

## 0.0 Planning Application PLN22/0462 at 7 Second Street, Warrandyte for a two-lot subdivision and associated works (including creation of access and removal of one Victorian native tree)

File Number:	IN23/554
Responsible Director:	Director City Planning
Applicant:	Scenic Design and Drafting Pty Ltd
Planning Controls:	Neighbourhood Residential Zone, Schedule 1; Design and Development Overlay, Schedule 3; Environmental Significance Overlay, Schedule 5; Bushfire Management Overlay
Ward:	Yarra
Attachments:	<ol style="list-style-type: none"><li>1 Decision Plans (amended under s57A of Act)</li><li>2 Advertised Plans</li><li>3 Legislative Requirements</li><li>4 Objector Map (confidential)</li></ol>

### EXECUTIVE SUMMARY

#### Purpose

1. This report provides Council with an assessment of the planning permit application, submitted for the land at 7 Second Street, Warrandyte. This report recommends approval of the submitted proposal, subject to amendments to be addressed by way of permit conditions. The application is being reported to Council as it has received significant community interest.

#### Proposal

2. The proposal is for subdivision of the land to create two (2) individual lots. The subject site currently contains an existing dwelling serviced by two access points, one at the northern end and one to the southern end of the frontage.
3. The existing dwelling is proposed to be retained within the proposed Lot 1, which is to have an area of 1,002 square metres and be serviced by the southern-most crossover which currently provides access to the garage associated with the dwelling.
4. Lot 2 is to have an area of 1000 square metres, also containing a building envelope of 284.5 square metres. This lot is to be serviced by the existing northern-most crossover, with a driveway extending along the northern boundary in a battle-axe formation before reaching the broader lot area toward the rear.
5. Existing vegetation (14 specimens) are proposed for removal. Of these, a 4 metre tall Victorian native Kanooka tree (*Tristaniopsis laurina*) of low arboricultural value requires planning permission to remove under the Environmental Significance Overlay, Schedule 5. All other vegetation does not require a planning permit to remove due to being exotic or exempt. A large mature Oak tree (*Quercus robur*) is to be retained within the southern portion of Lot 2.

#### Notification

6. Notice of the application was given over a two-week period that concluded on 26 April 2023, by way of letters to adjacent and nearby properties and erecting a notice on the site frontage.
7. To date, 35 objections have been received. Issues raised primarily relate to the failure of the proposal to respond to the neighbourhood character and applied Scheme considerations, impacts upon flora and fauna, traffic and bushfire concerns and residential amenity impacts.
8. The location of objector properties is demonstrated on the map included in Confidential Attachment 4, albeit the location of some objector properties are beyond the nearby surrounds and therefore not shown.

#### **Amendment following Notification**

9. The application was formally amended under Section 57A of the *Planning and Environment Act 1987* (Act) on 5 October 2023. The purpose of this amendment was to address the referral requirements of the relevant fire authority. This required an updated Bushfire Management Statement and Plan, with minor changes to the subdivision plan in response, relevant to the access to Lot 2. Notice of the amended application was not given, as matters relevant to the Bushfire Management Overlay are exempt from the usual notice requirements under Clause 44.06-7 of the Scheme.

#### **Key matters in considering the application**

10. The key matters considered in the assessment of the application are provided in Section 8 of this report and respond to the following:
  - Is the subdivision an appropriate response to the physical and planning context?
  - Are the vegetation impacts acceptable?
  - Are the access arrangements and traffic impacts acceptable?
  - How does the subdivision respond to the relevant particular and general provisions?
11. Also included in Section 9 is a further response to objector concerns.

#### **Assessment**

12. The subdivision of the land into two lots is consistent with the site and policy context, providing an acceptable response to the existing character context and preferred character as directed by the Scheme controls, with limited vegetation impacts, appropriate access arrangements and a layout that is consistent with the measurable requirements related to residential subdivision.
13. Subject to the recommended conditions, the proposal generally complies with the objectives of Clause 56 (Subdivision), the purpose and decision guidelines of the Neighbourhood Residential Zone, and the objectives of the Design and Development Overlay, Schedule 3, Environmental Significance Overlay, Schedule 5 and Bushfire Management Overlay, and is considered to be an appropriate response to the physical site context as well as strategic policy context.

#### **Conclusion**

14. It is recommended that the application be supported, subject to conditions.

## 1. RECOMMENDATION

That Council:

- A. Having considered all objections, issue a Notice of Decision to Grant a Planning Permit PLN22/0462 for a two-lot subdivision and associated works (including creation of access and removal of one Victorian native tree) subject to the following conditions:

### Amended Plans

1. Before the Certification of the Plan of Subdivision, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will then form part of the permit. The plans must be generally in accordance with the Amended Plans (prepared by Scenic Design and Drafting Pty Ltd, job number 192074, dated October 2023) but modified to show:
  - a) Reduction of the building envelope within Lot 2 to not more than 25% of the site area by way of increasing the setbacks from the northern and western boundaries, with that to the north to be at least 1.8 metres.
  - b) Finished surface levels and associated gradients of the proposed accessway nominated and in accordance with the approved Bushfire Management Plan.
  - c) Earthworks and associated retaining walls removed from the lot boundaries, with any works limited to the tuning area within Lot 2 only and to the minimum extent necessary, to the satisfaction of the Responsible Authority.
  - d) The deletion of internal fencing between Lots 1 and 2 where generally adjacent to and forward of the existing dwelling on Lot 1 (in favour of landscaping).
  - e) The location of the landscaping referred to above, with details to include the species quantity, height and maturity and at time of planting (to be of indigenous screening type specimens);
  - f) A notation to indicate tree protection must be undertaken in accordance with the Tree Protection and Management Plan and Bushfire Management Plan approved as part of this permit and the satisfaction of the Responsible Authority.
  - g) An updated plan of subdivision to reflect the above as relevant.

### Endorsed Plans

2. The layout of the subdivision and any associated works and vegetation removal as shown on the approved plan must not be altered or modified without the prior written consent of the Responsible Authority.

### Tree Protection

3. No vegetation, apart from that shown on the approved plans as vegetation to be removed, may be removed, destroyed or lopped without the written consent of the Responsible Authority.
4. Concurrent with the review of plans to be endorsed under Condition 1,

a Tree Protection and Management Plan (TPMP) prepared by a suitable qualified Arborist, setting out how the trees to be retained will be protected during the construction of the driveway to Lot 2, and which generally follows the layout of Section 5 of AS4970 'Protection of trees on development sites', must be submitted to the Responsible Authority. When approved the TPMP will be endorsed and form part of the permit. The TPMP must include:

- a) A plan showing the TPZ and SRZ for all trees to be retained along with the location of protective fencing and/or areas where ground protection systems will be used.
  - b) Details of proposed work within TPZ and Arborist supervision when this is proposed.
  - c) A statement advising any removal or pruning of Council owned trees must be undertaken by Council approved contractor.
  - d) A statement that Council will be notified within 24 hours of any breach of the TPMP or where damage has occurred to the tree.
5. Any tree pruning to retained trees must be undertaken by a suitably qualified Arborist who has thorough knowledge of tree physiology and pruning methods and any pruning is carried out to the Australian Standard AS 4973-2007 'Pruning of amenity trees'.
6. All Tree Protection Fencing must be erected prior to the commencement of the driveway construction and maintained in good condition until the completion of the driveway to the satisfaction of the Responsible Authority.
7. The owner must ensure all contractors/tradespersons (including demolition workers) who install services or work near trees to be retained are made aware of the need to preserve the trees and to minimize impacts on the trees through appropriate work practices.

#### Drainage

8. Stormwater must not be discharged from the subject land other than by means of drainage to the legal point of discharge. The drainage system within the subdivision must be designed and constructed to the requirements and satisfaction of the relevant Building Surveyor. A connection to Council maintained assets must not be constructed unless a Connection to Council Drain Permit is first obtained from the Responsible Authority.
9. The whole of the land, including landscaped and paved areas must be graded and drained to the satisfaction of the Responsible Authority, to prevent ponding and to minimise overland flows onto adjoining properties.

#### Construction Management

10. The owner must use appropriate site management practices to prevent the transfer of mud, dust, sand or slurry from the site into drains or onto nearby roads. In the event that a road or drain is affected, the owner must upon direction of the Responsible Authority take the necessary steps to clean the affected portion of road or drain to the satisfaction of the Responsible Authority.

