

*Planning and Environment Act 1987*

**Priority Projects Standing Advisory Committee Report**

**Hume Planning Scheme**

**Referral No 6: 14 and part 16 South Circular Road and 15 –  
17 Payne Street, Gladstone Park**

**23 December 2020**

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*Planning and Environment Act 1987*

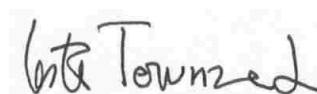
Priority Projects Priority Projects Standing Advisory Committee Report pursuant to section 151 of the Act

Hume Planning Scheme

Referral No 6: 14 and part 16 South Circular Road and 15 – 17 Payne Street, Gladstone Park

23 December 2020

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



Lester Townsend, Chair



Tim Hellsten, Member

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## Glossary and abbreviations

|                     |   |
|---------------------|---|
| Act                 | <i>Planning and Environment Act 1987</i>  |
| AHD                 | Australian Height Datum   |
| Airport Master Plan | <i>Melbourne Airport 2018 Master Plan</i>   |
| ANEF                | Australian Noise Exposure Forecast  |
| ANR                 | Aircraft Noise Reduction  |
| APAM                | Australian Pacific Airports (Melbourne) Pty Ltd   |
| AS2021              | <i>Australian Standard 2021:2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction (AS2021)</i> |
| BVRT                | Building Victoria’s Recovery Taskforce  |
| the Committee       | Priority Projects Standing Advisory Committee   |
| Council             | Hume City Council   |
| DELWP               | Department of Environment, Land, Water and Planning   |
| EAPL                | Essendon Airport Pty Ltd  |
| GRZ                 | General Residential Zone  |
| MAEO2               | Melbourne Airport Environs Overlay (Schedule 2)   |
| NASF                | National Air Safety Framework   |
| PPF                 | Planning Policy Framework   |
| VCAT                | Victorian Civil and Administrative Tribunal   |
| YVW                 | Yarra Valley Water  |

# 1 Overview

## (i) Referral summary

| Referral summary                       |  |
|--|--|
| <b>Date of referral</b>                | 18 November 2020   |
| <b>Members</b>                         | Lester Townsend (Chair), Tim Hellsten  |
| <b>Description of referral</b>         | VCAT Proceeding No P1180/2020: Development of a five storey residential aged care facility adjacent to the existing residential aged care facility (including the partial demolition of the existing residential aged care facility) and a basement level car park   |
| <b>Common name</b>                     | Referral No 6: 14 and part 16 South Circular Road and 15 – 17 Payne Street, Gladstone Park   |
| <b>Municipality</b>                    | Hume   |
| <b>Planning Authority</b>              | Hume City Council  |
| <b>Planning permit application No.</b> | P22513   |
| <b>Subject land</b>                    | 14 and part of 16 South Circular Road (easement E-6 on PS327182T) and 15 – 17 Payne Street, Gladstone Park   |
| <b>Applicant</b>                       | Andalla Pty Ltd  |
| <b>Site inspection</b>                 | 18 December 2020   |
| <b>Consultation</b>                    | Roundtable submissions by video conference on 14 and 15 December 2020  |
| <b>Parties</b>                         | <p>Andalla Pty Ltd represented by John Cicero and Eliza Minney of Best Hooper who called expert evidence in acoustics from Darren Tardio of Enfield Acoustics Pty Ltd and in town planning from Edelene Loke of Ratio</p> <p>Hume City Council represented by Kim Piskuric of Harwood Andrews and Eliana Demetriou, Senior Town Planner</p> <p>Australia Pacific Airports (Melbourne) Pty Ltd (did not attend the Roundtable consultation)</p> <p>Anna and Jeanette Neesham</p> <p>Robert Colin White (who represented several other people)</p> |
| <b>Information relied upon</b>         | VCAT File, Permit application support documents, Council report and objections, without prejudice permit conditions, expert evidence, written and verbal submissions at the Roundtable session (Appendix C)  |
| <b>Date of this report</b>             | 23 December 2020   |

**(ii) Findings**

The Committee finds:

- there is no justification or identified need to intensify aged care accommodation in an area that has been identified as unacceptable for that use
- amenity of residents of the facility would be significantly adversely impacted by aircraft noise noting that they could only achieve acceptable noise levels when inside with the windows closed – this is not appropriate for an age care facility
- it is unclear whether the height of the building would be deemed acceptable by the Secretary under the Airports (Protection of Airspace) Regulations 1996.
- the proposal's built form, scale and height is excessive and does not appropriately responds to the site or its context and will result in a built form that is unreasonably visually dominant of its setting and overwhelming for adjoining land owners
- there is no policy imperative to set aside the issues of built form, scale and height.
- the proposal has the potential to result in significant amenity impacts to adjoining residents. While some of these issues can be managed by permit conditions, issues of overshadowing and overlooking will result in an unreasonable amenity impact and are symptomatic of a development that is inappropriate in scale and bulk.

**(iii) Recommendation**

**That a planning 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 11 November, 2020 (Appendix B) that tasked it:

... for advice and recommendations on whether planning approval should be issued and, if so, the appropriate conditions that should be imposed. I ask that the Priority Projects SAC consider, among other matters, how the project aligns with facilitating the expansion of Melbourne Airport and protecting its optimum usage as well as how the project responds to the built environment.

