 29 May 2006 Ordinary Council Meeting which outlines the proposed amendment.

In summary, the amendment seeks to permanently:

- Replace Clauses 21.05, 21.06, 21.12 and 22.11 of the Kingston Municipal Strategic Statement.
- Replace Clause 21.05 ‘Residential Land Use Framework Plan’ to include the following properties within the area for Increased Housing Diversity:
 - 1125, 1127A, 1127, 1129, 1131, 1133, 1135, 1137, 1139, 1/1141, 2/1141, 1143, 1145, 1/1147, 2/1147, 3/1147, 1/1149, 2/1149, 3/1149, 1/1151, 2/1151, 3/1151, 1/1153, 2/1153, 3/1153, 1155 and 1157 Nepean Highway, Highett.
- Replace Clause 21.17 the Highett Local Planning Policy with an amended Clause 22.17.
- Replace Schedule 12 to the Design and Development Overlay with a new Schedule 12.

The amendment also seeks to:

- Rezone the following land from a Public Use 1 Zone and Business 3 Zone to a Residential 1 Zone:
 - 1136-1140 Nepean Hwy, Highett
 - 1142 Nepean Hwy, Highett

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- 1144-1146 Nepean Hwy, Highett

- Rezone the following land from a Business 1 Zone to a Mixed Use Zone:
 - 1112 Nepean Hwy, Highett
 - 374-376 Highett Rd, Highett

- Rezone the following land from a Residential 1 Zone to a Mixed Use Zone:
 - 1104 Nepean Hwy, Highett
 - 1106 Nepean Hwy, Highett
 - 1108 Nepean Hwy, Highett
 - 1 & 2/1110 Nepean Hwy, Highett

- Introduce an Environmental Audit Overlay to all Public Use Zone 1 and Business 3 Zoned land to be rezoned to the Residential 1 Zone within the amendment area.

2.1 Public Exhibition

Amendment C73 was placed on public exhibition for a period of six (6) weeks between 2 August 2007 – 14 September 2007. The following exhibition process was undertaken:

- Notice of the amendment was published in the Victorian Government Gazette on 2 August 2007.
- Notice of amendment was published in the Moorabbin Kingston Leader on 8 August and 22 August 2007, Bayside Leader on 7 August and 4 September 2007 and in Kingston Your City newspaper which was distributed during 28-29 August 2007 to all households in Kingston.
- Direct notification was sent via ordinary mail to all landowners and occupiers within the study area, prescribed Ministers and referral authorities.
- The amendment was also available for viewing at the Department of Community and Planning, Highett Library, City of Kingston Cheltenham Office and website.

2.2 Submissions

During the exhibition of the amendment a total of eight (8) submissions were received. Four (4) of the submissions received were from referral authorities, which raised no objection to the amendment and comments in relation to the drainage considerations for future development. The remaining four (4) submissions were received from property owners and occupiers in relation to the rezoning and Design and Development Overlay provisions.

3. Panel Hearing and Recommendations

The Minister for Planning appointed a Panel to consider Amendment C73. A Panel hearing was held on 6 and 8 February 2008 and was heard by Mr Ian Gibson (Chairperson) and Mrs Renate Howe (Member). Over the course of the Panel Hearing the following parties made submissions to the Panel:

- Kingston City Council represented by Mr Terry Montebello from Maddocks Lawyers who called Mr Craig Czarny from Hansen Partnership.

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- Department of Treasury and Finance (owners of 1138 Nepean Highway) represented by Ms Rachel Ducker from Sinclair Knight Mertz.
- Owners of 1144-1148 Nepean Highway represented by Mr Adrian Finanzio who was assisted by Mr Peter O'Farrell and Ms Natasha Liddell who called Mr Rob Milner, from Coomes Consulting Group.
- Mr. Adam Cavanagh

A copy of the report of the Panel has been previously made available to all Councillors.

In addition a document prepared on behalf of Drapac Property (owners of the Leigh Mardon Property) has been recently provided to all Councillors in order to represent its view with respect to the Amendment.

3.1 Panel Recommendations on Amendment C73

Having considered all the submissions referred to it and all the material presented at the hearing, and the conclusions set out in the Panel report, the Panel made the following recommendations:

“Based on the reasons set out in this Report, the Panel recommends:

Amendment C73 to the Kingston Planning Scheme should be adopted subject to the following recommendations:

- The rezoning of the Courthouse site be excluded from the Amendment, and it should remain in the Public Use Zone.
- The Environmental Audit Overlay be excluded from the courthouse site.
- Maps showing land to the east of Nepean Highway reflect the intent of rezoning to the Residential 1 Zone.
- The refined version of Local Policy 22.17 Highett Activity Centre Policy, as shown in Appendix 1, be adopted, with the exceptions that:
 - The dot point relating to specific heights in the “Increased Density – Highway West” Precinct be deleted
 - The details of requirements relating to the Outline Development Plan for the “Increased Density - Highway West” Precinct be deleted
 - The details of requirements relating to a drainage strategy for the “Increased Density - Highway West” Precinct be deleted
- The rezoning of the northwest and southwest corner of Highett Road and Nepean Highway from Residential 1 Zone to Mixed Use Zone be adopted as exhibited.
- The Design and Development Overlay (Schedule 12 – Areas H1 to H4) over the Highett Road strip west of the railway line be adopted as modified, as shown in Appendix 2. Building height controls in these areas should be specified as mandatory.

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- The map relating to Schedule 12 to the DDO be modified to enable refinement of the sub-precinct boundaries, while respecting the intent of the Highett Structure Plan.
- Specified building heights and Design Standards relating to Sub-precincts H6(a), H6(b), H6(c) and H6(d) of Schedule 12 to the Design and Development Overlay be modified, as shown in Attachment 2, with the following exceptions
 - Building heights should be discretionary rather than mandatory
 - Sub-precinct H6(a) should have specified maximum building heights of three storeys or 11 metres
 - Sub-precinct H6(b) should have specified maximum building heights of three storeys or 11 metres in a 15-metre strip along the Highway, and four storeys or 14 metres further back from the Highway
- The Leigh Mardon and Fleet Marine sites be included in the rezoning of the “Increased Density – Highway West” precinct to Residential 1 Zone, as exhibited.
- Specified building heights and Design Standards relating to Subprecinct H6(e) to Schedule 12 to the Design and Development Overlay be modified as shown in Attachment 2, with the exception that building heights should be discretionary rather than mandatory.
- Specified building heights and Design Standards relating to Subprecinct H5 to Schedule 12 to the Design and Development Overlay be modified, as shown in Attachment 2, with the exception that building heights should be discretionary rather than mandatory.

Further, the Panel recommends that:

A revised and updated version of the Highett Structure Plan reflecting both Bayside and Kingston’s refinements be generated, and adopted by both Councils as the definitive version.

4. Options

Section 27 of the *Planning and Environment Act 1987* directs that the planning authority must consider the Panel’s report before deciding whether or not to adopt the amendment. Having considered the report Council may:

- Abandon the Amendment pursuant to Section 28 of the *Planning and Environment Act 1987*.
- Adopt the Amendment without changes pursuant to Section 29 (1) of the *Planning and Environment Act 1987*.
- Adopt the Amendment with changes pursuant to Section 29 (1) of the *Planning and Environment Act 1987*.

Overall, Council received a favorable Panel report on Amendment C73. While, the Panel has recommended some changes to the amendment, which are discussed in detail below, the strategic direction of the amendment was supported. It is therefore considered appropriate that Council adopt the Planning Scheme Amendment subject to changes, which are discussed below.

5. Panel Recommendations Discussed

- 5.1 *The rezoning of the Courthouse site be excluded from the Amendment, and it should remain in the Public Use Zone.*

Support Recommendation

Kingston City Council requested a number of changes to the exhibited amendment to correct errors. One of these changes included retaining the Public Use Zone over the courthouse site, which was exhibited as part of the amendment to be rezoned to a Residential 1 Zone. The land for the Moorabbin Law Courts was rezoned Public Use Zone 7 (Other Use) by the Minister of Planning through Amendment C48, gazetted on the 7 July 2005. The Panel concluded that the requested change was minor and logical given the recent construction of the facility.

- 5.2 *The Environmental Audit Overlay be excluded from the courthouse site.*

Support Recommendation

The courthouse site was included in the exhibited amendment to be included in the Environmental Audit Overlay. Kingston City Council requested that the Overlay be removed as the courthouse has recently been constructed and therefore did not require the protection of the Environmental Audit Overlay.

- 5.3 *Maps showing land to the east of Nepean Highway reflect the intent of rezoning to the Residential 1 Zone.*

Support Recommendation

This recommendation ensures the correct implementation of the amendment. The exhibited amendment amends the existing Residential Policy to include land to the east of Nepean Highway within the Increased Housing Diversity but omitted to rezone the land to a Residential 1 Zone, to allow development of a maximum of three-storeys when allotments are consolidated. The current Residential 3 Zone does not allow development in excess of nine (9) metres to occur. The Panel noted that Council wrote to all property owners and occupiers on 24 August 2007 to highlight the additional change and did not receive any submissions pertaining to this issue.

- 5.4 *The refined version of Local Policy 22.17 Highett Activity Centre Policy, as shown in Appendix 1, be adopted, with the exceptions that:*

- *The dot point relating to specific heights in the “Increased Density – Highway West” Precinct be deleted*
- *The details of requirements relating to the Outline Development Plan for the “Increased Density - Highway West” Precinct be deleted*
- *The details of requirements relating to a drainage strategy for the “Increased Density - Highway West” Precinct be deleted*

Support Recommendation

The Panel was generally supportive of the strategic directions of the Local Policy for the Highett Activity Centre Policy and only made minor recommendations regarding the drafting of the policy. The Panel recommended specific requirements relating to height to be dealt with in the Design and Development Overlay rather than the Local Policy and noted that the building heights set out in the local policy replicated those contained in Schedule 12 of the Design and Development Overlay. The Panel also noted that there was further duplication with the requirements for an Outline Development Plan for the Increased Density Highway West Precinct and drainage strategy and that these requirements were more appropriately located in Schedule 12 of the Design and Development Overlay. These drafting recommendations made by the Panel are considered minor and do not change the intent of the amendment.

- 5.5 *The rezoning of the northwest and southwest corner of Highett Road and Nepean Highway from Residential 1 Zone to Mixed Use Zone be adopted as exhibited.*

Support Recommendation

The rezoning of the northwest and southwest corner of Highett Road and Nepean Highway from a Residential 1 Zone to Mixed Use Zone, implements the objectives of the Highett Structure Plan. The Structure Plan seeks to provide for a built form which provides a presence and demonstrates entrance to the Highett Shopping centre from Nepean Highway. It is noted that there were no submissions that pertained to this issue.

Support Recommendation

- 5.6 *The Design and Development Overlay (Schedule 12 – Areas H1 to H4) over the Highett Road strip west of the railway line be adopted as modified, as shown in Appendix 2. Building height controls in these areas should be specified as mandatory.*

Support Recommendation

The Panel considered that there were exceptional reasons to support the implementation of mandatory controls in Highett Road. The Panel noted that the Structure Plan reflected careful strategic work that had effectively analysed all of the built form along the shopping strip and identified clear opportunities for change. The Panel also highlighted the merit in implementing a similar suite of controls to the Bayside controls in the Kingston side of the Highett neighbourhood activity centre.

- 5.7 *The map relating to Schedule 12 to the DDO be modified to enable refinement of the sub-precinct boundaries, while respecting the intent of the Highett Structure Plan.*

Support Recommendation

At the Panel hearing Ms Ducker questioned the boundaries of the sub-precincts for the Gascor site and raised concern as to whether they would hinder good integrated

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design outcomes. The precincts and sub-precincts are derived from the Hightt Structure Plan and it is important that they remain consistent. The boundaries of the sub-precincts for the Gascor site are indicative only. The sub-precincts provide building heights and design standards to ensure that development responds to surrounds and provides a transition in height. It is therefore not warranted to change the boundaries of the sub-precincts but rather considered appropriate to redraft Schedule 12 to the Design and Development Overlay, as highlighted in the Panel report, to indicate that the boundaries of the sub-precincts are indicative only.

