

Yarra Ranges Shire Council

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27-33 Old Hereford Road  
MOUNT EVELYN

Applying Special Control Overlay 16  
(SCO16) to facilitate a proposed two lot  
subdivision of the land

Planning Assessment Report

May 2022

## I. Overview

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- Subject site:** 27-33 Old Hereford Road, Mt. Evelyn (Lot 1 LP187625)
- Site dimensions:** 81.08m (frontage)  
64.31m (depth)  
5167m<sup>2</sup> (site area)
- Zoning:** Low Density Residential
- Overlays:** Bushfire Management (BMO2)  
Significant Landscape (SLO22)
- Proposal:** Apply Special Control Overlay Schedule 16 (**SCO16**) to the land to facilitate a two-lot subdivision of the land.

**Planning permit YR-2018/1032**, issued in May 2019 and later extended until 15 May 2023 (commencement date) and 15 May 2025 (completion date) allows for the construction of a second dwelling on the site.

The purpose of the amendment is to facilitate the subdivision of the site into two lots (2200m<sup>2</sup> and 2967m<sup>2</sup>).

Lot 1 will contain the proposed dwelling.

Lot 2 will contain the existing dwelling.

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## 2. Site Description

The subject site is Lot 1 on Title Plan I87625X.

The site is rectangular and has a frontage to Old Hereford Road of 81.08m and a depth of 64.31m giving a total area of 5167m<sup>2</sup>.

There are no restrictions, covenants, easements or Section 173 Agreements applying to the land.

The subject site is located on the west side of Old Hereford Road, Mt. Evelyn.

Topographically, the site slopes to the west (rear) and is currently developed with a single dwelling and associated outbuilding. The lot gains access via a gravel crossover off Old Hereford Road and contains scattered vegetation.

The attached aerial image identifies the subject site and the surrounding area.



All reticulated services [sewer, water, electricity, Telstra] are available to the site and surrounding area.

### **3. Surrounding area**

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The subdivision pattern along Old Hereford Road is typically one of 1200-1500m<sup>2</sup> lots, serviced by reticulated infrastructure which are clearly developed for conventional residential purposes. No nearby lots (other than the subject site) conform to the conventional 0.4ha sized lots of the Low Density Residential Zone (LDRZ). The application of the LDRZ was seemingly a response being in response to the fact that these areas were not sewered in the 1970's.

The LDRZ areas of Mount Evelyn were serviced with reticulated sewer throughout the mid to late 1980's (1985-88).

The wider surrounding area is host to a variety of allotment sizes and configurations. However, the area predominantly contains allotment sizes in the order of 1,000-2,550m<sup>2</sup> characterised by single family dwellings. The subject site is one of the largest sites within this residential precinct

In that context, the immediate land use pattern in the area is as follows:

- North: 35 Old Hereford Road is a 1,165m<sup>2</sup> lot that contains a single dwelling and associated outbuilding.
- Northwest: 112 Hereford Road is a 2,548m<sup>2</sup> lot that contains a single dwelling and associated outbuilding. The site contains scattered vegetation.
- West: 116B Hereford Road is an irregular shaped, 2,127m<sup>2</sup> lot that contains a single dwelling and associated outbuilding. The site contains scattered vegetation.
- West: 116 Hereford Road is a 2,172m<sup>2</sup> lot that contains a single dwelling and associated outbuilding.
- Southwest: 114 Hereford Road is a 1,226m<sup>2</sup> lot that contains a single dwelling and associated outbuilding.
- South: 25 Old Hereford Road is a 1,400m<sup>2</sup> lot that contains a single dwelling and scattered vegetation.

### **4. Yarra Ranges Planning Scheme**

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The Yarra Ranges Planning Scheme (YRPS) obliges the planning authority to decide whether the proposal will produce 'acceptable outcomes' in terms of the decision guidelines of Clause 65, which identify:

- The Planning Policy Framework and the Municipal Planning Strategy;
- The purpose of the zone, overlay or other provision;
- Any matter required to be considered in the zone, overlay or other provision;
- The orderly planning of the area;
- The effect on the amenity of the area.