**Service Utilities**

11. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage sewerage facilities, electricity, and gas services to each lot shown on the approved plan in accordance with that authority's requirements and relevant legislation at the time.
12. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
13. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

**Telecommunications**

14. The owner of the land must enter into an agreement with:
  - a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
  - b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.
15. Before the issue of a Statement of Compliance for any stage of the subdivision under the Subdivision Act 1988, the owner of the land must provide written confirmation from:
  - a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
  - b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

**Public Open Space**

16. Before the issue of a Statement of Compliance, the amount of Public Open Space contribution under Section 21 of the Subdivision Act and as per Clause 3.1.1 of Section 173 Agreement AV672240Y registered on the title must be paid.

**Completion of works**

17. Prior to Statement of Compliance, the following must be completed to the satisfaction of the Responsible Authority:
  - a) The vehicle crossovers and driveway must be appropriately formed.

- b) Boundary fencing between Lot 1 and 2 must be constructed.
- c) The building envelope cleared and pegged out.
- d) Landscaping within Lot 1 must be completed.

**CFA conditions (also refer to Section 173 Agreement requirements)**

18. The Bushfire Management Plan prepared by Keystone Alliance, Ref# 3698\5.0 Dated 3-Oct-23, must be endorsed by the Responsible Authority, by be included as an annexure to the section 173 agreement prepared to give effect to clause 44.06-5 of the Planning Scheme and must not be altered unless agreed to in writing by CFA and the Responsible Authority.
19. Before the Statement of Compliance is issued under the Subdivision Act 1988, the defendable space shown on the endorsed Bushfire Management Plan must be implemented to the satisfaction of the Responsible Authority.
20. Before the Statement of Compliance is issued under the Subdivision Act 1988, the vehicle access arrangements shown on the Bushfire Management Plan to lot 2 must be implemented to the satisfaction of the Responsible Authority.

**Section 173 Agreement**

21. Prior to Statement of Compliance, the owner of the land must enter into and execute an agreement with the Responsible Authority, pursuant to Section 173 of the Planning and Environment Act 1987. This agreement must:
  - a) Prevent buildings and works outside of the building envelope on Lot 2 on the endorsed plan without the written consent of the responsible authority.
  - b) Prevent Tree 1 (English Oak) within Lot 2 on the endorsed plan from being removed, lopped or destroyed, except with the written consent of the Responsible Authority.
  - c) Prevent any excavation, trenching or soil removal within the drip line of Tree 1 where outside of the building envelope, except with the written consent of the Responsible Authority.
  - d) Require Tree 1 within Lot 2 on the endorsed plan to be maintained (to optimal health) and pruned by an AQF 5 qualified arborist in accordance with the AS4973-2007 'Pruning of Amenity Trees' and the endorsed bushfire management plan, except with the written consent of the Responsible Authority.
  - e) Require that, prior to the construction of any dwelling on Lot 2, the following be submitted to and approved by the Responsible Authority:
    - i a landscape plan to include:
      - a minimum of 2 Indigenous canopy trees to the local ecological vegetation class of the area, with complementary understorey and screening trees, in compliance Bushfire Management Plan; and
      - a Dripper irrigation system installed within the private open space garden beds to provide supplementary watering for Tree 1 (English Oak).
    - ii a Tree Protection and Management Plan (TPMP) prepared by a suitably qualified Arborist, setting out how trees to be retained will be protected during the construction of any

dwelling.

- f) Require any protection measures approved by the TPMP to be erected prior to and during the construction of any dwelling of Lot 2 and that planting as per the endorsed landscape plan be completed within three months of the completion of the dwelling, unless with the written consent of the Responsible Authority.
- g) Secure common access to the carriageway easement and the sharing and maintenance of facilities and landscaping between both lots to the satisfaction of the Responsible Authority.

**Further CFA conditions for Agreement**

- h) State that it has been prepared for the purpose of an exemption for from a planning permit under Clause 44.06-2 of the Manningham Planning Scheme.
- i) Incorporate the plan prepared in accordance with Clause 53.02-4.4 of this planning scheme and approved under this permit.
- j) State that if a dwelling is constructed on the land without a planning permit that the bushfire protection measures set out in the plan incorporated into the agreement must be implemented and maintained to the satisfaction of the responsible authority on a continuing basis.
- k) Explicitly exclude Lot 1 from the following exemption under Clause 44.06-2 of the Scheme:
  - i) *“A Building or works consistent with an agreement under section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-5”.*

The land owner must pay the reasonable costs of the preparation, execution and registration of the Section 173 Agreement.

It is further required that this agreement must be registered at the Office of Titles pursuant to Section 181 of the Planning and Environment Act 1987.

**Permit Expiry**

22. This permit will expire if one of the following circumstances apply:

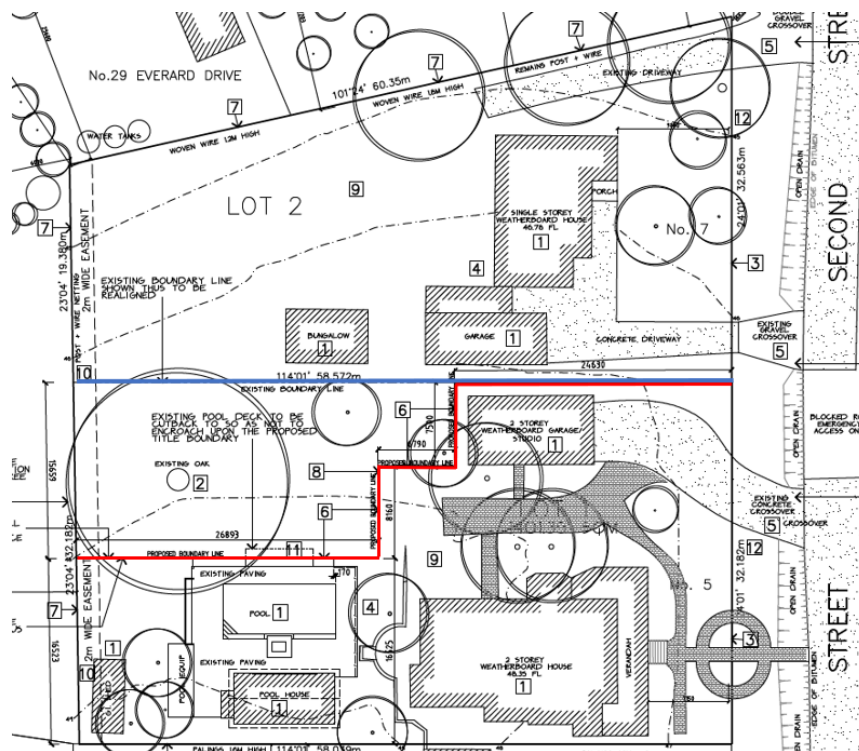
- a) The plan of subdivision is not certified within two (2) years of the issue of the permit.
- b) The plan of subdivision is not registered within five (5) years of the certification of the plan.
- c) The authorised works and vegetation removal are not started within two (2) years of the date of this permit; and
- d) The authorised works and vegetation removal are not completed within four (4) years of the date of this permit.

The Responsible Authority may extend the commencement period referred to if a request is made in writing by the owner or occupier either before the permit expires or in accordance with Section 69 of the *Planning & Environment Act 1987*.

## 2. BACKGROUND

Previous permit application

- 2.1 Prior to this permit application, Planning Permit PLN20/0210 was issued on 15 March 2021. The permit allowed for a two-lot re-subdivision (boundary realignment) between the subject site and the adjoining property at 5 Second Street Warrandyte.
- 2.2 The permit effectively allowed the central shared boundary to be realigned to increase the lot size of 7 Second Street and decrease the lot size of 5 Second Street, with the previous and approved boundaries highlighted in blue and red respectively in the image below.



2.3 The previous lot sizes and resulting approved lot sizes were as follows:

Land	Previous Lot size (sqm)	Lot size (sqm) approved under PLN20/0210
5 Second Street	1,876	1,402
7 Second Street	1,526	2,002

**Background to current permit application**

- 2.4 The application was received on 26 October 2022.
- 2.5 At the time of lodgement, two applications were made, one for the subdivision and one for a new dwelling on Lot 2. The applications were then combined to be considered together (to propose both a subdivision and dwelling development); however, officers later formed the view that any subdivision should proceed before any new dwelling could be considered due to Scheme interpretation and to ensure that a building envelope, registered on Title, could be implemented to provide more controlled development parameters.
- 2.6 Subsequently, this application was amended under Section 50 of the Act on 6 April 2023 to only consider a subdivision, with an applied building envelope upon Lot 2.