5.8 *Specified building heights and Design Standards relating to Sub-precincts H6(a), H6(b), H6(c) and H6(d) of Schedule 12 to the Design and Development Overlay be modified, as shown in Attachment 2, with the following exceptions:*

- *Building heights should be discretionary rather than mandatory*
- *Sub-precinct H6(a) should have specified maximum building heights of three storeys or 11 metres*
- *Sub-precinct H6(b) should have specified maximum building heights of three storeys or 11 metres in a 15-metre strip along the Highway, and four storeys or 14 metres further back from the Highway*

- *Building heights should be discretionary rather than mandatory*

Support Recommendation

In its consideration of whether heights should be discretionary or mandatory at the Gascor site the Panel determined that the site does not have the sensitivity of the Hightt Road neighbourhood activity centre and does not have well-developed building form and character to work around. The Panel stated:

‘The Panel is aware of the complexity of planning for the site, with existing buildings on the Leigh Mardon and Fleet Marine sites, the courthouse and the heritage chimney, Sir William Fry Reserve to the south, Nepean Highway to the east, and sensitive residential areas to the north and across the railway line in Bayside City. However, it considers that there should be some flexibility in planning for such a significant redevelopment site, to ensure that quality design outcomes are achieved while still ensuring that the site plays an important role in meeting housing objectives.’

Achieving support for mandatory controls from Planning Panels and subsequently the Minister for Planning is a difficult task and success is rare rather than the norm. This has consistently been the advice of Planning Officers in relation to this Amendment. Mandatory controls are supported where there are ‘exceptional circumstances’ such as in the Mordialloc Activity Centre. Mandatory controls were supported there as the Panel found *‘exceptional circumstances being coastal location and heritage values justified the application of mandatory controls’*.

- *Sub-precinct H6(a) should have specified maximum building heights of three storeys or 11 metres*

Support Recommendation

The Panel concluded that there was merit in generally supporting the proposed maximum building heights as specified in Schedule 12 of the Design and Development Overlay. However, the Panel considered that there were some cases where the exhibited height limits were too low.

Sub-precinct H6(a) is located in the northern boundary of the Gascor site and abuts the motel and established residential area to the north (Precinct H5). This established residential area is located in a 'preferred medium density residential area', where the objective is to encourage increased density and building heights of up to three storeys on consolidated lots of at least 1,000 square metres. The Panel considered it appropriate to have a consistent approach in sub-precinct H6(a) with the established residential area and allow discretionary maximum building heights of three storeys or 11 metres rather than 2 storeys 7.5 metres. While a lower building height on this proportion of land would complement the existing built form of the established residential area, the anticipated growth in the abutting H5 and H6 precincts would see a 3 storey built form appropriate over time. It is on this basis that the Panel's recommendation is supported.

- *Sub-precinct H6(b) should have specified maximum building heights of three storeys or 11 metres in a 15-metre strip along the Highway, and four storeys or 14 metres further back from the Highway*

Support Recommendation

Precinct H6(b) abuts Nepean Highway and the front of the court house. The Panel supported suggestions that building heights in sub-precinct H6(b) along the Nepean Highway should be limited to 3 storeys along the Highway, but concluded it could accommodate 4 storeys further back from the Highway. The presentation of 3 storey development along Nepean Highway is important to correspond with the new court house and established built form. A rise of scale to 4 storeys further back to the Highway would be consistent with the precinct to the rear of H6(b). It is therefore considered appropriate to support this recommendation as it does not change the intent of the Structure Plan or amendment.

- 5.9 *The Leigh Mardon and Fleet Marine sites be included in the rezoning of the "Increased Density – Highway West" precinct to Residential 1 Zone, as exhibited.*

Support Recommendation

The Hihett Structure Plan identifies the Leigh Mardon and Fleet Marine sites, together with the Gascor site as a major redevelopment opportunity. The size, location and surrounding development allows for an integrated development close to the Hihett Activity Centre, Southland Activity Centre and public transport. The Hihett Structure Plan identifies the potential for limited convenience retail and home

office development on these sites to complement the predominant residential role so as not to undermine the nearby activity centres..

The owners of the Leigh Mardon argued that the land has a strong connection to the principle activity centre at Southland and should be rezoned to a Mixed Use Zone. The Panel agreed that there is little difference in the distance of the land to the Southland and Highett Activity Centres and that future residents may have strong affiliations with Southland. However, the Panel noted that this is not sufficient to justify a mixed use zone and that there is no strategic justification for substantive retail and commercial development at these sites. The Panel therefore accepts that the predominately residential land use that is proposed by the amendment and that the application of the Residential 1 Zone is appropriate.

It is noted that two (2) planning permit applications have been received for this site, including KP 808/07 for buildings and works comprising of a warehouse and the provision of additional car parking and KP 977/07 for a three (3) storey office building.

5.10 Specified building heights and Design Standards relating to Sub-precinct H6(e) to Schedule 12 to the Design and Development Overlay be modified as shown in Attachment 2, with the exception that building heights should be discretionary rather than mandatory.

Support Recommendation

Sub-precinct H6(e) covers the Leigh Mardon (Drapac) site with a portion of the southern section of the former Gascor site. It was suggested to the Panel by a submitter that aspects of this precinct should be limited to 3 storeys or 11 metres proximate to Nepean Highway rather than the proposed 5 storeys or 17 metres and that the balance of the precinct should be permitted to rise to 5-6 storeys (17-21 metres). The Panel concluded that the 5 storey non mandatory limit proposed in Schedule 12 of the Design and Development Overlay for this precinct to be appropriate.

5.11 Specified building heights and Design Standards relating to Sub-precinct H5 to Schedule 12 to the Design and Development Overlay be modified, as shown in Attachment 2, with the exception that building heights should be discretionary rather than mandatory.

Support Recommendation

Schedule 12 of the Design and Development Overlay encourages redevelopment of existing residential lots north of the Gascor site on consolidated lots of greater than 1,000 square metres by allowing 3 storeys (11 metre) maximum building heights on these large lots, while maintaining 2 storey limits (7.5 metres) on lots up to 1,000 square metres. This is to encourage the consolidation of lots and in order to ensure sufficient land area is provided for higher built forms and to minimise amenity impacts to adjoining properties. At the Panel Mr Adam Cavanagh opposed the lot size restriction and the requirement for greater side and rear setbacks than those outlined in Clause 55 of the Scheme. The Panel considered that Mr Cavanagh's view

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had merit and that the controls did not provide tools to facilitate the objective of encouraging medium density development. Acknowledging the view of Council, the Panel noted that the consolidation of lots may occur very slowly limiting contribution to increase diversity in Kingston. However the Panel supported the control to maintain consistency with those supported by the Bayside Panel and in maintaining neighbourhood character, provided the building heights are discretionary. The issue of discretionary controls was discussed in Section 5.8 of this report.

5.12 A revised an updated version of the Highett Structure Plan reflecting both Bayside and Kingston's refinements be generated, and adopted by both Councils as the definitive version.

Support Recommendation

Council has informed Bayside City Council of the Panel's recommendation and both Council's will work together to generate a definitive version of the Highett Structure Plan. It is noted that the Bayside version of the Structure Plan needs to include the refinements that have been incorporated in the Kingston version of the Structure Plan which mainly relate to the Gascor Site.

6. Conclusion

Amendment C73 has now been considered by a Planning Panel who has recommended the adoption of Amendment C73 subject to changes. The Planning Scheme Amendment controls proposed through Amendment C73 will provide direction in terms of land use, siting, design and building height to support the function of the Highett Activity Centre. While the Panel recommended height controls to be discretionary (with the exception of the Highett Road commercial strip west of the railway) it is recognised that only in 'exceptional circumstances' are mandatory controls supported. The Panel in this instance did not believe that there were exceptional circumstances to support mandatory controls for the established residential areas and the strategic redevelopment sites. It is for this reason that Council Officers believe that the Planning Scheme Amendment should be adopted subject to the changes recommended by the Panel.

Recommendation

1. That Council release the report of the Planning Panel considering Planning Scheme Amendment C73.
2. That Council, as Planning Authority, resolve to adopt Planning Scheme Amendment C73 to the Kingston Planning Scheme with changes as recommended by the Panel and submit the Planning Scheme Amendment to the Minister for Planning for approval.
3. That all submitters be notified of the above resolution and that the Panel report be made available for viewing on Council's Website and at Council's Cheltenham Customer Service Centre.

Athanasopoulos/Alabaster

The recommendation be adopted.

Carried

K54 Amendment C75 to the Kingston Planning Scheme and Planning Permit applications KP 266/06 – Chelsea Supermarket & KP 826/06– Patterson Lakes Supermarket

Author: Jonathan Guttmann –Manager Strategic Planning

Approved by: Tony Rijs– General Manager Environmental Sustainability

1.0 Purpose

At its Ordinary meeting 24 July 2006 Council resolved to adopt the Retail and Commercial Strategy and seek authorisation for Amendment C75 and combined planning permit applications, pursuant to the requirements of the Planning and Environment Act 1987. Authorisation was received from the Minister for Planning on the 22 February 2007.

Council at its meeting of the 30 April 2007 resolved to seek a modification to the proposed combined amendment and planning permit applications to include a Public Acquisition Overlay in accordance with urban design work. The Minister for Planning granted authorisation for the modified amendment and combined planning permit applications on 30 May 2007.

Amendment C75 and Planning Permit Applications KP266/06 & KP826/06 were subsequently exhibited and submissions subsequently received by Council. This matter was then the subject of consideration by an Independent Panel through the 11th to 15th February, 2008.

The purpose of this report is to recommend that based on the rigorous analysis and positive response from the Panel that Council adopt Planning Scheme Amendment C75 incorporating Planning Permit Applications KP266/06 and KP826/06 and initiating the statutory processes to commence the sale of land required to deliver the Chelsea project.

The report also provides for the formal release of the Panel Report by Council.

2.0 Background

The amendment has arisen as a result of work completed by the City of Kingston exploring retail and commercial development within the municipality, the adopted Retail and Commercial Development Strategy, July 2006.

The Retail and Commercial Development Strategy established a comprehensive understanding of the current and future retail and commercial opportunities and constraints which exist within the City of Kingston.

Accordingly, the amendment is required to strengthen the local focus given to decision-making involving retail and commercial development throughout the municipality, through changes to the Local Planning Policy Framework of the

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Kingston Planning Scheme to appropriately inform Council's ongoing strategic land use and decision making.

The amendment also seeks to rezone land in Chelsea and Patterson Lakes to facilitate the development of full line supermarkets in each centre respectively. These requests, received from the Lascorp Development Group and Urbis JHD, are consistent with key initiatives stemming from the strategy, relating to opportunities for further supermarket floor space in the southern portion of the municipality.

As identified the requests for rezoning were made together with two (2) planning permit applications KP266/06 and KP826/06, lodged in conjunction with Amendment C75 under Section 96A of the Planning and Environment Act 1987.

Amendment Requests & Planning Permit Applications

Chelsea (Proposed Safeway Supermarket)

The Lascorp Development Group (Aust.) Pty Ltd submitted a combined planning scheme amendment and planning permit application to enable the development and use of a new Safeway Supermarket in the Chelsea Activity Centre.

The proposal as submitted comprises the following components:

- § The construction of a new supermarket understood to be a Safeway of 3,135m² on land at the rear of the existing Safeway tenancy.
- § The demolition of a number of buildings fronting Bath Street (generally between No. 23 and 29 Bath Street) and the redevelopment of this area for car parking

The statutory processes associated with the above amendment request and planning permit application includes:

- § A rezoning of 15-31 Bath St, Chelsea Part 426-431 Nepean Hwy, Chelsea and 3-9 Swansea Road, Chelsea to the Business 1 Zone
- § Amending the Business 1 Zone Schedule to limit the amount of upper floor space to be used as a shop to 3,135m² without the need for a planning permit at the Chelsea Activity Centre at 13-31 Bath Street, 3-9 Swansea Road and Part 426 – 431 Nepean Highway, Chelsea
- § A planning permit application which seeks to provide for the construction of a 3,135m² supermarket, associated office and storage areas, reduced car parking requirements pursuant to Clause 52.06 of the Kingston Planning Scheme, including associated car parking and access lanes, and to erect advertising signage.
- § Introducing the Public Acquisition Overlay over part of 432-443 Nepean Hwy, Chelsea to provide for the development of a dedicated pedestrian walkway.