Of particular local relevance is the MSS at Clause 21.

At **Clause 21.4** - Objective 1 (Housing Location), the strategy for Low Density residential areas seeks to ensure that land in the LDRZ remains committed to low density, single dwelling residential use as the primary function of the area.

The proposal is considered consistent **Clause 21.04-1** in that:

- The proposal does not alter the zoning of the land but merely allows for the subdivision of a Council approved dwelling at a density consistent with the neighbouring properties.
- In that context, the “character” of Old Hereford, Hereford & Kookaburra Lane is a fully developed residential precinct consisting of 53 lots which range in area from 1000-1500m<sup>2</sup>. The creation of a new lot (2200m<sup>2</sup>) for the approved dwelling is therefore consistent with the existing settlement pattern of this fully developed residential precinct.
- The subdivision of the site to create a 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 subdivision and subsequent development of a dwelling will not change the character of this developed residential precinct.
- The subdivision of the site to create a 2200m<sup>2</sup> lot is consistent with the zone of low-density single dwelling residential use.

At **Clause 21.8** - Objective 1 (Subdivision in Residential Areas) seeks to ensure that subdivision in (among other places) the Foothills, retains environmental and landscape values. At **Clause 21.8** - Objective 2 (Subdivision design) seeks to promote subdivision that enhances neighbourhood character. As noted above, the proposed lot sizes of 2200m<sup>2</sup> and 2967m<sup>2</sup> comfortably align with the prevailing settlement pattern and allow for dwellings in a spacious and vegetated setting.

Council also requires that applications be supported by a development proposal. In this instance, the request is supported by the Council approval of YR 2018/1032.

It is considered that the subdivision is therefore consistent with Clause 21 of the YRPS which identifies the strategy for LDRZ as ensuring these areas remain committed to low density single dwelling use, which is reflected in the issue of planning permit YR 2018/1032.

## **5. Regional Strategy Plan**

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The Upper Yarra and Dandenong Ranges Authority established under the *Upper Yarra Valley and Dandenong Ranges Authority Act 1976* prepared the Regional Strategy Plan, enabling increased protection for the special features and character of the region. The 'Regional Strategy Plan' (RSP) historically provided the basis for protection of the unique character of much of the residential area in the Shire. The RSP when developed in the late 1970's through to the early 1990's focused on:

- Improving the current social and community facilities of the urban areas, through the containment and restriction of growth within the urban areas (consolidation); with expansion of the economic base for both agriculture and tourism.
- Restricting the region's growth was implemented through the application of "Township Policy" areas, which represented the "strategic" basis that was overlaid on top of the local government planning scheme zones.
- Delivering a strategic approach given that it was developed well before the introduction of planning strategy into local government planning schemes. The VPP's were only developed after local government amalgamation (1995 onwards) which introduced strategy and local policy into planning schemes
- Limiting township expansion, although the confinement of the boundaries would limit development to the renewal or redevelopment (intensification) of the existing urban areas.
- The efficient provision of infrastructure through township policy areas (Areas A and B) although these had been removed by 1992, given the sewer program that had been implemented throughout the region in the mid 1980's.

