

Planning and Environment Act 1987

Priority Projects Standing Advisory Committee Report

Yarra Ranges Planning Scheme

Referral No 4: 375 Swansea Road, Lilydale

15 October 2020

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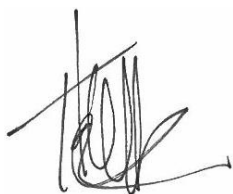
Priority Projects Priority Projects Standing Advisory Committee Report pursuant to s151 of the Act

Yarra RangesYarra Ranges Planning Scheme

Referral No 4: 375 Swansea Road, Lilydale

15 October 2020

Members of the Priority Projects Standing Advisory Committee who considered this referral:



Tim Hellsten, Chair



Geoffrey Carruthers, Member

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
BVRT	Building Victoria's Recovery Taskforce
Committee	Priority Projects Standing Advisory Committee
Council	Yarra Ranges Shire Council
DELWP	Department of Environment, Land, Water and Planning
DoT	Department of Transport
LDRZ	Low Density Residential Zone
LSIO	Land Subject to Inundation Overlay
PPF	Planning Policy Framework
RDZ1	Category 1 Road Zone
RLZ2	Rural Living Zone (Schedule 2)
RSP	Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan
VCAT	Victorian Civil and Administrative Tribunal
WSUD	Water Sensitive Urban Design

1 Overview

(i) Referral summary

Referral summary	
Date of referral	6 September 2020
Members	Tim Hellsten (Chair) and Geoffrey Carruthers
Description of referral	Use and development of a residential village, vegetation removal, earthworks greater than one metre, creation of access to a Road Zone category 1 and a reduction in the required car parking of Clause 52.06
Common name	Referral No 4: 375 Swansea Road, Lilydale
Municipality	Yarra Ranges
Planning Authority	Yarra Ranges Shire Council
Planning Permit Application No.	YR-2018/960
VCAT Application No.	P950/2020
Subject land	375 Swansea Road, Lilydale (Lot PS639506)
Applicant	Lilydale Management Services Pty Ltd
Site inspection	8 October 2020
Consultation	Roundtable submission 1 October 2020
Parties	<p>Lilydale Management Services Pty Ltd represented by Lloyd Elliot of Urbis, supported by Edward Mahoney and John Cicero of Best Hooper and Bruce Monteath of Lilydale Management Services Pty Ltd, who called written statements and evidence from:</p> <ul style="list-style-type: none"> - Hillary Marshall of Ratio (traffic) - Kate Kerkin of K2 Planning (social planning) - Darren Atkinson of Urbis (landscape architecture) - Warwick Bishop of Water Technology (drainage) - Claire Ranyard of Ecology and Heritage Partners (ecology) <p>and made available Ray Sweeney of Mondo Architects (architect) and Ross Mason of DCE Civil (civil engineering) for questioning</p> <p>Yarra Ranges Shire Council represented by Andrew Sherman and Xander Meachem of Russell Kennedy Lawyers with Council officers including Lachlan Howard and Matt Metaxas in attendance</p> <p>Melbourne Water represented by Mr Nikolas Karageorge</p> <p>Brett Daniel</p>
Information relied upon	VCAT File, application support documents, Council report and objections, amended plans and without prejudice permit conditions, expert evidence, written and verbal submissions at the Roundtable session (Document C)
Date of this report	15 October 2020

(ii) Findings

The Committee finds:

- The scale and extent of the proposal is inappropriate within the Rural Living Zone and is inconsistent with the Planning Policy Framework.
- The proposal is not an appropriate built form or design response to the site's neighbourhood character and landscape setting.
- A permit should not be issued.
- Issues other than built form can be appropriately managed:
 - The environmental impacts (habitat and its riparian zone) on Olinda Creek can be adequately addressed.
 - The 'Development Impact Assessment' and 'Biodiversity Assessment' provide a satisfactory basis to allow the proposed removal of vegetation.
 - The proposal minimises the removal of native vegetation and provides for appropriate offsets, protection and replanting.
 - The impacts of traffic noise can be appropriately managed.
 - The issues of flooding can be managed with appropriate engineering treatments to satisfy the requirements of the LSIO and State and local planning policy.
 - The issues of stormwater drainage can be managed with appropriate engineering treatments to satisfy the requirements of Melbourne Water, Council and State and local planning policy.
 - Adequate provision is made on site for carparking as a result of the amended plans submitted by the Applicant.
- If, contrary to the Committee's primary recommendation, a permit is issued, it should be subject to the conditions set out in Appendix D.

(iii) Recommendation

- 1. That a permit not be issued.**

2 Introduction

(i) Terms of Reference and letter of referral

The Priority Projects Standing Advisory Committee (the Committee) was appointed by the Minister for Planning on 14 June 2020. The purpose of the Committee is set out in its Terms of Reference (Appendix A) to:

... provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

The Committee was provided with a letter of referral from the Minister for Planning dated 6 September, 2020 (Appendix B) that tasked it:

...for advice and recommendations on whether a planning permit should issue, with the primary issues of dispute being conflicting state and local planning policy, neighbourhood character, built form, housing diversity, the purpose of the zone, flooding and car parking.

This is Referral No. 4.

(ii) Membership

Due to the issues to be resolved, the members of the Committee dealing with Referral No. 4 were:

- Tim Hellsten, Chair
- Geoffrey Carruthers, Member.

The Committee was assisted by Georgia Thomas, Project Officer, of Planning Panels Victoria.

(iii) Background to the proposal

VCAT proceeding No. P950/2020 relates to the proposed use and development of a residential village, vegetation removal, earthworks greater than one metre, creation of access to a Road Zone category 1 and a reduction in the car parking required under Clause 52.06 at 375 Swansea Road, Lilydale.

Lilydale Management Services Pty Ltd (Applicant) lodged Planning Permit application YR-2018/960 with Yarra Ranges Shire Council (Council) on 19 September 2018 initially as a s96A combined amendment (for rezoning to the Neighbourhood Residential Zone (NRZ)) and permit. The Applicant amended the application on 3 May 2019 to a permit application only. It involved:

- the construction of 72 two and three bedroom, single storey brick dwellings with hip rooves, single and double garages arranged around a 5.5 metre-wide shared pedestrian and vehicular circulation accessed from Akarana Road with a single gated entry
- a communal facility (gym and pool, theatre, lounge and dining facilities)
- five Communal Open Space areas totalling 1828 square metres
- vehicle access to the site via an eight metre wide bridge within the Akarana Road reserve and a separate gated emergency access to Swansea Road
- 24 visitor car parking spaces

- earthworks to raise the eastern portion of the land so that the dwellings are above the flood level of the site and to excavate the western portion of the land to ensure no loss of floodplain capacity
- the removal of 21 trees (11 within the site and 10 within the Akarana Road road reserve) to facilitate filling of the land and construction of access. 17 of these trees are native species (predominantly Swamp and Yarra gums) requiring offset planting
- a 3 metre high acoustic sound barrier along the site boundary with Swansea Road and 1.7 metre high returns at the Akarana Road and southern boundaries.

The village is to be provided for over-55 year old residents under a land lease model.

The Applicant submitted amended plans (Figure 1) which included:

- reducing the dwelling numbers by three to a total of 69
- reducing the fence height along Swansea Road to 2.0 metres with planted offsets
- altering internal garage dimensions to meet the statutory requirement for onsite parking and widen sections of the internal driveway.¹

Figure 1 Development proposal amended plan layout



Source: Amended Site Plan A-004 dated 29.09.20, Mondo Architects

A permit is required by the Yarra Ranges Planning Scheme under:

¹ Document 13 - Amended plans A-004, A-005, A-006, A-101, A-102, A-103, A-201 and A-203 dated 29.09.20

- Clause 35.03 (Rural Living Zone - Schedule 2)(RLZ2) - for the use and development of a Residential Village and for earthworks
- Clause 36.04 (Road Zone) (RDZ1) – for works (access)
- Clause 44.04 (Land Subject to Inundation Overlay) (LSIO) - for buildings and works (including fencing)
- Clause 51.03 (Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan) – to carry out works within two metres of vegetation, construct a fence, dwelling and remove vegetation
- Clause 52.06 (Car parking) – for a reduction in onsite carparking provision (8 spaces)
- Clause 52.17 (Native Vegetation) – for the removal of native vegetation.

Residential Village is defined as:

Land, in one Ownership, containing a number of dwellings, used to provide permanent accommodation and which includes communal, recreation, or medical facilities for residents of the village.

Whereas a Retirement Village is defined as:

Land used to provide permanent accommodation for retired people or the aged and may include communal recreational or medical facilities for residents of the village.

The application was supported by the following documents:

- Planning Report prepared by Urbis, May 2019
- Earthworks Plans prepared by Dalton Consulting Engineers, Revision H
- Stormwater Treatment Plan prepared by Water Technology, February 2020
- Cultural Heritage Management Plan, ID: 15508 prepared by Pragmatic Cultural Heritage Services, 5 March 2018
- Development Impact Assessment prepared by Arbor Survey, 23 April 2019
- Biodiversity Assessment prepared by Ecology & Heritage Partners, October 2019
- Landscape Concept Plan prepared by Urbis, 30 April 2019
- Landscaping Response prepared by Urbis, 28 August 2019
- Transport Impact Assessment prepared by GTA Consultants, 2 May 2019
- Traffic Noise Assessment prepared by Marshall Day Acoustics, 4 September 2019
- Waste Management Plan prepared by Leigh Design, 3 September 2018.

Council's internal departments:

- did not object to removal of vegetation but sought tree protection and identified a preference for retaining 6 trees in the road reserve and management of environmental impacts on the creek
- identified concerns about lack of pedestrian access, design of garages and reduction of parking
- identified flood concerns within the public realm and with downstream flow velocities and stormwater quality treatments.

No objections were received from the four referral authorities – VicRoads (now Department of Transport), Transport for Victoria, Country Fire Authority (CFA) (with conditions) and Melbourne Water (with conditions).

Council considered the application on 26 May 2020 and the 44 objections received to the application, resolving to refuse to grant a permit on the grounds that:

- the proposal is an overdevelopment of the site and fails to comply with the Planning Policy Framework (PPF) and Local Planning Policy Framework (LPPF) relating to neighbourhood character, housing diversity and landscaping
- the purpose and decision guidelines of the RLZ because of the built form response (intensity, spread, lack of separation, extent of fencing and hard stand surfaces, lack of landscaping and loss of views to the Creek)
- the proposal does not satisfy the purpose and decision guidelines of the LSIO
- the proposal is not supported by the purpose and decision guidelines of Clause 52.06.

An application for review of Council’s decision was lodged with the Victorian and Civil Administrative Tribunal (VCAT) on 5 June 2020 (VCAT Proceeding No. P950/2020). The other parties to that proceeding were Council, Melbourne Water (confirming they had no objection subject to the application of their identified conditions) and Mr Daniel. Transport for Victoria advised VCAT that they had no objections and proposed no conditions but wanted to be advised of the outcome. The matter was listed for a compulsory conference on 15 September 2020 with a Hearing scheduled to commence on 25 November 2020.

(iv) Limitations

Consultation

The Committee held a roundtable session to consider submissions from the VCAT parties on 1 October 2020.

Parties were advised on 17 September 2020 of the Minister’s call in of the VCAT proceeding and its referral to the Committee and the Committee’s intention to consider submissions via a one day roundtable. All VCAT parties confirmed their intention to participate in the roundtable with no procedural issues identified.

Parties were advised on 21 September of the Committee’s identification of issues for consideration in addition to specific questions regarding design response, referral authority permit conditions, particular environmental and site management aspects and without prejudice draft conditions. Only the Applicant sought to add an additional issue relating to Council’s *Healthy and Active Ageing Plan 2019-2023* and policies relating to housing diversity and affordability which was accommodated within the Timetable.²

Parties were given the opportunity to call evidence or (in the case of the Applicant) provide statements from the authors of particular application reports relating to the identified issues. The Applicant provided expert evidence and written statements on drainage, traffic, landscaping, ecology and social planning and had its architect and civil engineer available for questioning. This material was taken as read and only in limited instances (drainage) was the expert invited to provide a short overview of opinions.

The roundtable session provided each party with the opportunity to present focused verbal (and in some instances written) submissions on each of the identified issues. Parties were provided an opportunity to clarify positions of other parties and ask questions of experts. The roundtable concluded with a ‘without prejudice’ discussion on conditions. The

² Document 6

Applicant provided revised conditions based on those discussions after the conclusion of the roundtable, and other parties were provided with an opportunity to respond.

The Applicant provided an accessible SharePoint folder for all background documents and documents submitted to the Committee by parties.

Submissions

The Committee's consideration of this matter has been limited to submissions and discussions from parties to the VCAT proceeding. The Committee however, viewed the 44 objections to the permit application, and these informed its identification of the issues. In some cases, the Committee has referred to specific objections where they relate to a particular issue.

The Committee notes that the shared document folder provided to parties included a statement of grounds lodged with VCAT by objector number 38. While the statement was not found on the VCAT file it indicates that the party did not wish to be a party to the VCAT proceedings but wished their objection to be considered. While not specifically referring to that submission in this Report, the Committee has reviewed it and considered the environmental concerns identified in it as part of its consideration of environmental issues.

Site inspection

Because of the movement restrictions associated with COVID 19, not all Committee members were able to view the site before the roundtable. The Committee relied on extensive aerial imagery and photographic views of the site contained in material provided to it. The Committee visited the site (with appropriate permits) on 8 October 2020.

3 Site and planning context

3.1 The subject land

The subject land is 4.167 hectares in area, with a primary frontage to Swansea Road, Lilydale of 262.8 metres and a secondary, largely unconstructed frontage to Akarana Road (refer Figure 2). It abuts Bellbird Park to the north and Olinda Creek to the west. The site is largely vacant (save for an open sided storage shed and shelter) and flat with a gentle fall to the creek in the north-west. The site contains scattered exotic and native vegetation, with a denser belt of riparian and mature Manna Gum along the creek edge. A four metre wide drainage and sewerage easement extends north-south through the western portion of the site.

Figure 2 Subject land



Source: Yarra Ranges Council Meeting Agenda 26/05/2020

Land adjoining the site comprises:

- north of Akarana Road, Lilydale Lake and Bellbird Park. The Akarana Road Reserve includes a walking trail
- south and abutting the site is the former Glenvale School and part of a Rural Living Zone (RLZ) strip of 20 lots ranging from 850 square metres to six hectares, extending along Swansea Road and Olinda Creek from Birmingham Road to Lilydale Lake Park. Land uses include places of worship, the former school and the Boorndawan William Aboriginal Healing Service
- west of Olinda Creek and east of the site fronting Swansea Road is a residential area within the Low Density Residential Zone (LDRZ) comprising single and two storey dwellings on lots of 900 square metres to 0.8 hectares.

The subject land is located approximately 1.7 kilometres walking distance from the Lilydale Activity Centre with bus stops on Swansea Road close to the site providing direct connections to both the Lilydale and Mooroolbark Activity Centres.