Patterson Lakes (Proposed Coles Supermarket)

Urbis JHD on behalf of J&G Knowles Pty Ltd submitted a combined Planning Scheme Amendment and Planning Permit Application to enable the development and use of a new Coles Supermarket in Patterson Lakes. The supermarket is to be

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constructed on a vacant parcel of land of approximately 1.27 hectares on the south west corner of Thompsons Road and Gladesville Boulevard, Patterson Lakes. The proposal comprises of the following components:

- § A full line supermarket of approximately 3,600m² of retail floor space with reduced car parking requirements pursuant to Clause 52.06 of the Kingston Planning Scheme
- § A series of specialty shops which would be linked to the supermarket development
- § The removal of native vegetation, the erection of advertising signage, and the creation or altered access to a Road Zone Category 1

The statutory processes associated with the above amendment include:

- § A rezoning of all the land from the Residential 1 to the Business 1 Zone
- § Amending the Schedule to the Business 1 Zone to limit the upper amount of floor space to be used as a shop without requiring a planning permit at the Patterson Lakes activity centre for the property at 116-118 Gladesville Boulevard, Patterson Lakes
- § Introducing the Design and Development Overlay over the subject site to provide for the encouragement in the future of a mix of uses which may include residential to compliment the Activity Centre role of the subject land.

Exhibition and submissions

Public exhibition

Amendment C75 and Planning Permit Applications KP266/06 & KP826/06 were placed on public exhibition for one month between 4 July 2007 and 16 August 2007. Submissions were still being received up to the 27 August 2007. Notice was given as follows:

- Notice of the amendment and planning permit applications was published in the Victorian Government Gazette on 5 July 2007.
- Notice of amendment and planning permit applications was published in the Moorabbin Kingston, Mordialloc Chelsea, and Oakleigh Monash/Springvale Leader Newspapers in the editions circulated the week beginning 9 July 2007 and in the Chelsea Independent on 10 July 2007.
- Direct notification was sent via ordinary mail to all landowners and occupiers affected by the amendment and planning permit applications.
- Amendment and planning permit application documentation was also available on Kingston's Strategic Planning website from the 5 July 2007.
- Direct notification was sent via ordinary mail to all landowners, occupiers and stakeholders consulted with during the development of the Retail and Commercial Development Strategy.

Direct notification was also forwarded to the following referral agencies and adjoining municipalities:

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§ Melbourne Water	§ United Energy
§ Telstra	§ South East Water
§ Environment Protection Authority	§ Vic Roads
§ Department of Sustainability and Environment, Port Phillip Region	§ Parks Victoria
§ City of Greater Dandenong	§ Minister for Energy and Resources
§ Minister for Agriculture	§ Minister for Water, Environment & Climate Change
§ Monash City Council	§ Glen Eira City Council
§ Frankston City Council	§ Bayside City Council

Submissions Received

During exhibition of the amendment and planning permit application, a total of one hundred and twenty nine (129) submissions were received. One submission from the Chelsea Traders Association included a petition of five hundred and fifteen (515) signatories in support of the Safeway supermarket development at Chelsea. Five (5) of the submissions received were from referral authorities, which raised no objection to the amendment and planning permit applications. Four (4) of the submissions were received following the close of submissions on 16 August 2007.

The key issues raised included:

- § Demand for additional supermarket facilities
- § Traffic and parking
- § Amenity
- § Increased employment opportunities

The previous report provided to Council discussed the items raised in submissions received prior to the Amendment's closing date for exhibition.

3. Panel Hearing and Recommendations

The Minister for Planning appointed a Panel to consider Amendment C73. A Panel hearing was held between the 11th to 15th February, 2008 and was heard by Ms. Kathryn Mitchell (Chairperson), Mr. Ken McNamara and Mr. Chris McNeil.. Over the course of the Panel Hearing the following parties made submissions to the Panel:

- Kingston City Council represented by Mr Jonathan Guttmann and assisted by Rosa Zouzoulas who called evidence from Mr Blair Warman (Retail Economics) and Mr Matt Slavin (Design basis for Public Acquisition Overlay).
- Lascorp Development Group (proponent for Chelsea Project) represented by Mr Chris Canavan QC with Ms Juliet Forsythe instructed by Mr John Turnball of Lascorp who called Planning, Traffic and Economic Evidence.
- Knowles Group (proponent for Patterson Lakes) represented by Mr Chris Canavan QC, with Ms Juliet Forsythe instructed by Deacons Lawyers who called Planning, Traffic and Economic Evidence
- Pellicano Group represented by a Planning Consultant
- Patterson Lakes Primary School represented by the Principal Mr Szuty

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- Community Submissions from Dr. Len Cubitt, Mr Walter Hay, Mr Neil James, Mr Hans Stegeman, Mr and Mrs Neall and Mr and Mrs Miller
- Drapac Management Ltd represented by Mr Peter O'Farrell

A copy of the report of the Panel has been previously made available to all Councillors:

3.1 Panel Recommendations on Amendment C75

Having considered all the submissions referred to it and all the material presented at the hearing, and the conclusions set out in the Panel report, the Panel made the following recommendations:

For the reasons outlined in this report, the Panel appointed to consider Amendment C75 to the Kingston Planning Scheme and planning permit application KP266/06 and KP826/06 makes the following recommendations:

1. *That Amendment C75 to the Kingston Planning Scheme be adopted in the form as presented to the Panel, as presented in Attachment 1 to the Council submission on 11 February, 2008, and with the changes as shown to Clause 21.02, 21.03, 21.06, 21.10, 22.08, subject to the following modifications:*
 - a. *Adopt the changes as highlighted in Mr Warman's evidence report, for Sections 7 and 8 of the Retail Commercial Development Strategy.*
 - b. *Adopt the boundary for the Patterson Lakes Neighbourhood Activity Centre as shown in Figure 5 of this report.*
 - c. *Delete the Schedule for the Business 1 Zone in Chelsea.*
2. *That a permit be issued for planning permit application KP266/06, subject to the following:*
 - a. *The conditions as set out in Appendix 2*
3. *That a permit be issued for planning permit application KP826/06, subject to the following:*
 - a. *The conditions as set out in Appendix 3*

4. Options

Section 27 of the *Planning and Environment Act 1987* directs that the planning authority must consider the Panel's report before deciding whether or not to adopt the amendment. Having considered the report Council may:

- Abandon the Amendment pursuant to Section 28 of the *Planning and Environment Act 1987*.
- Adopt the Amendment without changes pursuant to Section 29 (1) of the *Planning and Environment Act 1987*.
- Adopt the Amendment with changes pursuant to Section 29 (1) of the *Planning and Environment Act 1987*.

Overall, Council received a most favorable Panel report on Amendment C73. While, the Panel has recommended some minor changes to the Amendment, Council Officers submit that the strategic direction of the amendment was strongly supported as were the merits of the planning permit application by what was a most experienced Panel. It is therefore considered that a substantive basis exists beyond the extensive work undertaken by Council leading up to this Amendment to adopt the Planning Scheme Amendment subject to changes, which are discussed below.

5. Panel Recommendations Discussed

1. That Amendment C75 to the Kingston Planning Scheme be adopted in the form as presented to the Panel, as presented in Attachment 1 to the Council submission on 11 February, 2008, and with the changes as shown to Clause 21.02, 21.03, 21.06, 21.10, 22.08, subject to the following modifications:

a. Adopt the changes as highlighted in Mr Warman's evidence report, for Sections 7 and 8 of the Retail Commercial Development Strategy.

Support Recommendation

The changes the Panel refers to above were all advanced by Council and were either grammatical corrections with the exhibited amendment or improvements to Chapters 7 and 8 of the already adopted Retail and Commercial Development Strategy. The improvements to the Strategy were specifically designed to ensure that it reflects the most current data available to Council with respect to the issues specifically about the undersupply of Supermarket floorspace in Kingston's southern areas. This material was subject to consideration by the Panel as part of its examination of Mr. Warman in his capacity as an expert and his views as indicated by the recommendation were accepted by the Panel.

b. Adopt the boundary for the Patterson Lakes Neighbourhood Activity Centre as shown in Figure 5 of this report.

Support Recommendation

The Panel indicated through the Panel Hearing that it would have been assisted with a plan included in the Retail and Commercial Development Strategy that clearly incorporated all aspects of the Patterson Lakes Activity Centre. Such a plan was produced during the hearing by Council and Council Officers support the views of the Panel to incorporate this into the Retail and Commercial Development Strategy

c. Delete the Schedule for the Business 1 Zone in Chelsea.

Support Recommendation

The Panel indicated in its report that seeking to limit the amount of retail floor space in a Major Activity Centre was inappropriate. Council accepts the basis put by the Panel and recognizes that any future substantive growth in retail floor space where the schedule was sought to be applied would be a subsequent consideration for Council.

2. *That a permit be issued for planning permit application KP266/06, subject to the following:*
 - a. *The conditions as set out in Appendix 2*

Support Recommendation

Throughout the course of the hearing all parties (local residents, proponent and Council) associated with the Chelsea proposal worked collaboratively to consider suggestions that could assist in improving the amenity of the proposal for the surrounding residents. As such the Planning Permit that is proposed to issue would include conditions relating to matters deemed by the Panel and Council Officers following review of the submissions, to be appropriately included to address some the concerns raised in relation to the proposal.

3. *That a permit be issued for planning permit application KP826/06, subject to the following:*
 - a. *The conditions as set out in Appendix 3*

Support Recommendation

In determining that a Planning Permit should issue for the Supermarket and associated specialty shops in Patterson Lakes the Panel was assisted by suggestions both by Council and the Patterson Lakes Primary School in relation to the interface between the school and the proposal. A number of conditions have been included on the Planning Permit which directly address the issues of design or amenity raised by the School.

In supporting the proposal for Patterson Lakes following the conduct of the hearing and review of submissions, the Panel concluded that:

- § *The proposal is consistent with relevant Activity Centre policy within the SPPF and LPPF.*
- § *The proposal is consistent with the City of Kingston's Retail and Commercial Development Strategy (2006)*
- § *The design and layout of the proposal is of a high standard.*
- § *The proposal does not raise any significant issues in relation to amenity considerations.*
- § *The proposal will consolidate the existing Activity Centre by utilising a vacant parcel of land within it and filling in the final piece of the Centre.*

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- § *The design and layout provides more formal pedestrian linkages between the existing and proposed retail precincts.*
- § *The proposal will create a net community benefit through the provision of additional retail facilities that are required in the area improving choice for the community.*

6. Property Considerations

As a consequence of seeking to implement the proposal at Chelsea a number of property transactions are required. These include:

At present Council owns a property at 27 Bath Street, Chelsea, which contains a vacant house. As Council may be aware the developer has recently relocated the Central Bayside Health Facility to The Strand in Chelsea and as a result of this relocation is now the owner of the former Health Care Centre Site at 23 Bath Street, Chelsea. It is proposed that these allotments of similar size be exchanged to provide both Council and the developer with contiguous ownerships. This report recommends the commencement of statutory processes under the Local Government Act to pursue this proposal.

The second matter relates to the proposed acquisition of approximately 2.3 metres from the rear of properties 432,433,434,440,441,442 and 443 Nepean Highway to provide for a pedestrian walkway. In relation to this matter specialist evidence as to the basis for the acquisition was presented to the Panel by Mr. Slavin. The Panel commented that:

‘While the Panel understands the proposed pedestrian walkway may change the day to day arrangements of business operating from the impacted properties, the Panel has formed the view that the benefits provided by the pedestrian walkway with regard to the overall functionality, safety and pedestrian connectivity of the Chelsea Activity Centre outweigh any inconvenience caused to individual landowners (Pg 34)’.

This report seeks a resolution that subject to Amendment C75 being approved by the Minister for Planning, Council commence the acquisition of the required land to provide for the pedestrian walkway.

7. Conclusion

The recommended adoption of Amendment C75 by Council Officers to Council completes the substantive work of Council over the last three years in initially preparing a Retail and Commercial Development Strategy which was subsequently adopted by Council in July 2006 which then lead to a comprehensive Planning Scheme Amendment. Over recent months this amendment which has included two supermarket proposals has been the subject of both extensive work by Council Officers in preparing for the Panel and subsequently critique by a highly experienced Panel.

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Having heard substantive submissions from Council in relation to the Amendment, the Panel concluded:

'There is little the Panel can add to that assessment [Strategic Assessment Guidelines]. The Panel considers that Amendment C75 proposes a sound policy framework in order to guide and promote retail and commercial development in Kingston and both the Chelsea and Patterson Lakes proposals are consistent with this policy framework. It should be noted that one of the reasons the Panel provides strong support to this amendment is due to the robust and well argued submissions of Council. They are to be commended for the thoroughness of their preparation'.