- 2.7 Notice of the application was given in accordance with Section 52 of the Act for a minimum two-week period, concluding 26 April 2023.
- 2.8 In response to the number of objections received, a consultation meeting was held by officers on 12 July 2023, attended by both the applicant and the objectors who elected to attend. No agreements were reached at this meeting.
- 2.9 The referral response was received from the Country Fire Authority (CFA) on 6 September 2023, which required further information to be provided, including updates to the Bushfire Management Statement as it related to the hazard assessment for the site and broader landscape, and in consideration of access requirements.
- 2.10 In response to this referral advice, the application was formally amended under Section 57A of the Act (following notice) on 05 October 2023. Changes to the application material have consisted of:
- an updated Bushfire Management Statement (BMS) and Bushfire Management Plan (BMP); and
  - consequential amendments to the Subdivision and Building Envelope Plan to accord with the amended BMP, namely by increasing the access shaft to 4.5 metres in lieu of 4.1 metres (to achieve a 500mm clearance on either side of a 3.5 metre accessway), with associated minor changes to the internal lot boundaries (shifted slightly south and west).
- 2.11 Notice of the amended application was not given as the changes to the BMP and plans were a direct result of the permit requirements under the Bushfire Management Overlay (BMO).
- 2.12 Clause 44.06-7 of the BMO exempts an application (relevant to bushfire considerations) from the usual third-party notice and appeal rights under sections 52(1)(a), (b) and (d) and section 82(1) of the Act. As the BMO 'triggers' caused the need to amend the application, this exemption comes into play.
- 2.13 This is the approach taken in *Clifftop at Hepburn v Hepburn Shire Council*,<sup>1</sup> where the Tribunal held that third-party exemptions apply, to the extent that relates to questions of bushfire risk.
- 2.14 The decision material for the purpose of this report is consequently based upon the amended Section 57A plans (Decision Plans) as provided in **Attachment 1**. The plans that were advertised prior to this amendment are provided at **Attachment 2**.
- 2.15 The statutory clock that applies to planning applications provides an applicant with the option of appealing to VCAT due to a failure to determine ground after 60 days. For this application, that time has not yet passed, being 4 November 2023.

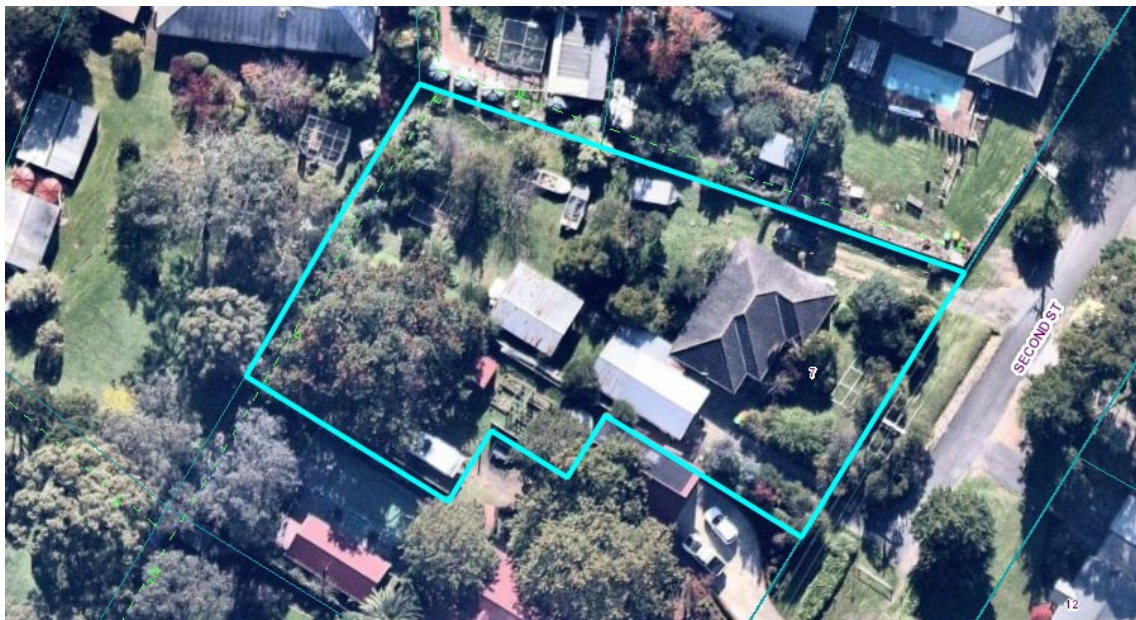
### 3. SITE AND SURROUNDS

- 3.1 The Subject Site:

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<sup>1</sup> [2023] VCAT 201. See also *Mazeika v Casey CC* [2023] VCAT 1108.

- is situated on the north-western side of Second Street (west for the purpose of this report), some 55 metres south of Everard Drive and 85 metres south of the Yarra River;
- has a distinctive, irregular shape with a frontage width of 32.57 meters, a depth of 60.35 meters and total yield of 2,002 square metres;
- maintains a consistent topography, with a gentle slope (approximately 3.8 metres maximum) in a northerly direction;
- contains a single-story weatherboard dwelling featuring a pitched tiled roof. An open verandah connects the dwelling to a garage, while a separate shed is positioned within the rear open space;
- is equipped with two vehicular access points, with the one at the southern end of the frontage providing formal access to the garage. The access at the northern end leads to an informal vehicular track extending along the northern boundary and is used for the purpose of other vehicle storage/ access;
- is moderately vegetated, including a large oak tree with the rear setback and numerous small trees and shrubs throughout which generally screen the existing dwelling from street view;
- is burdened by an easement measuring 2 meters in width along the rear western boundary, which does not contain any assets; and
- is further described in the following aerial image:



3.2 The site is immediately adjoined by five properties which are described as follows:

- Immediately south at 5 Second Street is a 1,400 square metre allotment containing double-storey weatherboard dwelling with a Colorbond pitched roof. The dwelling itself is well setback from the common boundary, with a two-level garage/studio to the north of the dwelling and pool area to the rear

located in closer proximity. Trees (approximately six) are generally scattered to the side and rear of the dwelling.

- Immediately west at 31 Everard Drive a lot of approximately 2,700 square metres containing a single-storey weatherboard dwelling with a pitched roof. The dwelling is located to the north-west of the subject site (setback a minimum of 6 metres) with the rear open space generally adjoining the shared boundary and containing both established trees and juvenile screening vegetation in proximity, with sheds in the area beyond.
- Immediately north are the rear boundaries of 27, 25 and 29 Everard Drive and their associated open spaces. The lots are approximately 1,230 to 1,240 square metres in area and each contains a single or double-storey dwelling of weatherboard or brick construction. The dwellings are setback between 17.4 metres and 23.6 metres from the shared boundary, with the rear yards containing outbuildings and varying degrees of trees and shrubs, with two also containing swimming pools as demonstrated below.



- 3.3 Contextually, the broader surrounds in proximity to the Yarra River are residential in nature and afforded the same planning controls as the site. Dwellings are generally one to two storeys in scale and vegetation coverage varies, as does the topography of land (steep in some locations and relatively flat in others). Lot sizes and layouts vary, some being less than 1,000 square metres, others more than 2,000 square metres.
- 3.4 In proximity to the site, the local street network is characterised by narrower carriageway widths (some sealed and some unsealed) and with no formalised kerb and channelling and generally informal crossovers. Second Street has a sealed carriageway width varying between approximately 4 metres where in front of the site, to more than 9 metres where approaching Everard Drive. Second Street also terminates mid-way (by way of a gate) at the southern end of the site, opposite its boundary with 5 Second Street.
- 3.5 The general surrounds are broadly shown in the following aerial image:



#### 4. THE PROPOSAL

4.1 The proposal seeks to subdivide the existing land (one lot of 2,002 square metres) to create an additional parcel. Key details of the subdivision involved:

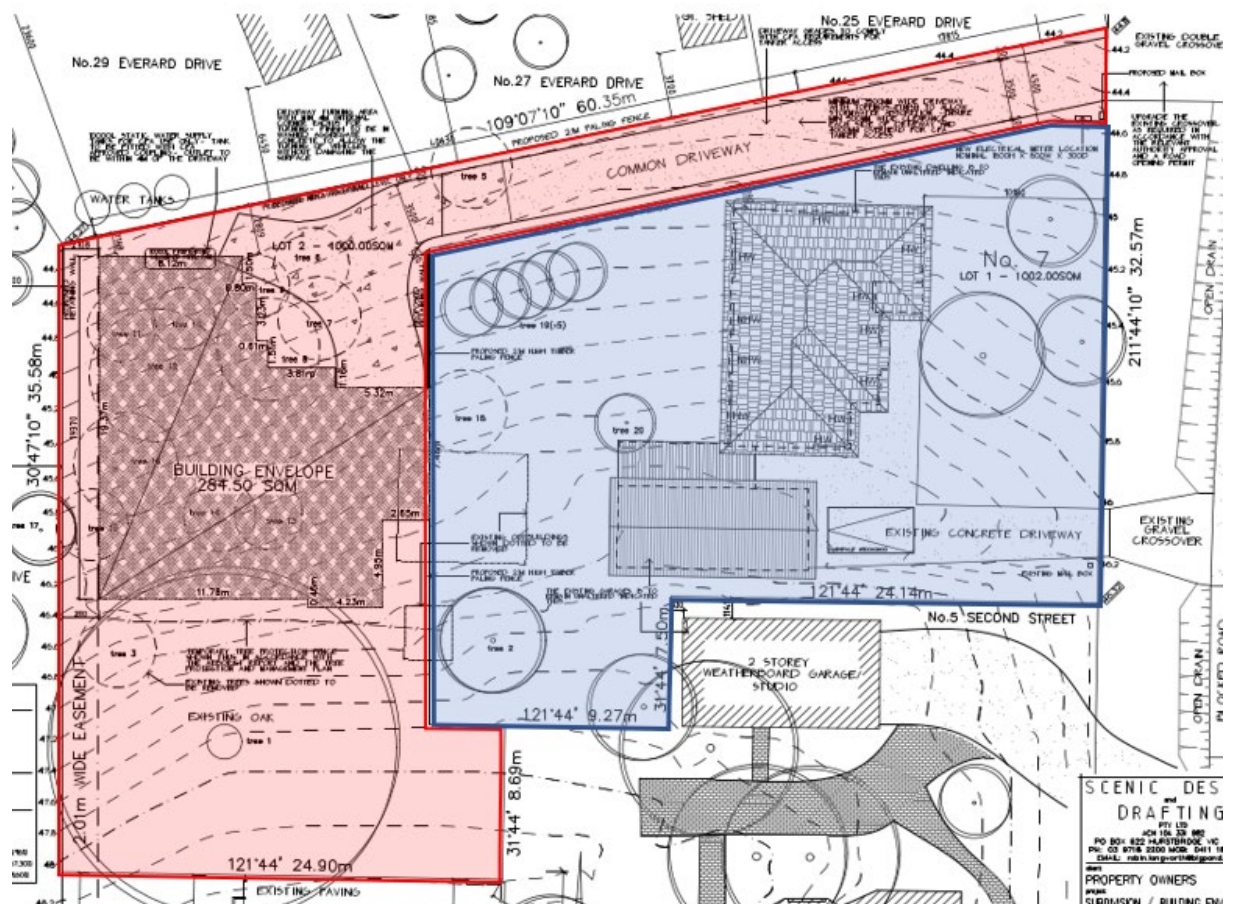
4.2 Lot 1 will be 1,002 square metres and is irregularly shaped with:

- the existing dwelling retained, utilising the existing crossover at the southern end of the frontage;
- a frontage width of approximately 27.4 and a depth of approximately 37 metres; and
- the retention of all existing vegetation, with the exception of one tree (Tree 18) due to being 'hazardous'.

4.3 Lot 2 will be 1,000 square metres with an irregularly shaped battle-axe style layout with:

- a 4.5 metre wide by 39 metre long access shaft, accessible via the existing crossover at the northern end of the frontage;
- a broader lot area with a minimum width of 35.59 metres and a minimum depth of just under 21 metres;
- a building envelope with an area of 284.5 square metres or 28.45% of the lot, with minimum setbacks of:
  - 1.168 to 2.809 metres to the northern boundary;

- 2.11 metres to the western boundary;
  - 15.2 metres to the southern boundary;
  - the retention of one mature, 16-metre-tall English Oak (*Quercus robur*) known as Tree 1 which is of high arboricultural value; and
  - the removal of a Kanooka tree (*Tristaniopsis laurina*) known as Tree 12 which is a small 4-metre native of low arboricultural value.
- 4.4 A 3.5-metre-wide driveway (constructed of permeable toppings) is proposed within the access shaft of Lot 2, with a carriageway easement (E-2) proposed in favour of Lot 1.
- 4.5 While there are fourteen trees in total to be removed (Tree 3, Trees 5 - 16 and Tree 18), all trees, other than Tree 12 as highlighted above, are exotic or exempt under Clause 52.12 and therefore do not require a permit to remove. These trees are also nominated as low arboricultural retention value.
- 4.6 The general layout is demonstrated below, with Lot 1 highlighted blue and Lot 2 highlighted red:



- 4.7 The proposal is further outlined on the Building Envelope/Site Plan, prepared by *Scenic Design and Drafting Pty Ltd* (job number 192074, as amended and dated October 2023).
- 4.8 The following reports were also submitted in support of the application:

- Arboricultural report, prepared by Nick Withers Arboriculture (dated April 2023).
- Bushfire Management Statement, prepared by Keystone Alliance (amended October 2023).

## 5. LEGISLATIVE REQUIREMENTS

5.1 Refer to **Attachment 3**.

5.2 A permit is required under the following Clauses of the Manningham Planning Scheme:

- Clause 32.09-3 of the Neighbourhood Residential Zone Schedule 1 (NRZ1), to subdivide land.
- Clause 44.06-2 of the Bushfire Management Overlay (BMO), to subdivide land.
- Clause 43.03-3 of the Design and Development Overlay, Schedule 3 (DDO3), to subdivide land with associated works to construct access.
- Clause 42.01-2 of the Environmental Significance Overlay, Schedule 5 (ESO5), to subdivide land and remove Victorian Native Vegetation.

5.3 It is noted that the site is within an area of 'Aboriginal Cultural Heritage Sensitivity'. The proposal does not require the submission of a Cultural Heritage Management Plan as a two-lot subdivision for residential purposes is an 'exempt' activity. This was further confirmed in writing on 31 July 2023 by Dr Shaun Canning, Managing Director and Principal Heritage Advisor of Australian Cultural Heritage Management.

## 6. REFERRALS

### External

- 6.1 Pursuant to Clauses 44.04 and 66.03 of the Manningham Planning Scheme, the Country Fire Authority (CFA) is a recommending referral authority as the application seeks to subdivide land within the Bushfire Management Overlay.
- 6.2 The CFA responded in September 2023 seeking further information. In response to the further information provided in the amended Bushfire Management Statement and Plan, the CFA, in their correspondence dated 11 September 2023, consented to the application, subject to standard conditional requirements.
- 6.3 The application did not require referral to servicing authorities pursuant to Clause 66.01 as the subdivision is for two lots. The mandatory conditions prescribed under Clause 66.01 -1 (relevant to servicing) would be required by the condition.

### Internal

- 6.4 The application was referred to two Service Units within Council. The following table summarises the responses:

Service Unit	Comments
City Infrastructure	<p>Council's Engineers raised no objections to the proposal and provided the following comments relevant to traffic generation:</p> <ul style="list-style-type: none"> <li>• There are 5 properties that appear to have access north of the gate on Second Street.</li> </ul> <p>Assuming a trip generation of 10 trips per day per dwelling, that would generate 50 daily trips. An extra dwelling would increase that to 60. Assuming 10% in the peak that would be 1 car every 10 minutes. There are no concerns with this volume of traffic in the capacity of the road network.</p> <p>Recommended conditions would require the dwellings be connected to the point of discharge, separate connections for each lot and drainage within the easement to be in favour of Council.</p>
Statutory Planning Arborist	<p>Council's Arborist did not object to the application subject to conditions. Comments included:</p> <ul style="list-style-type: none"> <li>• Fourteen (14) trees being Trees 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 18 are proposed to be removed.</li> <li>• Only Tree 12 a <i>Tristaniopsis laurina</i> to be removed is protected under the ESO5 though is of low Arboricultural value. The remaining trees are exempt due to being Australian natives, exotic or weed species.</li> <li>• Two replacement Indigenous canopy trees to the local ecological vegetation class of the area are recommended. Sufficient space is available to plant canopy trees to meet the environmental objectives of ESO5. However, such planting should not be undertaken until the future dwelling is constructed.</li> <li>• Tree 1 a mature <i>Quercus robur</i> of high arboricultural value is proposed to be retained. Although not protected by ESO5, retention of this tree should be seen as a positive response to the design objectives of DDO3.</li> <li>• Encroachment into Tree 1 is marginally above 10% of the trees area. However, can be successfully retained if appropriately managed.</li> <li>• It is recommended to protect Tree 1 via a Section 173 Agreement, given its maturity and significance to the area, including that no excavation, trenching or soil removal within the drip line and include a dripper irrigation system to maintain its health.</li> <li>• Standard conditions should require a Tree Protection and Management Plan to protect Tree 1 and neighbouring trees.</li> </ul>

## 7. CONSULTATION / NOTIFICATION

- 7.1 Notice of the application was given by Council, which concluded on 26 April 2023.
- 7.2 Notice was given in the form of sending letters to the owners and occupiers of abutting and adjoining properties and by displaying one sign at the site frontage for a two week period.
- 7.3 To date, thirty-five (35) objections have been received. The main grounds of objection fall under the broader themes of:
- inconsistency of the subdivision and building envelope with neighbourhood character and Scheme requirements;
  - flora and fauna impacts;
  - traffic and bushfire impacts; and
  - impacts upon residential amenity.
- 7.4 These grounds are largely considered within the assessment section and further responded to in Section 9 of this report.