This is Referral No. 6.

### (ii) Membership

The members of the Committee dealing with Referral No. 6 were:

- Lester Townsend, SAC Chair, chair of this matter
- Tim Hellsten, SAC Chair.

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

### (iii) Background to the proposal

The referred proposal relates to a planning permit application for land at 14 (and part of 16) South Circular Road and 15 – 17 Payne Street, Gladstone Park which proposes the:

Development of a five storey residential aged care facility adjacent to the existing residential aged care facility (including the partial demolition of the existing residential aged care facility) and a basement level car park.

Planning Permit application P22513 was lodged with Hume City Council (Council) on the 17 September 2019 and amended on 29 April 2020 (Revision F) by Baumgart Clark Architects Pty Ltd to include easement E-6 on PS327182T (a carriageway easement) within the subject land. As amended, it involves (refer Figures 1 and 2):

- demolition of two dwellings in Payne Street and the western portion (45 bedrooms) of an existing aged care facility at 16 South Circular Road
- construction of a five storey aged care building (16 metre high to highest point of the roof of level 5 (125.2 AHD) and 17 metres to the plant room)
- 115 bedrooms and ancillary spaces and services (providing for a total of 152 bedrooms on site and net increase of 70 bedrooms)
- a two storey podium level building setback of 7.59 metres from Payne Street with protruding canopy at ground level (increasing to 14 metres at levels 3 and 4 and over 20 metres for level 5), with a range of setbacks to side and rear boundaries increasing with height

- external building finishes that include red brick (ground level), feature charcoal coloured bricks, rendered and painted concrete panels, Colourbond and folded metal cladding and window screening shrouds and blades
- provision of an external courtyard
- basement carparking (29 spaces) accessed off South Circular Road via an existing crossover access and driveway (partly located on a carriageway easement shared with 16 South Circular Road) and retention of 19 existing ground level parking spaces
- a new entry (primary entry) off Payne Street via a circular driveway providing access to a loading/waste collection area on the east side of the site
- removal of a street tree in Payne Street and other site vegetation adjacent to proposed works.

**Figure 1** Proposed development elevations (Revision J)







A permit is required by the Hume Planning Scheme under:

- Clause 32.08-8 (Residential aged care facility) to the General Residential Zone (GRZ) for buildings and works
- Schedule 2 to Clause 45.08 Melbourne Airport Environs Overlay (MAEO2) for buildings and works associated with Accommodation.

The application was supported by the following documents:

- Application drawings 17 September (2019 Revision A), 29 November 2019 (Revision F) and 30 April 2020 (Revision J)
- Arboricultural Report (Development Impact Response), Tree Response, 30 August 2019
- Copy of titles and legal advice from Planning and Property Partners regarding covenants, 13 November 2019
- Town Planning Report, Hollerich Town Planning, 17 September 2019 and 26 November 2019
- Consideration of Aircraft Noise Impacts, Watson Moss Growcott, 6 September 2019 and 7 October 2019
- Acoustic Report, Watson Moss Growcott, 6 December 2019
- Urban Design Report, David Lock Associates, 29 November 2019
- Landscape Concept package, Rupert Baynes Landscape, September 2019 and April 2020
- Traffic Engineering Assessment, Traffix Group, September 2019 and April 2020
- Waste Management Plan, Salt, 22 November 2019
- Stormwater Drainage Plan, GHA Engineers, April 2020
- Sustainability Management Plan, Frater, 23 April 2020.

Council referred the application to internal departments who raised concerns relating to:

- standards of disabled parking bays and parking bay access swept path details
- built form and facade treatments including design enhancement opportunities including reinforcing South Circular Road as a primary entry through design treatments and signage
- impacts on Melbourne Airport
- thermal fabric requirements and light/ventilation access to basement staff and training rooms
- management of essential services (including outdoor areas) for existing residents during construction
- appropriateness of plant selection and landscaping arrangements.

The application was referred to the Head of Transport (which had no objections) and Jemena Electricity Network which identified required conditions to be included on any permit issued. Essendon Airport Pty Ltd made a submission to the application notification noting that height limitations applied to the site.

Sixty three objections were received to notification of the application with one submission in support with key issues relating to:

- Airport impacts including:
  - consistency with Clauses 18.04-1S, 18.04-1R and 45.08
  - Essendon Airport AHD requirements
- Neighbourhood character including:
  - height and building bulk

- built form, site coverage and setbacks
- landscape response
- Amenity impacts including:
  - consistency with Clauses 16.01-7S and 53.17
  - overlooking
  - overshadowing
  - light spill
  - site access
  - traffic, pedestrian safety and on street parking
  - noise
  - odour
  - construction management
- Other issues including:
  - easements
  - property value impacts
  - precedent.