In relation to the specific permit aspects considered by the Panel on both occasions they indicated clear support both in a policy sense and in relation to community need for the proposals and provided clear and supportive recommendations.

From the broader communities perspective it is considered that the completion of this work provides a most important future framework which will in the short term assist to deliver improved supermarket facilities to undersupplied parts of the municipality. Notably as was put to the Panel both the Chelsea and Patterson Lakes opportunities have been in excess of ten years in the planning and the outcomes now delivered will go some way to addressing the gaps identified by Council and supported by the Panel in food and grocery provision in the southern parts of the municipality. Subject to the Amendments adoption by Council Officers look forward to working with the parties involved to implement what are most exciting projects for the municipality.

In addition the report considered at the March Ordinary Council Meeting regarding commencing the planning process for improvements to the Dingley Neighbourhood Activity Centre and the report presented on the agenda for this Council meeting relating to the Thrift Park Centre illustrate other important projects stemming from the Retail and Commercial Development Strategy.

The recommendation to adopt this Amendment completes a major policy milestone for the municipality. Council Officers believe that the Planning Scheme Amendment should be adopted subject to the changes recommended by the Panel.

Recommendation

1. That Council release the Panel Report for Planning Scheme Amendment C75 and Planning Permit Applications KP266/06 and KP826/06.
2. That Council, as Planning Authority, resolve to adopt Planning Scheme Amendment C75 to the Kingston Planning Scheme with changes as recommended by the Panel and submit the Planning Scheme Amendment to the Minister for Planning for approval.
3. That all submitters be notified of the above resolution and that the Panel report be made available for viewing on Council's Website and at Council's Cheltenham Customer Service Centre.

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4. That Council commence the statutory processes under the Local Government Act to consider the exchange of its property at 27 Bath Street, Chelsea with 23 Bath Street, Chelsea.
5. Appoint a Committee of Council pursuant to Section 223 of the Local Government Act comprising the Ward Councillor, the General Manager Corporate Services and the Manager Property Services to hear any submissions received in response to the public notice given under Section 189 and that the Committee report back to Council.
6. That in the event that there are no submissions the Chief Executive Officer or delegate be authorised to exchange and execute the required documentation.
7. That subject to the Minister for Planning approving Amendment C75, Council begin the processes to acquire the required land from No.'s 432, 433, 434, 440, 441, 442 and 443 Nepean Highway, Chelsea.

Cr Athanasopoulos left the meeting at 9.54pm

McKeegan/Alabaster

1. That Council release the Panel Report for Planning Scheme Amendment C75 and Planning Permit Applications KP266/06 and KP826/06.
2. That Council, as Planning Authority, resolve to adopt Planning Scheme Amendment C75 to the Kingston Planning Scheme with changes as recommended by the Panel and submit the Planning Scheme Amendment to the Minister for Planning for approval.
3. That all submitters be notified of the above resolution and that the Panel report be made available for viewing on Council's Website and at Council's Cheltenham Customer Service Centre.
4. That Council commence the statutory processes under the Local Government Act to consider the exchange of its property at 27 Bath Street, Chelsea with 23 Bath Street, Chelsea.
5. Appoint a Committee of Council pursuant to Section 223 of the Local Government Act comprising the Ward Councillor, the General Manager Corporate Services and the Manager Property Services to hear any submissions received in response to the public notice given under Section 189 and that the Committee report back to Council.
6. That in the event that there are no submissions the Chief Executive Officer or delegate be authorised to exchange and execute the required documentation.
7. That subject to the Minister for Planning approving Amendment C75, Council begin the processes to acquire the required land from No.'s 432, 433, 434, 440, 441, 442 and 443 Nepean Highway, Chelsea
8. For the loading bays of the Patterson Lakes Supermarket, that the loading hours on Sunday be 8.00am – 8.00pm.

Carried

**K55 Amendment C81 to the Kingston Planning Scheme – Thrift Park
Neighbourhood Activity Centre**

Author: Rosa Zouzoulas – Team Leader Strategic Planning
Approved By: Tony Rijs-General Manager Environmental Sustainability

1. Purpose of Report

The purpose of this report is to provide an overview of proposed Amendment C81, and provide Councillors with an overview of the proposed planning applications that are to accompany the Amendment request.

The report recommends that a request be made to the Minister for Planning to authorise the preparation of the amendment under Section 9(2) of the *Planning and Environment Act 1987* and proceed with exhibition of the combined amendment and planning permit applications if authorisation is granted.

2. Background

Council will be aware of the Retail and Commercial Strategy, recently undertaken to review the retail and commercial development activity within the municipality. The recommendations of this report state that Thrift Park be deleted as an appropriate site for bulky goods retailing. Clause 21.06 of the Kingston Planning Scheme currently identifies the Thrift Park Activity Centre as a preferred location for bulky goods retailing. The Strategy identifies a number of precincts which possess the mix of factors such as the critical mass of retail floor space, mix of tenancies, synergy, convenience and access and parking which contribute to the attractiveness of bulky goods retailing centres. The consolidation of these precincts is important while the dispersion of bulky goods reduces the commercial attractiveness of these precincts. The Strategy identifies these preferred locations as “core” bulky goods retailing precincts.

The Strategy advises that within the identified “core” bulky goods precincts, there is a good supply of land available within the municipality for bulky goods retailing with a supply of floor space sufficient to support demand until 2016. As the Thrift Park Activity Centre is not located as a “core” bulky goods precinct for reasons that it does not possess the mix of factors as outlined above, the Strategy recommends that Council remove Thrift Park as preferred bulky goods precincts and confirms that controls that compliment the Thrift Park Activity Centre should be considered.

Council initiated an amendment to the Kingston Planning Scheme to implement the recommendations of the Retail and Commercial Strategy. Amendment C75 has been exhibited and considered by an Independent Panel. It is likely that the Strategy will be formally incorporated in the Kingston Planning Scheme following adoption of Amendment C75.

The Thrift Park Activity Centre is classified as a Neighbourhood Activity Centre. The centre is predominantly zoned Business 4 although the existing Safeway and specialty stores are zoned Business 1, see attachment.

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It is understood that the Activity Centre is predominantly owned by two (2) land holders, with the balance of the Centre owned by a number of different owners reflecting the relatively small land parcels surrounding. The two major land holders own the following land:

Bonleaf Pty Ltd (7,300m²):

- 8 and 10 Lower Dandenong Road, Mentone
- 165-169 Nepean Hwy, Mentone

Fabcot Pty Ltd (17,330m²):

- 171-185 Nepean Hwy, Mentone

The Thrift Park Activity Centre incorporates an wide ranging mix of diverse land uses including a car wash, tyre fitting outlet, a dwelling, a joinery workshop, furniture retail shop, several convenience restaurants, a gymnasium, a 2000m² supermarket with specialty retail stores, and a car yard.

The current mix of uses is considered to be disparate in nature resulting in a commercial precinct that lacks a central point of focus and does not sustain the necessary level of retailing activity to be successful.

The Centre is well serviced with local public transport and major infrastructure such as water and power, has a gentle slope across the site which rises from the Nepean Hwy interface towards Lower Dandenong Road, and is accessed via a number of separate access points from both Lower Dandenong Road and the Nepean Hwy service road.

3. The Proposed Amendment

Since undertaking Amendment C75 to the Kingston Planning Scheme to implement the recommendations of the Retail and Commercial Strategy, including removing references within Clause 21.06 pertaining to the Thrift Park Activity Centre as a preferred bulky goods precinct, Council Officers have been involved in discussions regarding two separate Planning Scheme requests. These requests have related to the potential for an improved Safeway supermarket with specialty stores and a new mixed use development incorporating retail, office and residential uses.

Clause 21.06 of the Kingston Planning Scheme currently identifies the Thrift Park Activity Centre as a preferred bulky goods precinct. In accordance with this designation, the current zoning of the land is Business 4. The Business 4 Zone restricts the scope of retailing and commercial activities permissible, and prevents the integration of the Activity Centre with those parts of the centre currently performing retail based activities.

The purpose of the Business 4 Zone is to:

“to implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies”

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“to encourage the development of a mix of bulky goods retailing and manufacturing industry and their associated business services”

In order to allow greater integration of the Activity Centre, and to promote the Centre as a Neighbourhood Activity Centre to meet the weekly convenience shopping needs of the community (in accordance with the designation of the Centre as per the changes made to the Policy by Amendment C75), this amendment seeks to rezone all Business 4 zoned land to the Business 1 Zone. The Business 1 zoning will allow a more efficient use of land that is currently underdeveloped.

The Amendment affects the Thrift Park Activity Centre located at the intersection of Nepean Hwy and Lower Dandenong Road Mentone.

The amendment proposes to:

- Rezone Land at 151-169 Nepean Hwy, Mentone from Business 4 to Business 1 Zone.
- Rezone land at 8 and 10 Lower Dandenong Road, Mentone from Business 4 to Business 1 Zone.
- Rezone land at 185-205 Nepean Hwy, Mentone from Business 4 to Business 1 Zone.
- Rezone land at 1 and 2 Long St, Mentone from Business 4 to Business 1 Zone.
- Apply the Design and Development Overlay Schedule 15 to the land currently zoned Business 1 and land to be rezoned to the Business 1 Zone.

4. Proposed Planning Applications

Council has been in preliminary discussions with Bonleaf Pty Ltd regarding a combined planning scheme amendment and planning permit application to enable the development of a mixed use development within the Thrift Park Activity Centre adjoining the existing Safeway supermarket site.

The Planning Permit Application KP347/08 (Bonleaf site) proposes to:

- Redevelop and use the land at 8-10 Lower Dandenong Rd and 165-169 Nepean Hwy, Mentone for two buildings comprising:
 - 2966m² of retail tenancies;
 - 5931m² of office/medical centre;
 - A 900m² indoor recreation facility (fitness centre);
 - 40 residential dwellings; and
 - Associated car parking
- A variation to the car parking requirements.
- Removal of native vegetation
- Alteration of access to land in a Category 1 Road Zone.
- Vary the requirement in the existing schedule 11 to Design and Development Overlay relating to development exceeding 9 metres.
- Advertising Signage.

Council has also been in preliminary discussions with Fabcot Pty Ltd regarding a combined planning scheme amendment and planning permit application to enable the

redevelopment of the existing Safeway store and specialty stores in the Thrift Park Activity Centre.

The Planning Permit Application KP375/08 (Fabcot site) proposes to:

- Redevelop and use the land at 171-185 Nepean Hwy, Mentone for two buildings comprising:
 - A new supermarket relocated along the site's Nepean Hwy frontage of 4045m² (including 200m² mezzanine – non retail);
 - 2250m² of retail tenancies;
 - Variation to the car parking requirements (proposing 243 spaces including 3 disabled);
 - Alteration and access to land in a Category 1 Road Zone;
 - Vary the requirement in the existing schedule 11 to the Design and Development Overlay relating to development exceeding 9 metres.
 - Advertising signage.
 - Reduce the number of bike facilities required under Clause 52.34.

Section 173 agreements will be required between Council and the owners of the abovementioned land to further control the future use and development of the sites.

The merits of the projects above have been considered and are supported by the Retail and Commercial Strategy. It is therefore considered appropriate that once matters relating to the appropriate form of a Planning Scheme Amendment relating to the Thrift Park Activity Centre, and all outstanding matters relating to the information required to accompany the planning permit applications are resolved, that Council test the merits of the abovementioned amendment and planning permit applications through a Planning process.

5. Policy Consideration

5.1 State Planning Policy Framework

The proposed amendment is considered to be consistent with the State Planning Policy Framework. In particular, the amendment gives effect to the following:

- Further the objectives of the Metropolitan Strategy (Clause 12);
- Achieve settlement objectives by ensuring a sufficient supply for commercial land uses (Clause 14);
- Improve employment and economic activities in a location that is readily accessible to the community (Clause 17);
- Make efficient use of existing infrastructure (Clause 18); and
- Provide opportunities for good quality, energy efficient urban design (Clause 19.03).

5.2 Local Planning Policy Framework

The amendment is consistent with Clause 21.06 of the Municipal Strategic Statement which sets out the strategic direction for retail and commercial land use in the municipality. In particular, the amendment seeks to address the decline in the viability of the Thrift Park Neighbourhood Activity Centre by enabling retail and

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mixed use uses that compliment the supermarket and zoning which facilitates its redevelopment.