3.2 Planning framework

(i) Planning policy

The submissions of Council and the Applicant agreed that the following State and local planning policies were relevant:

State policy

- Clause 11.01-1S (Settlement Clause)
- 11.01-1R (Settlement – Metropolitan Melbourne)
- Clause 11.02-1S (Supply of urban land)
- Clause 11.03-5S (Distinctive areas and landscapes)
- Clause 12.01-1S (Protection of biodiversity)
- Clause 12.01-2S (Native vegetation management)
- Clause 12.03-1S (River corridors, waterways, lakes and wetlands)
- Clause 13.03-1S (Floodplain management)
- Clause 15.01-1S (Urban design)
- Clause 15.01-1R (Urban design – Metropolitan Melbourne)
- Clause 15.01-2S (Building design)
- Clause 15.01-5S (Neighbourhood character)
- Clause 15.03-2S (Aboriginal cultural heritage)
- Clause 16.01-1S (Integrated housing Clause)
- Clause 16.01-1R (Integrated housing – Metropolitan Melbourne)
- Clause 16.01-2S (Location of residential development)
- Clause 16.01-3S (Housing diversity)
- Clause 19.03-3S (Integrated water management).

Local policy

- Clause 21.03-1 (Strategic Framework)
- Clause 21.04-1 (Land use – Residential)
- Clause 21.06 (Built form)
- Clause 21.09 (Environment)
- Clause 21.10 (Infrastructure)
- Clause 22.05 (Vegetation protection)

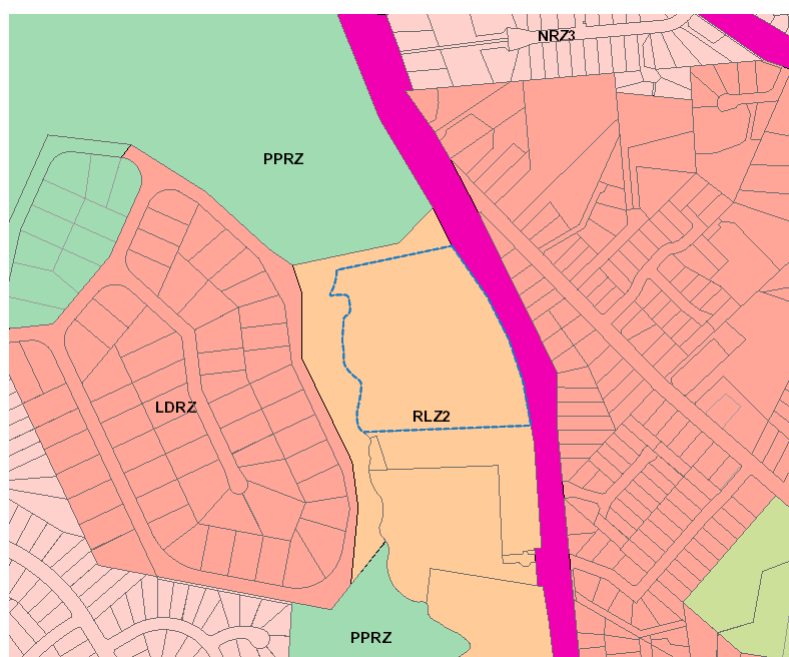
These planning policies have been considered by the Committee in forming its view on the application.

(ii) Zones and overlays

The subject land is within the RLZ2 and extensively covered by the LSIO. The site abuts a Category 1 Road Zone (RDZ1). The purpose of these Zones and Overlays is identified in Table 1 and their extent shown in Figures 3 and 4.

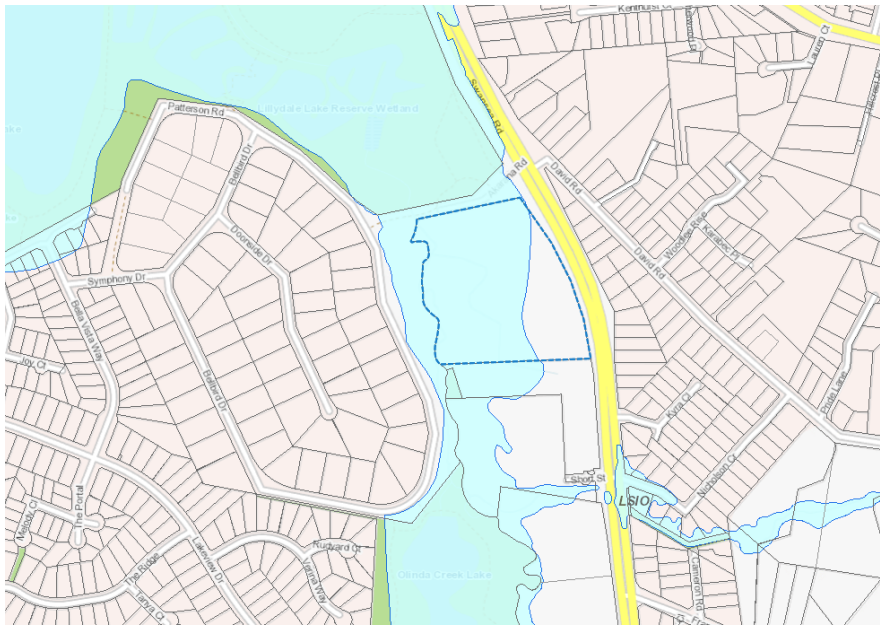
Table 1 Purpose of existing Zones and Overlays

Existing controls	Purpose
RLZ2	<ul style="list-style-type: none"> To provide for residential use in a rural environment. To provide for agricultural land uses which do not adversely affect the amenity of surrounding land uses. To protect and enhance the natural resources, biodiversity and landscape and heritage values of the area. To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.
RDZ1	<ul style="list-style-type: none"> To identify significant existing roads. To identify land which has been acquired for a significant proposed road.
LSIO	<ul style="list-style-type: none"> To identify land in a flood storage or flood fringe area affected by the 1 in 100 year flood or any other area determined by the floodplain management authority. To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, is compatible with the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity. To reflect any declaration under Division 4 of Part 10 of the Water Act, 1989 where a declaration has been made. To protect water quality in accordance with the provisions of relevant State Environment Protection Policies, particularly in accordance with Clauses 33 and 35 of the State Environment Protection Policy (Waters of Victoria). To ensure that development maintains or improves river and wetland health, waterway protection and flood plain health.

Figure 3 Zoning of site (within dotted line) and surrounding land

Source: VicPlan

Figure 4 Land Subject to Inundation Overlay



Source: VicPlan

(iii) Particular provisions

Council and the Applicant agreed that the following particular provisions of the Yarra Ranges Planning Scheme were relevant to the permit application:

- Clause 52.06 (Car parking)
- Clause 52.17 (Native vegetation)
- Clause 52.29 (Land adjacent to a Road Zone, Category 1)
- Clause 51.03 (Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan)
- Clause 65 (Decision guidelines)
- Clause 71.02-3 (Integrated decision making).

The provisions have been considered by the Committee in forming its view on the application.

4 The issues

The referral has asked the Committee to consider the primary issues of dispute “*being conflicting state and local planning policy, neighbourhood character, built form, housing diversity, the purpose of the zone, flooding and car parking.*” The Committee has focused its discussion on these issues as well as briefly addressing other issues raised by the parties.

4.1 Rural Living Zone and planning policy

(i) The issues

The issues are whether the proposal is:

- consistent with State and Local Planning Policy
- consistent with the Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan (RSP)
- an appropriate planning outcome within the RLZ.

(ii) Submissions and evidence

Council submitted that the proposal (as originally proposed and in its amended form) was untenable in the RLZ and on a site that is predominantly within a floodplain. It stated that the proposal was inconsistent with:

- Clause 21.04 relating to housing location which identifies the LDRZ and RLZ as having a housing function of low density, single dwelling residential use and includes a policy position of a maximum of one dwelling per lot or parcel in the RLZ
- the broader lower density outcomes of the RLZ and the RLZ2 average lot yield maximums (1 lot per 4 hectares), identifying that the use of the single ownership Residential Village model proposed avoided the minimum lot size provisions but had the same visual, density and development outcome as a Retirement Village, the subdivision outcome of which is not permitted
- the RLZ2 decision guidelines relating to managing design and siting and environmental impacts on water quality, landscape features, biodiversity and character among others
- Clause 51.03 Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan.

Council’s submission identified that the RSP sought to protect the special character and features of the region and should be given significant weight. It identified that the site sits within the ‘Rural Landscape 1 Policy Area’ (which generally reflects the extent of RLZ2 on private land) which seeks:

To provide for a range of farming uses and activities (including part-time farming) compatible with land suitability, capability and subdivision patterns, to protect and maintain the remaining native vegetation, wildlife, water quality and to maintain and enhance landscape value and character.

Council submitted that the proposal was contrary to or at least inconsistent with the land use, tenement and second house policy provisions of the RSP even though these elements weren’t clearly translated into the RLZ2. It advised that the application of the RLZ2 and LDRZ to the Olinda Creek corridor was a deliberate zoning approach and response to the RSP and not a remnant zoning anomaly.

While Council acknowledged positive aspects of the proposal that reflected other policy elements including economic development and housing affordability, it considered them *“elements of a normal balancing of considerations to exercise a planning discretion”* and that a single, modest development on a constrained site should not ignore *“30 plus years of clear strategic direction”* and policy. It concluded that the Planning Scheme, policy and the RSP support the more open nature of development that exists between the townships of Lilydale and Montrose (and the Mooroolbark suburb to the west) and that the proposal was *“completely incongruous to the historical and current development”* of the area.

Mr Daniel considered that the proposal was at odds with the decision guidelines of the RLZ which sought compatibility with adjoining and nearby uses and minimising impacts on the environment. He considered the scale of the development inconsistent with the purpose of the RLZ which permits lot sizes of two to three hectares rather than effective lot sizes of 250 square metres. He submitted that consistent with Clause 21.03-1, the RLZ provides a lifestyle choice and that the proposal was not supported by the strategies of Clauses 21.04-1 or 21.08 that sought to support single dwelling use as the primary function of RLZ areas.

The Applicant identified that the proposal was an appropriate response to a largely cleared site with main road frontage and proximity to the Lilydale Activity Centre. It provided additional affordable³ housing options at comparable densities to other similar developments in the Green Wedge Zone and RLZ (two examples cited), an opportunity to create a new park space and improve the riparian corridor along Olinda Creek and would deliver a net community benefit.

The Applicant submitted that the site did not fit any of the descriptors in Clause 21.03-1 (it was not on the Mt Dandenong Ridge line or in a buffer between urban and rural or green wedge land, was not remote from an urban centre or identified as inappropriate for further subdivision or development). It suggested therefore, that the site was somewhat anomalous given its location within the Urban Growth Boundary. The submission noted that the locational characteristics of Rural Landscape 1 described in the RSP did not reflect those of the site and that those provisions of the RSP did not reasonably apply. It submitted that the proposal is aligned with the RSP given it is a permitted use.

Dr Kerkin provided social planning evidence for the Applicant. Her evidence outlined the potential benefits of the proposal in terms of fulfilling a housing need based on changing municipal demographics and identified that it was consistent with Council’s Healthy and Active Ageing Plan and policies relating to housing diversity and affordability. She identified a lack of similar housing options in the area to enable ‘ageing in place’ and considered that the proposal provided affordable living in a location close to Lilydale Town Centre and access to transport options. Dr Kerkin provided a spatial analysis of other retirement villages which identified 13 other villages in nearby suburbs (the closest land lease model being 34 kilometres away) with overall unit availability below 1.8 percent. She identified that of the six comparable sized developments, one was in a Green Wedge Zone and one within a LDRZ, with the others being in more conventional residential zones.

(iii) Discussion and findings

The subject land is located within a RLZ strip that extends from south of Hull Road, connecting Lilydale Lake Reserve Wetlands, Olinda Creek Lake and Olinda Creek and Olinda Reserve.

Whether or not the RLZ2 application is an anomaly within the Urban Growth Boundary is not for the Committee to surmise, the fact is it applies and would appear to have some strategic basis linked to the RSP and the landscape values present.

The proposed Residential Village use (and a Retirement Village) are permitted uses. The zone anticipates a broad range of uses under Section 2 ranging from farming, commercial and light industrial activities on the basis that there is management of conflicting and adjoining uses. One of the purposes of the RLZ is to provide for residential use (which the proposal is) in a rural environment.

Council's housing policies including Clause 21.04 provide a clear objective to support low density housing outcomes in the RLZ. The Committee agrees that in the context of the RLZ2 provisions and decision guidelines there is a strong level of support for single dwellings and restricting subdivision, however they do not prohibit more intensive residential development outcomes. There are no density provisions within the RLZ2 and the proposal does not involve the subdivision of land or rely on the ability to subdivide in the future.

The Committee acknowledges that the RSP applies broad descriptions of rural areas and agrees that many of the described attributes of Rural Landscape 1 are not present in the Olinda Creek-Swansea Road corridor. However, Clause 51.03 sets out a broad objective to maintain landscape values and character. The Olinda Creek-Swansea Road corridor has apparent landscape, character and environmental elements present that require consideration.

It was generally agreed by Council that there are positive aspects associated with this proposal. The Committee agrees that strategically the site is well located for more intensive development. It is close to the Lilydale Activity Centre, serviced by public transport and linked to a wider pedestrian-bicycle network. It was not disputed that the proposal has the potential to provide for additional housing diversity in the area and based on evidence, will satisfy a supply need and provide an affordable option to other more traditional housing forms for older residents.

The proposal must be assessed not only for its broad consistency with the zone purpose, provisions and decision guidelines but also in concert with the wider policy provisions of the planning policy framework. To be supported, it must achieve appropriate planning outcomes, sustainable development and net community benefit.

The question for the Committee is whether the proposal achieves an appropriate planning outcome.

The Committee notes that the Minister's letter to VCAT calling in the application identified that he considered the proposal was consistent with:

- Clause 11.01-1R (Settlement – Metropolitan Melbourne)
- Clause 21.01-1S (Protection of Biodiversity)
- Clause 21.03-1S (River corridors, waterways, lakes and wetlands)
- Clause 13.02-1S (Bushfire planning)

- Clause 16.01-3S (Housing diversity).

These policies were not identified by the parties as being in dispute or unable to be responded to. The Committee agrees that they have been broadly satisfied.

The Committee acknowledges that the site and surrounding area is not a pristine rural or rural living environment. There are a number of land use and built form intrusions within the Olinda Creek-Swansea Road corridor including, on the west side a church, several houses and a former private school comprising large structures and high front fence, and on the east side dwellings of varying size and setbacks. What is consistently present within this view corridor is a general sense of openness (despite some interruptions), views to the Olinda Creek environs, canopy trees and adjoining parklands.

On balance the Committee is of the view that the proposal is not consistent with the RLZ and the planning policy framework. As discussed further in Section 4.2 the strategic location of the site and context can support a land use and development substantially larger than a single dwelling. However, a development form that covers 36 percent of the site and would have a significant, dominant impact on its setting is not what could reasonably be expected to be accommodated in a RLZ. The development would significantly impact on view lines to open space and the Olinda Creek environs, and is likely to have a cascading impact on the possible development expectations of the vacant lot to the south and future use of the former school site, dramatically impacting the character of the corridor. The potential to provide affordable housing and further housing choice close to the Lilydale Town Centre, while a positive housing outcome, it is not sufficient to tip the scales against the broader strategic expectations of local policy and the RSP. The scale of the proposal does not result in an acceptable planning outcome or provide a net community benefit.

The Committee notes that the Applicant originally intended that the Communal Open Space area be provided to Council as public open space. Such an outcome would have presented a significant community benefit by providing additional protection and enhancement of the Olinda Creek environs. However, Council did not wish to accept the site and Melbourne Water cautioned public access to it.