A section 79 (*Planning and Environment Act 1987*) application for review of the responsible authority's failure to grant a permit within the prescribed time was lodged with the Victorian and Civil Administrative Tribunal (VCAT) on the 16 July 2020 VCAT (Proceeding No. P1180/2020) by Andalla Pty Ltd. This application for review superseded an earlier application by Baumgart Clark Architects Pty Ltd (P846/2020) that was lodged prematurely on the 28 May 2020 and was subsequently withdrawn on the 21 July 2020 with the consent of VCAT. The earlier application reference was identified in the Minister's referral letter. DELWP advised on 8 December 2020 that the referral:

... letter mistakenly refers to VCAT proceeding P846/2020. This was an administrative error and VCAT proceeding P1180/2020 is the matter that has been called in.

A scheduled compulsory VCAT conference on the 18 November 2020 did not occur with a VCAT Hearing scheduled to take place on the 24 February 2021 prior to the call in and referral. The VCAT proceeding P1180 parties were the parties invited to participate in the Roundtable.<sup>1</sup>

Council considered the application on the 24 August 2020 resolving to refuse to grant a permit on the grounds that the proposal fails to satisfy:

- Clause 16.01-7S
- Clauses 18.04-1S and 18.04-1R
- Clause 45.08
- Clause 53.17
- Clause 65.01.

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<sup>1</sup> Mr White's Statement of Grounds identified he was representing objectors from 5, 8, 12 and 14 Payne Street and 4, 5, 9, 10, 11, 12 and 14 Dolphin Court. He appeared at and presented to the Roundtable on that basis.

**(iv) Limitations and procedural issues****Consultation and procedural issues**

Parties were advised on the 30 November 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 1 to 2 day roundtable submission session.

Parties were advised on 1 December 2020 of the Committee's outline of issues in dispute, proposed Roundtable arrangements for the 14 and 15 December 2020, draft Directions and Timetable. On 1 December Council through Harwood Andrews sought an adjournment of the Roundtable until mid-January 2021 citing timeframe challenges to prepare for the Roundtable and procedural fairness. A similar adjournment supporting position was received from Ms Anna and Ms Jeanette Neesham (Neeshams) which was also critical of the matters referral to the Committee.<sup>2</sup> Best Hooper for Andalla Pty Ltd (Applicant)<sup>3</sup> opposed the adjournment request identifying that it would be unfairly prejudiced *"particularly given that its offer of beds (associated with the proposed extension to the existing nursing home facility) from the Department of Health expires on 29 December 2020."*

The Committee considered the submissions of Council and the Neeshams and advised on 2 December 2020 that it intended to proceed with the Roundtable on the scheduled dates because:

- Council had established a clear (Council endorsed) position on the proposal as identified in its Council report of the 24 August 2020 and identified grounds of non-support
- the position of other parties and the issues in dispute had been clearly identified in the respective Statement of Grounds
- there is a clear planning policy framework in place relevant to this proposal which has been consistently identified by the Applicant, Council and other parties
- the Applicant's identified areas of evidence in their review application to VCAT reflect the supporting reports provided with the application. The Committee did not anticipate that any evidence would identify any substantially new material requiring detailed analysis and longer timeframes than those identified
- there was no requirement for Council to provide a Part A submission
- there was no expectation that parties will prepare detailed written submissions for the Roundtable or call evidence
- evidence would be taken as read with minimal cross examination
- the purpose of the Roundtable is for the Committee to clearly understand the position of the parties and the proposed Timetable and Roundtable arrangements have been prepared with this in mind.

On 3 December 2020 Minter Ellison for Australia Pacific Airports (Melbourne) Pty Ltd (APAM) advised the Committee of its concerns about the Roundtable timeframes and ability to prepare fully and the referral of the matter to the Committee particularly given the strategic planning inquiry currently being undertaken by the Melbourne Airport Environs

<sup>2</sup> Ms J Neesham is the owner of 13 Payne Street.

<sup>3</sup> The referral refers to the Hope Aged Care as the applicant. Mr Cicero for Andalla Pty Ltd advised that *"Hope Aged Care Brunswick was named in the original application form (lodged with Hume City Council on 17 September 2019) however leave was sought from the Tribunal to amend the name of the Applicant at the time the Application for Review was lodged with the Tribunal (16 July 2020)."*

Safeguarding Standing Advisory Committee.<sup>4</sup> It expressed concern about the piecemeal approach to airport safeguarding and advised it would not be appearing at the Roundtable. It identified that *“given the location of the land in such a heavily noise affected area, any decision to approve the application would, in APAM’s view, be a mistake”* and sought that the Committee takes its views into account in its considerations.

APAM is considered a key party and its non-participation was unfortunate. The Committee considers however, that it had enough information from APAM to understand the nature of their concerns which were clearly set out in its written objections and letter of the 3 December 2020.

On the 4 and 5 December 2020 the Committee received further correspondence from:

- the Neeshams raising concerns about their capacity to prepare for the Roundtable, defects in procedure (VCAT reference), the non-participation of APAM and the appropriateness of the referral to this Committee. It sought that the matter be dealt with by VCAT or the Melbourne Airport Environs Safeguarding Standing Advisory Committee
- Mr White outlining concerns regarding the distribution of documents consistent with the Committee’s Directions and seeking the matters return to VCAT
- the Applicant setting out the process they used to prepare the documentation to be included within the Dropbox, including Council’s inputs and opposing any adjournment.

