

PLANNING SCHEME AMENDMENT REQUEST – 27-33 OLD HEREFORD ROAD, MT EVELYN

Report Author: Executive Officer Strategic Planning
Responsible Officer: Kath McClusky – Director Planning Design and Development
Ward(s) affected: Billanook

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

A request to amend the Yarra Ranges Planning Scheme has been received by the owner of land at 27-33 Old Hereford Road, Mount Evelyn, to enable a two-lot subdivision. A concurrent application for a two-lot subdivision has also been submitted under Section 96A of the *Planning and Environment Act 1987*.

While a permit can be sought for a second dwelling on a lot, as has occurred on this property, the land is in the Low-Density Residential Zone (LDRZ) which has a minimum subdivision size of 4,000 square metres for any new lot created. Hence subdivision is not possible on the subject site which is 5,160 square metres. The amendment request seeks to create an exemption in the planning scheme to allow a reduced lot size through the application of a Specific Controls Overlay.

In order to commence the amendment process, the proponent is requesting Council to seek authorisation from the Minister for Planning to prepare and exhibit an amendment (Amendment C208).

The proponent has now submitted the required information to support an authorisation request.

RECOMMENDATION

That Council

- 1. Request the Minister for Planning authorise the preparation and exhibition of Amendment C208 to apply a Specific Controls Overlay and draft planning scheme permit for the two-lot subdivision of 27-33 Hereford Road, Mt Evelyn, generally in accordance with the attachments to this report.***

- 2. Subject to the Minister's authorisation, exhibit Amendment C208 to the Yarra Ranges Planning Scheme.**
- 3. Receive a further report considering submissions.**

RELATED COUNCIL DECISIONS

At the Council Meeting of 28 October 2014, Council resolved an amended motion in relation to Amendment C143 that proposed to reduce the minimum lot size in the Low-Density Residential Zone in the Yarra Ranges Planning Scheme as follows:

That Council:

1. *Write to the Minister for Planning advising him of Council's decision to support the removal of the schedule to the Low Density Residential Zone to enable consideration of subdivision of land from a minimum lot size of 4000 square metres to 2000 square metres provided it is connected to reticulated sewer in all Low Density Residential Zone areas with the exception of:*
 - (a) *The suburbs of Belgrave, Belgrave Heights, Belgrave South, Tecoma, Upwey, Selby and Upper Ferntree Gully*
 - (b) *Areas within the Bushfire Management Overlay as shown in Attachments 3-10 with the exception of Warburton (Attachment 5).*
 - (c) *Areas within the Erosion Management Overlay that are susceptible to debris flow, shown in Attachment 11.*
 - (d) *Areas of uniform subdivision as identified in Attachment 8*
 - (e) *The Bickleigh Vale subdivision (HO75), shown in Attachment 8*
 - (f) *12 lots outside of the Urban Growth Boundary shown in Attachment 3*
2. *Request the Minister for Planning implement the associated Planning Scheme amendment to introduce the changes to the Yarra Ranges Planning Scheme outlined in this report.*
3. *Request the Minister for Planning implement any associated amendment that may be required to the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan to achieve consistency with Council's decision.*
4. *Direct staff to review existing policy on subdivision to address further subdivision of low-density areas, with a view to amending the Planning Scheme via the Planning Scheme Review and rewrite of the Municipal Strategic Statement.*
5. *Write to all submitters advising them of Council's decision.*

The subject site was not included in 1(b) at the time of the 2014 resolution, however, was subsequently added into the Bushfire Management Overlay through a Ministerial Amendment.

DISCUSSION

Purpose and Background

Purpose

The amendment request submitted by consultants on behalf of the landowner, proposes to:

- Apply the Specific Controls Overlay (SCO) to the site, to exempt the land from the minimum subdivision requirements of the LDRZ to enable subdivision of the land into one 2200sqm and one 2967sqm lot. The detailed requirements of the SCO would be included in a new Incorporated Document to the Yarra Ranges Planning Scheme (Attachment 1). Further details of the amendment proposal is outlined below and in the Explanatory Report (Attachment 2).
- Concurrently apply for a planning permit for a two-lot subdivision under Section 96A (combined amendment and permit process) of the *Planning and Environment Act 1987* (Attachment 3).