The Committee was somewhat perplexed by earlier discussions between the Council and the Applicant about the potential rezoning of the site to a Neighbourhood Residential Zone (which was not ultimately progressed). This seemed at odds with the Council position that the application of the RLZ to the area was a clear and deliberate response. While not particularly relevant to the Committee's considerations, it notes that a section 96A approach may have received a different response from the Committee. To that end the Committee acknowledges the evident frustration of the Applicant in pursuing the application over several years at some cost based on an understanding of Council support.

The Committee finds:

- The scale and extent of the proposal is inappropriate within the Rural Living Zone and inconsistent with the Planning Policy Framework, including the RSP.

4.2 Design response to neighbourhood character and landscape setting

The issue is:

- whether the proposal's built form and design is an appropriate response to neighbourhood character, landscape and broader site context.

(i) Submission and/or evidence

Council's submission provided the following descriptive analysis of the site context:

This site combined with its neighbours to the north and south (and then land further north and south) forms a long term continuous stretch or gap between the township of Lilydale and the approaches to Montrose towards the south. Immediately south of the site there are large allotments on both sides of Hull Road (church buildings and school) which maintain that open feel or development. Immediately north is an open reserve area (Bellbird) which provides access to walking paths and is used regularly for an open air market. Further north is Lilydale Lake, a large open space area constructed a number of decades ago in part to manage the drainage and flooding issues associated with Olinda Creek and nearby redevelopment of the "Lilydale Lakes Estate". There is small Low Density Residential Zone immediately west of Olinda Creek, adjacent to the site, which serves as a density buffer to the Lilydale Lakes Estate just further west.

Across Swansea Road where the hill rises up to Mount Evelyn, there is a Low Density Residential Zone and dwellings within that area are generally, through some vegetation, somewhat visible, albeit on larger lots.

It identified that while the immediate environs of Olinda Creek are aesthetically pleasing, it was not suggesting the area was a *"a magnificent rural landscape or vista"*. Rather, it was part of a *"genuine open break in the land, along Swansea Road between the more intense residential areas of the townships/suburbs"*.

While acknowledging the amended plans responded to some of its concerns, Council was critical of a number of elements of the design and built form response to its neighbourhood and character setting, including:

- the interfaces with the Olinda Creek and the views of the development from Swansea Road
- lack of a 'front' entrance to Swansea Road
- the need for acoustic measures creating a long fence interface and lack of streetscape address
- the 'cheek by jowl' arrangement of the dwellings
- dwelling variety and quality
- use of cantilever treatments over the fill embankment which do not meet private open space dimensions and provide maintenance challenges.

Mr Daniel characterised the area around the site as a pleasant environment and treed valley characterised with low density housing, public open space and a floodplain. He considered the original design response providing 23 dwellings within 3.5 metres of Swansea Road with a high acoustic wall was an unacceptable visual intrusion within the established neighbourhood character. While not supporting the development, in commenting on possible permit conditions, he considered that the number of dwellings should be reduced to 46 to create a density outcome more consistent with the LDRZ, Swansea Road setbacks increased to 7.5 metres and fence height reduced to 2 metres.

The Applicant submitted that the proposal was an appropriate response to the site, featuring single storey development, a low site coverage (36 percent) and providing a significant landscape outcome (41 percent garden area). It considered that the amended plans satisfied Clause 15.01-2S and Clause 21.06 by providing additional breaks between buildings, increased internal green spaces and extensive canopy landscaping and would

“contribute positively to the local context and enhance the design response to the surrounding urban character”.

The Applicant did not support the deletion of the cantilever elements of the western edge buildings, considering them part of the premium product offering. It indicated that they could be enlarged to meet minimum open space dimensions but that this was not necessary given there was no specific requirement to do so and that sufficient open space areas were provided elsewhere within the site.

(ii) Discussion and findings

The primary question for the Committee is whether the development form is appropriate to its streetscape and landscape setting.

The Olinda Creek – Swansea Road corridor character in which the site is located is dominated by large open areas, views to the Oldina Creek environs and floodplain and public parks and a strong presence of canopy trees. The corridor is not a pristine landscape and does feature a number of visual intrusions. The site itself is large and generally open and can accommodate a reasonable level of development. Despite the extent of fill required, the resultant single storey dwelling form is not inappropriate. The Committee has no concern with the proposed cantilever treatment of the western edge dwellings and sees no clear benefit in their deletion from the design. Observed from the open space to the north and pedestrian creek crossing, they are likely to add greater visual interest and break up the form of the structures.

The most significant element of the development as it presents to Swansea Road and the public realm is the number of dwellings and spacing between dwellings along the Swansea Road frontage and the high front fence.

In Section 4.4 the Committee sets out its response to the issues of flooding in the context of the provisions of the LSIO and related planning policies. While the floodplain issues require careful consideration and management, there are engineering solutions available to manage these impacts. The extent of the LSIO and the constraints it places on the design and location of the development pad do, however, have consequences for the overall development. The floodplain extent and the need to maintain its flood storage capacity has required intense development focused along the entire eastern half of the site, along Swansea Road. The resultant continuity of built form including fence treatments is at odds with the prevailing character of the location. It largely prevents any clear views through or across the site. The development of the vacant lot to the south would likely exacerbate this impact.

The Committee acknowledges that the amended plans provided by the Applicant have gone some way to addressing some of the more significant built form elements. Providing greater spacing between buildings along Swansea Road, a lower front fence (potentially with transparent treatments as discussed in Section 4.3.3) and additional landscaping will assist in reducing the impact. These changes are, however, at the margins. Views through the site are restricted to views from more elevated dwellings and pathways on the east side of Swansea Street across the top of the fence and roof tops, and will be to the upper canopy backdrop of the creek only. The density and spatial extent of the development response will still be inappropriately visually dominant within the landscape setting and strongly at odds with the prevailing neighbourhood character.

The Committee considers that it is the extent of site coverage, rather than density per se, that is excessive. It is not possible to specify a number of dwellings that might be acceptable as it is the built form response rather than dwelling number which has the greatest visual impact. The Committee notes that a substantially reduced proposal may not be feasible and would not contain sufficient scale or dwelling numbers to create a village or community feel.

While a form of residential village may be appropriate on the site, it would need to be substantially reconfigured so that built form was concentrated in the north-east corner to take advantage of the mature street tree backdrop and provide substantial open areas to the south of the site to maintain important landscape views through to the Creek environs and open space areas to the north from Swansea Road. Such a change would be an entirely new proposal and could not be reasonably conditioned on a permit.

Both Council and Mr Daniel suggested that in the event the proposal was supported that the dwelling numbers be dramatically reduced by up to 30 dwellings to achieve a lower density and site coverage. Such a response is arbitrary, tantamount to a refusal and does not consider aspects of development viability, particularly when the Applicant advised that the amended proposal as 69 dwellings was at the margins of viability.

The Committee finds:

- The proposal is not an appropriate built form or design response to the site's neighbourhood character and landscape setting.
- A planning permit should not be issued.

4.3 Flooding and stormwater drainage

The relevant State Planning Policies are:

- Clause 19.03-1S (Floodplain management)
- Clause 19.03-3S (Integrated waterway management).

The RLZ requires a permit to carry out works exceeding 1 metre in height or depth which change the rate of flow or discharge point of water across a property boundary.

The majority of the subject site is covered by a LSIO, and forms part of the Olinda Creek floodplain. The LSIO requires a permit to construct a building or construct or carry out works, including a fence.

(i) The issue

The issue is:

- whether flooding and stormwater impacts can be adequately addressed and managed.

4.3.1 Flooding

(i) Submissions

The Applicant's submission materials identify that site flooding is proposed to be managed through earthworks fill creating a pad to raise the eastern part of the site. The dwelling finished floor levels would be 600 millimetres above the 1 percent Annual Exceedance Probability flood contour (1% AEP). The earthworks would result in a loss of floodplain capacity in this part of the site, which is proposed to be recouped through graded excavation

up to 3 metres deep across the western part of the site. This would in essence create a wetland in the Communal Open Space to act as a retarding basin. The existing overland stormwater flow paths would also be diverted into new swale drains around the site, within both the Swansea and Akarana Road reserves.

The Applicant's Stormwater Management Plan (Water Technology, February 2020) detailed modelling that demonstrated that the earthworks would result in no net loss to the floodplain capacity, but that increased depths and velocities would occur through existing swale drains. The excavations would create an additional 13,000 cubic metres of retention capacity.

Council's Drainage Engineering Team expressed concern regarding these potential increases and that the modelling shows the potential for increased floodwater flows on the private land adjoining the site at the southern boundary.

Council also submitted that local policy seeks to divert developments which cater for an aged population away from areas of environmental risk and that the Applicant had not adequately demonstrated that the proposal would not face adverse flooding risk, including at the main entrance bridge from Akarana Road.

Melbourne Water submitted that the proposed Communal Open Space would effectively be a floodplain basin and that no public or resident access should be permitted within 30 metres of the top bank of Olinda Creek. Melbourne Water noted that its nominated permit conditions had been included in the without prejudice conditions document. This included the preparation of a Floodplain Risk Management Plan.

Melbourne Water sought that the Owner of the residential village indemnify Melbourne Water from any claims resulting from flooding.

(ii) Discussion and findings

The LSIO provides the primary planning tool for considering flood impacts, with Melbourne Water the management authority for the Olinda Creek floodplain and major stormwater drainage.

The Committee is of the view that the appropriate assessments under the LSIO have been undertaken and are supported by Melbourne Water. The nominated Melbourne Water conditions are appropriate, and a permit could stipulate that design floor levels of all buildings be 600 millimetres above the 1% AEP flood level.

The proposed increased in retardation volume might vary at the detailed design stage and the final earthworks to create the pad upon which the village would be constructed might change as a result of the layout variations recommended by the Committee should a permit be granted. The ongoing maintenance of the Communal Open Space by the Owner must ensure that the retardation function within the floodplain operates as required by Melbourne Water. The Committee concludes that, subject to Melbourne Water endorsing final plans, the development could enhance the storage performance of the Olinda Creek floodplain.

A Flood Risk Management Plan is a critical component of development (and an appropriate condition) within a floodplain, and particularly important in this instance where stormwater would be diverted from the upstream catchment around the site via swale drains.

The Committee finds:

- The issues of flooding can be managed with appropriate engineering treatments to satisfy the requirements of the LSIO and State and local planning policy.
- Any permit issued should require a Stormwater Management Plan and Flood Risk Management Plan which must be approved by Melbourne Water prior to commencement of development.
- The final design of the swale drains and access at Akarana Road and Swansea Road should be referred to Melbourne Water and DoT as relevant for approval as a condition of any permit.

4.3.2 Stormwater drainage

(i) Submissions and evidence

Council submitted that the current conditions allow for stormwater from properties on the eastern side of Swansea Road to be collected in a swale drain on the western side of the road. These site surface cross flows cross would effectively be blocked by the proposed development with new swale drains around the site constructed within the road reserve adjacent to pedestrian and bike paths. Council regarded this as potentially dangerous and sought satisfactory landscape screening with physical barriers (such as bollards) to separate path users from the swale drains along Swansea and Akarana Roads. It was not convinced that the Communal Open Space area could be drained to the creek allowing for the sewerage easement and berm.

Council's key concerns are set out in Table 2 with related responses from Water Technology.

Table 2 Response to Council drainage issues

Council issue	Water technology response
Velocities in the drainage channel on the north and east boundary of the site	These velocities, from both a person safety and channel stability perspective, can be managed through appropriate design
Safety Hazard in swale	It is not uncommon for safety criteria to be exceeded in drainage channels. As above, this can be managed through appropriate design, guiding pedestrians away from harmful areas through landscaping, fencing and signage
Site access during floods	The Stormwater Management Plan describes how safe egress from the site will be provided directly from Swansea Road

The Stormwater Management Plan noted that the relatively steep terrain upstream in the catchment would result in a redirected 1% AEP stormwater flow creating two localised pinch points in the swale drains at the Swansea - Akarana Road intersection, and further west along Akarana Road. This could be exacerbated by existing underground local drainage pipes not being of sufficient capacity to carry 1% AEP event flows, and flood water spilling out from Council drainage pits. The back flows from these pinch points could affect flows across Swansea Road. The increased depth and higher velocity flows at these pinch points would need to be addressed at a detailed design stage in order to comply with Melbourne Water's 'Land Development Manual' guidelines.

Melbourne Water advised that the culverts under the main access bridge from Akarana Road and the proposed Swansea Road emergency access should be designed to convey 1% AEP flows, with a 15 percent blockage factor applied. The Applicant's drainage consultant and expert (Mr Bishop of Water Technology) advised that this may not be necessary given that the modelling predicted that flood levels would recede at the two access points within 2 hours of a flood peak.

The proposed stormwater drain outlet to Olinda Creek would need to be approved by Melbourne Water to ensure that the increased flows were mitigated to minimise erosion of the creek bank. The outlet would need to be designed to minimise visual impact, adequately integrate into the existing landscape and provide a method for treating pollutants (particularly nitrogen and phosphorus) so that water quality in Olinda Creek was not impacted.

The Water Technology report proposed the possibility of a 10,000 square metre Riparian Forest plantation (of approximately 500 Swamp Gum) in the Communal Open Space area, based upon the nutrient uptake capabilities of these eucalypts. Once mature, these trees could extract up to 90 kilograms nitrogen and 15 kilograms phosphorus per year, and form part of a stormwater treatment train across the site.

(ii) Discussion and findings

While Council was not confident enough pre-application work had been undertaken to ensure flooding and stormwater impacts could ultimately be successfully managed. The Committee is satisfied by the evidence of Mr Bishop and views of Melbourne Water that they can be. Any permit issued would require further detailed drainage engineering design, plans and computations to be submitted to Council for approval prior to development. Council advised that WSUD principles would need to be applied. The Water Technology report adequately outlines this intent, including on-site water treatment options such as rain gardens, gross pollutant traps, underground retention tank, and the possibility of a plantation of Swamp Gums.

The diversion of stormwater flows around the site in a 1% AEP flood event requires careful and thorough consideration by Council, Melbourne Water, and DoT. The proposed swale drains along Swansea and Akarana Roads need to be designed to achieve safe diversion of flood flows around the development, and provide emergency access during a flood event.

The Committee shares Council's concerns relating to the two pinch points indicated in the Water Technology analysis at the Swansea and Akarana Road intersection, and the possibility of flood water backing up local pipe drains, particularly in the context of CSIRO climate predictions for more severe future flooding events. State policy in relation to climate change and flood risk dictates that these issues are addressed at the detailed design stage.

If a permit is to be issued the main access bridge over the drainage swale at Akarana Road should be constructed at an elevation that ensures access to the residential village during a 1% AEP event as a minimum. The bridge should additionally be structurally designed to withstand the side forces of such flood event floods. In an event where the bridge access is inundated, the detailed engineering design must ensure that the emergency access over the drainage swale at Swansea Road is at an elevation adequate to clear a 1% AEP event. This

would address State policy and provide for a least one access point during a large flood event.

The Committee is satisfied that the potential safety hazard risk at the swale drains can be appropriately addressed at the detailed design stage. The designs relating to the Swansea Road swale drain and emergency access should be referred DoT for approval as a condition of any permit issued.