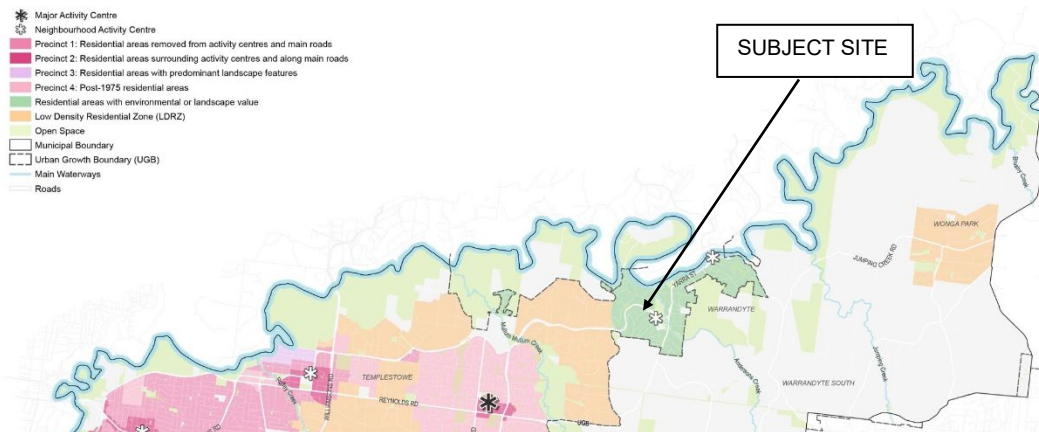
## 8. ASSESSMENT

- 8.1 The proposal has been assessed against the relevant state and local planning policies, the zone and overlay, and the relevant particular and general provisions of the Manningham Planning Scheme.
- 8.2 The assessment is made in consideration to the following key questions:
- Is the subdivision an appropriate response to the physical and planning context?
  - Are the vegetation impacts acceptable?
  - Are the access arrangements and traffic impacts acceptable?
  - How does the subdivision respond to the relevant particular and general provisions?
- 8.3 The assessment is based on the relevant policies of the Scheme and the applicable requirements of the zone, overlays and particular and general provisions.

### **Is the subdivision an appropriate response to the physical and planning context?**

- 8.4 Clause 11 (Settlement) acknowledges planning is to anticipate and respond to the needs of existing and future communities through the provision of zoned and serviced land for housing. Clause 11.01-1L-01 identifies the site and its immediate surrounds as being within a “Residential area with environmental or landscape value”, with the relevant strategy seeking to “retain the bushland character of the Warrandyte township”.





- 8.5 Due to the established residential nature of the area, the site is not within Green Wedge and Yarra River Corridor Areas, or Low Density Buffer Area as defined by Clause 11.01-1L-02 and 3.
- 8.6 At a higher level, objectives and strategies at Clause 12 acknowledge significant landscapes that contribute to character and seek to protect and conserve environmentally sensitive areas.
- 8.7 Strategies relevant to housing supply seek to increase the proportion of housing in designated locations in established urban areas, including under-utilised urban land.
- 8.8 Specific to subdivision is Clause 15.01-3S which includes the objective to ensure the design of subdivisions achieves attractive, safe, accessible, diverse, and sustainable neighbourhoods. Strategies within this clause, and at Clause 15.01-3L-01 (relevant to subdivisions in Manningham) include a balance of supporting subdivisions that are located within established urban areas with good access to services, while also providing layouts that are sensitive to the neighbourhood character, environment (native vegetation in particular) and site features.
- 8.9 Clause 15.01-5L-02 further defines the neighbourhood character of particular areas of the municipality and includes the municipal-wide objective *to achieve residential development that is well-designed, site-responsive and respectful of existing or preferred neighbourhood character and the surrounding environment*. Specific to Warrandyte (among other areas) it seeks:
- To facilitate minimal change, and enhance the existing bushland character, particularly the presence of large native trees, of the Warrandyte Township...*
- 8.10 The site is located within the Yarra River Environs and there is a particular importance on vegetation and landscape in this location. This is emphasised by the overlay controls applied, namely the Environmental Significance Overlay, Schedule (ESO5) which seeks to protect all Victorian native vegetation. It does not have specific objectives relevant to subdivision, though seeks to maintain the natural landscape character of environmental urban areas, including topography and waterways.
- 8.11 The Neighbourhood Residential Zone (NRZ) seeks to support residential development, with the purpose of recognising areas of predominantly single and double-storey scales, with development that respects the identified neighbourhood character, heritage, environmental or landscape characteristics. Subdivision requires a permit and that the requirements of Clause 56 be met,

with decision guidelines requiring consideration of the pattern of subdivision and its effect on the spacing of buildings.

- 8.12 The zone otherwise does not imply a minimum lot size nor require a permit to construct a dwelling on a lot that is 300 square metres or larger, however, the Design and Development Overlay, Schedule 3 (DDO3) is the means for which the minimum lot size for subdivision is applied. While some areas of Warrandyte are applied a Low-Density Residential Zoning that demands larger 4,000 square metres lot sizes, the minimum implied by the DDO3 is 1,000 square metres and is specific to the 'Warrandyte Environmental Residential Area'.
- 8.13 It is therefore relevant that the policy framework and both the NRZ and the DDO3 provide in-principal support for subdivisions and residential dwellings. The minimum lot size and design parameters for dwellings have been applied to meet the design objectives of the DDO3, which include, amongst other things, to maintain and enhance the special bushland and low-density character of the Warrandyte township and retain the predominance of single detached housing. It also seeks to maintain the vegetation dominated vistas and ensure development does not protrude above the prevailing canopy height.
- 8.14 The proposal clearly meets the minimum lot size prescribed. however, the assessment also weighs upon whether the proposed subdivision is responsive to the physical context and character of the area.
- 8.15 Key aspects of the existing character include:
- The general area is well established with housing of both single and double-storey scales and associated outbuildings.
  - Vegetation coverage varies, some more vegetated than others and with a broad mix of native and exotic species. Canopy trees are generally substantially sized and prevail above the height of the built form.
  - The topography varies significantly, with properties along Everard Drive generally steeply sloping toward the banks of the river, while the subject site and those further south in Second Street have more levelled topography with a subtle slope.
  - Lot sizes vary, some are less than 1,000 square metres (for example, 4 Second Street at approximately 814 square metres) and others exceed 2,000 square metres.
  - Dwellings and outbuildings are visible to the street and from the private realms and form part of the general landscape character.
  - Lot patterns are generally rectangular, though battel-axe style development resulting from the subdivision is evident, with nearby examples including at 4 First Street, 6 Third Street, 45 Everard Drive and 13-15 West End Road.
  - Local streets have a semi-rural feel by way of their narrowness and informal access points, though connect to an established road network with public transport facilities.
- 8.16 The variance of lot sizes and patterns is demonstrated in the cadastral plan below:



- 8.17 The proposal demonstrates compliance with established policies seeking to increase housing in an established urban area. The subject site benefits from accessibility to public transportation, local shops, and recreational parks and facilities. Reticulated sewer and the usual required services are established and the local road network, despite its rural feel, currently supports residential traffic volumes in an ordinary manner and connects to an arterial road.
- 8.18 As seen in the cadastral plan above, battle-axe-style lot arrangements currently form part of the existing character.
- 8.19 The proposed Lot 2 would have little, if any impact upon the streetscape, given any future built form would be generally concealed by the dwelling on Lot 1, in addition to the screening offered by established vegetation along the frontage. By way of utilising the existing second crossover currently servicing the site, no appreciable difference in the built form will be evident from Second Street and the retention of the existing dwelling, unaltered front setbacks and the absence of proposed front fencing maintain the overall aesthetic coherence of the existing streetscape.
- 8.20 The proposal preserves a significant canopy tree that contributes to the treed environs of the Warrandyte township. The placement of the building envelope and the large rear yard it is afforded offers a balanced approach between hard and soft surfacing, with the building envelope providing assurance that this balance is ongoing.
- 8.21 The retention of this tree further means that the future built form will sit well beneath the 16-metre canopy height and be subordinate to this feature.
- 8.22 Such places where vegetation forms a strong part of the character are also subject to bushfire risk and strategies seek to reduce such risk in the protection of human life in decision-making. Clause 12.01-1L seeks to preserve the environmental, vegetation and landscape significance of land in the Bushfire Management Overlay and encourage development that meets higher construction standards or utilises alternative treatments to address bushfire risk in preference to vegetation removal. Policy guidelines require consideration of establishing building envelopes to minimise adverse impacts on environmental and biodiversity outcomes in the Bushfire Management Overlay.

- 8.23 The proposal does this, proposing a building envelope that retains the most significant tree on the site and removes only trees that could ordinarily be removed without a permit, other than for one as discussed further below.
- 8.24 Furthermore, the bushfire hazard has been assessed through the supplied Bushfire Management Statement and has been approved by the relevant fire authority, therefore satisfying the objectives of Clause 13.02 and the BMO in appropriately mitigating bushfire risk.
- 8.25 As suggested by the proposed building envelope location, any future built form would have a direct interface with three properties, being 5 Second Street, 29 Everard Drive, and 31 Everard Drive. A future dwelling in this location will, no doubt, change the outlook toward the site from what currently exists. However, it needs to be acknowledged that buildings (in the form of dwellings and outbuildings) form part of the landscape and overall character due to the residential nature of the area, and just because it may be visible, does not necessarily mean it would cause detriment.
- 8.26 The location of the building envelope toward the rear of the site is not at odds with the built form siting patterns in the area. This is seen at No. 6A Third Street just 30 metres west (which allowed for a similar subdivision) and even in the case of larger lots, dwellings, whilst often sited closer toward the frontage, are sometimes set deeper into a block, or contain significant outbuildings toward the rear. One existing outbuilding currently located to the rear of the dwelling will also be removed to accommodate the subdivision and future built form.
- 8.27 The construction of any future dwelling on the lot would not be regulated by the zone (as a dwelling is an as-of-right use), though the DDO3 provides parameters relevant to dwellings setbacks, height, site coverage, pervious space, building materials and associated earthworks. These are effectively the “tests” of what the preferred built-from outcomes are, and where not met, a planning permit is required to consider the appropriateness of such built form.
- 8.28 The building envelope generally seeks to reflect the preferred siting and setback arrangements referred to in the DDO3. The 2.1-metre western setback exceeds the minimum boundary setback of 1.8 metres suggested for walls up to 3.6 metres in height (allowing for a wall height of up to 4.5 metres in that location). Any wall heights surpassing this would need to be a setback as per the suggested amounts, or if not, otherwise seek planning permission to be assessed on its merits (the requirement seeking a 1.8-metre setback plus 100 millimetres for every 300 millimetres or part that the building exceeds 3.6 metres).
- 8.29 The DDO3 prefers that site coverage of dwellings and buildings on land does not exceed 25% of the total area. The proposed building envelope area of 284.5 square metres exceeds this.
- 8.30 It is also acknowledged that the envelope is sited closest to its northern and western interfaces in its positioning to retain Tree 1. It is therefore recommended that a condition require it be reduced to not exceed 25% of the site area, and specifically include increased setbacks to the more sensitive residential interfaces to the north and west. It will further require the northern boundary setback to be at least 1.8 metres (excluding the water tank).
- 8.31 Subject to some conditional changes, the proposed subdivision and building envelope is considered acceptable within the existing character context and

consistent with overarching and local policy requirements, including the objectives of the overlays.

### Are the vegetation impacts acceptable?

- 8.32 Policy at Clause 12.01-2L seeks to protect, conserve and enhance native vegetation with strategies that include to avoid native vegetation removal or destruction within Core and Critical Conservation Areas (as shown on the Strategic Framework Plan in Clause 02.04). Further guidelines suggest avoiding native vegetation removal within 30 metres of watercourses.
- 8.33 Vegetation protection is controlled solely by the ESO5, which relates to biosites and their associated buffer areas, as identified in a 2004 study referred to in Schedule 5 (and also in various policy provisions of the Scheme) which contemplates these core conservation areas.
- 8.34 It protects Victorian native vegetation only, seeking to protect and conserve Core and Buffer Conservation Areas, habitat corridors and ecological stepping-stones and maintain the treed character of residential areas.
- 8.35 There are fourteen (14) species to be removed, specifically numbered as trees 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 18 as identified on plan and in the arboricultural report.
- 8.36 Tree 12 is indigenous and therefore requires a permit to remove under the ESO5 (observing Clause 52.17 does not apply given the land size). This tree, a *Tristaniopsis laurina* (or Kanooka tree) is bifurcated at a height of 0.3 metres above ground level and therefore presents fair health, form and structure. It is further assessed as having a low retention value, to which Council's Arborist agrees. Its removal is considered acceptable given its low value and diminutive 4 metre height (pictured below) and limited landscape contribution. The Kanooka tree is known as a tall shrub or small tree and therefore it may close to its mature height.

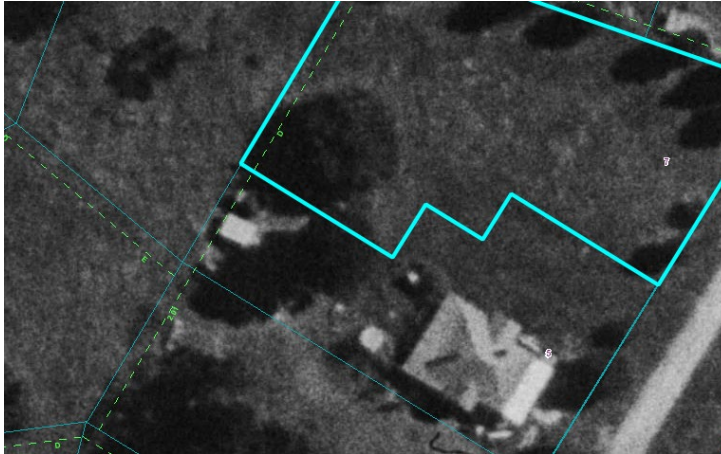


- 8.37 The remaining vegetation does not require a permit to be removed due to their classification as Australian native, exotic, or weed species or being exempt under the bushfire protection requirements of Clause 52.12. All species to be removed are of low retention value, one of which (Tree 18) is hazardous.

- 8.38 Notably, eleven of the species are 4 metres or less in height which is below the typical height of a “canopy” tree, with only three trees being a more substantial 5 to 6 metres in height.
- 8.39 It therefore could be reasonably said that the proposal will allow for the enhancement of biodiversity as sought by Clause 12.01-1S, in that the removal of the above vegetation would make way for more appropriate indigenous species to be introduced.
- 8.40 In Lot 1, all existing vegetation will be retained, with exception of Tree 18 to the rear of the dwelling, solely due to being hazardous. It can be observed that the vegetation coverage within the front setback is more substantial than indicated on the plan, given some are shrubs offer screening benefits as pictured below.



- 8.41 The retention of the existing vegetation to Lot 1 has merit in preserving the current landscape character. It is considered that this can be further complemented by the introduction of additional indigenous planting. A condition will therefore require at least two indigenous trees within Lot 1 and indigenous screen planting along its northern boundary where generally adjacent to and forward of the existing dwelling. Such planting for lot 1 would be required prior to the issuing of any Statement of Compliance to subdivide the land.
- 8.42 Vegetation removal within Lot 2 and the one indigenous species requiring a permit to be removed, can be offset by the introduction of higher-quality vegetation, subject to a condition for a separate landscape plan to be provided prior to any future dwelling construction. This is to include a minimum of two indigenous canopy trees with complementary tall shrubs and understorey planting. The implementation of this landscaping is to be applied through a Section 173 Agreement to be registered on the future title for Lot 2. This will ensure that, whether or not a planning permit is required to construct the dwelling, the landscaping obligations are carried out.
- 8.43 Tree 1, an aged *Quercus robur* (English Oak) is of high arboricultural importance and despite lacking protection under ESO5, maintaining this tree aligns positively with the design goals of relevant policy, being the most significantly sized and visible canopy tree on the site.
- 8.44 Tree 1 stands as a historic landmark (as evidenced in the historical aerial below) and thorough endeavours have been made by the landowner undertaken to ensure its preservation.