The Committee determined that the Roundtable would proceed as scheduled on the basis that:

- The purpose of the Roundtable was not to achieve a consensus or a mediated outcome but to enable the Committee to fully understand the position of the parties to enable it to consider the issues in dispute fully before preparing its recommendations. In this instance it considers APAM’s position clear.
- It was clear that the Minister’s referral relates to Planning Permit Application P22513.
- The matter has been referred to the Committee by the Minister. The Committee’s Terms of Reference do not allow it to send the matter back to VCAT or to another Committee or question the basis of the referral.
- While the documentation link was received a few hours late it was clear that the Applicant had made a reasonable attempt to collate this material well before the identified timeframe but did not receive Council’s information until after the scheduled time. Most of this material included application materials that parties would have been able to access.
- Committee members were appropriately skilled and experienced to consider the referral, with Mr Townsend Chair of the Melbourne Airport Environs Safeguarding Standing Advisory Committee.

### **Roundtable arrangements**

Parties to the Roundtable were given opportunity to call evidence based on the key issues in dispute. The Applicant provided expert evidence on planning, traffic, landscaping and acoustics. This material was taken as read with limited cross examination. The Roundtable

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<sup>4</sup> Document 10

submission session provided each party with the opportunity to present focused verbal (and written submissions) on each of the identified issues in turn with the Committee asking clarifying conditions. 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 provided by Council and revised by the Applicant.

The Applicant provided an accessible Dropbox 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 from and discussions with parties to the VCAT application for review (including the correspondence from APAM) rather than all 63 objections to the application. The Committee however, viewed all the objections and these informed its issues identification.

### **Site inspection**

The Committee undertook an unaccompanied inspection of the site and surrounds from the public realm on the 18 December 2020.



## 3 Site and planning context

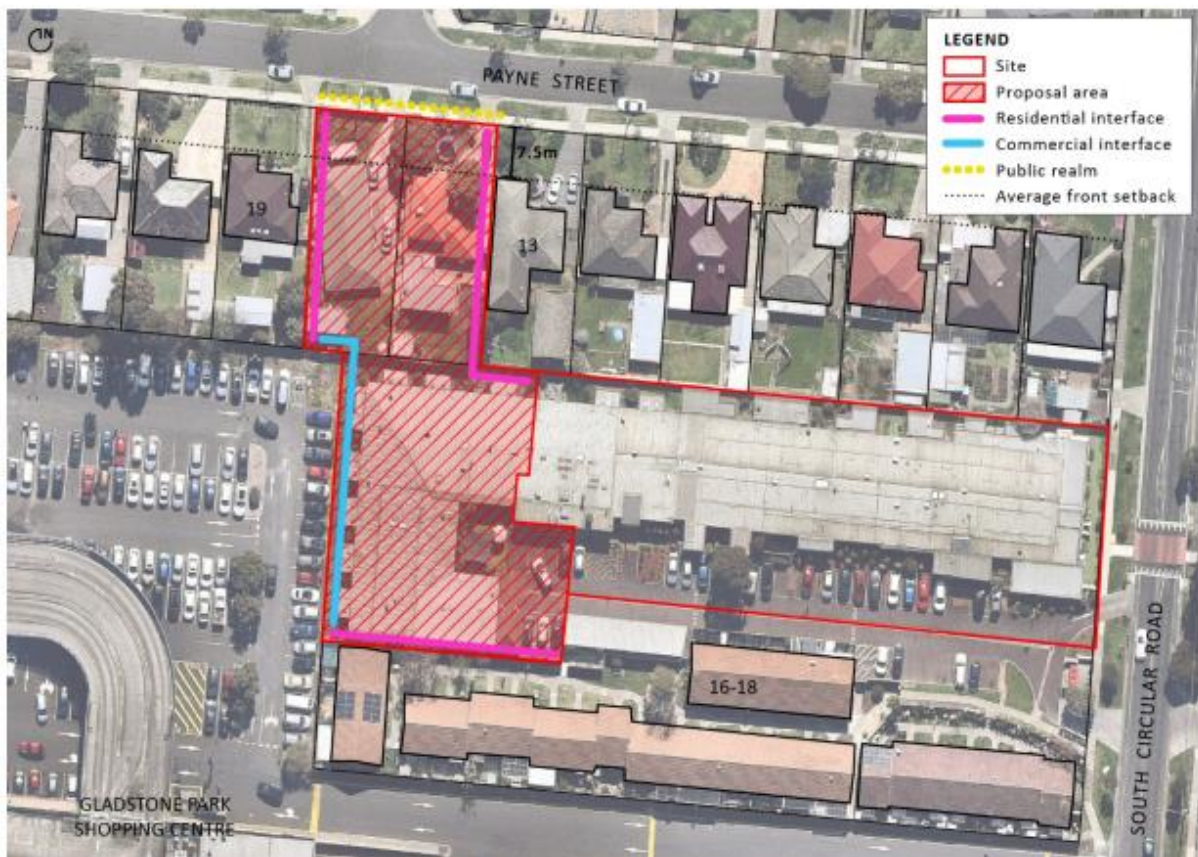
### 3.1 The subject land

The subject land (refer Figure 3) is 5,660 square metres in area and comprises:

- on the South Circular Road site, a single storey 82 bedroom aged care facility (North Western District Private Nursing Home) with 26 at grade carparks
- a two storey and a single storey brick dwelling at 15 and 17 Payne Street respectively.