Background

The owner of 27-33 Old Hereford Road, Mount Evelyn, has requested that Council amend the Yarra Ranges Planning Scheme to allow subdivision of the land.

The land is 5,160 square metres in size, and in accordance with the provisions of the Low Density Residential Zone can't be subdivided into two lots of at least 4000 square metres each.



Amendment C143

In July 2013, the Minister for Planning amended the minimum subdivision size for lots in the Low Density Residential Zone (LDRZ) from 4000 to 2000 square metres through Amendment VC100. Concurrent with the change, the Minister introduced a schedule to the LDRZ in the Yarra Ranges Planning Scheme to retain the 4000 square meter subdivision size on an interim basis to allow Council time to further consider the change and develop the required rigorous strategic justification to support applying the reduction in Yarra Ranges.

An analysis, that included community consultation, was subsequently undertaken. The report concluded that some areas of Yarra Ranges should retain a 4000 square metre minimum lot size due to a range of factors such as environmental hazard, heritage and neighbourhood character. At this stage the subject site was not affected by one of these factors.

Council subsequently resolved on 28 October 2014 to apply the new 2000sqm lot size to several areas that at the time were outside the Wildfire Management Overlay (now Bushfire Management Overlay), including parts of Mount Evelyn.

Amendment C143 to implement the Council resolution was subsequently prepared as a Ministerial amendment request. The Minister for Planning agreed to consider the amendment and appointed an Advisory Committee to provide advice and consider written submissions on C143.

The Committee report, dated 13 September 2017, recommended that:

- The CFA and the Council should jointly review the proposed LDRZ2 areas together with any proposed or anticipated BMO schedules at a 'desk top' level;
- Where, without the need for further analysis, it is considered that a satisfactory outcome will be achieved through the combination of the LDRZ2 and the BMO, the areas can be included in the LDRZ2; and
- Where further analysis is considered necessary, the areas should not be included in the LDRZ2 until that analysis is undertaken and the outcome demonstrated to be satisfactory.

After considering the recommendations of the Advisory Committee's Report (that was provided directly to the Minister and not Council), the Minister wrote to Council in November 2017 advising that he had determined to refuse Amendment C143, primarily due to the need to prioritise the protection of human life from bushfire. By this time, the Minister had approved an amendment that increased the application of the BMO to a number of areas including 27-33 Old Hereford Road, Mount Evelyn, which by implication placed the site back into the minimum 4,000sqm areas.

The Minister, in refusing Amendment C143, also advised Council to review:

- The housing strategy to identify the need for additional housing in specific towns or areas better suited for growth, rather than a broad application (of LDRZ changes) across most of Yarra Ranges' townships; and

- Review the appropriateness of locating more housing in LDRZ areas at a township level rather than site specific level before considering any additional subdivision.

Planning Permit YR-2018/1032

In April 2019, Council approved a planning permit to allow a second dwelling at 27-33 Old Hereford Road, Mount Evelyn. The land already contained an established dwelling.

In the LDRZ, it is permissible to apply for a second dwelling on a single lot. It does not, however, enable subsequent subdivision of the land.

As part of the permit application, a bushfire assessment was submitted, showing the land could safely accommodate a new dwelling, providing the new dwelling was constructed to a Bushfire Attack Level of at minimum BAL-29, which has been applied as a construction response to a characteristic within the landscape. This requirement now forms part of the planning permit.

The policy at Clause 21.04-1 of Yarra Ranges Planning Scheme also directs that a second dwelling in the LDRZ “should” only be constructed on a site which has an area of at least 8000 square metres. Hence the granting of a permit is possible even if it does not meet the minimum lot size policy.

An extension of time has now been approved for this permit, specifying that the development must commence by 15 May 2023 and be completed by 15 May 2025. Under this permit the land-owner can build a second dwelling regardless of whether an amendment to the planning scheme to enable subdivision is progressed.