The Committee finds:

- The issues of stormwater drainage can be managed with appropriate engineering treatments to satisfy the requirements of Melbourne Water, Council and State and local planning policy.
- The access bridge at Akarana Road and the emergency access at Swansea Road should be designed to deal with a 1% AEP flood event to the satisfaction of Melbourne Water as a condition of any planning permit.
- An updated Stormwater Management Plan should be prepared by the Applicant and approved by Melbourne Water and Council as a condition of any planning permit.
- A Flood Risk Management Plan should be prepared and approved by Melbourne Water prior to development as a condition of any planning permit.

4.4 Environmental impacts

The application proposes significant earthworks across the site and disrupts the existing overland drainage flows adjacent to the Olinda Creek and the riparian corridor. Stormwater from the proposed development would be treated before being discharged into the creek.

The proposal includes the removal of 21 trees within the site and adjoining road reserves, 17 of which are indigenous. Eleven of the proposed trees to be removed are within the site, with the other 10 trees located in the Akarana Road reserve at the northern boundary removed for the main entrance bridge.

The site adjoins an arterial road at its eastern boundary.

Of the 44 objections received to the application, 32 related to the potential environmental impacts of the proposal.⁴

The relevant planning policies and provisions are:

- Clause 12.01-1S (Protection of Biodiversity)
- Clause 12.03-1S (River corridors, waterways, and wetlands)
- Clause 21.09 (Environment)
- Clause 52.17 (Native vegetation)
- Clause 51.03 (Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan).

(i) The issues

The issues are:

⁴ Objections 4,5,6,7,8,9,10,12,13,14,15,16,17,18,19,20,21,22,23,24,27,29,30,32,33,38,39,40,41,42,43 and 44

- whether the environmental impacts on Olinda Creek (habitat and its riparian zone) can be adequately addressed
- whether the proposal minimises the removal of native vegetation and provides for appropriate offsets, protection and replanting
- whether the impacts of traffic noise can be appropriately managed.

4.4.1 Impacts on Olinda Creek

(i) Submissions and evidence

The Applicant submitted that its consultants Ecology and Heritage Partners had conducted a field survey in May 2019, and found that a highly modified Riparian Forest exists adjacent to the Olinda Creek (identified as a Habitat Zone 2). The Applicant considered that because Olinda Creek was not within the development area, there would be no waterway impacts.

The Stormwater Management Plan proposed that stormwater from the site could be treated by an end-of-line bio-retention system (such as a rain garden) and a tertiary treatment gross pollutant trap. A plantation of Swamp Gum trees was also proposed to assist with the removal of nitrogen and phosphorus pollutants from the stormwater outflows. While this was not reflected in landscape plans or amended development plans the Applicant and land owner considered the option could be further investigated at a later design stage.

Council submitted that State policy seeks to ensure development responds to and respects the significant environmental, conservation, cultural, aesthetic, open space, recreation and tourism assets of water bodies and wetlands. It identified that Objective 3 to Clause 21.09-1 (Biodiversity) seeks to protect and enhance wetlands and watercourses and that the Olinda Creek and associated parklands and trails adjacent to the subject site form a significant environmental, recreational, and aesthetic resource within the municipality. It considered that a development of the scale proposed and its proximity to a riparian corridor requires careful management to ensure no detrimental impacts.

While the proposal complies with local planning policy that buildings should not be constructed within 30 metres of a waterway, Council's Environment Team recommended that no earthworks be undertaken within 30 metres of Olinda Creek (top of bank) at the western end of the site to protect environmental values and soil stability along the creek bank. The Applicant confirmed that under the amended plans, no earthworks would be undertaken within the 30 metre riparian zone setback from the top of bank.⁵

Council considered that Melbourne Water's conditional consent to the application provided adequate control and management of any environmental impacts to the riparian area, however its Environment and Engineering Teams raised concerns regarding the effects of the proposed earthworks during construction on water quality within Olinda Creek.

The Applicant confirmed that no earthworks or vegetation removal was proposed to the west of the existing sewerage easement and that it was intended to enhance the riparian areas adjacent to Olinda Creek through revegetation of the site. A permit condition was proposed to address this issue.

⁵ Refer: Site Plan A-004 surveyed Top of Bank 2018

Council identified permit conditions required that Land Management, Creek Management and Revegetation Plans be prepared to fully understand the impacts of the proposal and ensure appropriate outcomes. It submitted that these documents, in addition to a Construction Management Plan, would provide adequate guidance for the maintenance and protection of the environmental features of the site should the proposal be supported.

The 'Australian Platypus Conservancy' objection noted that Melbourne Water commissioned the '*Platypus Strategic Management Plan for Melbourne Catchments*' in 2018 (authored by Griffiths J and Weeks A).⁶ The Plan lists the Olinda Creek as one of three high priority areas in the Melbourne region for the protection and enhancement of platypus habitat as the population was declining from the estimated 30 animals in 2009, and was effectively isolated from the Yarra catchment.

Council submitted that the *Shire of Yarra Ranges Platypus Conservation Plan* (2009) identifies a population of platypus within the immediate Olinda Creek area as being threatened by urban development. Melbourne Water confirmed that a vulnerable population existed in the Creek between Lilydale and Mount Evelyn.⁷ This population is immediately downstream of the site, within the Lilydale Lake complex. Council submitted that an assessment of the proposal against its Water Sensitive Urban Design (WSUD) guidelines had been undertaken, which specifically related to the conservation and protection of platypus. The Council officer report stated that the identified drainage measures could comply with the WSUD guidelines, if the permit conditions specified by Melbourne Water were implemented.⁸

Ms Ranyard of Ecology and Heritage Partners attended the roundtable. She advised that no specific investigation had been undertaken to assess impacts on the local platypus habitat as was unable to provide an opinion about whether the existing platypus habitat would be protected. Ms Ranyard was also unable to provide any guidance relating to the potential efficiency of a plantation of Swamp Gums in the Communal Open Space to assist in removing nitrogen and phosphorus pollutants from the stormwater flows into the Olinda Creek.

Melbourne Water was unable to advise whether platypus habitat impacts had been assessed but considered this likely as part of its broader assessment of the proposal's impact on water quality and habitat values of the creek corridor. It identified that it was comfortable the development was appropriate in relation to creek impacts with the inclusion of its identified permit conditions.

(ii) Discussion and findings

An objective of the LSIO is to ensure that development maintains or improves river and wetland health, waterway protection and flood plain health. Clause 21.09 (Environment) Objective 3 'Catchment' is also a relevant consideration.

The objective of the Stormwater Management Plan is to ensure that Olinda Creek is not adversely impacted by the development and to enhance water quality entering it. The adjacent Lilydale Parks, lakes, and wetlands precinct is a vital component of the local ecology

⁶ Objection number 32

⁷ Melbourne Water: <https://yoursay.melbournewater.com.au/healthy-waterways/platypus>

⁸ 26 May 2020, page 27

and biodiversity. It is therefore critical that Melbourne Water ensures that any changes to stormwater flows resulting from the development are thoroughly analysed and assessed in the context of these statutory requirements.

A vulnerable population of six platypus was identified in 2011/12 and is likely to exist within the immediate section of the Olinda Creek. The protection of the Olinda Creek riparian zone is therefore critically important.

It is appropriate that this aspect of the proposal should focus on implementing Melbourne Water's *'Healthy Waterways Strategy'* (2018) which includes the objective of *"improving water quality and reducing the impacts of stormwater on waterways for fish, platypus, frogs and macroinvertebrates"* to *"stabilise the relative abundance of platypus population"* and conserve the habitat for all local fauna (including platypus).

The Stormwater Management Plan identifies the option of a plantation of Swamp Gums to enhance water quality outcomes. This option was given in-principle support by the Applicant during the roundtable. In the absence of any expert opinion from the Applicant ecology expert, the Committee is unable to reach conclusions regarding the efficiency of a new plantation of Swamp Gums, particularly during the initial growth phase. This should be further assessed by Water Technologies, a qualified botanist, DELWP, and Melbourne Water if a permit is to be issued.

That said, a plantation of Swamp Gums would potentially enhance the in-line suite of stormwater treatment processes. Subject to the further assessment, the Committee regards this option as one of the water treatment processes that should be implemented as part of the development, if approved, to not only protect but enhance the water quality in the Olinda Creek. While an innovative approach, these plantings could form part of the biodiversity off-set for the development and add to the landscape amenity of the residential village Communal Open Space.

A Swamp Gum plantation (either as a biodiversity offset or part of the stormwater treatment) could be defined as 'development' and should therefore not be within the 30 metre riparian zone offset, unless endorsed by DELWP and approved by Melbourne Water.

The Committee finds:

- The objectives of the Melbourne Water *Healthy Waterways Strategy* (2018) could be achieved through a permit requirement for a Stormwater Management Plan and a Site Environment Management Plan. The two plans should be approved by Melbourne Water prior to development commencing.
- If a permit is to be issued, the potential to establish a plantation of mature Swamp Gums in the Communal Open Space should be investigated within the Stormwater Management Plan and as a basis for achieving biodiversity offsets.

4.4.2 Native vegetation

Clause 22.05 (Vegetation removal) provides policy direction relating to loss of biodiversity and off-set plantings. Clause 52.17 requires permission to remove vegetation. Clause 51.03 requires a permit to carry out works within 2 metres of vegetation and remove vegetation.

(i) Submissions and evidence

The Applicant submitted that, based on the Biodiversity Assessment, the Riparian Forest within the site is supported by a canopy of Manna Gum trees, and Silver Wattle trees in the mid-storey. The under-storey has poor diversity and is dominated by the weedy pasture grass Yorkshire Fog. All the trees along the Olinda Creek boundary would be retained, in order to maintain the landscape and environmental character. The Applicant acknowledged that this could be enhanced by establishing a Swamp Gum plantation within the Communal Open Space.

The Applicant submitted a Development Impact Assessment (Arbor Survey, December 2018), that identified that the trees proposed to be removed are of low arboricultural value. The Biodiversity Assessment identifies an offset requirement of 0.06 general habitat units with a strategic biodiversity value of 0.176, and that 13 of the larger trees would be required to be offset.

Council's arborist reviewed the assessment and largely concurred with it but considered that two of the Swamp Gums proposed for removal provided habitat for local fauna and that some vegetation removal could be avoided by relocating the main entrance. The Applicant submitted that earthworks, traffic access and stormwater flow considerations also needed to be considered in locating the main entrance.

Council submitted that, despite its arborist's concerns, the proposed tree removal would not constitute sufficient grounds for refusal as the loss of these trees would probably result from any development of the site beyond a single dwelling, due to the inherent site flooding issues.

The biodiversity lost by the tree removal would be required to be offset within the Port Phillip and Westernport Catchment. Council proposed that the western part of the site offered prime opportunity for compensative and rehabilitative landscaping to offset the biodiversity loss. The proposed excavation at the western part of the site would be designed to protect a 24 metre Manna Gum (tree 18 in the Arbor Survey assessment). Council considered that the identified offsets would comply with Clause 52.17 and were appropriately accounted for within the without prejudice permit conditions.

(ii) Discussion and findings

The Committee accepts the Biodiversity Assessment conclusions and recommendations and notes Council's view that the biodiversity impacts of the proposed removal of native vegetation could be offset by new plantings.

The Committee was unable to establish whether site access could be achieved off Swansea Road rather than using Akarana Road and minimising road reserve vegetation removal. This is discussed further at Section 4.5.

The Committee considers that the proposed vegetation removal, on balance, is acceptable given the condition of the vegetation, proposed site landscaping and offsets and satisfies the decision guidelines of Clause 52.17. The proposed vegetation removal is unlikely to impact on the landscape values of the locality. The suggested plantation of Swamp Gums within the Communal Open Space could be beneficial in maintaining habitat for fauna, and producing biodiversity offset credits. The suggested permit conditions to manage offsets are appropriate in the event a permit is issued.

The Committee finds:

- The Development Impact Assessment and Biodiversity Assessment provide a satisfactory basis to allow the proposed removal of vegetation.
- If a permit is issued, an on-site plantation of Swamp Gums should be considered during the detailed design stage.

4.4.3 Traffic noise

(i) Submissions and evidence

The Applicant submitted a Traffic Noise Assessment (Marshall Day Acoustics, September 2019), that addressed the guidelines developed by VicRoads (now the Department of Transport (DoT)) for noise mitigation at residential developments near main roads. The guidelines recommend noise barriers of sufficient height and suitable construction in order to reduce the noise levels from external sources to 63 decibels $L_{A10(18h)}$ ⁹ or less at ground floor level of the worst affected dwellings. Sound treatments should be provided to dwellings in order to comply with Australian Standard 2107-2016 Acoustics (recommended design sound noise and reverberation times for building interiors).

The Traffic Noise Assessment monitored traffic noise levels at two locations on the site's eastern boundary along Swansea Road and applied modelling to produce projected noise levels corresponding to traffic volumes ten years after development completion. The predicted daily traffic volumes for Swansea Road in year 2030 were 12,680 vehicles in both northbound and southbound lanes. The 18 hour $L_{A10(18h)}$ modelling inputs were reduced to 95% of the daily volumes.

The modelling concluded that for the 63 db $L_{A10(18h)}$ level to be achieved, a 3 metre high noise barrier fence would be required along the eastern boundary, with 1.7 metre high returns along the northern and southern boundaries for 50 metres, constructed of materials of a minimum density of 20 kg/m² to DoT guidelines.

Council submitted that Clause 51.05 and the LSIO required permission to construct a fence. The proposed acoustic barriers, while generally expected at the boundary of a residential village development, would produce a poor interface with the surrounding public realm. The fences could result in the development appearing closed off, particularly from the parklands north of Akarana Road. Some of the proposed landscape plantings were within the road reserve, which Council considered to be an unacceptable response to the concerns raised by objectors.

Mr Daniels considered the proposed 263 metre long 'freeway environment' style fence adjacent to Swansea Road created a 'compound' effect that was an unacceptable response in a semi-rural landscape and was an unsightly blight on the neighbourhood character. He considered the inaccessible stepped landscaped fence elements would be difficult to maintain and should not be located on the road reserve.

The Applicant's amended site plan proposed a lower 2 metre acoustic fence, augmented by additional tree and shrub planting, to improve the visual interface along the Swansea Road

⁹ $L_{A10(18h)}$: L_{A10} is the noise level exceeded for 10% of the measurement period. An arithmetic average is then applied over the 18 hour period between 6 am and midnight.

boundary. The Applicant submitted that the required level of traffic noise acoustic attenuation could be achieved via the amended proposal and acknowledged that there were competing considerations for the fence, in terms of acoustic attenuation, landscape aesthetics, residence security, and maintaining neighbourhood character.

(ii) Discussion and findings

The Committee accepts that the site's location requires the amelioration of potential noise impacts associated with current and future traffic volumes anticipated for Swansea Road to ensure an appropriate level of amenity for future residents. It agrees with Council that some sort of acoustic fence would be the expected outcome. However, at 3.0 metres in height and 263 metres in length the fence element is a highly intrusive visual element in the streetscape and landscape generally. It is inconsistent with other fence forms in adjacent residential areas on the east side of Swansea Road and would significantly reduce view lines across the site to Olinda Creek. It is also not the only form of acoustic treatment that could be employed, with other options including door and window treatments on the proposed dwellings.

While the lower fence height and treatment proposed in the amended plans along with landscape treatments will improve views across the site (at canopy and roof level) it does little to provide visual breaks or views to the west across the site or to create more of a sense of openness.