The amendment aims to enhance the Centre by providing a zone to facilitate redevelopment and new uses that will provide a good mix of retail and other services that will cater for the weekly needs of households commensurate with the neighbourhood role of the centre within the retail hierarchy.

6. Public Exhibition

Council is required to give notice of an amendment under section 96C of the *Planning and Environment Act 1987*. Accordingly, this report recommends that Council seek authorisation from the Minister for Planning and if this is provided place the proposed amendment on public exhibition. It is envisaged that the amendment would be placed on public exhibition for a period of one month once authorisation is received with the following consultation to be undertaken:

- Amendment documentation available at Council's Cheltenham and Mentone offices and website.
- Amendment documentation available at Council's Parkdale and Cheltenham Libraries
- Notices placed in the Government Gazette and local papers.
- Direct notification to nearby landowners and occupiers.

7. Conclusion

The proposed combined amendment and planning permit applications are considered to be consistent with the State and Local Planning Policy. The proposed combined amendment and planning permit applications are believed to have a sufficient strategic basis to warrant a request to be made to the Minister for Planning to authorise preparation of the combined amendment and planning permit applications and undertake exhibition if authorisation is granted.

Recommendation

That a request be made to the Minister for Planning to:

- a. Authorise the preparation of Amendment C81 under Section 9(2) of the *Planning and Environment Act 1987* to rezone land at 151-169 and 185-205 Nepean Hwy Mentone, 8-10 Lower Dandenong Road and 1 and 2 Long Street Mentone to the Business 1 Zone.
- b. That following authorisation Amendment C81 and Planning Permit Applications KP374/08 and KP375/08 be exhibited in accordance with Section 96C of the *Planning and Environment Act 1987*.

Cr Athanasopoulos re entered the meeting at 9.56pm

Athanasopoulos/Alabaster

The recommendation be adopted.

Carried

K56 Amendment C91 to the Kingston Planning Scheme – Changes to the Mordialloc Activity Centre Design and Development Overlay (Schedule 10)

Approved By: Tony Rijs- General Manager Environmental Sustainability
Author: Rosa Zouzoulas – Team Leader Strategic Planning

1. Purpose of Report

The purpose of this report is to provide an overview of the exhibition of Amendment C91, which seeks to modify Schedule 10 of the Design and Development Overlay in Mordialloc. The overlay provides height controls and design standards for the Mordialloc Activity Centre. At its ordinary meeting of 25 June 2007 Council resolved to seek authorisation for the preparation and exhibition of the amendment. Authorisation was received on 20 August 2007.

The amendment proposes to:

- § Introduce a 2 storey (7.5 metres) height control for 503 Main Street, Mordialloc to reinforce that this building is one of the oldest in the Mordialloc Activity Centre.
- § Modify the minimum front setback of any 3rd storey, max 11 metres, to 622-626 Main Street, Mordialloc from 4 metres to 8 metres to recognise the heritage significance of these buildings.
- § Modify Table 1 to Schedule 10 of the Design and Development Overlay to correctly place the height and setback provisions for 622-626 Main St, Mordialloc within Precinct A7 from Precinct A6

Amendment C91 was subsequently exhibited and submissions were received that have now been reviewed by Council Officers.

The purpose of this report is to recommend that Council adopt the amendment and submit it to the Minister for Planning for approval.

2. Background

Interim structure planning controls for the Mordialloc Activity Centre were implemented into the Kingston Planning Scheme in April 2005, via Amendment C51. Permanent controls were then sought and approved by the Minister for Planning on the 21 June 2007 via Amendment C52. The controls implement the objectives and strategies of the *Mordialloc Pride of the Bay: A Structure Plan for the Future of Mordialloc, 2004*.

Amendment C91 flows on from Amendment C51 and C52 and is required to protect the significance and prominence of the building at 503 Main St Mordialloc, including the opportunity for oblique views from Main St. The building is susceptible to impacts resulting from inappropriate development that is typical locally. Recent work undertaken to supplement the heritage citation prepared for Main Street, Mordialloc has focussed on the significance of the building at 503 Main St, Mordialloc to support and justify this amendment. This work has identified the building as having local significance as an intact early shop within the Mordialloc Main St precinct

The amendment is further required to protect the heritage significance and character of the buildings at 622-626 Main Street, Mordialloc. The proposed amendment seeks to correct an error of the previous Amendment C52 to the Kingston Planning Scheme that introduced development provisions for Main St, by increasing the setback requirement at Table 1 to Schedule 10 of the Design and Development Overlay for any 3rd level from 4 metres to 8 meters

The amendment finally modifies Table 1 to Schedule 10 of the Design and Development Overlay to correctly place the height and setback provisions for 622-626 Main St, Mordialloc within Precinct A7 from Precinct A6

3. Exhibition and submissions

Public exhibition

Amendment C91 was placed on public exhibition for one month between 20 September 2007 and 22 October 2007. Notice was given as follows:

- Notice of the amendment was published in the Victorian Government Gazette on 20 September 2007.
- Notice of amendment was published in the Mordialloc Chelsea, Leader Newspaper in the editions circulated the 17 September 2007 and 24 September 2007
- Direct notification was sent via ordinary mail to all landowners and occupiers affected by the amendment.
- Amendment documentation was also available on Kingston's Strategic Planning website from the 20 September 2007.

Direct notification was also forwarded to the following referral agencies:

§ Melbourne Water	§ United Energy
§ Telstra	§ South East Water
§ Environment Protection Authority	§ Vic Roads
§ Department of Planning and Community Development	§ Minister for Environment & Climate Change
§ Minister for Energy and Resources	§ Minister for Water
§ Minister for Agriculture	§ Parks Victoria

4. Submissions Received

During exhibition of the amendment one objecting submission and four submissions raising no objection to the proposed amendment were received.

The owner of the property at 503 Main Street stated that they "*object to the amendment C91 and would like to make an appointment to discuss my concerns in regards to this amendment*". No further details of the grounds of objection were

received. A meeting was organised as requested to discuss the objection received and their concerns.

On the 19th March 2008 the objection was withdrawn in writing from the owner of the property at 503-5 Main St Mordialloc.

5. Strategic Justification

State Planning Policy Framework

The amendment is considered to be consistent with State Planning Policy and the state Planning Policy Framework. In particular, the amendment gives effect to the following objectives:

- § To provide for the fair, orderly, economic and sustainable use, and development of land by providing design criteria that acknowledge the heritage significance of buildings whilst promoting the continued sustainable use of these buildings.
- § To conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value by acknowledging the heritage significance of the buildings on the site.
- § To facilitate development in accordance with the above objectives by introducing design criteria that provides for the protection of the heritage significance of buildings whilst still allowing for the potential to improve the building.
- § Clause 12.05 'A great place to be' by requiring development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.
- § Clause 15.11 'Heritage' by conserving places that that have social, aesthetic and historical significance.

The proposed amendment is considered to be consistent with the Local Planning Policy Framework. In particular, this amendment gives effect to the following objectives:

- § Clause 21.05-3 'Residential land use' Objective 2 by protecting areas/buildings of historical/cultural significance.
- § Clause 21.13 'Heritage' Objective 2 by ensuring new development and renovation does not adversely affect the significance of heritage places and areas, and contributes positively to the identified heritage values.
- § Clause 22.14 'Mordialloc activity Centre Policy' by protecting and enhancing the existing character, streetscape and heritage of Mordialloc.
- § Clause 22.16 'Heritage Policy' by recognising, conserving and enhancing places identified as having aesthetic, architectural and historical interest; respecting the historical and architectural integrity of buildings, streetscapes

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and vistas; and encouraging development to be undertaken in accordance with accepted conservation standards of the ICOMOS Burra Charter

The amendment will result in positive social and environmental benefits resulting from a positive impact on the environment by ensuring:

- § increased visual amenity to the streetscape and
- § that new development is responsive to the valued heritage character of the area
- § historical elements of the physical landscape that are valuable to the community are protected and conserved, providing a link with the past and maintaining cultural history. The Statement of Significance prepared for Main St precinct and for 503 Main St, Mordialloc each demonstrate the heritage significance of the places to the local community.

The amendment will have economic implications in that it introduces controls relating to subdivision and consolidation of land, demolition or removal of any buildings, construction of any buildings, or construction or carrying out of a range of works within identified sites of significance. The inclusion of places within the Heritage Overlay does not prohibit changes, but rather requires an approval process whereby heritage aspects can be properly addressed, along with other factors.

6. Conclusion

Amendment C91 seeks to apply appropriate planning scheme controls to the identified heritage places of 503-5 Main St and 622-626 Main St, Mordialloc. The amendment is considered to implement the recommendations of the Mordialloc Structure Plan and the policies and objectives of the Planning and Environment Act 1987 including the State and Local Planning Policy Frameworks of the Kingston Planning Scheme.

The Amendment has been exhibited and submissions have been received. Given the withdrawal of the objection to the amendment, it is appropriate for Council to support Amendment C91, to be further progressed.

Furthermore, officers believe that it is appropriate for Council to request that the Minister for Planning approve the Amendment.

Recommendation

That Council, as Planning Authority, adopt Amendment C91 to the Kingston Planning Scheme and submit Amendment C91 to the Minister for Planning for approval.

Cr McKeegan left the meeting at 9.58pm

Petchey/Athanasopoulos

The recommendation be adopted.

Carried

K57 Amendment C93 to the Kingston Planning Scheme – Significant Trees

Author: Rita Astill – Strategic Planner

Approved by: Tony Rijis – General Manager Environmental Sustainability

1. Purpose

The purpose of this report is to provide Council with a summary of the submissions received in relation to Amendment C93 to the Kingston Planning Scheme. This report recommends that Council split the Amendment into two (2) parts: Part 1 relating to all trees which have received no submissions and Part 2 relating to those trees which have received submissions. Furthermore, this report recommends that Council adopt Part 1 of Amendment C93 with changes, and submit it to the Minister for Planning for approval, and request that the Minister for Planning appoint a panel to further consider and report on the merits of Part 2 of Amendment C93.

2. Background

At its Ordinary meeting on 30 April 2007 Council resolved (pending the adoption of the Tree Register) to seek authorisation from the Minister for Planning to prepare an amendment to provide protection controls to the trees identified on the Tree Register via an Environmental Significance Overlay, introduce new planning scheme provisions within the Municipal Strategic Statement and following authorisation exhibit the amendment.

At its Ordinary meeting on 28 May 2007 Council resolved to adopt the Significant Tree Register. The Tree Register was developed by Kingston City Council in conjunction with Tri Dimensional Consultants. The Register has been developed in accordance with the National Heritage Trust criteria within the local context. The Tree Register identifies trees within the municipality that are significant because of their horticultural value, location or context, are rare or have a localised distribution, are particularly old, are of an outstanding size, provide aesthetic value or are of curious growth form, are outstanding examples of their species or are of cultural or historical significance.

Authorisation to prepare the amendment was received from the Minister for Planning on the 22 February 2007.

Amendment C93 was subsequently exhibited and submissions were received that have now been reviewed by Council Officers.

3. Amendment C93 to the Kingston Planning Scheme

Amendment C93 to the Kingston Planning Scheme seeks to:

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- Apply an Environmental Significance Overlay to properties which contain or are affected by tree(s) identified in the City of Kingston Register of Significant Trees, May 2007.
- Modify Clause 21.02 (Municipal Profile) to recognise the importance of the municipality's significant trees and the City of Kingston Register of Significant Trees, May 2007.
- Modify Clauses 21.05 (Residential Land Use), 21.06 (Retail and Commercial Land Use) and 21.07 (Industrial Land Use) of the Municipal Strategic Statement to introduce strategies and implementation methods to support the protection of significant trees throughout the municipality.
- Modify Clause 21.09 (Environment, Wetlands and Waterways) of the Municipal Strategic Statement to further reinforce the recognition and protection of significant trees and introduce strategies and implementation methods to support the objective of protecting significant trees throughout the municipality.
- Include the City of Kingston Register of Significant Trees, May 2007 as a reference document in the Kingston Planning Scheme.