Department of Environment, Land, Water and Planning (DELWP) Advice on the Amendment Proposal

Council officers contacted DELWP to obtain their preliminary views. DELWP expressed, in summary:

- Consistent with the Minister’s decision on C143, changes to the LDRZ to allow for more housing should be considered at a strategic level, rather than a site level;
- The Minister is unlikely to support any amendment to reduce the current minimum lot requirement without a detailed township-level assessment that demonstrates the need for additional housing and identifies the most suitable locations, taking into account bushfire risk; and
- If the proponent wishes to proceed to seek authorisation, they will need to provide appropriate amendment documentation, showing how the proposal is strategically justified.

Issues

Strategic Justification

As explained above under 'DELWP Advice on the Amendment Proposal', a key aspect of DELWP's position in relation to the Low Density Residential Zone, is that any changes to subdivision requirements should be considered at a strategic and township level, rather than a site level. DELWP expressed that it was unlikely to approve a site specific request to change subdivision requirements without a detailed township-level assessment of housing need, which has been communicated to the applicant.

The proponent have acknowledged this risk, yet have advised that they believe the amendment is strategically justified and consistent with both State and local planning policy in the Yarra Ranges Planning Scheme. In particular:

- Clause 16.01-5S Rural Residential Development:
 - The site is located within a fully developed residential precinct of Mt Evelyn and is connected to reticulated infrastructure (water, sewerage, power, telecommunications) and close to social and community infrastructure.
- Clause 21.04-1 Residential:
 - The subdivision of the current site to create a second site for a single storey dwelling is consistent with the residential strategies of the planning scheme of containing infill development within established residential areas.
 - The "character" of Old Hereford, Hereford & Kookaburra Lane is a fully developed residential precinct consisting of 53 lots which range in area from 1000-1500m². The creation of a new lot (2200m²) for the approved dwelling is consistent with the existing settlement pattern of this fully developed residential precinct.
 - The subdivision and subsequent development of a dwelling would not change the overall character of this developed residential precinct.
 - The subdivision of the site to create a 2200m² lot is consistent with the zone of low-density single dwelling residential use.
 - The proposal does not alter the zoning of the land but merely allows for the subdivision of an approved dwelling at a density consistent with the neighbouring properties.
- Clause 21.08 Subdivision:
 - The design of the subdivision for the location of the approved dwelling is within the established garden area of the site and lower than road level (19m setback) which ensures no impact on any landscape values.
 - The proposal will provide for a range of lot sizes in appropriate locations to meet the needs of a diverse range of household types. The creation of a 2200m² lot is consistent with the existing settlement pattern of this precinct.

- Clause 42.03 Significant Landscape Overlay Schedule 22 - Foothills and Rural Township:
 - The creation of a 2200m² lot is consistent with the SLO which identifies that the foothill areas at the base of the Dandenong Ranges contain houses which, although occurring at more suburban densities, are well integrated into an environmental setting.

Supporting Documentation

Council officers have worked in close communication with the proponent over the past two years to assist them in making an appropriate amendment request.

The proponent has now resolved and submitted the required documentation to support the amendment proposal.

Bushfire Risk

In submitting an amendment for land in an identified area of bushfire risk, a proposal must address Clause 13.02-1S Bushfire Planning of the Planning Scheme, which includes a number of assessment criteria.

One of the criteria in Clause 13.02 states that population should be directed to low-risk locations, being those with a radiant heat flux of 12.5 kilowatts/square metre. The applicant has submitted a bushfire report that suggests the site can adhere to this requirement.

Based on the potential for bushfire risk, the draft planning permit for subdivision also includes a condition that the new lot include a building envelope that is capable of achieving a setback from a bushfire hazard to enable construction standard of BAL 12.5. Other conditions relating to bushfire risk management have also been included in the draft permit.

If authorisation is provided by the Minister for Planning to prepare and exhibit Amendment C208, the amendment and bushfire report will be sent to the CFA for formal comment.