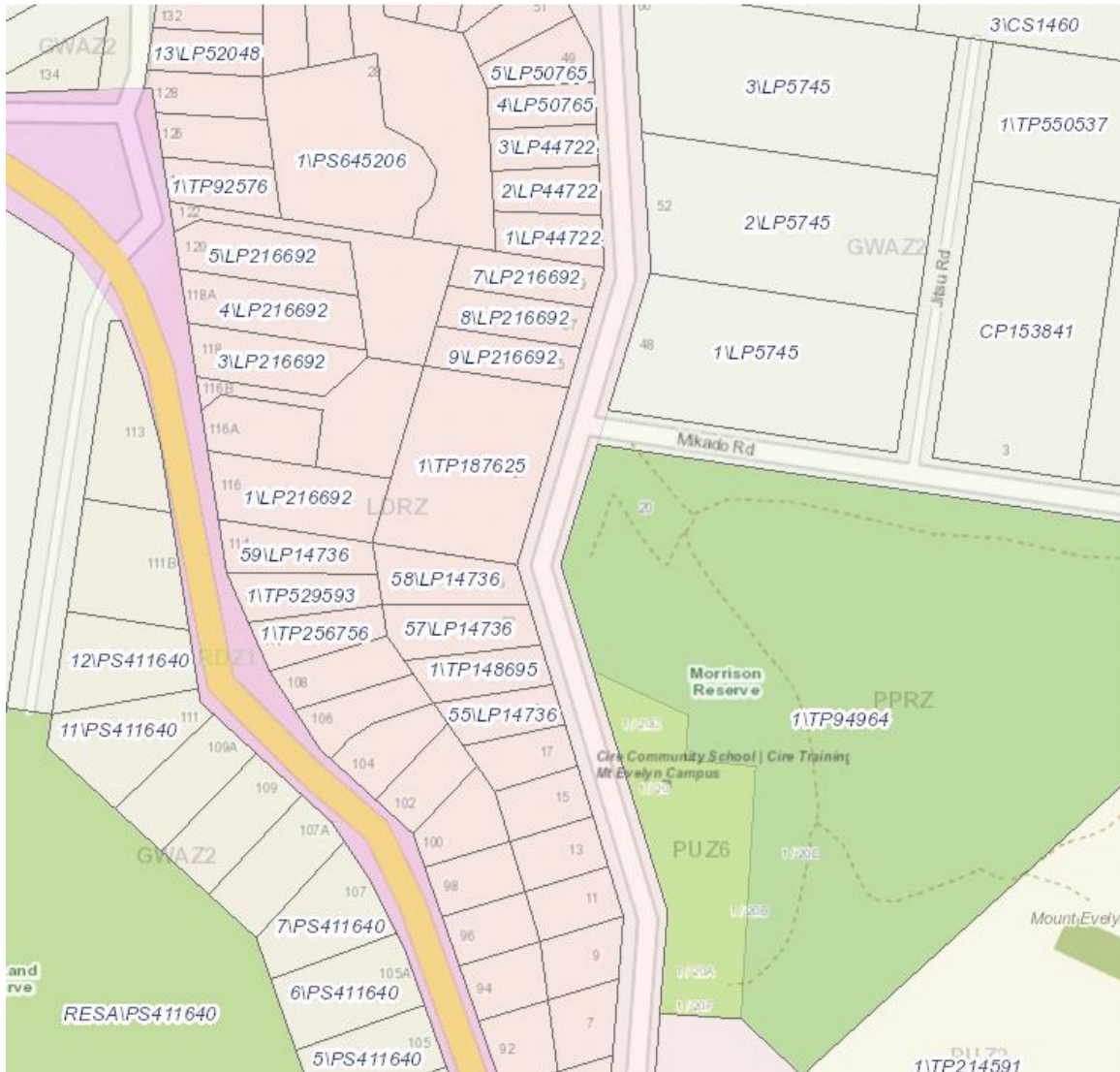
In summary, the purpose of the RSP was to define the extents of the various townships throughout the region by containing urban development, well before the Urban Growth Boundary (UGB) was ever considered for Melbourne (2003).

The subsequent development of local strategy within the YRPS now has to accord with Plan Melbourne while the UGB contains metropolitan development.

The introduction of the UGB has in effect superseded but is obviously consistent with the UYDRVA Strategy in the confining of urban areas within existing residential zones. Hence all strategies within Clause 21 of the YRPS will automatically comply with both Plan Melbourne and the UYVDRVA Regional Strategy Plan (RPS).