4. Exhibition and Submissions

4.1 Public Exhibition

Amendment C93 was placed on public exhibition for a period of one (1) month between 14 February 2008 and 14 March 2008. Notice was given as follows:

- Notice of the amendment was published in the Victorian Government Gazette on 14 February 2008.
- Notice of amendment was published in the Moorabbin Kingston on 20 February 2008, Mordialloc Chelsea, and Oakleigh Monash/Springvale Leader on 18 February 2008 and in the Chelsea, Mordialloc, Mentone Independent on 19 February 2008.
- Direct notification was sent via ordinary mail to all landowners and occupiers affected by the amendment on 14 February 2008.
- Amendment documentation was made available on Kingston's Strategic Planning website, customer service centres and libraries from 14 February 2008.

Direct notification was also forwarded to the following referral agencies, Ministers and adjoining municipalities:

§ Melbourne Water	§ United Energy
§ Telstra	§ South East Water
§ Environment Protection Authority	§ Vic Roads
§ Department of Sustainability and	§ Aboriginal Affairs Victoria

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Environment, Port Phillip Region	
§ City of Greater Dandenong	§ Minister for Energy and Resources
§ Minister for Agriculture	§ Minister for Water, Environment & Climate Change
§ Monash City Council	§ Glen Eira City Council
§ Frankston City Council	§ Bayside City Council
§ National Trust of Victoria	§ United Energy

4.2 *Submissions Received*

During exhibition of the amendment, a total of thirteen (13) submissions were received. Six (6) of the submissions received were from referral authorities, which raised no objection to the amendment. The submissions are summarised in Attachment 1. Attachment 2 illustrates those trees whereby submissions were not received in relation to the intentions of Amendment.

The key issues identified in the submissions include safety and liability if a tree or limb falls and causes injuries or damage.

Council Officers have met with each submitter to discuss their concerns.

4.3 **Consideration of Submissions**

Section 22 of the *Planning and Environment Act 1987* requires that Council consider all submissions received in respect to an exhibited amendment.

Section 23 of the Act specifies that after considering submissions, Council must:

- Change the amendment in the manner requested; or
- Refer the submission to a panel appointed under Part 8; or
- Abandon the amendment or part of the amendment.

5. **Discussion of Issues**

The following is a discussion around the main issues raised in submissions to Amendment C93.

5.1 **Safety**

In the instance where a tree presents an immediate risk of personal injury or damage to property the Environmental Significance Overlay does not require a planning permit to be obtained to remove the tree. This exemption is consistent with the other vegetation controls contained within the Planning Scheme. Council has the ability to prosecute owners who remove vegetation where there was no immediate risk.

5.2 **Liability**

Council is not responsible for trees which are situated on private land or on another public authority's land. Such trees are the responsibility of the private property owner or occupier of the authority. This is consistent with other planning scheme provisions such as the Heritage Overlay and this view is upheld by numerous Panels including that which considered Amendment C76. Furthermore, introducing the Environmental Significance Overlay does not introduce additional responsibility requirements from those currently applied through the application of the local law.

5.3 Pruning Controls

In drafting the Schedule to the Environmental Significance Overlay the Department of Sustainability and Environment advised that pruning controls could not be included as the Overlay as it does not allow for this provision. Legal advice has been sought on this issue and the advice received agrees with the view of the Department but for a different reason. The advice highlights clause 62.02-1 of the Planning Scheme which exempts gardening from buildings and works requiring a permit.

Pruning can seriously alter the appearance and health of a tree and it is considered important to be able to control pruning for our significant trees. It is recommended that the issue be raised at the Panel.

6. Changes to the Proposed Amendment

Due to recent storms there have been a number of trees that have failed and have been or need to be removed, these include:

- A large River Gum located in a Reserve on Wells Road, Patterson Lakes, east of Portal Place.
- A Cape Chestnut located at 1167 Nepean Highway, Highett.
- A large Lemon Scented Gum located at 9 Ramsay Court, Cheltenham.
- A Coast Banksia located on the foreshore in Bonbeach.

In addition, a Red Flowering Gum located 46 McLeod Road, Carrum has been damaged by the recent development of the site. Although the tree is retained as part of the development it is no longer deemed to be of local significance.

It is recommended that the above trees be removed from the Significant Tree Register and Schedule 3 to the Environmental Significance Overlay before being submitted to the Minister for Planning for approval.

It is noted that the legal advice received also recommended minor drafting changes to the Schedule of Environmental Significance Overlay and it is recommended that these be incorporated to the Schedule before being submitted to the Minister for Planning for approval.

7. Consideration of Trees to which no Submissions were Received

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As previously mentioned, submissions were received to Amendment C93 in relation to a limited number of trees. Council did not receive any submissions relating to the remaining 91 entries (see Attachment 2).

Section 29 of the *Planning and Environment Act 1987* specifies that:

- After complying with Divisions 1 and 2 in respect of an amendment or any part of it, the planning authority may adopt the amendment or that part with or without changes
- If a planning authority adopts a part of an amendment that part becomes a separate amendment.

Council officers consider that the relatively large number of uncontested significant trees are worthy of inclusion within the Environmental Significance Overlay based on the strategic justification outlined in Section 8 of this Report. Furthermore, given the relatively lengthy planning scheme amendment process typically undertaken where submissions to an amendment have been received and a planning panel is required, it is considered inappropriate and undue to commit the large number of uncontested trees to such a process, thereby prolonging the uncertainty of planning scheme provisions in relation to these trees.

Respectfully it is therefore proposed that Amendment C93 be split into two (2) parts comprising of trees to which no submissions were received (Part 1), and trees with submissions requiring a planning panel process (Part 2). This report recommends that Council therefore adopt Part 1 of Amendment C93 in order to progress this component of the amendment, and forward it to the Minister for Planning for approval, subject to the changes outlined in this Report (see Attachment 2).

8. Strategic Justification

8.1. State Planning Policy Framework

The amendment is consistent with the State Planning Policy Framework of the Planning Scheme. In particular, the amendment gives effect to the following objectives:

- Clause 12.05 ‘A great place to be’ by ensuring:
 - Urban environments are of better quality and provide an easily recognisable sense of place and cultural identity.
 - Development recognises distinctive urban forms and layout and their relationship to landscape and vegetation.
 - Development responds to its context and reinforces special characteristics of local environment and place by emphasising:
 - The underlying natural landscape character.
 - The heritage values and built form that reflect community identity.
 - The values, needs and aspirations of the community.

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- Clause 15.09-1 'Conservation of native flora and fauna' by protecting and conserving biodiversity, including native vegetation retention.

8.2 Local Planning Policy Framework

The amendment is consistent with the Local Planning Policy Framework of the Planning Scheme. In particular, the amendment gives effect to the following objectives:

- Clause 21.02 'Environment and heritage' and Clause 21.09 'Environment, Wetlands and Waterways' which recognises the diversity and significance of the municipality's environmental landscape in both a local and regional context.

9. Conclusion

Amendment C93 to the Kingston Planning Scheme seeks to introduce planning controls to protect trees identified in the City of Kingston Significant Tree Register, May 2007. The amendment seeks to introduce a new Schedule to Clause 42.01 (Environmental Significance Overlay) and amend the Municipal Strategic Statement and Local Planning Policy Framework to provide guidance in decision making in regards to significant trees.

The Amendment has been exhibited and submissions opposing the amendment have been received in relation to only 6 (six) trees. Given the large number of trees that Council did not receive submissions to, it is considered that Planning Scheme Amendment C93 should be split into two (2) parts: Part 1 relating to all trees to which no submissions were received and Part 2 comprising those sites to which submissions were received (see Attachment 2). Officers firmly believe that it is appropriate for Council to support the splitting of Amendment C93 into parts, in order to enable those trees uncontested to be further progressed in a separate amendment process, of those trees that will require to be subject to the planning panel process.

Furthermore, officers believe that it is appropriate for Council to support Part 1 of the Amendment and submit it to the Minister for Planning for approval with changes as outlined in this report, and request that the Minister for Planning appoint an independent Panel to consider and report on Part 2 of the Amendment.

Recommendation

1. That Council formally split Amendment C93 into two (2) parts: Part 1 and Part 2 in accordance with the table set out in Attachment 2 to this report.
2. That Council formally adopt the introduction of the Environmental Significance Overlay over all properties contained within Part 1 of Amendment C93 as identified in Attachment 2 to this report and submit it to the Minister for Planning for approval.
3. That Council formally request the Minister for Planning to appoint a Panel under Part 8 of the Planning and Environment Act 1987 to further consider and report on Part 2 of Amendment C93 to the Kingston Planning Scheme as identified in Attachment 2 to this report.
4. That all submitters to Part 2 of Amendment C93 as identified in Attachment 2 to this report be advised in writing of the above resolutions.

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Cr McKee an re-entered the meeting at 10.00pm

Alabaster/Petchey

The recommendation be adopted.

Carried

K 58 Proposed New Residential Zones for Victoria

Author: Rita Astill – Strategic Planner

Approved by: Tony Rijs – General Manager, Environmental Sustainability

1. Purpose of Report

The purpose of this report is to provide Council with an overview of the proposed new residential zones for Victoria. This report recommends that Council provide comments as attached to this report to the Department of Planning and Community Development on the proposed new residential zones.

2. Background

The Minister for Planning has initiated a review of the residential zones. It is understood that the intention of the new zones are to better reflect the objectives of State and local policies for housing and to provide better tools to manage the diverse and changing needs of communities.

The Department of Planning and Community Development is seeking public feedback on the proposed new residential zones. It is important to note that at this stage the Department is seeking feedback on the ‘concept’ of the proposed zones rather than specific detail. The feedback received will inform the development of the actual proposed zones which are expected to be made available for further public consultation in mid 2008.

The closing date for lodging submissions is Friday, 18 April 2008 however an extension has been sought for Kingston City Council to allow Council to consider the proposed new zones.

3. Issues

3.1 The Proposed New Residential Zones

An overview of the proposed new zones is outlined in the 'New residential zones for Victoria - A discussion paper' which has been previously provided to all Councillors.

In summary the proposed new residential zones consist of:

- **Substantial Change Areas:** The purpose of this zone is to promote a significant increase in new dwellings, greater housing diversity, and new built form and character. The zone is intended to be applied to areas close to community facilities and services, employment or public transport.
- **Incremental Change Areas:** The purpose of this zone is to provide for an increase in housing diversity with a moderate increase in new dwellings which respects existing neighbourhood character. The zone is intended to be applied to areas where modest residential development can occur.
- **Limited Changes Areas:** The purpose of this zone is to provide limited opportunity for increased housing and to recognise specific characteristics to be protected.

The zone as proposed in the discussion paper is intended to be applied to areas of special neighbourhood character, vegetation, environmental or landscape significance or limited infrastructure capacity or areas remote from public services and transport.

The main proposed components outlined in the new zones for discussion include:

- The ability to implement schedules to vary development provisions for different areas within the residential zones.
- The ability to implement maximum building heights.
- The ability to vary specified ResCode standards.
- Fast tracking the approval processes for straight forward developments applications by limiting notice requirements and appeal rights.
- A permit requirement for vegetation removal in the Incremental and Limited Change Areas.

3.2 Comments on the Proposed New Residential Zones

Attachment 1 of this report provides comments on the concepts for the proposed new residential zones. The comments have been prepared using the feedback form provided by the Department of Planning and Community Development. As noted above the feedback sought from the Department is on the concept of the proposed new zones, specific detail of the zones or implementation issues are not addressed at the early stage of the process. However, Council should begin to turn its mind to how the new zones should be implemented in Kingston by revisiting the Residential Strategy.

Overall, the concept of the three new residential zones is supported subject to understanding more regarding the detail to be contained within the zones. The proposed three new zones provide more clarity and certainty for the community and the development sector.. Kingston has developed a residential framework based on a similar concept to manage housing change through Amendment C8*. The implementation of the new zones should provide for a strengthening of this framework. The ability to implement spatially applied schedules to vary Rescode provisions and implement maximum building heights for different areas within the residential zones will strengthen Kingston's residential policy and is something Kingston has been advocating for some time. There are however certain concerns including limiting notice requirement and appeal rights and specifying minimum / maximum building heights without sufficient strategic basis.

4. Conclusion

The Department of Planning and Community Development is seeking public feedback on the proposed concepts for three new residential zones consisting of Substantial Change Areas, Incremental Change Areas and Limited Changes Areas. Overall, the concepts of the new zones is supported there are however a few concerns and these are raised in the comments that have been prepared. In addition Council Officers believe that this process provides opportunities for some substantive improvements to

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what can be identified within the structure of Residential Zones. Officers believe that given Council's work in this area is substantially advanced, it is opportune to begin to consider how our existing local approaches can be successfully adapted should new zones be introduced.