Options considered

Option 1 – Seek authorisation to commence a planning scheme amendment

The proponent has worked with Council over the past two years to prepare a site-specific amendment request and has addressed matters relating to strategic justification, bushfire and draft planning permit conditions. It is reasonable that the amendment now be progressed to the Minister for Planning for further consideration.

Option 2 – Not support the amendment request until the completion of a new Housing Strategy

Council officers are currently preparing a new Housing Strategy to replace the existing 2009 Strategy. A planning scheme amendment will be prepared to implement the land use actions of the Strategy following its adoption by Council.

The strategy will provide a clear strategic framework for where further residential development should be located in Yarra Ranges and Mt Evelyn. DELWP has advised that it would prefer Council prepare a township-level assessment that demonstrates the need for additional housing and identifies the most suitable locations, rather than a site-specific approach.

Recommended option and justification

It is recommended Option 1 be pursued. The proponent has responded to previous feedback and provided the strategic justification and amendment documentation to support the request at the standard required. The proponent is aware of the previous advice from DELWP and has confirmed they still intend to proceed.

In considering the request the Minister for Planning will need to consider if a site-specific amendment is appropriate.

FINANCIAL ANALYSIS

As the request is sought by an individual (rather than initiated by Council) all costs associated with the amendment, including statutory fees required under the *Planning and Environment (Fees) Regulations 2016* and advertising costs must be paid for by the proponent.

Use of Council resources will be limited to Council officer time.

APPLICABLE PLANS AND POLICIES

The proposal relates to the following objective of the Council Plan 2021-2025:

- Quality Infrastructure and Liveable Places - Quality facilities and infrastructure meets current and future needs. Places are well planned and are hubs of activity that foster wellbeing, creativity, and innovation.
- Clauses 21.04:Land Use, 21.08:Subdivision and 32.03:Low Density Residential Zone of the Yarra Ranges Planning Scheme.
- Housing Strategy 2009. While the Strategy does consider Mount Evelyn suitable for housing growth, the area of Mount Evelyn described for growth in the Strategy did not include LDRZ land. Council is now preparing a new Housing Strategy which will consider future housing need across the municipality.

RELEVANT LAW

The proposed planning scheme amendment has been prepared in accordance with the legislative requirements of the *Planning and Environment Act 1987*.

SUSTAINABILITY IMPLICATIONS

Environmental Impacts

The proposal must address bushfire risk in an acceptable way as discussed above. No other environmental implications are anticipated.

Social Impacts

There would be no direct social impacts of the proposal, if approved. However, a precedent of inappropriate subdivision within the LDRZ may result in an undesirable development pattern.

Economic Impacts

The approval of the application would have negligible economic impacts on Mount Evelyn.

COMMUNITY ENGAGEMENT

If Council supports the amendment proposal, and resolves to seek authorisation from the Minister for Planning to prepare and publicly exhibit an amendment, and the Minister grants authorisation, the amendment would be subject to standard notification requirements for planning scheme amendments as required under the *Planning and Environment Act 1987*, including:

- Notification in a local newspaper;
- Letters to affected property owners and other key stakeholders;
- Information available on Council's website and Council offices; and
- Direct notification to relevant government agencies and departments.

A further report would be prepared for Council to consider all submissions received through the exhibition process.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

Council and the proponent have both informally consulted with the CFA on the Bushfire report prepared to support the amendment request.

If the amendment is authorised for public exhibition, Council will seek formal comments from the CFA.

RISK ASSESSMENT

If the amendment proceeds and is approved, there is a risk that other site-specific amendments of a similar nature may follow, creating a precedent. Considering these

issues on a site by site and piecemeal way, would be contradictory to the Minister's letter directing Council to consider the issues on a broad strategic level.

The preparation of a new Housing Strategy that is currently underway, will consider future housing need across the municipality at a broader strategic level.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

1. Specific Controls Overlay Incorporated Document
2. Amendment C208 Explanatory Report
3. Draft Planning Permit
4. Proponents Planning Report