The proposal needs to consider the development impacts upon neighbourhood character while addressing competing considerations within the site. Experience elsewhere shows that high fencing along main road boundaries can attract graffiti and trap litter, creating visual pollution and an added maintenance impost. Should a permit be granted, alternative noise mitigation treatment (such as double or triple glazing) should be considered by the Applicant for the dwellings along Swansea Road as part of a holistic response to acoustics and design considerations.

The Committee supports an approach that was in principle supported by the Applicant to provide a more transparent fence form where it aligned with communal landscaped areas between dwellings 3 and 4, 6 and 7, and 14 and 15, along with other building treatments although it is unclear whether acoustic management objectives can still be achieved with this approach.

Whether the guidelines for traffic noise levels can be achieved via a mix of acoustic fencing (with more transparent elements) and landscape plantings needs to be substantiated by the Applicant. Further assessment is required, including the consideration of any further comments from DoT. At the very least, if a permit is issued, conditions should require an updated Traffic Noise Assessment to the satisfaction of the Responsible Authority and DoT.

The northern and southern boundaries of the site should be designed consistent with the fence and landscape treatment adopted for the Swansea Road boundary.

The Committee finds:

- The original proposed 3.0 metre high acoustic fence treatment is an inappropriate response to the landscape and neighbourhood character setting.
- The amended plans reducing the fence height to two metres and providing additional landscaping are more appropriate, but should include more transparent

fence treatments adjoining the communal landscaped areas (between dwellings 3 and 4, 6 and 7, and 14 and 15) along with other dwelling design treatments including traffic noise mitigation as a condition of any permit issued.

- Before any permit is issued, a further Traffic Noise Assessment should be produced that demonstrates the fencing, landscaping and/or dwelling treatments along Swansea Road and the northern and southern boundaries can meet VicRoads guidelines (63 db $L_{A10(18h)}$ level).

4.5 Traffic, site access, vehicle parking and internal circulation

(i) The issues

The issues are:

- whether proposed site access locations, treatments and linkages to external networks are appropriate
- whether adequate provision is made for emergency vehicle access
- whether adequate provision is made for on-site parking including whether the garage dimensions are appropriate
- whether the internal circulation network provides a safe and functional response to the movement of pedestrians, bicycle and mobility scooters and waste collection vehicles.

4.5.1 External traffic and site access

(i) Submission and evidence

Approximately 11 objections raised concerns regarding increased traffic and impacts upon local road intersections. Council considered that the traffic volumes generated by the proposed development would not have a detrimental impact on the operations of Swansea Road or the surrounding road network. It referred that application to DoT which consented to a permit being issued. DoT specifically noted that the turning lanes into Akarana Road are sufficient to absorb the demand generated by the development, and that mitigation works would not be required.

Traffic analysis was provided by the Applicant in the Transport Impact Assessment (GTA consultants, May 2019) which concluded that the development would generate 43 vehicle movements during peak periods, and 432 daily vehicle movements (based upon 72 dwellings). This number of vehicles could satisfactorily exit Akarana Road during peak periods.

The analysis also concluded that the development *“will include a walking and cycling network generally consistent with the objectives of Clause 56.06 of the Planning Scheme”*. There was no reference in this report to external linkages to the wider walking and bike network. It identified that there is a public transport bus service along Swansea Road, that connects with Metro Rail services.

The Stormwater Management Plan noted the existing flooding risk within the Akarana Road reserve, and that access to the site across the proposed 8 metre wide bridge over the swale drain may be restricted during a flood event.

The Applicant proposed that this risk be mitigated by a separate emergency access point directly onto Swansea Road at the eastern boundary. Council considered the emergency access width insufficient to manage ingress and egress of a residential village population of over 55 year old residents during flooding events. The Applicant identified that the design would be an acceptable outcome in a 1% AEP flood event.

The proposed access bridge to the entrance security gate includes a pedestrian pathway separated from the vehicle thoroughfare. The amended plans included an additional access point for pedestrians and bikes at the Swansea Road eastern boundary, providing a total of four access points and identifying a pedestrian footpath along Swansea Road.

Mr Daniel's submitted that if the proposal was approved primary access should be off Swansea Road. Council identified that access of Swansea Road for primary access would reduce impacts on native vegetation. It anticipated DoT may have supported a right turn in left turn out arrangement. The Applicant advised that while there had been no discussions with DoT about whether site access off Swansea Road was possible, the development had been specifically designed to be accessed off Akarana Road to provide a sense of address and a focus for the club house. The Applicant's traffic expert Ms Marshall (Ratio Consultants) advised that a site access from a Category 1 Road Zone was not likely to be encouraged by DoT where alternate access could be provided.

(ii) Discussion and findings

The predicted traffic volume across the main access bridge is considered to be low (at less than one vehicle per minute during peak periods). This predicted traffic impact upon the intersection at Akarana and Swansea Roads can be accommodated, if Akarana Road is constructed in accordance the suggested permit conditions. A shared pedestrian and bike path connecting the Swansea Road pathway to the main access bridge thoroughfare is required to complete the development's connectivity to public transport and external bike trails and pathways. The Committee recommends that this shared pathway be a minimum of 3 metres wide to connect with the designated access bridge lane.

The access at the main entrance must be designed so that it is accessible in a 1% AEP flood event, with a freeboard level that is satisfactory to Melbourne Water.

An alternative emergency access point to Swansea Road from the eastern boundary of the site is appropriate. This emergency access should be designed to accommodate emergency services vehicles, and also be security gated so that pedestrians can utilise it normally during non-emergency events.

The bridge and pedestrian lane thoroughfare at the main access from Akarana Road should be designed to be Disability Discrimination Act compliant, including a functional incline gradient and surface treatment (including tactile guidance inserts).

Additional or alternative direct access from Swansea Road was discussed at the roundtable, and the Committee was advised by the Applicant that DoTs preference was for this access to be provided from a secondary local road where possible, not an arterial main road. A left turn deceleration lane is provided from Swansea Road to the Akarana Road intersection, that would need to be incorporated into the site road access at the detailed design stage. The deceleration lane and site distances potentially limit the provision of a primary site access off Swansea Road.

The proposed development provides limited pedestrian connections to Swansea Road, Akarana Road and creek corridor paths. Maximising connection points with the external movement network is supported by planning policy and was also supported by the evidence of Dr Kerkin. The Applicant considered it was possible to provide additional pedestrian connection points for its residents (including locations adjacent to the communal spaces along Swansea Road). Council supported the construction of a footpath from the emergency access to Akarana Street and to the Akarana bridge crossing from Swansea Road. The Committee considers that the plans should be amended to provide these additional connections if a permit is to be issued.

The Committee finds that should a permit be issued:

- Additional provision should be made for pedestrian connections to external pedestrian and bicycle networks as a condition of any planning permit.
- Adequate provision is made for emergency vehicle access.
- Akarana Road should be constructed from Swansea Road to the main accessway by the Owner of the development to the satisfaction of Council and the Department of Transport, and include a 3 metre wide shared pedestrian and bike pathway as a condition of any planning permit.
- Akarana Road and the access bridge to the site should be designed to a finished pavement level to deal with a 1% AEP flood event to the satisfaction of Melbourne Water as a condition of any planning permit.

4.5.2 Carparking

(i) Submissions

The original application Planning Report and Traffic Impact Assessment set out the basis for onsite car parking provision, the level of waiver proposed and justification for it.

Council submitted that its Traffic Engineering Team did not agree with this analysis, noting that the occupancy rates relied on parking spaces being shared between dwelling occupants. It submitted that this would not occur because the spaces were to be provided in separate garages, and that two bedroom dwellings garages were 3.0 metres wide instead of 3.5 metres as required by Clause 52.06. It considered this unsuitable particularly in a residential environment for over 55s.

The Applicant's amended plans enlarged garages to the dimensions sought by Council, providing 119 carparking spaces (for the 69 dwellings) satisfying the requirements of Clause 52.06. Ratio's traffic engineering review generally endorsed the amended carparking provision and garage designs. The loading bay was also deleted at the community club house in the amended plans. This is discussed in Section 4.6.

(ii) Discussion and findings

Council supported the carparking spaces provision and increased garage dimensions in the amended plan at the Committee roundtable. The amended plans ensure that the Clause 52.06 provisions are met, and a permit is not therefore required for a parking waiver.

The Committee finds:

- Adequate provision is made on site for carparking as a result of the amended plans.

- A permit is no longer required for the waiver of carparking pursuant to Clause 52.06 as a result of the amended plans.

4.5.3 Internal traffic circulation

(i) Submissions and evidence

The original proposal included a 5.5 metre wide internal loop road design based upon the thoroughfare being regarded as an 'Access Space'. It was anticipated that cars, trucks, waste collection vehicles and emergency vehicles would use this 'shared environment' with pedestrians, mobility scooters and cyclists. GTA predicted an internal volumes of 432 vehicles per day and that the road design could accommodate 1,000 vehicles per day.

Council considered the lack of dedicated pedestrian paths inappropriate for the scale of the development and presented possible safety risks for residents and visitors as it did not meet Design Standard 6 (Safety) of Clause 52.06.

The Applicant submitted a review of the draft permit conditions by Ms Marshall at the roundtable. In relation Council's request for a designated pedestrian thoroughfare in Condition 1, she identified that:

The internal road has been generally designed in accordance with Clause 56.06-8 the Yarra Planning Scheme, as an Access Place, which is defined as "*A minor street providing local residential access with shared traffic, pedestrian and recreation use, but with pedestrian priority*".

The internal road will be a private road through the development.

The loop road is designed such that half of the residential dwellings will use one side of the loop, while the remainder use the other side.

Footpaths are not required where pedestrians will have priority and oncoming vehicles will give way to pedestrians.

The proposed pavement width of 5.5m comfortably allows a vehicle to pass a pedestrian using the carriageway. The inclusion of a footpath is unnecessary and undesirable as it increases the amount of hard paving through the development.

Part of the 5.5m roadway could be linemarked for use by pedestrians, but this is not supported. It would be perceived to be a pseudo footpath and will give the perception that vehicles can't use it and that pedestrians are then restricted to one side or the other, causing confusion.

Ms Marshall advised that no specific analysis had been undertaken to identify whether the design of an over 55's aged community required a more unique or controlled design response. No specific consideration had been given to Disability Discrimination Act compliance considerations. She concluded that the 5.5 metre wide internal loop road would be adequate and that reducing hard pavement area in high density residential developments was preferred. She suggested that the width at southern end of the loop could be reduced to 3.6 metres and still function effectively.

The Applicant's Planning Report relied upon the Waste Management Plan (Leigh Design) to demonstrate that a standard side loading waste collection truck (10.5 metres long, 3 metres wide, and 4 metres operational height) could negotiate the internal road loop and the main access bridge. The Refuse Plan depicted both a car and the collection truck being able to pass within the 5.5 metre width where the truck encroaches beyond the centre line of the road.

Waste storage wheelie bins are proposed to be stored at the side of each dwelling, behind gates and screens. General garbage and recycled waste bins would be collected at the edge of the landscape verge in front of each dwelling.

Ms Marshall's opinion was that a loading bay at the communal club house was superfluous, given the provision of visitor car spaces in the immediate vicinity, and that delivery vehicles would be smaller vehicles, not large trucks.

(ii) Discussion and findings

The Design Standard 6 (Safety) of Clause 52.06 is an important consideration within a medium density community environment. While not a standard required to be met, the proposed over 55's resident demographic requires consideration of less ambulant residents using wheelchairs and mobility scooters. Increased pedestrian movement and bicycle use are to be encouraged (over vehicle use), with linkages to public transport and the external trails network.

Several established residential villages in Melbourne were cited by the Applicant as functioning examples of the design principles applied to the amended site plan. The Committee is however, aware of other existing similar developments where the safety requirements of Clause 52.06 have been met, by including wider shared thoroughfares and designated pedestrian and bicycle lanes.

The Applicant highlighted that the proposal is for a gated village, where the internal road way is not a public accessed road, with a predicted volume of 432 vehicles per day. The application is for a tenanted residential village, not a retirement village with subdivided or strata title lots. Accordingly, the traffic will in effect be overseen by the Owner (or a corporate management entity) of the development; not Victoria Police, or Council By-laws officers, or an Owners Corporation. The practicality of such arrangements raises concerns and was questioned by the Committee. A medium density residential village and an over 55's demographic is likely to increase the incidence of:

- Less ambulant pedestrians using walking aids
- mobility scooters, wheelchairs and bicycles sharing the internal thoroughfare
- medical carer and paramedic visitations
- taxis and shared passenger transport
- home deliveries vehicles (groceries, takeaway meals, prescription medications, and home services)
- residents with hearing and visual impairments
- visitations by extended families (including young grandchildren).

The Committee notes that the main access bridge is proposed at 8 metres wide, with a separated pedestrian lane, yet the internal thoroughfare is proposed to reduce to 6 metres around the club house, then 5.5 metres in width for the remainder.

It is reasonable to conclude that some proportion of the vehicles moving through the site will not be resident's vehicles, with a high probability of external traffic that would be not subject to the governance of the Owner. An increased incidence of delivery vans and trucks, where waste collections vehicles and normal passenger vehicles might be coincident around the internal thoroughfare, would possibly create situations where vehicles travel outside the edges of the pavement. The concept plan provides for only limited room between the kerbs

and the cottage gardens, and the curtilages provide minimal temporary refuge for passing traffic. Multiple waste wheelie bins being placed at each garage entrance verge would exacerbate this congestion and risk to safety. In reality, the main security gates to the village would remain open for large parts of the day to provide convenient access for service vehicles, taxis, and visitors.

Because of the probability for an increased incidence in external and special needs traffic movements (as identified above), the Committee does not endorse the expert submissions. The majority of internal shared zone accessway should be a minimum of 6 metres wide, to allow for a clearly designated and separate lane for pedestrians, mobility scooters and bicycles. This should be achieved by either pavement line-marking or differences in pavement treatment aesthetically consistent with the landscaping plan. The section of the accessway fronting dwellings 65 to 69 could remain at 5.5 metres wide, being a relatively short accessway. The shared zone accessway should clearly exhibit signage indicating pedestrian and bicycle priority within this designated lane.

The traffic flows immediate to the club house would be impacted by visitors of residents and administration staff accessing the abutting eight car spaces. Ms Marshall submitted that the use of these visitor spaces by delivery vans and waste collection vehicles would be appropriate, and that the loading bay (proposed in the advertised plans at the western side of the club house) would not be warranted. The Committee regards this part of the site will act as a concentration point for internal traffic circulation, potentially creating congestion during peak periods when delivery vans and trucks conflict with other internal traffic movements. Delivery and waste collection vehicles manoeuvring into and backing out of visitor spaces could create unacceptable delays and safety risks for other accessway users. It would be a more practical outcome for the loading bay to be provided at the southern side of the clubhouse (as originally proposed), where goods deliveries could be made, and waste wheelie bins could be stored for collection. This would effectively direct these traffic movement away from the confluence and minimise congestion around the main entrance.

The Committee finds:

- That the internal shared zone accessway should be a minimum of 6.0 metres wide, except for a 5.5 metre wide section fronting dwellings 65 to 69.
- The accessway should incorporate a designated and separate lane for pedestrians, mobility scooters, and bicycles, with appropriate signage to indicate their prioritised movements.
- A loading bay should be provided at the southern side of the community club house for deliveries and waste collection.