- 8.45 The proposed building envelope has been specifically sited to ensure the protection of this tree. The envelope presents an encroachment slightly surpassing 10% of the tree's TPZ, however as agreed by both the Applicant's and Council's Arborist, will not be detrimentally impacted with proper management.
- 8.46 The imposed Section 173 Agreement will also form the mechanism to ensure this tree is retained, serving as notification to the present and future land proprietors of their obligations to retain and protect it. It would further require that any pruning to meet bushfire management be performed by a suitably certified Arborist, and that an irrigation system be implemented to assist in future safeguarding, as per the recommendations of Council's Arborist.
- 8.47 The Section 173 Agreement will also call for a tree protection management plan to be submitted prior to the construction of any future dwelling on Lot 2, to ensure all vegetation retained and any neighbouring vegetation are protected and fenced off through the course of any construction.
- 8.48 Considering the above, the vegetation impacts are considered acceptable and consistent with the overarching directions of policy, in addition to the DDO3 and ESO5. Furthermore, the BMO has not caused unnecessary vegetation removal which is consistent with the strategies of Clause 12.01-1L.

#### **Are the access arrangement and traffic impacts acceptable?**

- 8.49 Lot 1 will retain its current accessway arrangement, which is primarily served by the crossover at its southern end of the frontage. The secondary crossover that currently exists will service Lot 2. This crossover connects to an informal accessway that contains both grass and gravel and appears to service the parking of supplementary vehicles toward the rear of the site.
- 8.50 The access shaft to Lot 2 will be 4.5 metres in width to accommodate a 3.5-metre-wide driveway which is to be formalised, albeit in a subtle manner that involves the laying of permeable toppings upon a relatively level area. A turning area is also proposed to facilitate vehicles safely exiting the site in a forward manner.
- 8.51 A considered approach to the topography is evident through the positioning of the driveway largely at the natural grade. Some levelling would be required in the location of the turning area within Lot 2, although there are no concerns with a

small amount of work in this general location to manage the gentle slope and gradients toward a future dwelling. However, a condition will require the works to be limited to the driveway area only and be removed off the boundary to retain the natural surface level along the fence lines. The finished surface levels will also be required on plan, to demonstrate that any works are suitably reduced to the minimum extent necessary.

- 8.52 Clause 15.01-3L-02 (Battle Axe Blocks - Manningham) seeks to avoid creating battle axe blocks, unless they are functional, safe and an attractive design with a strategy to design access ways that are clearly visible, provide safe access, provide for waste collection where appropriate, and retain existing vegetation and landscaping.
- 8.53 The policy guidelines suggest a number of design options, such as considering a minimum shaft of 6 metres in width unless site dimensions or characteristics warrant a variation, avoiding fencing along common boundaries between abutting driveways, and providing common property or carriageway easements over common service areas with agreements to share maintenance.
- 8.54 The access shaft and driveway widths for Lot 2 are designed specifically to accord with the BMP requirements as regulated by the CFA, thus ensuring the safe and efficient access of vehicles, including emergency vehicles. The shaft width of 4.5 metres allows for a 3.5 metre driveway including the required 500mm clearances on either side. A shaft of a wider width would not be warranted in the context of the site and surrounds.
- 8.55 In particular, the width of the shaft is compatible with the surrounding pattern of development in the immediate area (such as 45-47 Everard Drive and 6-6A Third Street). Satisfactory arrangements can also be made for the provision and maintenance of infrastructure under Section 8 of the Subdivision Act. As the existing dwelling is at the front, its existing connections will be retained, enabling full flexibility for the new lot to connect to the available services in Second Street at the most convenient point.
- 8.56 There is scope to achieve appreciable landscaping that is visible to the public realm. As identified earlier, a condition will require indigenous planting along the northern boundary of Lot 1 adjacent to and forward of the existing dwelling. However, in consideration of the policy guidelines and to ensure it is appreciable, a condition will require the proposed boundary fencing between Lot 1 and 2 to be removed where forward of the existing dwelling. This will in many ways, retain and enhance the current conditions as presented to the street and immediately adjoining property to the north.
- 8.57 A carriageway is proposed along the driveway shaft of Lot 2 to facilitate vehicle access to the rear of Lot 1. As per the policy guidelines, a condition will require the Section 173 Agreement to govern shared access to the carriageway and the sharing of maintenance.
- 8.58 Relevant to traffic generation, Council's Engineer has considered the current conditions of the immediate and nearby road network in the context of the increased lot and demand expected by the proposal. No objections or issues were raised, noting that the street network could readily accommodate the additional traffic generation created by an additional dwelling. Furthermore, the CFA have raised no objection to the application, meaning that, they are satisfied that emergency vehicles can readily access the site as per their requirements.



**How does the proposal respond to the relevant Particular Provisions (including Clause 56 – Residential Subdivision) and other General Provisions?**

- 8.59 The provisions of Clause 56 (Residential Subdivision) apply to applications to subdivide land within NRZ, among other zones. Its purpose seeks to implement the Municipal Planning Strategy and the Planning Policy Framework, in addition to creating liveable and sustainable neighbourhoods and urban places with character and identity, with outcomes that appropriately respond to the site and its context for Infill sites within established residential areas.
- 8.60 It is highlighted that many of the objectives and standards are directed toward larger subdivisions which create new roads and the like and not applicable to subdivisions of existing lots as in this case. The proposal is consistent with all applicable objectives and standards of this clause, with a summary of responses below.

Policy implementation and Liveable and sustainable communities

- The assessments address the policy considerations and consistency of the overarching principals, encouraging residential consolidation within established areas and within the urban growth boundary.
- It further outlines how the subdivision would respect the existing neighbourhood character as per the Scheme directions, including responding to and integrating with the surrounding urban environment and protecting significant vegetation and site features.

Lot Design

- The proposal lot size is suitable for the development of a single dwelling. The site is located within the Principal Public Transport Network meaning it is within less than a 400 metre street walking distance from the nearest existing bus route.
- The lot area and building envelope objective seeks to provide lots with areas and dimensions that enable the appropriate siting and construction of a dwelling, solar access, private open space, vehicle access and parking and the retention of significant vegetation and site features.
- The standard requires lots greater than 500 square metres to be able to contain a rectangle measuring 10 metres by 15 metres and may contain a building envelope. The primary area of Lot 2 allows approximately double these dimensions and an envelope exceeding the area of 150 square metres is provided. This readily enables the establishment of a dwelling, in addition to extensive private open areas and appropriate access and parking provisions. The lots facilitate appropriate solar access, considering the any future proposed dwelling and ability to capitalise on northern sunlight.
- The common driveway proposed over the access shaft to Lot 2 also services Lot 1, for the event that access to the rear of the property it is required. A condition will require the plan to nominate this as a carriageway easement, with the owners to enter into a Section 173 Agreement to ensure landscaping and maintenance is shared equally to be appropriately managed.

Urban Landscape

- The subdivision does not create streets or public open spaces and therefore these provisions do not apply.

Access and Mobility Management

- No new roads or associated footpaths are proposed or required as part of the subdivision, with the existing and established road network accommodating pedestrian activity and cycling within convenient access to bus services, being located within the Principal Public Transport Network in Metropolitan Melbourne.
- The design provides for safe lot access to the existing road carriageway, with a turning area to accommodate the forward egress of vehicles from Lot 2.

Integrated Water Management

- The proposal does not require new services, being already serviced by a Yarra Valley Water supply and any new tapping will be required to be constructed as per the authority's requirements. In the same manner, all sewerage connections will be required to be constructed to Yarra Valley Water's requirements.
- Stormwater run-off must meet the Urban Storm – Best Practice Guidelines (Victorian Stormwater Committee 1999) and standard engineering and drainage conditions, as specified by Council's Infrastructure Services, will be applied.