Recommendation

1. That Council submit the attached comments on the proposed Residential Zones to the Department of Planning and Community Development.
2. That Council begin background work to review its Residential Development Strategy and Local Planning Policies to assist in guiding the application and implementation of the new residential zones.
3. That Council write to Local Members of Parliament providing them a copy of the attached submission regarding the discussion paper on the proposed Residential Zones (Attachment 1) to reinforce the areas of concern Council has with the proposed Residential Zones.

Attachment 1: Council Submission on Proposed Residential Zones

Athanasopoulos/Petchey

The recommendation be adopted.

Carried

9 Community Sustainability Reports

K60 Draft Kingston Cycling and Walking Facility Plan 2009-2013

Authors: Hannah Croughan, Leisure Planner

Approved by: Trevor McCullough - General Manager Community Sustainability

1. Purpose

The purpose of this report is to inform Council of the Draft Kingston Cycling and Walking Facility Plan, including the proposed approach to implementation of the 2009-2013 Capital Works Program. The report recommends approval be given to place the draft plan on public exhibition and invite community and key stakeholder comment.

2. Background

2008 is the final year of the five-year term of the 2003 – 2008 Kingston Bicycle Strategy. This document identified the strategic direction and capital investment that needed to be made in the Kingston bicycle network over that five year period.

In 2006 Council requested that this strategy be reviewed for the subsequent five-year period 2009-2013. A detailed review of the 2003-2008 Strategy and implementation plans was completed and Council was provided with a report summarising the issues influencing the delivery of the original strategy (TRIM Ref: 07/33655). The new draft facility plan attempts to address these issues and provide direction for successful implementation of a new capital works program which will assist Council to meet community needs and aspirations for cycling and walking.

3. Issues

3.1 Review Issues

The review of the 2003 – 2008 Kingston Bicycle Strategy and associated capital works program has revealed a variety of issues and opportunities. The draft 2009-2013 cycling and walking facility plan provides responses to these identified issues with the aim of improving future outcomes for cycling as well as walking. The majority of trails within Kingston are shared use paths, encouraging both pedestrian and cyclist use. Additionally, the literature review revealed a distinct need to improve both pedestrian and cyclist access across the city. Consequently, the new Facility Plan will address both activities, as opposed to cycling alone.

A summary of the issues and responses are listed below:

- **Funding**

Council has limited ability to fund all projects solely through the Capital Works Program and should seek to partner where possible to access additional financial resources.

- **Collaborative Implementation**

Council must ensure that an integrated approach to implementation occurs across all departments and that external partners are engaged as appropriate.

- **Maintenance**
Council must ensure that adequate and timely maintenance is proactively implemented across the network.
- **Risk Management**
Council currently responds to risk on the bicycle network in an ad-hoc manner. There is a need to pro-actively identify and respond to risk issues.
- **Accountability and Reporting**
There is a need to report regularly to the community and to Council regarding the implementation of cycling and walking facility improvements – it is proposed that quarterly reporting be built in to departmental reporting processes.
- **Project Priority Setting**
Implementation of the Facility Plan should reflect the community’s aspirations and needs as expressed via the Plan’s objectives.
- **Project Feasibility**
All proposed capital works projects must be determined feasible before being committed to the implementation program.
- **On-Road vs Off-Road**
Commuter and recreational cyclists have distinct perspectives, with recreational cycling and walking being encouraged predominately through the provision of off-road trails. Council should recognise the different needs of each and nominate responsible officers dependent on areas of expertise.
- **Bay Trail Integration**
When completed, the Kingston Bay Trail will form an important part of the Kingston cycling and walking facility network. The 2009-2013 Cycling and Walking Facility Plan will consider connectivity and linkages between the Bay Trail and the broader network however it will not include capital works planning for the Bay Trail.

3.2 Research

In preparing the draft facility plan, a range of data sources were consulted in order to build a picture of cycling and walking in Kingston. A comprehensive literature review of federal, state and neighboring local government strategies relating to cycling and walking was performed, current and previous census data was reviewed and a targeted survey was undertaken by Bicycle Victoria for the study area.

This survey known as “Bike Scope” received over 1000 responses and identified respondents’ most accessed cycling routes in Kingston as well as the areas that current users deemed to require improvement.

It is acknowledged that the survey was limited somewhat in the information it provided e.g. it targeted current cyclists and pedestrians, the majority of whom resided in suburbs along the bay. In acknowledgment of this fact additional data of relevance to the northern suburbs of Kingston including Clarinda, Clayton South, Waterways and Dingley was located within Trim to ascertain issues previously highlighted by those communities about cycling and walking facilities.

Additionally, staff from Parks and Urban Design; Engineering Design; Strategic Planning; Traffic and Transport; Roads and Drains; and Leisure Planning have been consulted including input in the review of the 2003 – 2008 Bicycle Strategy as well as

comments/feedback regarding the proposed objectives of the 2009 – 2013 Cycling and Walking Facility Plan.

Council officers are seeking to test the draft Facility Plan objectives and the potential capital works projects via a four week public comment period as well as distribution to Village Committees for their comment. Should the approach to setting capital works programs be deemed appropriate, respondents would also be given the opportunity to make submissions regarding projects they would like to see completed across the network over the coming five years.

3.3 Facility Plan Objectives

The objectives of the draft Facility Plan have been formulated from the review of the 2003-2008 Bicycle Strategy and the research as detailed above. The objectives provide the framework for identifying and prioritising projects to be implemented across the network. The proposed objectives are:

1. Provision of a quality network of bicycle and walking routes with emphasis on neighbourhood activity areas, major trails, cross municipal access and provision of supporting network infrastructure.
2. Integration of Council policy and practice to facilitate cycling and walking
3. Provision of well-located end of trip facilities
4. Effective co-ordination and monitoring of implementation plan
5. Improved maintenance and management of existing facilities
6. Improved safety for cyclists and walkers
7. Effective encouragement and promotion of cycling and walking

3.4 Implementation

Achievement of the objectives requires a cross-organisational approach to planning and implementation. The plan recommends the formation of an inter-departmental Kingston Cycling and Walking Management Group. Its role would be to ensure integrated project management for all improvements, lifecycle planning including maintenance, risk management, reporting and promotion.

in order to meet community aspirations and expectations with regard to the local cycling and walking network it is imperative that the organisation views implementation of the Cycling and Walking Facility Plan as a whole of Council document requiring shared responsibilities.

4. Triple Bottom Line Checklist

4.1 Budget/Financial impact

Council has supported the implementation of the draft Kingston Cycling and Walking Facility Plan 2009-2013 through a provisional allocation of \$150,000

per annum in the five year capital works program. Depending on the identified projects, this allocation can be expected to complete between 3-5 projects per financial year. Additional funds from grants, developer contributions and other external sources will enable the number of identified projects that can be undertaken in any one year to be increased.

4.2 Social impact

There are significant individual and community health benefits to be gained through cycling and walking. Improvements to the trail network will have positive social impacts through improving the accessibility, connectedness and liveability of Kingston. Improving the functionality, safety and upkeep of existing trails will improve the cycling and walking experience for all users.

4.3 Environmental impact

Quality trail networks have positive impacts through reduction of vehicle usage. Off-road trails are also designed to minimise erosion issues. The reduction of vehicle usage can reduce green house gases and traffic congestion within Kingston and broader Melbourne.

5. Summary and Conclusion

The review of the 2003-2008 Bicycle Strategy identified a series of constraints impacting the implementation of the strategy objectives. Analysis of the constraints has informed the objectives and recommendations of the 2009-2013 draft Cycling and Walking Facility Plan.

The Facility Plan is backed by comprehensive research and analysis including literature reviews and targeted surveys.

The review process and research performed to date has produced a set of objectives that reflect the current community expectations and learn from the issues identified in the 2003-2008 Strategy.

Co-ordinated planning and implementation is required to ensure Council efficiently responds to community needs and aspirations. The development of a Kingston Cycling and Walking Management Group to facilitate coordinated implementation of the Facility Plan is a key recommendation of the draft Plan.

Recommendation

That Councillors endorse the draft 2009-2013 Kingston Cycling and Walking Facility Plan and that it be made available for public comment over a period of four weeks (in accordance with the project Consultation Plan).

Attachments (4):

Draft Kingston Cycling and Walking Facility Plan 2009-2013 TRIM Ref: 08/7226

Kingston Bicycle Strategy 2003-2008 Review TRIM Ref: 08/7480

Kingston Bike Scope Survey Results Nov 2007 TRIM Ref: 08/7222

Proposed Consultation Plan for Draft Kingston Cycling and Walking Facility Plan TRIM Ref: 08/16826

Petchey/Athanasopoulos

The recommendation be adopted.

Carried

K61 Annual Report of City Historian

Author: Peter Frost-Governance Co-ordinator

Approved by: Trevor McCullough-General Manager Community Services

Attached for the information of Council is the Annual Report for 2008 of the City Historian, Dr Graham Whitehead.

Recommendation

That the Annual Report of the City Historian be received and Dr Whitehead be thanked on behalf of the community for his ongoing contribution to Kingston.

(See Attachment)

Alabaster/Petchey

The recommendation be adopted.

Carried

10 Organisational Development and Governance Reports

K62 Quarterly Reports to Council Plan and Community Plan for the period to 31 March 2008

Author: Kim Oakman – Team Leader Performance Planning
Approved by: Elaine Sowerby - General Manager Organisational Development and Governance

1. Purpose

To present to Council the quarterly reports for the March 2008 quarter in respect of the Council Plan and the Community Plan.

Highlights of March 2008 Quarter

The third quarter produced a number of highlights and achievements against the Council and Community Plans, in particular highlights included:

- § Substantial work has been completed on the P.L.A.N document (Prosperous Liveable Accessible Neighbourhoods) to enable broad community consultation through to May 2008.
- § Stage 1 of the Bay Trail is now complete and being used and enjoyed by the community.
- § Implementation of the corporate system is progressing well with the financial system in place in time to enable budget planning and processing in this quarter.
- § Earth Hour and Clean Up Australia Day supported and promoted.
- § Funding applications for the Patterson Lakes Community Centre redevelopment were successful. Minister Peter Bachelor announced \$916,150 in grants from the Community Support Fund and Living Libraries in January 2008.
- § The Master Plan for Edithvale Reserve was completed and adopted by Council in February 2008. Implementation plan will now be integrated with Capital Works Program.
- § Landscape plan and playground upgrade design for Kingston Heath Reserve completed and adopted.
- § Peter Scullin Reserve project completed for enjoyment by the crowds attending the Mordialloc Fine Food and Wine festival in March.
- § Successful Globe to Globe festival and other Australia Day functions in January.
- § Pavilion Development Strategy and Guiding Principles presented in March.

2. Background

A) Report against the Council Plan

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The 2007-12 Council Plan was adopted by Council in June 2007 with five planned outcomes. This quarterly report is the third progress report against that Council Plan.

The format of reporting against the Council Plan continues to be as follows:

- Where appropriate, milestones for the 2007-08 year are nominated against each Council Plan target;
- Progress on milestones for the financial year to date (ie not just for the March quarter);

Each financial year, new milestones will be allocated for the subsequent year, and reported on for those Council Plan targets that are due for completion over a five-year period.

Councillors are asked to note that items shaded green are those which are ongoing projects, whereas those shaded blue are time based projects.

All milestones are progressing on track, with the exception of 1.1.4 and 3.3.4. In 1.1.4 Mentone footpath works have been deferred to enable consideration of the results of a feasibility study for underground power lines. Consultants have undertaken this study and will be providing quotes for consideration in the near future. Footpath works can proceed during the next financial year pending final design decisions. 3.3.4 relates to the development of a Children's Services Policy. Milestones were renegotiated for this project to reflect its fully developed scope. The project is now anticipated to be completed by October 2008.

This quarterly report also reports on triple bottom line indicators where a quarterly assessment has been able to be made for the 2007-08 year. Full reporting on these indicators will take place in the 2007- 08 Annual Report which will be available from October 2008.

B) Report against the Community Plan

Community workshops across Kingston were held prior to the completion of the first formalised and published Community Plan for Kingston. This Community Plan was launched in March 2007. As a result of the workshops, priorities and visions for the relevant local areas were identified and included in the Council's adopted Community Plan.

This quarterly report against the Community Plan indicates progress made since the launch of the Plan against the ten local area plans.

Significant work has been undertaken this quarter to progress the actions required and everything is being progressed according to schedule.