4.6 Communal open space and management of communal facilities

(i) The issues

The issues are:

- whether the proposal provides appropriate provision, access and management of Communal Open Space areas
- whether the communal club house will be accessible by non-residents.

4.6.1 Communal Open Space area

(i) Submissions

Melbourne Water regards the proposed excavation of up to 3 metres in the western part of the site as effectively creating a floodplain retarding basin. Its conditions sought removal of references to pedestrian links, pathways and bird watching hutches from a revised Stormwater Management Plan.

The Stormwater Management Plan regarded the flood risk from the Olinda Creek as “*not being a consideration*”. In response Melbourne Water sought that a ‘Floodplain Risk Management Plan’ be produced and approved prior to development commencing.

Mr Monteath confirmed that there would be no body corporate to manage communal facilities as no subdivision was proposed. He advised that the development model would include an entity (not necessarily the land Owner) that would be responsible for managing communal areas and facilities, with a resident site manager in place, through funds secured through resident dwelling purchase (under a lease arrangement) and annual fees.

(ii) Discussion and findings

The Applicant advised that initial design responses had included making the Communal Open Space area public open space but that Council did not want the land. Council confirmed this position. Melbourne Water discouraged this area being made available for public access.

Melbourne Water’s referral response contained a stipulation that a revised Stormwater Management Plan be submitted and approved with no development to occur within the 30 metre riparian zone set back from the top bank of the Olinda Creek. The Plan of Subdivision indicates that the eastern boundary of the site follows beyond the Olinda Creek top of bank line and that the site includes the current Olinda Creek flow path.

The Communal Open Space could be utilised by the village residents during dry conditions. Such works could include the potential for a Swam Gum forest plantation. Any works that would enhance the habitat within the riparian zone (between the sewer easement and the 30 metre set back) should be endorsed by DELWP and approved by Melbourne Water prior to development.

The depth of stormwater flows and their velocity across the Communal Open Space have not yet been included in the assessment of Flood Hazard. An assessment of the risk of flash flooding within the Communal Open Space should be undertaken as part of the development of the Flood Risk Management Plan.

Melbourne Water requires that signage be installed by the Owner to display the 1% AEP flood level across this part of the site. The Committee regards this as appropriate. No public access to the Communal Open Space is now proposed, and appropriate boundary fencing should be constructed by the Owner to the Olinda Creek top of bank.

The Committee finds:

- Any works that would enhance the habitat in the riparian zone between the sewer easement and the 30 metre set back should be endorsed by DELWP and approved by Melbourne Water prior to development as a condition of any permit.

- An assessment of the risk of flash flooding within the Communal Open Space should be undertaken within the Flood Risk Management Plan as a condition of any permit.

4.6.2 Community club house

(i) Discussion and findings

The amended plan provides 8 dedicated carparking spaces, no loading or waste bin collection dock for the club house. The club house is proposed to be used by the village residents and their guests only and will be a focus for a lot of the site's activities and movements.

Council indicated that it was satisfied that the proposed club house and communal facilities within a gated residential village would not create significant additional carparking demand.

The Committee finds:

- A waste storage and loading bay area should be provided within a revised design as a condition of any permit.

4.7 Permit conditions

As discussed in Sections 4.1 and 4.2, the Committee finds that the current proposal is inappropriate and a permit should not be granted. The modifications that would be required to render the proposal acceptable would transform the proposal and it is not appropriate that such substantial modifications be dealt with by permit conditions. Should the Applicant wish to pursue a substantially redesigned proposal, a fresh application should be made.

Notwithstanding, the Committee has included this section in the event that the Committee's primary recommendation is not accepted.

The parties participated in a 'without prejudice' discussion about appropriate permit conditions in the event that a permit be issued. The discussion was informed by earlier versions of the without prejudice conditions prepared by Council for the VCAT Hearing and subsequently amended by the Applicant and Council. The roundtable focused on version 5 of the draft permit which included comments identifying conditions that were accepted or in dispute by either Council or the Applicant.

The conditions in dispute largely related to:

- Condition 1 (Amended Plans), with Council seeking to reduce the number of dwellings to 50 and remove the cantilever elements of dwellings protruding over the fill edge. Mr Daniel sought the reduction of dwellings to 46, additional spacing of dwellings and greater landscaped setbacks along Swansea Road.
- Conditions 26 and 27 (Drainage Engineering) with Council seeking a stepped approach to drainage design based on further modelling at 5%, 10%, 20% and 50% AEP events to inform Communal Open Space landscaping and Akarana Road work heights and the Applicant question the further step of plan certification.
- Condition 29 (Traffic Engineering) relating to the construction of Akarana Road with the Applicant seeking clarification of the extent of 'full construction' and height levels.

Other conditions were discussed and broadly agreed subject to minor changes. These were conditions 5 (section 173 Agreement), 6 (Restrictions on use and occupation), 12 (Landscaping), 39 (Open Space Management Plan). Other drafting improvements to ensure consistency in language were also discussed.

The Applicant was provided an opportunity to update the proposed without prejudice conditions based on the roundtable discussion following the conclusion of the roundtable with the other parties provided with an opportunity to respond with any further changes or comments. Council provided a further revised version while Melbourne Water advised it had no further comments.

The Committee's comments follow:

- The issue of cantilever building design was discussed in Section 4.2. Removal of this design element is not supported.
- The Committee is confident that the additional drainage modelling sought by Council are not required to be identified as a permit condition. Mr Bishop's evidence was that additional drainage modelling would generally be factored into a detailed drainage design. Drainage plans are required to be prepared to the satisfaction of both Council and Melbourne Water. Existing conditions require an emergency vehicle exit which even at 1% AEP would only be affected for a two hour period drainage.
- While there was some discussion regarding the appropriateness of applying a s173 Agreement that provided indemnification for Council and Melbourne Water it was broadly agreed by the parties that such a condition was not particularly unusual, was considered necessary and was accepted.

In the event that a permit is to be issued against the Committee's primary recommendation, the Committee has provided a preferred version of conditions in Appendix D. These respond to the roundtable discussion regarding the disputed conditions, as well as minor grammatical and consistency changes to the versions proposed by the Applicant and Council and to Melbourne Water's conditions. These changes do not alter the intent of these conditions.

The Committee notes that if a permit is to be issued consistent with the amended plans approval is no longer required for the waiving of carparking.

The Committee finds:

- If, contrary to the Committee's primary recommendation, a permit is issued, it should be subject to the conditions set out in Appendix D.

5 Reasons and recommendations

5.1 Reasons

The Committee considers that the development proposal for 375 Swansea Road, Lilydale poses two threshold issues. The first is whether it is an appropriate development response and use of land within a RLZ, consistent with State and local policy. The second is whether the proposal is appropriate in an area subject to flooding. The other issues relating to environmental impacts including river health of Olinda Creek and its environs, native vegetation impacts, site access and management remain important considerations, but their impacts can largely be managed through design and engineering responses.

The Committee does not consider that the proposal results in an appropriate planning outcome consistent with planning policy, the purposes of the RLZ and provisions of RLZ2. This is primarily due to the impacts of the proposed built form, including the acoustic fence, on landscape and neighbourhood character. While the site is not located within a pristine rural living environment, with a mix of uses and built forms present, it is within an environment characterised by open vistas to Olinda Creek and its environs, parklands and an established green canopy. This character is broadly consistent along the Olinda Creek – Swansea Road corridor and the extent of the RLZ2.

The Committee is satisfied, based on the position of Melbourne Water and drainage experts, that the site can be designed to manage flooding and stormwater impacts of the development, including the altered floodplain. However, the necessary response constrains the built form and spatial arrangement of the development which results in inappropriate landscape and neighbourhood character outcomes. To accommodate 69 dwellings on the site requires the development of the entire length of the Swansea Road frontage, with minimal spacing between dwellings, shallow setbacks and a high acoustic fence treatment. This arrangement and its design aspects provide at best limited or filtered views over the site to the creek and wetland park areas. This arrangement strongly contrasts the neighbourhood and landscape character of the area and is inconsistent with a reasonable development expectation on a RLZ site.

While it is acknowledged that the site is proximate to the Lilydale Town Centre and can provide for a level of housing diversity and affordability and potentially meets a housing need, these benefits do not outweigh the negative impacts on neighbourhood and landscape character or the ability to achieve the broader local policy directions for RLZ areas. The proposal does not provide for a net community benefit or a sustainable development outcome.

While the Committee finds that a planning permit should not be issued, it has identified permit conditions in Appendix D to this report in the event that the Committee's primary recommendation is not accepted.

5.2 Recommendations

The Committee recommends:

- 1. That a permit not be issued.**

Appendix A Priority Projects SAC Terms of Reference

Priority Projects Standing Advisory Committee

Standing Advisory Committee appointed pursuant to Part 7, section 151 of the *Planning and Environment Act 1987* to advise the Minister for Planning on referred priority planning proposals.

Name

1. The Standing Advisory Committee is to be known as the 'Priority Projects Standing Advisory Committee' (the Committee).
2. The Committee is to have members with the following skills:
 - a. statutory and strategic land use planning
 - b. land development and property economics
 - c. urban design and architecture
 - d. heritage
 - e. civil engineering and transport planning
 - f. social impacts
 - g. environmental planning
 - h. planning law.
3. The Committee will include a lead Chair, Chairs, Deputy Chairs and not less than ten other appropriately qualified members.

Purpose

4. The purpose of the Committee is to provide timely advice to the Minister for Planning on projects referred by the Building Victoria's Recovery Taskforce (BVRT), projects affected by Covid-19 and or where the Minister has agreed to, or is considering, intervention to determine if these projects will deliver acceptable planning outcomes.

Background

5. The Victorian Government has identified Victoria's building and construction sector as a key mechanism to revitalise Victoria's economy during the coronavirus (COVID-19) pandemic.
6. The Government has committed to a fast-track assessment process for priority projects of state and regional significance that are shovel-ready and that will provide immediate benefits to Victoria's economy, keeping Victorians in work and priority infrastructure on track for completion.
7. The BVRT was formally announced on 26 April 2020. The Taskforce was established by the Minister for Planning and Treasurer to help keep Victoria's building and development industry running during the coronavirus crisis. The Taskforce will investigate planning and investment opportunities to boost Victoria's building and development industry over the short, medium and long term.

Method

8. The Minister for Planning or delegate will refer projects by letter to the Committee for advice on whether the project achieves acceptable planning outcomes.
9. The referral letter must specify:
 - a. the specific issues the Minister for Planning seeks advice about
 - b. the mechanism of intervention being considered
 - c. whether, or which previously collected, submissions are to be considered by the Committee
 - d. how the costs of the Committee will be met.

10. The letter of referral will be a public document.
11. In making a referral, the Minister for Planning or delegate must, either:
 - a. be satisfied that any proposed planning controls for the land make proper use of the Victoria Planning Provisions and are prepared and presented in accordance with the Ministerial Direction on The Form and Content of Planning Schemes, or
 - b. seek advice from the Committee on the drafting of the planning controls or permit conditions.
12. The Committee may inform itself in anyway it sees fit, but must consider:
 - a. The referral letter from the Minister for Planning,
 - b. referred submissions,
 - c. the comments of any referral authority,
 - d. the views of the project proponent,
 - e. the views of the relevant Council,
 - f. The relevant planning scheme.
13. The Committee is not expected to carry out additional public notification or referral but may seek the views of any relevant referral authority, responsible authority or government agency.
14. The Department of Environment, Land, Water and Planning (DELWP) will be responsible for any further notification required. New submissions will be collected by DELWP.
15. The Committee may seek advice from other experts, including legal counsel where it considers this is necessary.
16. The Committee is not expected to carry out a public hearing but may do so if it is deemed necessary and meets its quorum.
17. The Committee may:
 - a. assess any matter 'on the papers'.
 - b. conduct discussions, forums, or video conferences when there is a quorum of:
 - i. a Chair or Deputy Chair, and
 - ii. at least one other member.
18. The Committee may apply to vary these Terms of Reference in any way it sees fit.

Submissions are public documents

19. The Committee must retain a library of any written submissions or other supporting documentation provided to it directly to it in respect of a referred project until a decision has been made on its report or five years has passed from the time of the referral.
20. Any written submissions or other supporting documentation provided to the Committee must be available for public inspection until the submission of its report, unless the Committee specifically directs that the material is to remain confidential. A document may be made available for public inspection electronically.

Outcomes

21. The Committee must produce a concise written report to the Minister for Planning providing the following:
 - a. A short description of the project.
 - b. A short summary and assessment of issues raised in submissions.
 - c. A draft planning permit including relevant conditions from Section 55 referral authorities, or draft planning scheme control depending on the nature of the referral.
 - d. Any other relevant matters raised in the course of the Committee process.
 - e. Its recommendations and reasons for its recommendations.
 - f. A list of persons or authorities/agencies who made submissions considered by the Committee.
 - g. A list of persons consulted or heard, including via video conference.
22. Following the completion of a report, the Committee may deliver an oral briefing to the Minister for Planning and/or DELWP. The briefing may be by video conference or telephone.

Timing

23. The Committee is required to submit its reports in writing as soon as practicable, depending upon the complexity of the referred project between 10 and 20 business days from either:
- a. the date of receipt of referral, if no further submissions or information are to be sought, or
 - b. receipt of the final submission of material or final day of any public process in respect of a referral.

Fee

24. The fee for the Committee will be set at the current rate for a Panel appointed under Part 8 of the *Planning and Environment Act 1987*.

The costs of the Advisory Committee will be met by each relevant proponent.



Richard Wynne MP
Minister for Planning

Date: 14 / 06 / 2020

Appendix B Letter of referral



Hon Richard Wynne MP

Minister for Planning
Minister for Housing

8 Nicholson Street
East Melbourne, Victoria 3002

Ms Kathy Mitchell
Chair (Lead), Priority Projects Standing Advisory Committee
Planning Panels Victoria
planning.panels@delwp.vic.gov.au

Ref: MBRD43362



Dear Ms Mitchell

BUILDING VICTORIA'S RECOVERY TASKFORCE INTERVENTION RECOMMENDATION – 375 SWANSEA ROAD, LILYDALE

I refer to Victorian Civil and Administrative Tribunal (VCAT) proceeding no. P950/2020 relating to the proposed development of a 'Residential village' including a club room and associated car parking at 375 Swansea Road, Lilydale. A permit is required under Clause 35.03 'Rural Living Zone', Clause 44.04 'Land Subject to Inundation Overlay', Clause 51.03 'Upper Yarra Valley and Dandenong Ranges Regional Strategy Plan', Clause 52.06 'Car Parking', Clause 52.17 'Native Vegetation' and Clause 52.29 'Land Adjacent to a Road in a Road Zone, Category 1' of the Yarra Ranges Planning Scheme. The project was referred to me by the Building Victoria's Recovery Taskforce.

I advise that I have decided to call in the proceeding from VCAT under Clause 52(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* and refer the matter to the Priority Projects Standing Advisory Committee for advice and recommendations on whether a planning permit should issue, with the primary issues of dispute being conflicting state and local planning policy, neighbourhood character, built form, housing diversity, the purpose of the zone, flooding and car parking.