The subject land contains several sewerage and drainage easements, two of which are proposed to be bridged or built over subject to the approval of Yarra Valley Water (YVW). Existing site covenants (relating to fencing) do not restrict the proposed development as submitted.

**Figure 3** Subject land



Source: Urban Design Report, David Lock Associates Figure 1 page 3

Land adjoining the site comprises:

- to the east, a single storey brick dwelling at 13 Payne Street setback 7.7 metres from the Payne Street frontage and with a side setback of 1.25 metres from the shared boundary with the subject land
- to the west, a single storey rendered brick dwelling at 19 Payne Street setback 7.94 metres from the Payne Street frontage and with a side setback of 1.86 metres from the shared boundary with the subject land
- to the south, a single storey, multi dwelling complex at 16 South Circular Road
- the Gladstone Park Shopping Centre (identified as a Major Activity Centre) to the south of 16 South Circular Road and its associated carpark to the west of the site.

Site buildings vary in scale from one to two storeys (with a third level rooftop carpark)

- Gladstone Park Primary School, Gladstone Park Reserve and Community Centre opposite the site in South Circular Road.

The surrounding area (other than the shopping centre, school and reserve) is residential, comprising predominantly established single storey brick dwellings with some second storey elements evident.

## **3.2 Planning framework**

### **(i) Planning policy**

The submissions of Council and the Applicant (including the Hollerich Town Planning Report, and planning evidence of Ms Loke) generally agreed that the following State and local planning policies were relevant to the permit application:

#### **State policy**

- Clause 11.01-1S (Settlement)
- Clause 11.01-1R (Settlement – Metropolitan Melbourne)
- 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 16.01-1S (Integrated housing)
- Clause 16.01-1R (Integrated housing – Metropolitan Melbourne)
- Clause 16.01-7S (Residential aged care facilities)
- Clause 18.04-1S (Planning for airports and airfields)
- Clause 18.04-1R (Melbourne Airport)
- Clause 19.03-3S (Integrated water management).

#### **Local policy**

- Clause 21.02 (Urban Structure and Settlement)
- Clause 21.03 (Liveable Neighbourhoods and Housing)
- Clause 21.06 (Built Environment and heritage)
- Clause 22.07 (Aged Accommodation and Services Policy).

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

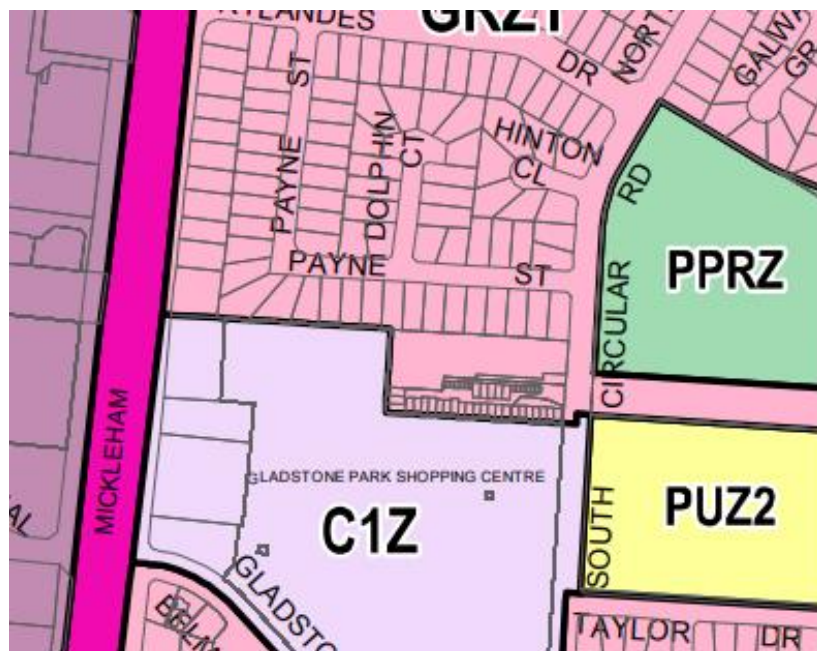
### **(ii) Zones and overlays**

The subject land is within the GRZ1 and largely covered by the MAEO2 as is the adjoining residential area. The shopping centre is located within the Commercial 1 Zone. The purpose of the GRZ and MAEO2 are identified in Table 1 and their extent shown in Figures 4 and 5.

