

AMENDMENT C208: 27-33 OLD HEREFORD ROAD, MOUNT EVELYN

Report Author: Executive Officer Strategic Planning
Responsible Officer: Director Planning and Sustainable Futures
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

At the Ordinary Council Meeting of 14 May 2022 Council resolved to prepare and exhibit a combined Planning Scheme Amendment C208 and Planning Permit application (YR-2022/512) for 27-33 Old Hereford Road, Mount Evelyn (the site).

Amendment C208 proposes to apply Schedule 2 of the Low Density Residential Zone (LDRZ) the site, to allow the subdivision of the land into one 2200sqm and one 2967sqm lot.

The amendment proposes a concurrent planning permit (YR-2022/512) for a two-lot subdivision under Section 96A (combined amendment and permit process) of the *Planning and Environment Act 1987*.

The amendment was exhibited between 13 October 2022 to 13 November 2022 with a total of 7 submissions received during the exhibition period. Of the 7 submissions, the one opposing submission was subsequently withdrawn.

RECOMMENDATION

That Council

- 1. Consider the submissions made in response to the exhibition of Planning Scheme Amendment C208 and Planning Permit Application YR-2022/512.***
- 2. Adopt Amendment C208 to the Yarra Ranges Planning Scheme generally in accordance with the Attachments to this report.***
- 3. Submit Amendment C208 to the Yarra Ranges Planning Scheme to the Minister for Planning for approval.***
- 4. Notify the proponent and submitters of Council's decision.***

RELATED COUNCIL DECISIONS

At the Council Meeting of 14 June 2022, Council resolved to:

- *Seek authorisation from the Minister for Planning to prepare and exhibit the combined Planning Scheme Amendment C208 and Planning Permit application (YR-2022/512) for the two-lot subdivision of 27-33 Hereford Road, Mt Evelyn;*
- *Pending the Minister's authorisation, exhibit the combined Planning Scheme Amendment C208 and Planning Permit application (YR-2022/512); and*
- *Receive a further report considering submissions.*

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

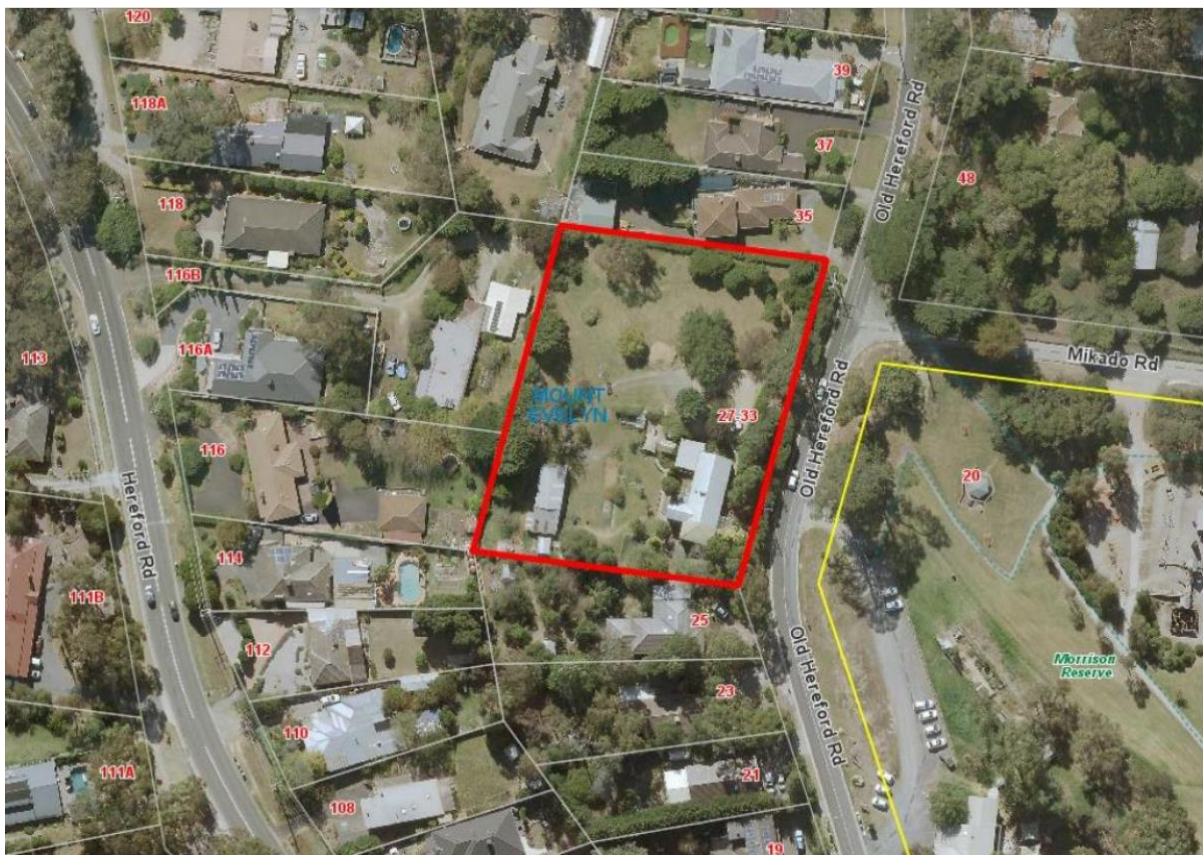
The combined Planning Scheme Amendment C208 and Planning Permit application (YR-2022/512) was exhibited from 13 October 2022 to 13 November 2022.