The Yarra Ranges Shire Council issued a refusal to grant a permit on 29 May 2020. On 5 June 2020, Hamilton Corporation Pty Ltd applied to the Victorian Civil and Administrative Tribunal for a review of the council's decision under section 77 of the *Planning and Environment Act 1987*. A VCAT hearing date is currently set for three days commencing on 25 November 2020, with a compulsory conference scheduled for 15 September 2020.

The cost of the advisory committee will be met by the applicant, Lilydale Management Services Pty Ltd.

If you would like more information, please contact Jane Homewood, Executive Director, Statutory Planning Services, Department of Environment, Land, Water and Planning, on (03) 8683 0975 or email jane.homewood@delwp.vic.gov.au.

Yours sincerely

HON RICHARD WYNNE MP
Minister for Planning

06 / 09 / 2020

Appendix C Document list

No.	Date	Description	Provided by
1	16/09/2020	VCAT file	VCAT
2	“	Best Hooper SharePoint VCAT review folder including: <ul style="list-style-type: none"> - Council permit application material and further information request - Referral agency comments - Application for review and Statement of service - Draft permit conditions - Submission to BVRT 	Urbis for Applicant
3	“	Dropbox link including: <ul style="list-style-type: none"> - Application materials and reports - Objections and internal referrals - Objector list - Council report and grounds of refusal - Officer Reports VCAT Practice note material 	Council
4	17/09/2020	Notification letter to VCAT matter parties advising that the matter had been called in by Minister for Planning and referred to SAC and including: <ul style="list-style-type: none"> - Letter of Referral - Terms of Reference - Privacy Collection Notice 	Committee
5	21/09/2020	Email responses from parties advising of participation in the roundtable and representation	All parties
6	21/09/2020	Directions and Timetable	Committee
7	23/09/2020	Letter to parties regarding identification of issues and setting out roundtable arrangements	“
8	“	Link to SharePoint folder consolidating material provided to the SAC by Applicant and Council	Best Hooper for Applicant
9	“	Applicants tracked changes permit conditions	“
10	“	Council's without prejudice conditions	“
11	25/09/2020	Email to all parties regarding issues in dispute and amended plans	Committee
12	29/09/2020	Council's track-changes permit conditions	Council
13	“	Amended Application plans: A-004, A-005, A-006, A-101, A-102, A-103, A-201 and A-203 Modo Architects dated 29.09.20	Urbis
14	“	Statement of Application plan changes	“
15	“	Evidence Statements including: <i>Application consultants:</i>	“

No.	Date	Description	Provided by
		<ul style="list-style-type: none"> - Darren Atkinson - Warwick Bishop - Claire Ranyard <i>Review consultants:</i> <ul style="list-style-type: none"> - Hillary Marshall - Kate Kerkin 	
16	30/09/2020	Written Statement	Mr Daniels
17	"	Response to issues raised by the SAC	Urbis
18	"	Statement in response to amended plans	Mr Daniels
19	"	Draft Conditions – Track Changes with Russell Kennedy amendments	Russell Kennedy Lawyers for Council
20	"	Council submission	"
21	01/10/20	Draft Conditions with track changes	Best Hooper
22	"	PowerPoint presentation	"
23	"	Applicant submission	"
24	"	Reply to Council written submission	"
25	05/10/20	Response to documents (Document 24) tabled by the Applicant dated 01/10/20	Russell Kennedy Lawyers
26	"	Response to Council email dated 05/10/20 (Document 25)	Best Hooper
27		Further response to letter from the Applicant dated 05/10/20 (Document 26)	Russell Kennedy Lawyers
28	"	Email acknowledging exchange of correspondence between Council and the Applicant	Committee
29	06/10/20	Draft Conditions with track changes in response to the Applicant	Russell Kennedy Lawyers
20	07/10/20	Email advising no comment will be provided on draft permit conditions	Melbourne Water

Appendix D SAC preferred version of planning permit conditions

Permit Number	YR-2018/960
Address of the land	375 Swansea Road, (Lot 2 PS639506) Lilydale
Proposal	Use and development of a residential village, vegetation removal, earthworks, creation of an access to a Road Zone Category 1

Permit Conditions

Amended Plans Required

- 1 Prior to the commencement of the use and development (including the removal of any trees or other vegetation), amended plans must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and form part of the permit. The plans must be drawn to scale, with dimensions, and be generally in accordance with plans A-004, A-005, A—006, A-101, A-102, A-103, A-201 and A-203 prepared by Mondo Architects dated 29.09.20, but modified to show:
 - a. All internal shared zone accessways being constructed to 6 metres width, except the section fronting dwellings 65 to 69 being 5.5. metres wide, with pavement marking and signage to give priority to pedestrians and bicycles.
 - b. Provision of a storage/loading bay area adjacent to the communal club house.
 - c. All paths and permanent structures within 30 metres of Olinda Creek removed.
 - d. An additional pedestrian access to Swansea Road between dwellings 6 and 7.
 - e. Increased visual permeability of the fence on the common boundary with Swansea Road where it abuts the open space between dwellings 3 & 4; 6 & 7; 14 & 15.
 - f. Required alterations to the Akarana Road reserve in accordance with Condition 31 of this permit.
 - g. Landscaping details and any changes required in response to the Landscape Plan prepared in accordance with Conditions 13 and 50 of this permit.
 - h. Any changes required in response to the Land Management Plan prepared in accordance with Condition 40 of this permit.
 - i. Any changes required in response to the Open Space Management Plan prepared in accordance with Condition 41 of this permit.
 - j. Any changes as required by Condition 43 of this permit.
 - k. Noise mitigation measures including fencing, landscaping or dwelling treatments.
 - l. Provision of a footpath along Swansea Road linking the emergency access to Akarana Road.

All of the above must be to the satisfaction of the Responsible Authority.

Layout Not Altered

- 2 The use(s) hereby permitted must be undertaken in accordance with the permit and must not be modified or altered unless with the further written consent of the Responsible Authority.

- 3 The building and works as shown on the endorsed plans, reports or other documents as included in this permit must be undertaken, constructed and maintained by the property Owner to the satisfaction of the Responsible Authority and must not be altered unless with the further written consent of the Responsible Authority.

Expiry

- 4 This permit will expire if one of the following circumstances applies:
- a. The development is not started within four (4) years of the date of this permit.
 - b. The development is not completed within six (6) years of the date of this permit.
 - c. The use is not commenced within six (6) years of the date of this permit.
 - d. The use is discontinued for a period of two (2) years or more.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in sub-conditions a., b., and c.

Section 173 Agreement

- 5 Prior to the commencement of the development, the land Owner must enter into an agreement pursuant to Section 173 of the *Planning and Environment Act 1987* with the Responsible Authority to provide for:
- a. A restriction preventing the occupation of dwellings on the subject land by persons other than persons who are over the age of 55 or the spouse or widow/widower of a person over the age of 55 who is/was also a resident of the development.
 - b. Implementation of the Open Space Management Plan required by Condition 39 of this permit.
 - c. The access bridge and its maintenance is the responsibility of the Owner.
 - d. Indemnification of Yarra Ranges Shire Council and its Officers from any claims resulting from or in relation to flooding or infrastructure on Council land.
 - e. The requirement for the payment of a 5% public open space contribution upon any future subdivision of the Land.
 - f. The communal club house facility must only be used by residents of the approved development and their guests.

All costs (including legal costs) associated with the preparation and review of the agreement and the registration of the agreement on the Certificate of Title for the land must be paid by the Owner.

Restrictions on use and occupation

- 6 The use of the Land must be as follows:
- a. The dwellings on the subject land must not be occupied by persons other than persons who are over the age of 55 or the spouse or widow/widower of a person over the age of 55 who is/was also a resident of the development
 - b. The Land, including the communal club house facility, must only be used by residents of the approved development and their guests.

Amenity

- 7 There must be no unreasonable emissions of noise and/or vibrations from the premises which are detrimental to the environment and amenity in the area around the premises

to the satisfaction of the Responsible Authority.

- 8 The use and development must be managed by the Owner so that the amenity of the area is not detrimentally affected through the:
 - a. Transport of materials, goods or commodities to or from the land.
 - b. Appearance of any building, works or materials.
 - c. Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - d. Presence of vermin.
- 9 All external lighting provided on the site must be baffled so that no direct light is emitted beyond the boundaries of the site and no nuisance is caused to adjoining properties to the satisfaction of the Responsible Authority.
- 10 All external lighting within 100 metres of Olinda Creek must be baffled so that illumination directed over the water is minimised. Lighting within 100 metres of the creek must be fitted with globes producing relatively low amounts of insect-attracting blue and ultraviolet light.
- 11 Any air-conditioning unit must be positioned so that no noise disturbance is caused to occupiers of adjoining properties and any roof top unit must be provided with a sight screen, to the satisfaction of the Responsible Authority.

Traffic Noise Assessment

- 12 A Traffic Noise Assessment must be prepared to the satisfaction of the responsible authority which:
 - a. recommends appropriate acoustic treatments including fencing, dwelling design treatments and landscaping along the Swansea Road, northern, and southern boundaries of the site; and
 - b. demonstrates that VicRoads guidelines for internal noise limits in dwellings (63 db LA10(18h) level) will be achieved.

Landscaping

- 13 Prior to the commencement of the use and development (including the removal of vegetation), a landscape plan to be prepared by a landscape architect or suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved, the landscape plan will be endorsed and will then form part of the permit. The landscape plan must be generally in accordance with the landscape plan prepared by Urbis dated 29 September 2020 Revision 5. The plan must show the following:
 - a. A survey (including botanical names) of all existing vegetation to be retained and/or removed.
 - b. Buildings and trees (including botanical names) on neighbouring properties within three metres of the boundary.
 - c. Details of surface finishes of pathways and driveways.
 - d. A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.

- e. Landscaping and planting within all open areas of the site.
 - f. At least 90% of planting across the land, and 100% of planting within the 'Communal Open Space' to be indigenous plant species that are flood tolerant and listed in Yarra Ranges Vegetation Community Landscape list, No. 30 (Swamp Gum Swampy Riparian Woodland).
 - g. Landscaping within the 'Communal Open Space' to be selected and placed at appropriate densities so as to not compromise floodplain capacity.
 - h. The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
 - i. Details of all proposed hard surface materials including pathways, patio or decked areas.
 - j. Standard landscape notes included on the Landscape Plan in relation to soil preparation, irrigation of planting beds, replacement of dead plants and planting technique for trees and shrubs.
 - k. A 24 month maintenance plan with notes on appropriate weed control, irrigation, mulch replenishment, dead plant replacement and pruning is included on the Landscape Plan to ensure the successful establishment, and on-going health, of new planting.
 - l. Any further changes required from the detailed drainage design outcome.
- 14 Prior to the occupation of the permitted development (or such other time as agreed to in writing by the Responsible Authority), the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, and any dead, diseased or damaged plants must be replaced.

Vegetation Removal and Protection

- 15 This permit authorises the removal of tree(s) numbered 3, 7 to 17, 47, and 50 to 57 as shown on the Development Impact Assessment by Arbor Survey dated 23 April 2019. All other trees must be retained to the satisfaction of the Responsible Authority.
- 16 Tree protection measures must be carried out in accordance with the Development Impact Assessment by Arbor Survey dated 23 April 2019 to the satisfaction of the Responsible Authority.
- 17 Prior to the commencement of any approved buildings or works, temporary fencing must be erected to identify a construction exclusion zone to the satisfaction of the Responsible Authority and must:
- a. Exclude access and construction activity within the Tree Protection Zone (TPZ) of retained trees. If trees have not been assessed by an arborist, the TPZ is a circle with a radius equal to 12 x the trunk diameter measured 1.4 m above ground level.
 - b. Have a minimum height of 1.8 metres and comply with Australian Standard AS 4687 for temporary fencing and hoardings.
 - c. Not extend beyond the site boundaries except into roadside reserve and/or nature strip areas. Fencing within roadside reserves and/or nature strip areas must not prevent public use of a road or footpath.
 - d. Remain in place until all buildings and/or works are completed, unless with the prior written consent of the Responsible Authority.

Temporary fencing can be modified to accommodate encroachment into the TPZ of tree(s) as per the endorsed plans. Fencing must be modified in line with the footprint of the approved works only.

- 18 Prior to the commencement of the development, the permit holder must advise all persons undertaking the vegetation removal and works on site of all relevant conditions of this permit.
- 19 Prior to the commencement of the development, the permit holder must contact Council's Arborist to arrange for any approved roadside tree removal at the permit holder's cost.
- 20 Prior to the removal of roadside trees, a cost recovery fee of \$400 per tree must be paid to Council for the planting of new trees. New trees will be planted at a time and location determined by the Responsible Authority.
- 21 The existing street trees to be retained must not be removed or damaged to the satisfaction on the Responsible Authority.

Biodiversity Offsetting

- 22 To offset the removal of 0.293 hectares of native vegetation as shown in the approved Native Vegetation Removal Report (Report ID: EHP_2019_223), the permit holder must secure a native vegetation offset, in accordance with the *Guidelines for the removal, destruction or lopping of native vegetation* (DELWP 2017) as specified below:

A general offset of 0.060 general habitat units:

- a. located within the Port Phillip and Westernport Catchment Management Authority boundary or Yarra Ranges Council municipal district.
 - b. with a minimum strategic biodiversity value score of at least 0.176.
 - c. 13 Large trees.
- 23 Before any native vegetation is removed, evidence that the required offset has been secured must be provided to the satisfaction of the responsible authority. This evidence is one or both of the following:
 - a. credit extract(s) allocated to the permit from the Native Vegetation Credit Register, AND/OR;
 - b. An established first party offset site including a security agreement signed by both parties, and a management plan detailing the 10 year management actions and ongoing management of the site.

A copy of the offset evidence will be endorsed by the responsible authority and form part of this permit. The offset evidence will also need to be supplied to DELWP.

Drainage Engineering

- 24 Prior to the commencement of the development (including vegetation removal), Development Stormwater Drainage Engineering Plans and Computations must be submitted to, and approved by, the Responsible Authority. Development Stormwater Drainage Engineering Plans and Computations must be in accordance with all the requirements of an approved point of discharge direct to Olinda Creek. Please refer to Council's webpage for more information.

<https://www.yarraranges.vic.gov.au/Property/Roads-drains-footpaths/Stormwater->

drainage

- 25 Prior to the occupation of the development, piped drainage incorporating Water Sensitive Urban Design elements must be constructed to drain all impervious areas and meet the relevant water discharge quality and flow rate requirements, to the satisfaction of Melbourne Water and the Responsible Authority.
- 26 Prior to the occupation of the development, a below ground detention system must be constructed/installed to drain all impervious areas, to the satisfaction of the Responsible Authority.
- 27 Prior to the occupation of the development, the stormwater drain along Swansea Road and Akarana Road must be redesigned and then constructed so as to achieve compliance with the requirements in DELWP's Guidelines for Development in Flood Affected Areas.
- 28 Prior to the occupation of the development, the construction of all civil works, including the water detention system, must be fully completed and subsequently inspected and approved by a suitably experienced Civil Engineer at the arrangement and expense of the Owner. This person must supply written confirmation that the stormwater management system has been constructed in accordance with the plans endorsed under this permit.