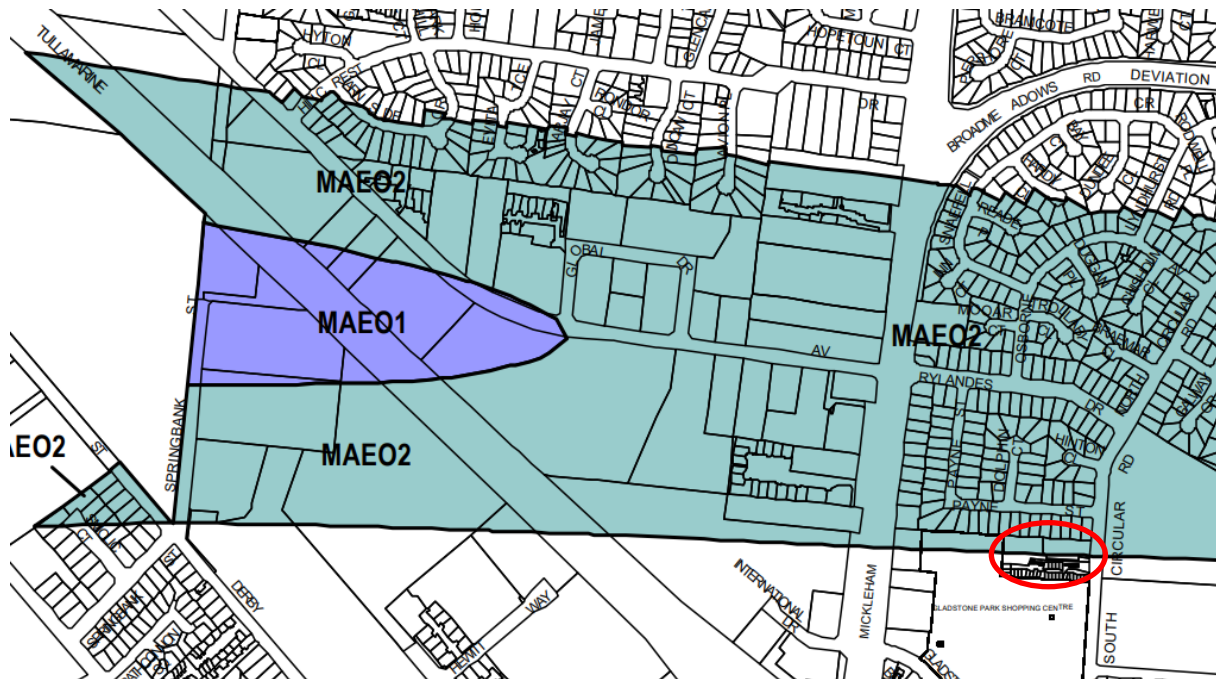


**Table 1 Purpose of existing Zones and Overlays**

| Existing controls | Purpose  |
|-------------------|--|
| GRZ               | <ul style="list-style-type: none"> <li>- To encourage development that respects the neighbourhood character of the area.</li> <li>- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.</li> <li>- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.</li> </ul>   |
| MAEO              | <ul style="list-style-type: none"> <li>- To ensure that land use and development are compatible with the operation of Melbourne Airport in accordance with the relevant airport strategy or master plan and with safe air navigation for aircraft approaching and departing the airfield.</li> <li>- To assist in shielding people from the impact of aircraft noise by requiring appropriate noise attenuation measures in dwellings and other noise sensitive buildings.</li> <li>- To provide for appropriate levels of noise attenuation depending on the level of forecasted noise exposure.</li> <li>- Schedule 2 purpose: <ul style="list-style-type: none"> <li>- To identify areas that are or will be subject to moderate levels of aircraft noise based on the 20-25 Australian Noise Exposure Forecast (ANEF) contours and to limit use and development to that which is appropriate to that level of exposure.</li> </ul> </li> </ul> |

**Figure 4 Zoning**

**Figure 5 Melbourne Airport Environs Overlay Schedule 2**



Note: The site's designation within the red oval has been added by the Committee

### (iii) Particular provisions

The submissions of Council and the Applicant (including the Hollerich Town Planning Report, and planning evidence of Ms Loke) agreed that the following particular provisions of the Hume Planning Scheme were relevant to the permit application:

- Clause 52.06 (Car parking)
- Clause 53.17 (Residential Aged Care Facility)
- 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 letter of referral (Appendix B) asked the Committee:

... to consider, among other matters, how the project aligns with facilitating the expansion of Melbourne Airport and protecting its optimum usage as well as how the project responds to the built environment.

Committee has focused its discussion on these issues as well as other amenity issues raised by the parties.

### 4.1 Protection of airports and management of airport noise impacts

#### (i) The issues

The proposal involves the provision of 66 of the new bedrooms within MAEO2 in addition to outdoor courtyard and terrace areas. Thirty seven of the existing bedrooms to be retained are located within MAEO2, which with the demolition of the two dwellings in Payne Street, results in a net increase of 34 bedrooms within MAEO2.

The issues are:

- whether the proposal is consistent with the Planning Policy Framework relating to the protection of Melbourne Airport and Essendon Fields Airport
- whether the proposal is consistent with the purpose and decision guidelines of the Melbourne Airport Environs Overlay relating to aircraft noise and compatibility with the Melbourne Airport Master Plan.

#### (ii) Planning policy and provisions

##### Policy

Clause 18.04-1S seeks to strengthen the role of Victoria's airports and airfields within the state's economic and transport infrastructure, facilitate their siting and expansion and protect their ongoing operation which includes ensuring the effective and competitive operation of Melbourne Airport and role of Essendon Fields Airport. It encourages planning for areas around airfields that precludes development which prejudices airfield safety and efficiency or future extensions consistent with an approved airfield strategy or master plan and the detrimental effects of aircraft operations such as noise are considered.