The purpose of this report is to discuss the submissions received during the exhibition period and outline the next steps to enable approval of the amendment.

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 site.

The land is 5,160 square metres in size, and in accordance with the provisions of the Low Density Residential Zone, is unable to be subdivided into two lots of at least 4000 square metres each. A combined amendment and planning permit application is required to facilitate the subdivision and creation of a lot (2200m²) to accommodate a new dwelling previously approved by YR 2018/1032.



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.

At the time of approval, the policy at Clause 21.04-1 of the Yarra Ranges Planning Scheme also directed 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 was 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.

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 Page 113 Agenda Item 10.2 Council Meeting Agenda 14 June 2022
- Review the appropriateness of locating more housing in LDRZ areas at a township level rather than site specific level before considering any additional subdivision.

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

Prior to the Minister authorising the amendment for exhibition, and consistent with the Minister's decision on Amendment C143, DELWP advised that changes to the LDRZ to allow for more housing should be considered at a strategic level, rather than a site level.

The department advised that 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.

In response to DELWP's advice, the proponent subsequently provided appropriate strategic justification that was satisfactory to enable the Minister to authorise exhibition of the amendment.

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.

The amendment and planning permit were sent to the CFA for formal comment during the exhibition period. The feedback is included in the submission section below and summarised in Attachment 1 to this report.

Key Issues

Submissions

A total of seven submissions were received in response to the amendment. A summary of submissions is at Attachment 1 and further discussed below.

Submission 1: Yarra Valley Water

The amendment was referred to Yarra Valley Water as a referral authority.

Yarra Valley Water consents to the granting of a planning permit subject to the owner of the subject land entering into an agreement with Yarra Valley Water for the provision of water and sewerage services, as well as providing a copy of the Plan of Subdivision to Yarra Valley Water prior to certification.

Response to submission: Yarra Valley Water's position is noted.

Recommendation: No change required,

Submission 2: Environment Protection Authority

The amendment was referred to the Environment Protection Authority (EPA) as a referral authority. They deemed the proposal to be low risk in relation to risk of harm from pollution or waste and advised they will not be making a submission.

They have requested no further communications in respect of this proposal.

Response to submission: The EPA's position is noted.

Recommendation: No change required,

Submission 3: AusNet

The amendment was referred to AusNet as a referral authority. AusNet does not object to the issue of a planning permit provided:

- The plan of subdivision is submitted for certification and must be referred to AusNet Electricity Services Pty Ltd.
- The applicant enters into an agreement with AusNet Electricity Services Pty Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision, including a payment to cover the cost of such work will be required.
- The applicant provides electricity easements internal and external to the subdivision in favour of AusNet Electricity Services Pty Ltd to service the lots on the plan of subdivision and/or abutting lands as required by AusNet Electricity Services Pty Ltd. The provision of reserves for electricity substations may also be required.

Response to submission: AusNet's position is noted. Draft permit condition address the matters raised in AusNet's submission.

Recommendation: No change required.