## 6. Statutory Planning Controls



### 6.1 Zone

As indicated on the above plan, the subject site is zoned **Low Density Residential (LDRZ)** under the Yarra Ranges Planning Scheme.

There is to be no change to the zoning of the land.

The purpose of the LDRZ is

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

The purposes of the Low-Density Residential Zone are satisfied as:

- The subdivision of the site into 2 lots is consistent with the RSP given that subdivision is contained within the existing zone and the UGB (i.e. “there is no expansion”);
- In regard to “*the containment of urban development to a level compatible with the conservation and environmental features of the region*”, the issue of the planning permit for the dwelling demonstrates that there would be no impact on these “features” as it would merely create a “new boundary line”.

Within the zone, a permit is required to subdivide land. The zone notes that each lot to be created in the LDRZ must be at least the area specified in the schedule to the Zone being:

- 0.2ha if each lot is to be connected to reticulated sewer.
- 0.4ha if there is no sewerage connected.

While the proposal no longer seeks to modify the zone or schedule, it is considered relevant that Ministerial amendment VCI00 (2013) introduced a two-tiered subdivision regime into the LDRZ depending on the availability of sewerage to the site.

The Ministerial *Residential Advisory Committee* found that the minimum lot size of 0.4ha in sewered areas is not required for effluent disposal and that in some cases smaller lots might be appropriate.

As noted, the entire LDRZ precinct that includes No. 27-33 Hereford Road Mt. Evelyn is connected to reticulated sewer and so qualifies for consideration for subdivision to lots of 0.2ha.

Notably, two neighbouring Councils to Yarra Ranges have modified their LDRZ schedules to reflect the changes introduced by VCI00:

- **Cardinia Shire Council** amended its scheme via Amendment C188 in October 2016 to permit subdivision to 0.2ha where land “had not yet been subdivided/developed into existing low density residential at 0.4ha lot size and therefore an established residential had not been established and where land is not affected by significant environmental or topographic constraints<sup>1</sup>”.

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<sup>1</sup> Independent Panel Report



- **Casey City Council** amended its scheme via Amendment C198 to implement the Housing Strategy in November 2019. Part of this amendment also introduced a LDRZ schedule “to allow smaller minimum lot sizes in areas that are connected to reticulated sewerage and that are relatively unconstrained by landscape character, environmental or biodiversity values<sup>2</sup>”.

## 6.2 Overlays

The site is also within a **Bushfire Management Overlay (BMO2)**.

BMO2 stipulates the following relevant requirements for an application to construct a single dwelling on a lot:

- The dwelling must be constructed to BAL-29;
- Defendable space is to be provided for a distance of 30 metres around the dwelling or to the property boundary, whichever is the lesser and maintained in accordance with the vegetation management requirements of Clause 52.47 with a variation that canopy of trees must be separated by at least 5 metres.

(See Sections 10 and 11 below for further details).

The site is finally within a **Significant Landscape Overlay (SLO22)** which covers the ‘Foothills and rural townships’ of the Shire. It is acknowledged that Yarra Ranges is committed to preserving the unique areas of the municipality.

Schedule 22 has been informed by the Shire of *Yarra Ranges Neighbourhood Character Study*, the purpose of which is to preserve and enhance the special residential areas of the Shire.

SLO22 identifies (among other townships) Mt Evelyn as being a foothills area at the base of the Dandenong Ranges containing houses which although occurring at more suburban densities are well integrated into an environmental setting. Private gardens are spacious with a mix of native and exotic vegetation.