Clause 18.04-1R includes the following strategies:

- Protect the curfew-free status of Melbourne Airport and ensure any new use or development does not prejudice its operation.
- Ensure any new use or development does not prejudice the optimum usage of Melbourne Airport.

##### Melbourne Airport Environs Overlay

Clause 45.08-2 sets out the following mandatory requirement for any new building within the MAEO:

Any building for which a permit is required under this overlay must be constructed so as to comply with any noise attenuation measures required by Section 3 of Australian Standard AS 2021-2015, Acoustics - Aircraft Noise Intrusion - Building Siting and Construction, issued by Standards Australia Limited.

*Note: In Section 3 of Australian Standard AS 2021-2015, Table 3.3 refers to both building types and activities within those buildings. Each building type listed has its ordinary meaning and should not be interpreted as defined in this scheme.*

Clause 45.08-4 sets out the decision guidelines for any new application within the MAEO:

- The Municipal Planning Strategy and the Planning Policy Framework.
- Whether the proposal will result in an increase in the number of dwellings and people affected by aircraft noise.
- Whether the proposal is compatible with the present and future operation of the airport in accordance with the current Melbourne Airport Master Plan approved in accordance with the Airports Act 1996.
- Location of the development in relation to the criteria set out in Table 2.1 Building Site Acceptability Based on ANEF Zones in Australian Standard AS 2021-2015.

### **Australian Standard 2021:2015 Acoustics – Aircraft Noise Intrusion – Building Siting and Construction (AS2021)**

AS2021 includes the following relevant provisions identified in the MAEO:

- Table 2.1 Building Site Acceptability based on ANEF Zones identifies the following ANEF acceptability levels for a nursing home:
  - Acceptable – Less than 20 ANEF
  - Conditionally acceptable – 20 to 25 ANEF
  - Unacceptable – Greater than 25 ANEF

Note 4 to Table 2.1 identifies:

- This Standard does not recommend development in unacceptable areas. However, where the relevant planning authority determines that any development may be necessary within existing built-up areas designated as unacceptable, it is recommended that such development should achieve the required ANR determined according to Clause 3.2. For residences, schools, etc., the effect of aircraft noise on outdoor areas associated with the buildings should be considered.
- Clause 2.3 identifies that for ‘conditionally acceptable’ sites maximum noise level and noise reduction should be based on Clauses 3.1 and 3.2 and aircraft noise attenuation based on Clause 3.3. For ‘unacceptable’ sites, development should not normally be considered unless it is in the community interest in which case Clause 3.2 is relevant.
- Clause 3.2 identifies Aircraft Noise Reduction (ANR) values (measured in dB(A)) to be achieved for different internal uses.

### **Melbourne Airport 2018 Master Plan (Airport Master Plan)**

The Airport Master Plan provides detailed plans for the continued development of the airport over the next five years and aligns with its 20-year strategic direction for the airport. It is a requirement of the *Airports Act 1996* (Cth). It identifies that the capacity of the airport to operate unencumbered and maintain its 24 hour curfew-free status is dependent on what occurs on the land surrounding it and aims to:

... improve community amenity by minimising aircraft noise-sensitive developments near airports including through the use of additional noise metrics and improved noise-disclosure mechanisms.

Chapter 9 (Aircraft noise and flight paths) of the Airport Master Plan identifies preferential usage of runways to minimise flights over residential areas and abate night noise. Chapter 17 (Safeguarding Melbourne Airport) which sets out an overview of the National Airports Safeguarding Framework (NASF), planning policy context, new ANEF contours and the MAEO. It identifies that the MAEO is based on the 2003 ANEF contours, and do not reflect the larger contours identified in the Master Plan that reflect the new east–west runway. The subject land within the identified 25 to 30 ANEF contour (refer Figures 6 and 7). The Master Plan identifies that the NASF *Guidelines A: Measures for Managing Impacts of Aircraft Noise*

recommends using the 'number above' noise contour system (N-contours) to supplement ANEF levels to identify how a person perceives a number of noise events a day over certain noise level (60, 65 and 70dB(A)). The subject land is located within an area identified as being exposed on a daily basis to more than 100 events over 60 dB(A), 50 events over 65 dB(A) and 20 events over 70 dB(A).