Councillors are asked to note that items shaded grey are those which have been completed to date or which are ongoing projects.

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Recommendation

That Council notes the reports.

Attachment(s):

March 2008 Quarterly Report to Council Plan

March 2008 Quarterly Report to Community Plan

Athanasopoulos/Mckeegan

The recommendation be adopted.

Carried

K63 Annual Update of “Council to Staff” Delegation Instrument

Author: Caroline Kinnear – Acting Manager Governance & Performance Planning.

Approved By: Elaine Sowerby-GM Organisational Development and Governance

1. Purpose

To perform the annual update of the “Council to Staff” instrument of delegation to reflect legislative changes. This report is to ensure that the delegated powers of officers remain consistent with relevant legislation.

2. Background

Legislative Context

Section 98 of the Local Government Act provides a mechanism for Council to delegate to officers specific powers, duties and functions awarded by legislation to Council.

Delegation permits powers to be possessed by an officer, as well as the Council. The power is not “removed” from Council, but is simply ‘shared’ with the designated officers.

Effective use of Section 98 allows decisions to be made at the most appropriate level of the organisation. It ensures that major and important decisions are dealt with by Council, and more minor administrative matters are able to be dealt with at officer level. Empowering officers in this way enables decisions to be taken by officers “on the spot” in accordance with direction previously established by Council, eliminating the need to repeatedly refer matters to Council meetings for decisions.

Kingston Instruments of Delegation

There are three organisational delegation instruments in place at Kingston:

- a) The “Council to CEO” instrument
- b) The “Council to Staff” instrument
- c) The “CEO to Staff” instrument.

Section 98(6) of the Act requires Council to review within the period of 12 months after a general election all delegations that are in force and have been made by the Council. Council reviewed instruments a) and b) at the Ordinary Council Meeting held on 20 November 2006. That review incorporated legislative changes since the previous update in November 2005 that impacted upon the instruments.

It is now proposed to again review instrument b) and update it to incorporate further legislative changes since the previous update in November 2006.

Organisational Restructure

Council's instruments of delegation also need to be updated to reflect a recent organisational restructure which has altered staffing positions and lines of reporting, particularly in Planning and Building and Organisational Development and Governance.

Staff within the Building section now report to the Manager Strategic Planning and Building, rather than the Manager Planning. This will allow the Manager Planning to focus more strongly on achieving enhanced performance levels in this key area of Council which is experiencing significantly stronger demand upon its resources.

Some delegations that were previously responsible to the GMES and the Manager Statutory Planning have been extended to Team Leaders within the Planning Department, to improve efficiencies and enable the Manager to dedicate more time to non operational activities.

The Organisational Development and Governance Department has also been restructured, to give stronger emphasis to organisational performance planning, and provide greater clarity in relation to human resource functions.

The restructure will enhance organisational responsiveness in these key areas.

Instrument c), which is an officer level instrument, will be updated concurrently (this instrument, being delegations from the CEO to Staff, does not need to be referred to Council).

Maddocks Delegations Update Service

To assist it to keep its instruments up to date and accurately reflective of current legislation, Council subscribes to Maddocks Solicitors Delegations Service, which monitors legislative changes that impact on the instruments, and informs subscriber Councils accordingly, so that the instruments can be regularly adjusted.

Instruments b) and c) are reviewed on an annual basis to reflect these updates from Maddocks.

3 Update of Instrument b)-“Council to Staff’ Delegations

This instrument is a necessary complement to instrument c) because powers, duties and functions applicable to certain Acts (for example, the Food Act, Planning and Environment Act, Health Act and Infringements Act) can only be delegated once, and therefore must be delegated directly from Council to the designated officer (as they cannot be “sub-delegated” a second time by way of the the “CEO to Staff” instrument, in the way that, for example, Local Government Act powers can be).

Maddocks' latest model of the “Council to Staff” instrument proposes that a relatively small number of additional powers, duties and functions be added to the instrument last updated in November 2006, in order to reflect legislative changes since that time. Some additional alterations to reflect recent staffing restructure have also been incorporated. The proposed additions to the instrument are indicated in bold and underlined type in the extracts attached.

Recommendation

That Council adopt the revisions to the “Council to Staff” delegations instrument set out in the attachment.

(See Attachment-extracts from Delegation Instruments indicating proposed changes in bold type)

Athanasopoulos/Alabaster

The recommendation be adopted.

Carried

K64 Naming Proposal-“The Horse Paddock” Mordialloc

Author: Caroline Kinnear – Acting Manager Governance & Performance Planning.
Approved By: Elaine Sowerby-General Manager Organisational Development and Governance

1. Purpose of Report

To invite Council to initiate procedures with a view to naming a site alongside the Mordialloc Foreshore Reserve as “The Horse Paddock”.

2. Background

The site proposed to be so named is historically associated with racehorses from the Epsom and Mentone racetracks, which were frequently tethered at the site by strappers prior to and subsequent to the horses bathing in the bay.

It is considered that formally naming the site “The Horse Paddock” will formalise a name already in common use by locals.

Members of the Mentone Historical Society recently suggested to Cr Petchey that the site be formally named “The Horse Paddock”, and Cr Petchey, being supportive of the idea, has suggested the initiation of formal naming processes.

3. Subject Site

The area proposed to be named “The Horse Paddock” is shown bordered on the map attached, being the portion of the foreshore reserve which is the existing foreshore car park broadly opposite Bay Street.

It was originally proposed that the site to be named “Horse Paddock” would extend to a point midway between Rosella Road and Bay Street and this was the subject of a report which was deferred at the Ordinary Council Meeting held on 31 March in order to further research the precise location where horses were actually tethered. This research, conducted with the assistance of prominent local horse trainer Bill Seymour and members of Kingston’s historical community, has established that the actual tethering site was in the area now used as a car park immediately south of Bay Street and it is this area that is to be named the “Horse Reserve”. According to Mr Seymour, tethering did not occur north of the existing car park site.

In addition to this naming process, Council is also undertaking a separate process of commissioning, organising and placing a horse sculpture further north of the car park. Naming of the horse paddock in accordance with the historical use as proposed here will result in the sculpture being outside of the area to be named the “Horse Paddock”, although it is possible that a plaque associated with the sculpture could provide a reference to the “Horse Paddock”.

4. Naming Procedure

Should Council resolve to give notice of the naming proposal, the provisions of Council's "Naming of Reserves, Pavilions and Other Facilities" Policy will be observed. Public comment will be invited on the proposal by way of a notice in the applicable local newspaper. Resultant comments will then be reported back to Council. Should Council wish to proceed with the proposal at that time, Council would resolve to request VicNames to gazette the new name.

5. Triple Bottom Line Checklist

Financial

Not applicable.

Environmental

Not applicable.

Social

The new name will appropriately recognise and preserve the historical connection between horses and this site.

Recommendation

That Council give notice of a proposal to name the subject site shown on the attached plan as "The Horse Paddock", and invite public comment on this proposal.

Attachment: Map showing subject site

Petchey/Athanasopoulos

The recommendation be adopted.

Carried

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K65 MAV State Council meeting

Author: Caroline Kinnear,
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1. Purpose of Report:

To propose that an additional substitute Council delegate be appointed to the upcoming MAV State Council meeting.

2. Background:

The MAV State Council meeting will take place on Thursday 8 May 2008 at which Councillor delegates will vote on a range of motions put forward to that meeting. Cr McKeegan, Council's authorised MAV representative is unable to attend the State Council meeting. Cr Petchey is Council's substitute delegate to the MAV, however the Mayor, Cr Nixon has indicated he may be available to attend. Council's CEO, Mr John Nevins, will also attend.

3. Issues:

Officers have confirmed with the MAV that as a result of the MAV Rules, if an alternate Councillor to Kingston's existing Council-appointed MAV representatives is to be able to vote at the MAV State Council meeting, a resolution of Ordinary Council appointing that Councillor will be required.

Recommendation:

That the Mayor, Cr Nixon be appointed as a MAV representative for the MAV State Council meeting on Thursday 8 May 2008. Cr Petchey and the Mayor, Cr Nixon will represent Council at different times during the State Council meeting."

McKeegan/Petchey

The recommendation be adopted.

Carried

11. Notices of Motion

K 66 Logging in Water Catchment Areas

Cr West has given notice to move the following motion.

1. *Council does not support logging in water catchments because:*
 1. *Logging has a dramatic and detrimental effect on water yield in catchments.*
 2. *Young re-growth trees need more water to grow thus releasing less water into catchments*
 3. *Logging reduces stream flow and yields to water catchments.*
 4. *It takes 150 years for water yields to return to their pre logged status*
 5. *It is poor water policy to continue to log our water catchments.*
 6. *logging of water catchments adversely affects water quality through increasing sediment as does road construction through logging coupes.*
2. *The Victorian Government be urged to consider a policy of no logging in water catchments.*

West/Alabaster

The Notice of Motion be adopted.

Carried

11. Notices of Motion Con't

K 67 Australian Conservation Foundation Bay Monitor Program

Cr Petchey has given notice to move the following motion.

“That Council provide an in principal support of \$10,000.00 to the Australian Conservation Foundation Bay Monitor Program to provide independent, scientific and community based ongoing Bay health check –ups and give the community greater confidence that threats to the health of Port Phillip Bay are being properly investigated and dealt with.”

Petchey/West

The Notice of Motion be adopted.

Carried

The Chief Executive Officer advised Council that the following Notice of Motion was received after the agenda for this meeting was finalised and released but as it had been lodged in accordance with Council's Meeting Procedure Local Law it forms part of the Agenda.

K 67A NOTICE OF MOTION - PLAN

Cr Wes has given notice to move the following motion:

Preamble: Considering

- the strong expressions of community support for a three-storey height limit for developments with a residential interface in this area at the PLAN consultation last week and in response to previous planning applications in this area;
- that three-storeys is a reasonable response to an application in this area and is consistent with other Council decisions;

that Council resolve to proceed through the PLAN process to apply a three-storey height limit to all prospective development sites with a residential interface in or adjacent to the Mentone Activity Centre east of the railway line and north of Balcombe Road

West/Athanasopoulos

The Notice of Motion be deferred.

Carried

12. Question Time

Barbara Spadinger asked how Council could consider overriding residents concerns with the proposed development at 76 -78 Balcombe Road, Mentone.

The Chief Executive Officer advised the meeting that this issue had been formerly considered by Council during the discussion and determination of item K59 earlier in the meeting.

Monique Last asked how the residents proposed height overlay in Mentone was compatible with Council's advice to agree with a 4 Storey application.

The Chief Executive Officer advised the meeting that this issue had been formerly considered by Council during the discussion and determination of item K59 earlier in the meeting.

Paul Slaney and Andrew McIntosh asked how will Council ensure that the Fraser Group will stick to its permit conditions.

The Chief Executive Officer advised the meeting that Council is aware of the issues raised and has issued directions to comply with permit conditions and that the General Manager Environmental Sustainability would contact Mr Slaney and Mr McIntosh this week.

Andrew and Carol Dawson asked why Council was considering the Fraser Group application when the Former Minister for planning had rejected it.

The Chief Executive Officer advised the meeting that the previous application was disallowed because a panel appointed by the Minister determined that the use was not allowed, when the panel reconvened to consider the Dingley application lodged by Alex Fraser, it adopted an alternate position leaving the way clear for the current proposal.

13. Urgent Business

K 69 295 – 315 Kingston Road, Clarinda

Athanasopoulos/Mckeegan

Council write to the Minister for Planning and the Premier advising them that no response has been received to Council's request for the Minister to call the in the application for the use and Development of the land for the purpose of a Refuse Transfer Station in conjunction with a Materials Recycling Facility.

At this point, an amendment was moved to the motion before the meeting.

West

Once Council has adopted a position on the matter, Council write to the Minister for Planning and the Premier advising them that no response has been received to Council's request for the Minister to call the in the application for the use and Development of the land for the purpose of a Refuse Transfer Station in conjunction with a Materials Recycling Facility,

The amendment lapsed for the want of a seconder.

The meeting then returned to the original motion and upon a vote, **the original motion was carried**

14. Items in Camera

Athanasopoulos/Alabaster

That the meeting be closed to the public pursuant to Section 89(2) of the Local Government Act, in order to consider an item that would prejudice the Council or a person if considered during an open meeting

Carried

There being no further business, the meeting closed at 10.45pm.

ConfirmedHis Worship The Mayor 26 May 2008