Insofar as it is relevant to the proposal, the purposes of SLO22 include:

- To recognise and conserve the environmental and visual sensitivity of residential areas
- To maintain vegetation as a dominant element of the landscape and encourage retention and regeneration of native vegetation

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<sup>2</sup> Independent Panel Report

- To ensure development is sensitive to the natural characteristics of the land including slope, terrain and any existing vegetation
- To ensure setbacks are generous, consistent with nearby dwellings and allow sufficient space for mature plantings
- To ensure site cover maintains the ambience and sense of spaciousness
- To ensure that buildings and works retain an inconspicuous profile and do not dominate the landscape
- To ensure that the health of existing trees is not jeopardised by new development
- To maintain an absence of front fences and informal rural character with either open style front fencing or an absence of front fencing

It is acknowledged that the landscape significance of residential areas in the Shire is attributed to the quality of the environment which includes the vegetation and its relationship to the broader landscapes which contribute to a 'sense of place'. The above purposes are satisfied by the approved dwelling and the proposed subdivision.

## **7. Proposed Planning Controls**

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A **Special Control Overlay (SCO16)** is to be applied the land.

The purpose of the SCO is:

*To apply specific controls designed to achieve a particular land use and development outcome in extraordinary circumstances.*

Land affected by the SCO may be used or developed in accordance with a specific control contained in the incorporated document. The specific control may:

- Allow the land to be used or developed in a manner that would otherwise be prohibited or restricted.
- Prohibit or restrict the use or development of the land beyond the controls that may otherwise apply.
- Exclude any other control in this scheme.

The Incorporated Document is attached to this Planning Report.

## **8. Subdivision assessment**

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The Low Density Residential Zone at Clause 32.03-5 (**Application requirements**) for 'Subdivision' identifies the following information to be provided:

*An application must be accompanied by a site analysis, documenting the site in terms of land form, vegetation coverage and the relationship with surrounding land, and a report explaining how the proposed subdivision has responded to the site analysis.*

Among other things, the report must show for each lot a building envelope and driveway to the envelope; and any existing vegetation. It also must show how the proposed subdivision relates to the existing or likely use and development of adjoining and nearby land. A site analysis is attached at Appendix I and it illustrates the location of:

- Existing dwelling and outbuildings;
- Vegetation;
- New driveway access for the existing dwelling, with lot 2 to utilise the existing driveway;
- Proposed lot boundary to follow the existing driveway with a boundary of 66.68m and frontage to Old Hereford Road of 29m to give an overall area of 2200m<sup>2</sup>;
- Lot 1 for the existing dwelling would be located on a lot of 2967m<sup>2</sup> with a frontage of 52m;
- The site for lot 2 is relatively flat.

As already noted, in terms of the “relationship with the surrounding land”, this part of Mt Evelyn comprises of 53 lots between Old Hereford, Hereford and Kookaburra Lane and it is a fully developed residential precinct.

In terms of the building envelope, the endorsed plans for planning permit YR – 2018/1032 identify the new dwelling as being:

- Setback 19m from the frontage;
- Setback 18.5m from the rear boundary;
- Setback 3.0m metres from the north boundary;

A new garage would be located at the end of the existing driveway, approx. 28metres from the north boundary.

At Clause 32.03-6, the **Decision guidelines** for subdivision include:

- *The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.*
- *The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.*

With respect to the initial decision guideline, Lot 2 (2200m<sup>2</sup>) is located within the garden of the subject site being occupied by perimeter planting and lawn areas.

The arborist report that accompanied the planning permit application for the dwelling identified a total of 18 trees of which:

- Seven (7) had nil retention values (recognised weed species);
- Five (5) low retention;
- Three (3) with moderate
- Three (3) with high retention value

Five trees would be required for removal around the building envelope for the dwelling, while 5 of the 6 trees identified as high & moderate retention would be retained.

The Decision guideline regarding the provision of utility services is met as the site and surrounds are located in a fully developed residential neighbourhood with access to all reticulated infrastructure.

Stormwater drainage is connected to lot 1 and the new dwelling and garage would be connected to the existing outfall located in the south-western corner of the site.

Both drainage and sewerage infrastructure are located within the common easement that is located at the rear of all lots within LP 14736.

## **9. Planning Permit**

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Council's assessment of the planning permit application for a second dwelling on the subject site is also considered relevant to the request for a two-lot subdivision.