Submission 4: Melbourne Water

The amendment was referred to Melbourne Water as a referral authority. Melbourne Water stated they do not object to the proposed subdivision.

Response to submission: Melbourne Water's position is noted.

Recommendation: No change required.

Submission 5: Supporting subdivision of 27-33 Old Hereford Road

Submitter 5 supports a subdivision of 27-33 Old Hereford Road. The submitter believes this property and other similar properties should have been able to be subdivided when Amendment C143 was consulted on. The submitter states that the process was costly and believes the Minster should not have refused Amendment C143.

Response to submission: Submitter 5's support is noted.

Recommendation: No change required.

Submission 6: Submission withdrawn

Submitter 6 objected to the amendment on the basis of concerns with current onsite stormwater management and a lack of downpipes and drains on the site's existing structures. The primary concern was that further development on the site would

exacerbate the existing stormwater management issues and lead to increased surface water runoff into their property.

Response to submission:

Following discussion with the proponent and submitter, the proponent was able to provide a Certificate of Compliance relating to drainage works undertaken on the property to address the existing issues.

The Certificate was provided to Submitter 6 for review. The submitter advised in writing that they were satisfied that the drainage works undertaken addressed their concerns and withdrew their submission.

Recommendation: No change required – withdrawal of submission noted.

Submission 7: CFA – Feedback on Permit Conditions

The amendment was referred to CFA as a referral authority that advised in relation to the draft permit conditions:

- As per previous advice, that when Council considers site-based exposure, that consideration is had as to whether the site can achieve a radiant exposure of less than 12.5 kW/m².
- Any dwelling on the land be constructed to BAL-29, as Schedule 2 to the Bushfire Management Overlay applies to the land.
- A minor spelling error within Section B is noted.

The CFA stated they are supportive of all other drafted permit conditions.

Response to submission: CFA's position is noted. The planning permit previously granted for the construction of a second dwelling has an associated Bushfire Management Plan which states that the dwelling must be constructed to a minimum Bushfire Attack Level of BAL 29. There are no changes to this plan or this existing Permit YR-2018/1032.

Recommendation: Rectification of minor spelling error.

Options considered

Option 1 – Adopt the planning scheme amendment and submit the combined amendment and draft planning permit to the Minister for approval

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 most recently drainage. The Minister authorised the combined amendment and draft planning permit for exhibition, and there are now no opposing submissions.

During Exhibition a copy of the draft planning permit was circulated to the relevant authorities for comment and feedback to ensure appropriate permit conditions are included in the final draft permit to be sent to the Minister.

Should the Minister approve the amendment, she will direct the grant of the planning permit. The permit must then be issued by the responsible authority within seven days after the direction by the Minister has been received.

Option 2 – Delay the Amendment 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. DELWP advised prior to providing authorisation to proceed with exhibition 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 combined amendment and planning permit have been exhibited, with the exhibition resulting in no opposing submissions. It is reasonable that the amendment now be adopted and submitted to the Minister for Planning for approval.

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 and Council policies:

- 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.
- Clause 02.03-1 Settlement of the Yarra Ranges Planning Scheme: The subdivision is with a Large Neighbourhood Activity Centre - Land within and

adjoining these centres is generally an appropriate location for additional housing.

- 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

Economic Implications

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

Social Implications

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.

Environmental Implications

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

COMMUNITY ENGAGEMENT

The amendment was placed on public exhibition for a month from 13 October 2022 to 13 November 2022. The following notification was carried out:

- Sign on the site for the duration of the exhibition period;
- Notification in the local Star Newspaper;
- Letters to neighbouring property owners and occupiers;
- Direct notification to relevant government agencies and departments.

In addition, information was made available from Council's and the Department of Environment, Land, Water and Planning's websites.

As discussed above, a total of seven written submissions were received.

Throughout the exhibition period one phone enquiry was received regarding the combined amendment and planning permit application.

COLLABORATION, INNOVATION AND CONTINUOUS IMPROVEMENT

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

During the public exhibition, Council sought formal comments from the CFA which have been detailed above in the 'submissions' section of this report and listed in Attachment 1 to this report as submission 6.

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. Submission summary
2. Amendment C208 Explanatory Report
3. YR-2022/512 Draft Planning Permit