Traffic Engineering

- 29 Prior to the occupation of the development the construction of all civil works, including car parking, internal shared zone accessways, and drainage is to be inspected and approved by a suitably experienced Civil Engineer or person. This person must supply written certification that the works have been constructed in accordance with the approved plans, to the satisfaction of the Responsible Authority.
- 30 Prior to the occupation of the permitted development a piped culvert concrete vehicle crossing with approved endwalls must be constructed in Akarana Road to serve the development and all Council assets, including the nature strip, reinstated to the satisfaction of the Responsible Authority. The vehicle crossing must be designed by a civil engineering to withstand a 1% AEP flood event stormwater surge force.
- 31 Prior to the occupation of the permitted development, Akarana Road must be constructed from its intersection with Swansea Road to the western end of the vehicle crossing to the subject site to a width of 6 metres between the inverts of the kerbs. The road construction will include a 3 metre wide shared bicycle pedestrian path way along the southern side, traffic management treatments, linemarking, drainage and kerb and channel. The finished pavement level must be constructed in accordance with Melbourne Water conditions 43 to 59, to the satisfaction of the Responsible Authority. Vehicle priority between the vehicle crossing and the parking area to Bellbird Park opposite the vehicle crossing must be defined to the satisfaction of the Responsible Authority.
- 32 Prior to the commencement of works required by this permit, engineering construction plans showing all internal works, including shared zone accessways, parking, footpaths, drainage, and all Council works, including roads, footpaths, drainage must be submitted to, and approved by, the Responsible Authority. Civil works must then be constructed

in accordance with these approved engineering plans.

- 33 Prior to the approval of engineering construction plans an inspection/surveillance fee to the value of \$2000 or 2.5% of the estimated cost of all Council works must be paid to the Responsible Authority.
- 34 Prior to the approval of engineering construction plans, a maintenance bond to the value of \$5000 for Council works as required this permit, must be paid to the Responsible Authority.
- 35 Works within the Road Reserve under this permit must be maintained in good condition and repair by the Owner for a period of three months from the date of practical completion to the satisfaction of the Responsible Authority.
- 36 Prior to an Off Maintenance inspection and subsequent return of the maintenance bond, “As Constructed” plans of all Council works, together with a video survey record of the full length of all Council piped drainage, must be submitted to, and approved by, the Responsible Authority.
- 37 The parking areas, internal shared zone accessways (including the emergency accessway) and drainage approved by this permit are to be maintained and must not be obstructed or made inaccessible to the satisfaction of the Responsible Authority.
- 38 All vehicles must enter and exit the site in a forward direction.

Waste Management Plan

- 39 Waste collection from the development must be in accordance with the Waste Management Plan prepared by Leigh Design, dated 3 September 2018.

Land Management Plan

- 40 Prior to the commencement of the development (including the removal of vegetation), a Land Management Plan must be submitted to and approved by the Responsible Authority to ensure the appropriate management of ecological values on the land. The Land Management Plan must detail and/or show:
 - a. The division of the site generally into three zones as outlined below:
 - ‘Residential’, forming the area of the site to be developed with dwellings;
 - ‘Flood management,’ forming the Communal Open Space, and;
 - ‘Conservation’, forming the areas of the subject land to the west of the sewerage easement.
 - b. No vehicles or machinery is to enter the Conservation Zone apart from on agreed access tracks.
 - c. The retention of all standing trees (dead and alive) within the Conservation Zone.
 - d. That all understorey and canopy species are to be allowed to regenerate within the Conservation Zone.
 - e. The protection of hollow bearing trees.
 - f. A works program detailing rehabilitation measures to be undertaken within the Flood Management Zone and Conservation Zone.
 - g. A weed management strategy that details the control and management of vertebrates pests and environmental weed species.
 - h. The provision of a report at years 2, 5 and 10 to the responsible authority that

details works undertaken, incomplete works, recruitment success and include photos of pre and post works.

- i. The provision of a Site Plan (map) showing the features of the site (e.g. trees, waterway, proposed built structures, tracks), management zones, revegetation areas (where applicable) and other features as relevant to the information provided in the written Property Management Plan.

When approved the plan will be endorsed and form part of the permit.

Open Space Management Plan

- 41 Prior to the commencement of the development (including the removal of vegetation), an Open Space Maintenance Plan detailing maintenance of the Communal Open Space for floodwater management must be submitted to and approved by the Responsible Authority. Details of the Open Space Management Plan must include, but are not limited to:

- a. On-going maintenance works required to ensure that flood storage capacity is not lost.
- b. Measures to ensure that grading to the excavation area is maintained and that the excavation area can properly drain, including to ensure there will be no pooling of stagnant water, risk to safety or increased risk of nuisance caused by mosquitoes and other insects.
- c. Management of landscaping and any structures within the Communal Open Space to ensure flood storage capacity is not compromised.
- d. The provision of reporting to the Responsible Authority after the development is completed at 5 years, 10 years and then every 10 years after, detailing:
 - Flood events that have occurred within the reporting period.
 - The condition of the Communal Open Space.
 - Maintenance works that have been undertaken.
 - Maintenance works that will be required to be undertaken in the immediate term.

Once approved, the Open Space Management Plan will be endorsed and form part of this Permit. The Communal Open Space must be maintained in accordance with the Open Space Management Plan and to the satisfaction of the Responsible Authority.

Construction Management Plan

- 42 Prior to the commencement of the development (including the removal of vegetation), the permit holder must submit a Construction Management Plan to the satisfaction of the Responsible Authority. The Construction Management Plan must include details on how the construction will be undertaken so it has minimal impact on the environment. Details to be provided in the Construction Management Plan will include, but are not be limited to:

- a. A full work schedule/construction management plan for each individual stage to ascertain impacts on surrounding properties.
- b. Anticipated staging of the development.
- c. Public/worker access and safety issues.
- d. Hours of construction activity (including at what stage “out of hours works” are proposed and what type of works are to be conducted outside the hours of

- operation).
- e. The location of hoardings, hoists and workers amenities.
 - f. The location of public precautions, loading zones, site sheds, materials, cranes and crane/hoisting zones, gantries and any other construction related items or equipment to be located in any street.
 - g. Details as to how traffic and pedestrian safety and amenity will be controlled within the vicinity of the site and its surrounds.
 - h. The provision of a traffic management plan, including detailed plans that show all items to be placed on any street during all stages of construction in accordance with approval by the responsible Building Surveyor, entry and exit points for construction vehicles (including temporary and permanent vehicle crossings), traffic management during construction including road closures/road occupation/footpath closures, work zones/construction zones to accommodate vehicles and deliveries.
 - i. Service connections/road and footpath openings and anticipated impact on public land during the connection of different services.
 - j. Measures to be used to protect Council infrastructure from damage.
 - k. Existing services and environmental management.
 - l. Exclusion fencing around vegetation to be retained.
 - m. Restrictions on access to the bank of Olinda Creek during construction, including detail of any fencing to be provided.
 - n. A list of all environmental hazards that the activities on-site pose, eg contaminated soil, imported fill, materials and waste, dust, stormwater contamination from run-off and wash-waters, sediment from the site on roads, construction noise, hours of operation, vibration, washing of concrete trucks and other vehicles and machinery, spillage from refuelling cranes and other vehicles and machinery etc.
 - o. Protection measures that will be undertaken to minimise the risk of the above hazards being realised.
 - p. Measures for the protection of the riparian area and management of drainage during each stage of construction as identified under Conditions 32(a) and 32(b).
 - q. Regular monitoring/inspections of the above protection measures.
 - r. Identification as to who will be responsible for managing all of the above issues.

The Construction Management Plan must be approved by the Responsible Authority prior to commencing construction and all buildings and works must be carried out in accordance with the approved Construction Management Plan.

Melbourne Water Conditions

- 43 Prior to the endorsement of plans, amended site, ground floor and elevation plans must be submitted to Council and Melbourne Water addressing Melbourne Water's conditions. Plans must be submitted with surface and floor levels to Australian Height Datum (AHD) and must be amended to show:
 - a. Amended architectural plans incorporating flood and floor levels in accordance with the approved Stormwater Management Plan.
 - b. A revised Stormwater Management Plan incorporating:
 - Flood modelling to determine the minimum finished floor levels for all dwellings and garages. Finished floor levels must be set 600mm above and at the 1% AEP graded flood level respectively. The minimum finished floor level for each dwelling and garage must be set out in a Schedule to the Plan.

- All reference to pedestrian links, pathways and bird watching hutches etc. must be removed from Site, Landscape, Architectural plans and any accompanying report.
 - Meeting the objectives of the 'Healthy Waterways Strategy 2018' specifically relating to the conservation of the local platypus habitat.
- 44 All dwellings and main buildings must be constructed with finished floor levels set a minimum of 600mm above the applicable 1% Average Exceedance Probability (AEP) flood level as determined by the flood modelling results of the approved Stormwater Management Plan, as prepared by Water Technology, February 2020.
- 45 All garages and outbuildings must be constructed with finished floor levels set no lower than the applicable 1% AEP flood level.
- 46 Buildings 51 to 69 cantilevered over the Communal Open Space area adjacent to Olinda Creek must be constructed in accordance with the Stormwater Management Plan.
- 47 Prior to the issue of an Occupancy Permit, a certified survey plan, showing that all lots have been filled to a minimum of 600mm above 1% AEP flood level, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with endorsed Stormwater Management Plan.
- 48 Prior to commencement of works, a stormwater connection application must be made to Melbourne Water for the stormwater outlet connection to Olinda Creek. Plans should highlight cross sections and where the drainage asset will enter the waterway, and also erosion prevention controls to ensure the waterway's structure is not impacted by increased flows (rock beaching etc). Guidelines are available on the Melbourne Water website:
- <https://www.melbournewater.com.au/planning-and-building/work-or-build-near-our-assets-or-easements/stormwater-connection-guidelines>
- Accompanying the stormwater connection application, a detailed Stormwater Layout Plan, in accordance with the Stormwater Management Plan, must be developed and submitted to Melbourne Water for details of onsite stormwater capture and detention and detailed design of drainage infrastructure including connections to Olinda Creek.
- 49 Prior to commencement of works a detailed Site Environmental Management Plan (SEMP) must be developed in accordance with the Melbourne Water's 'Healthy Waterways Strategy 2018' and submitted to Melbourne Water for approval. The SEMP must show the location and nature of environmental values identified through site environmental assessments, and include details of measures to protect or mitigate risk to those values. The SEMP must be implemented throughout all and any stages of the works. The SEMP must include a site map detailing the location and design of all measures in relation to significant site values including the following:
- Silt fencing.
 - Access tracks.
 - Spoil stockpiling.
 - Trenching locations.
 - Machinery/ Plant locations.
 - Exclusion fencing around native vegetation/habitat.

- 50 Prior to the commencement of works, a revised landscape plan, in accordance with the approved Biodiversity Assessment prepared by Ecology & Heritage Partners, must be submitted to Melbourne Water for approval, showing:
 - All vegetation removal, revegetation planting and any rehabilitation works within the Olinda Creek riparian zone 30 metre setback from the surveyed top of bank of Olinda Creek.
 - Areas, densities and proposed species for revegetation.
 - Appropriate vegetation screening of the development from the waterway corridor.
- 51 The development including all paths, thoroughfares, bird-hides or any other permanent structure must be set back a minimum of 30 metres from the surveyed top of bank of Olinda Creek. This setback must not be altered without the prior written approval of Melbourne Water.
- 52 All earthworks cut and fill within the site must be undertaken in accordance with the Stormwater Management Plan and no additional cutting of the site is permitted unless with the written consent of Melbourne Water.
- 53 The internal accessways and pathways must be constructed in accordance with the approved Stormwater Management Plan and must not be altered without the written consent of Melbourne Water.
- 54 Melbourne Water accepts no responsibility for the Ownership or future maintenance of the swale drains within the development site.
- 55 The culvert under the access road (at the Swansea Road emergency exit) must be designed to convey the 1% AEP flow with 15% blockage factor as it accords with the approved Stormwater Management Plan.
- 56 The culvert under the access road (at the Akarana Road exit) must be designed to convey the 1% AEP flow with 15% blockage factor as it accords with the approved Stormwater Management Plan.
- 57 Prior to the completion of works, a Flood Risk Management Plan prepared by an accredited risk management professional must be provided to the satisfaction and approval of Melbourne Water and the Responsible Authority. The Flood Risk Management Plan must be binding to successors in title to provide for ongoing effective management of flood risks. The Flood Risk Management Plan is to include, but not be limited to:
 - a. Site Specific Flood Risks.
 - b. An emergency evacuation plan.
 - c. Restrictions to areas within the Communal Open Space, including details of signage advising of flood risks associated with the Olinda Creek and provision for the area to be secured by a lockable gate.
 - d. Details of signage alerting users to the potential for flooding and depth markers showing the 1% AEP flood level, are to be placed around the property.
 - e. Details of signage installed at the exit to Akarana Road to prohibit pedestrian and vehicular access to and from the site during a flood event. Signage must indicate via Swansea Road. safe egress
- 58 Prior to the completion of works, the Owner of the Land must enter into an agreement pursuant to Section 173 of the *Planning and Environment Act 1987* with the

Responsible Authority and Melbourne Water Corporation. All costs associated with the setting up of the agreement must be borne by the permit holder. The agreement must be registered on the title of the Land and must provide, to the satisfaction of the Responsible Authority and Melbourne Water, for:

- a. Prospective and future Owners and occupiers of the Land to be informed that the Land is subject to inundation.
- b. The implementation of a Flood Risk Management Plan which has been approved by the Responsible Authority and Melbourne Water Corporation.
- c. Indemnify Melbourne Water, its Directors, Officers and Agents from any claims resulting from flooding.
- d. Identify and confirm that Melbourne Water will not take Ownership or maintenance responsibilities of the swale drains or any created assets within the floodplain.
- e. Identify the minimum finished floor level requirements for each of the dwellings and garages within the development, according to the final version of flood modelling results undertaken by the proponent as approved by Melbourne Water (consistent with the approved Stormwater Management Plan).
- f. All cut and fill as verified in the approved Stormwater Management Plan for the development.
- g. No buildings or works ie. dwellings, garages, sheds, water tanks, paths to be constructed within the 30 metre riparian zone setback from the Olinda Creek.

CFA Conditions

59 Prior to the commencement of occupation of the development, the following requirements must be met to the satisfaction of the CFA:

- a. Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200 metres apart. These distances must be measured around lot boundaries.
- b. The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Note – CFA’s requirements for identification of hydrants are specified in ‘Identification of Street Hydrants for Firefighting Purposes’ available under publications on the CFA web site (www.cfa.vic.gov.au)

60 Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.

- a. The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 meters.
- b. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
- c. Curves must of a dimension which allow accessibility by standard CFA design vehicle.
- d. Have a minimum trafficable width of 3.5 metres and be clear of encroachments for at least 0.5 metres on each side and 4 metres above the access way.
- e. Roads more than 60m in length from the nearest intersection must have a turning

circle with a minimum radius of 8m (including roll-over kerbs if they are provided) T or Y heads of dimensions specified by the CFA may be used as alternatives.

Notes

The granting of this permit does not obviate the necessity for compliance with the requirements of any other authority under any act, regulation or local law.

Building works approved under this planning permit shall not be commenced until a building permit has also been obtained under the *Building Act 1993* and the *Building Regulations 2018*.

Prior to the commencement of any works affecting or involving Council roads or drains, Asset Protection and/or Road Reserve/Easement Works permit(s) are required. An application for a permit can be made at the Yarra Ranges Council Community Links (phone 1300 368 333). The application must include a copy of the relevant permit(s), endorsed site plan(s) and approved civil engineering plan(s) if required by this permit.