Planning Permit YR-2018/1032 has been issued by Council for the development of the land for a dwelling.

The delegate report of the Responsible Authority identified as follows:

*Given that that the subject site is situated near the periphery of the Neighbourhood Residential Zone (approx. 360m away), and the majority of surrounding lots are below the minimum subdivision size of 4,000m<sup>2</sup> (typically 1,000-2,000m<sup>2</sup>) the site lends itself for more intensive development..... the site benefits from urban infrastructure including sewerage and a sealed road. Based on these considerations and the context of the surrounding area, the proposed use of a second dwelling is deemed appropriate in this circumstance.*

*The siting of the proposal is reasonable as it is generously setback with a frontage of 19m and a minimum side boundary of 3m. This is acceptable as it will soften its impact on the streetscape and have greater separation between dwellings than the existing pattern of development. The proposal will have a maximum height of 7m; however, this is largely*

*unavoidable due to the east-west 1.2m fall of the land. Nevertheless, the height is considered acceptable in this circumstance as it is consistent with the height requirements of the Significant Landscape Overlay Schedule 23, and will be shorter and less bulky than the double storey dwelling to the north (35 Old Hereford Road). The proposal will also contain non-reflective materials with a muted colour scheme that will help it blend with the natural tones of the surrounding environment.*

*The proposal will be situated within 4m of the base of a significant tree (tree #15), however based on the findings of the Arborist Report it was determined that it will remain viable as it will have a minor TPZ encroachment. The proposal otherwise complies with all of the other buildings and works requirements under Schedule 23 of the Significant Landscape Overlay.*

## **10. Bushfire consultations**

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The above delegate report assessment under clause 53.02 for the dwelling application identified that the CFA had no objection to the proposed development subject to the following condition:

- The Bushfire Management Plan prepared by Fire Front Consultancies, Version 1 and dated 04/07/2018, must be endorsed to form part of the permit and must not be altered unless otherwise agreed in writing by the CFA and the Responsible Authority.

A BAL assessment<sup>3</sup> has been completed for both the proposed and the existing dwelling and it identifies (at Section 5.1 of the assessment):

- The data outlined in Bushfire Hazard Assessment and Bushfire Management Statement (section 4) above reveal that the defendable space appropriate for the subdivision of this land is 50 metres of property boundary. This exceeds the defendable space minimum requirement of this BMO2 clause.
- Section 4.2.4 identifies that the vegetation on the site is such that tree canopy separation is readily achieved and will not require the removal of native vegetation.
- The combination of the factors of:
  - the endorsed BAL -29 standard for the new dwelling;
  - defendable space being well accommodated on site; and
  - tree canopy management being readily met on site,all being met shows that Clause 44.06 of the YRPS is satisfactorily applied to this subdivision proposal.

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<sup>3</sup> Tree Wishes Pty Ltd – 27 Old Hereford Road, Mount Evelyn – Sept 2021

The proposal is considered to satisfy the objectives and mandatory standards of the clause. The following can be concluded from the above assessment:

- The dwelling is located in an area mostly cleared of vegetation. The level of risk is acceptable due to acceptable vegetation management requirements and allowable vegetation removal within the defendable space distances. [L]  
[SEP]
- The defined defendable space requirements can be practically implemented for the site in accordance with the recommendations of the CFA. [L]  
[SEP]
- The location, type and layout of existing vegetation will not increase the bushfire risk to the proposed development or the adjacent area. The surrounding area includes dwellings in a residential setting. [L]  
[SEP]
- Static water supply and access to the water supply meet the requirements of the CFA.
- Access meets the requirements of the CFA. [L]  
[SEP]

The existing dwelling at 27-33 Old Hereford Road was constructed prior to 2009. As the property is covered by a Bushfire Management Overlay the 10/50 rule applies.