Site Management

- Standard requirements to ensure the appropriate use of site management practices to prevent the transfer of run-off into drains and nearby roads are applied during any construction.
- Shared trenching for services would not be required given the existing dwelling on Lot 1 is already connected to services. All services are already available within the street network and Lot 2 would be required to be connected as per the Service Authority requirements.
- Standard mandatory conditions required under Clause 66.01-1 ensure that electricity, telecommunications, and gas are provided as per the Service Authority requirements.

Clause 52 Easements, Restrictions and Reserves

- 8.61 The creation of a carriageway easement is proposed along the driveway of Lot 2 in favour of Lot 1. This facilitates access to the rear of the existing dwelling, for the event it is required. The Council has no objections to the suggested easement arrangement, as the maintenance responsibility for the driveway will be shared by both landowners through a Section 173 agreement governing its upkeep.

Clause 65 – Decision Guidelines

- 8.62 The proposal is consistent with the decision guidelines for subdivision at Clause 65.02. In particular:
- The subdivision pattern has regard to the physical characteristics of the land including existing vegetation, and no further subdivision would occur thereafter.
  - The density of the proposed lots, each being at least 1,000 square metres is consistent with the mandatory requirements of the DDO3 and surrounding lot sizes.
  - The design and siting of the building envelope and the access design have regard to safety and the risk of fire. The provision of off-street parking is not affected, retaining the existing two points of access.
  - The land is serviced and has full access to utility services and significant vegetation is retained, with the opportunity to enhance native vegetation coverage.

## 9. FURTHER RESPONSE TO THE CONCERNS OF OBJECTORS

- 9.1 The assessment above has largely considered the issues raised in the objections to the application, however, the following provides a summary of the concerns, including an officer response.

### **Inconsistency with neighbourhood character and Scheme requirements**

- 9.2 Concerns have been raised with the failure of the proposal to respond to the existing character and the controls that apply to the land.
- 9.3 As stated, policy at a higher and local level supports increased densities in areas with good access to public transport and other services. Indeed, policy in this location directs lesser change in a manner that responds to the landscape and environmental values. The applied zone and overlay controls form a framework to understand the desired density and character outcomes, namely relevant to lot sizes, built-form outcomes and what vegetation and features are to be protected.
- 9.4 Battel-axe style allotments are not new to the area and the general vicinity is characterised by lot sizes in the order of 1,000 square metres (some more and some less). This is replicated by the proposal. The site in its current conditions offers a generous setting that is more spacious than what policy calls for, and therefore its urban consolidation to the desired lot size cannot be discouraged.
- 9.5 It is appreciated that other considerations beyond whether the minimum lot size is met, ought to be considered in assessing the suitability of the proposal. As outlined, the land has a gently sloping topography, facilities secondary access already, and contains low-value vegetation of nominal heights in the location of the proposed lot, with the exception of Tree 1 which is being retained. Tree 1 would continue to prevail above the average building heights, unlike the smaller species being removed to accommodate the new lot and envelope.
- 9.6 From a public vantage point, there is little to suggest that the proposal will have detriment to the broader neighbourhood character, in that any future built form is highly unlikely to be visible and the street-facing conditions will remain very much similar. The character implications are more so directly associated with the immediate abutments to which the building envelope is located.

- 9.7 The building envelope location will introduce built form in a location presently occupied by low-lying vegetation. The outlook will change by virtue of any future building form as viewed from the properties directly west and north, however, it would continue to sit beneath the prevailing canopy of the large retained oak tree.
- 9.8 Reductions to the building envelope to be not more than 25% of the site area will be required (in alignment with the desired outcome of the DDO3), with such reductions to occur from the north and west in which the envelope is most closely located. The largest length of the envelope is sited 2.1 metres from the western boundary. This could see a future dwelling located a minimum of 7.8 metres from the nearest adjoining dwelling to the west. This separation distance would not be unusual or out of character, considering the pattern of spacing already established between dwellings, particularly from their side boundaries. Furthermore, a building with a wall height of 3.6 metres could be setback 1.8 metres from the boundary without the need for a permit.
- 9.9 It is therefore considered for these reasons and those outlined in the earlier assessment, that the proposal presents an acceptable response to the character and policy context and includes an appropriate building envelope siting and size, subject to the aforementioned changes.

#### **Responsiveness of Earthworks**

- 9.10 The plans do indicate earthworks within Lot 2 in the northwest corner of the site. However, these appear to be a residual of the previous dwelling proposal. It is understood that some residents have copies of the initial dwelling layout, however, it is important to note that it no longer forms part of this application. In progressing with any permit for a dwelling on Lot 2 (should it require the need for a planning permit), it will need to be separately assessed on its merits at that time.
- 9.11 A condition will require the aforementioned works to be removed from the plan and be limited to the driveway turning area only, and to the minimum extent necessary.
- 9.12 Should any future dwelling seek to import fill along the western/northern boundaries, this is unlikely to be supported as it would fall outside of the building envelope and the preference would be to retain the natural grade and ensure any dwelling is responsive to the topography so as to not be unnecessarily raised. Given the relatively flat levels traversing the building envelope, the need for any or excessive earthworks for any future dwelling could be reasonably avoided.

#### **Flora and fauna impacts**

- 9.13 The proposed subdivision demonstrates a commitment to preserving the bushland character of the area by retaining a significant Oak tree which stands as a unique element major contributor to the area's identity and distinct character. It retains a vital element of the local landscape and the area's previous heritage.
- 9.14 All vegetation within Lot 1 (other than a hazardous tree) is further retained to maintain the sites current landscape contribution to the street.
- 9.15 The vegetation removed from Lot 2 is of low value and does not hold significant importance to the overall area by way of their height or species, observing that all but one could be removed without a planning permit.

- 9.16 A landscape plan will be required to reintroduce vegetation according to the suitable ecological vegetation class of the area. This initiative aims to improve the environmental value of the site's vegetation and ensure appropriate integration into the natural bushland character. A minimum of four large indigenous canopy trees would be expected across the two lots, in addition to complementary smaller trees/shrubs and understory planting.
- 9.17 It is understood that wildlife may utilise the site as a corridor to broader areas. It is not considered that the proposed envelope will inhibit this, namely with the increased setbacks recommended and the access shaft that retains a clear corridor between land to the west and the street. The southern half of Lot 2 will further remain clear of any built form, offering additional space for wildlife to traverse, both at grade and within the retained trees and supplementary planting.
- 9.18 Both Council's and the Applicant's Arborist have not identified any impacts on neighbouring trees, although recommend tree protection fencing to be erected as a matter of added protection during construction. It should be noted that smaller plants are not usually assessed, given their root zones are limited. Tree 17 is the only tree that has a tree protection zone extending into the property and the envelope is sited outside of this to ensure it is suitably protected.

#### **Traffic and Bushfire Impacts**

- 9.19 The potential traffic impacts have been assessed by Council's Infrastructure Services Unit, which concluded that the proposal, in the context of the traffic and the surrounding street network, can be accommodated without creating adverse traffic and safety implications to the adjacent road network.
- 9.20 While the road network is narrower in areas, it serves the purpose of accommodating residential traffic and connects to an established arterial network in close vicinity. The capacity of the road network is a matter for Councils Engineers to consider, who have not raised issues with the potential increased trips generated by a future dwelling.
- 9.21 Appreciably, concerns with the access and street conditions have been raised in the context of bushfire. The policy requires the protection of human life to be prioritised and the site is accordingly applied with a BMO. However, as abovementioned, Clause 44.06-7 of the BMO exempts an application from the usual third-party notice and appeal rights. For this reason, the suitability of the proposal in terms of bushfire risk and mitigation is limited to the views of the relevant fire authority, who has consented to the proposal subject to standard conditions, noting access arrangements accommodate emergency vehicles and static water supply.

#### **Amenity Impacts**

- 9.22 As part of the subdivision application, assessments related to overlooking and overshadowing cannot be considered as no built form is being proposed at this stage. Although, it is important to highlight that the Zone would not require a permit to construct a future dwelling as the lot exceeds 300 square metre in area. Were a planning permit needed, the assessment would be limited to the considerations of the overlays only, namely the DDO3.
- 9.23 Matters relevant to external amenity such as overlooking and overshadowing are governed by Clause 54 (Rescode) of Scheme. The evaluation of these matters

would need to be assessed by the appointed Building Surveyor for any future dwelling, to ensure compliance with the relevant standards of Clause 54.

**10. CONCLUSION**

10.1 For the reasons above, it is recommended that the application be approved subject to conditions.

**11. DECLARATION OF CONFLICT OF INTEREST**

11.1 No officers involved in the preparation of this report have any general or material conflict of interest in this matter.