At the request of Council, an addendum to the Bushfire Management Assessment (**12 May 2022**) specifically responded to the criteria in Clause 13.02-IS (Bushfire Hazard Identification and Assessment) and it noted that that clause requests that bushfire hazards (such as vegetation, topographic and climatic conditions) are identified and that an appropriate risk assessment is performed.

Specifically, and as required by Clause 13.02-IS, this has now been performed at the following scales:

- Landscape conditions up to 20km [L]  
[SEP]
- Local conditions up to 1km [L]  
[SEP]
- Neighbourhood conditions up to 400m [L]  
[SEP]
- The site [L]  
[SEP]

The assessment is included in Addendum I of the attached report of 'Tree Wishes'.

## **11. Proposed Bushfire permit conditions**

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Proposed conditions ensuring how bushfire risk is managed for the proposed two lot subdivision have been included in the draft planning permit for subdivision in consultation

with the CFA. This is consistent with Clause 13.02-IS (Bushfire Planning) which gives priority to directing development into low-risk locations and ensuring the availability of and safe access to area where human life can be protected.

The conditions are also consistent with recent amendments supported by DELWP to address bushfire risk (see Casey C231-DPO24; Campaspe C118 – DPO11).

Based on the potential for bushfire risk, the draft planning permit for subdivision that has been applied to the site requires (among other things) the following:

- Lot 2 must include a building envelope that is capable of achieving a setback from a bushfire hazard to enable a construction standard of BAL 12.5 (equivalent to a radiant heat exposure of 12kilowatts/square metre) under AS 3959-2018 (*Construction of Buildings in Bushfire-prone Areas - Standards Australia, 2018*); or that is located a sufficient distance from the hazard vegetation that a building may be sited to achieve compliance with a BAL 12.5 construction standard.
- Any vegetation located in the setback between a future dwelling and a bushfire hazard must be managed in accordance with defensible space standards as set out in Table 6 of Clause 53.02.
- The bushfire protection measures forming part of the dwelling permit shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis.

These conditions are consistent with the existing permit (YR-2018/1032) and with Casey DPO24 and proposed Campaspe DPO11.

## **12. Conclusion**

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The proposal to apply the Special Control Overlay (SCO16) to land already zoned LDRZ will facilitate the subdivision into two of an uncharacteristically large 5167m<sup>2</sup> lot in Mt. Evelyn to create a lot for a dwelling that has already been approved by Council. This outcome is consistent with the assessment by the Responsible Authority of YR-2018/1032 based on:

- The site analysis and design response plans;
- Opportunities and constraints of the site;
- Other Planning Scheme overlays that have been assessed (BMO, SLO) which has demonstrated that the site can be developed.
- The location within the BMO which has been assessed and approved by the C.F.A. as being suitable for a dwelling.



The creation of a 2200m<sup>2</sup> site within the fully developed residential precinct of Old Hereford Road Mt. Evelyn is consistent with the subdivision pattern and neighbourhood character and would address the anomaly of having two dwellings on a single lot.

Based on the potential for bushfire risk, the draft planning permit for subdivision that has been applied to the site requires (among other things) that the new lot includes a building envelope that is capable of achieving a setback from a bushfire hazard to enable construction standard of BAL 12.5; or be located a sufficient distance from the hazard vegetation that a building may be sited on the lot to achieve compliance with a BAL 12.5 construction standard.

The inclusion of the site within the SCO schedule is considered appropriate and cannot create an undesirable precedent, given the planning approval for the development of this site for a dwelling.

The proposed subdivision does not rely on the application of the minimum standards, but will provide for a generous lot and building envelope designed to allow for the approved dwelling to be constructed to meet the BMO standards.

In that sense, the design represents an “reasonable and acceptable outcome” that results in a net community benefit.

## **Attachments**

Copy of Title

Approved Planning Permit and Endorsed Plans

Site Analysis and Subdivision Plan of the land

Draft Planning Permit

Draft Incorporated Document

Tree Wishes Report