The Airport Master Plan sets out the provisions of the NASF which include seven principles which seek to:

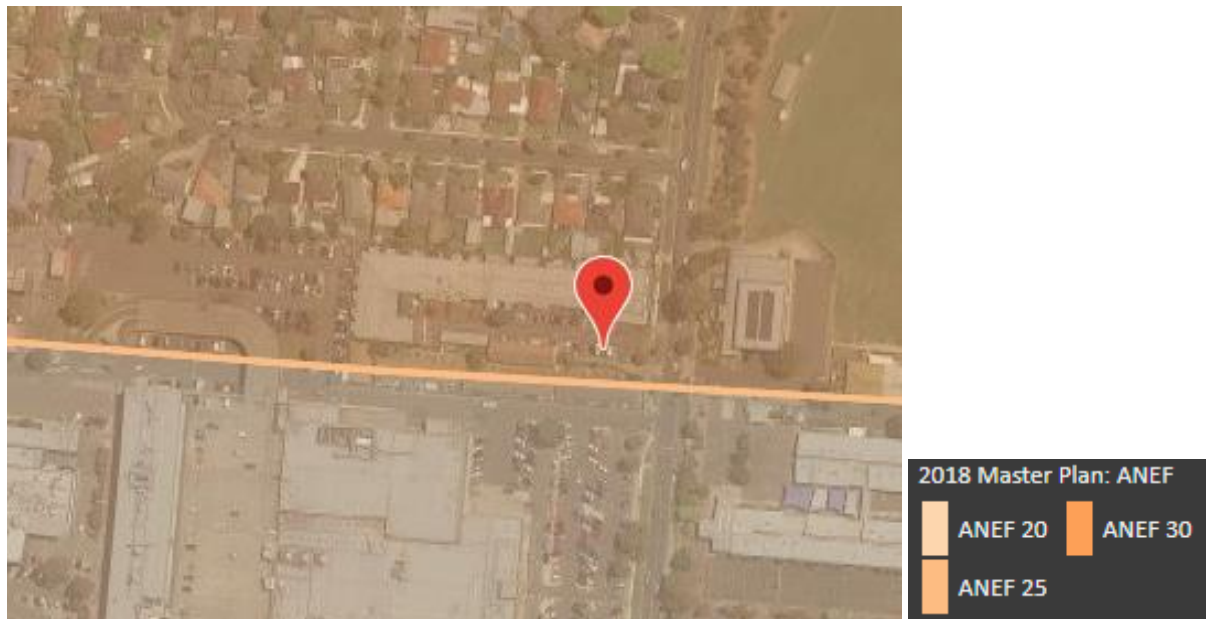
... improve community amenity by minimising aircraft noise-sensitive developments near airports including through the use of additional noise metrics and improved noise-disclosure mechanisms.

**Figure 6** Melbourne Airport 2018 Master Plan ANEF contours



Source: Consideration of Aircraft Noise Impacts, Watson Moss Growcott, 7 October 2019



**Figure 7 Melbourne Airport Noise Information Tool mapping detail – 2018 Master Plan/ANEF**

### Essendon Fields Airport

Essendon Airport Pty Ltd (EAPL) made a submission to the notification of the permit application but was not a party to the Roundtable. That submission however, identified that the site was outside the 20 ANEF contours for the Essendon Fields Airport but was within the Airport's prescribed airspace with consent required for buildings, antennas or construction cranes extending above 123.5 AHD from the Secretary under the *Airports (Protection of Airspace) Regulations 1996*. EAPL also highlighted Clause 18.04-2 and the NASF guidelines, noting that the site was outside the Airport's Public Safety Area. It recommended the following condition be included in any permit issued:

No activity may occur above 123.5 metres Australian Height Datum (AHD) on the land unless approval is obtained from the Secretary under the *Airports (Protection of Airspace) Regulations 1996*. This includes buildings, antennas or cranes during construction.

### (iii) Submissions and evidence

The initial objection from APAM (3 October 2019) identified that while within MAEO2 the subject land was within the current 25-30 ANEF contours and within three of four N-above contours and was accordingly unacceptable under AS2021. It identified that it did not support the expansion of the existing facility onto the Payne Street lots where existing use rights did not exist and considered that expansion inconsistent with Clause 18.04 and the NASF. It sought further information about the redevelopment of the existing aged care site including an assessment against the NASF guidelines. It identified that if a permit was issued it should be conditioned that any building meets the noise attenuation measures required by Section 3 of AS2021.

Following the receipt of additional information APAM advised Council on the 11 February 2020 that it did not support the expansion of the existing facility as it was inconsistent with Clause 18.04-1R. This position was reinforced in its letter to the Committee of 3 December 2020.

Council submitted that airport issues were threefold:

- Firstly, that noise impacts from Melbourne Airport needed to be managed within the building design.
- Secondly, the sites location within MAEO2 and, as accepted by the parties, within an area identified as within the unacceptable ANEF contours.
- Thirdly the uncertainty associated with the building's height above the 123.5 AHD contour identified by EAPL.

Council submitted that while the building maybe capable of complying with the noise attenuation measures of AS2021 the proposal was inconsistent with the broader purposes and decision guidelines of MAEO2 and Clauses 18.04-1S and 18.04-1R. It acknowledged that AS2021 allows unacceptable development in existing built up areas if the 'relevant planning authority' deems it as 'necessary'. While 'necessary' was not defined, Council submitted that there was no strategic basis to conclude that it was necessary to do so. It submitted that while adjacent to an activity centre it was not of a scale, well serviced by public transport or within an area identified for housing intensification or aged care that warranted airport policy and overlay considerations to be set aside. Council considered that APAM was best placed to understand the impact of the proposal on the airport and it had relied on APAM's observations that the proposal was unacceptable.

The submissions of the Neeshams and Mr White supported the positions of Council and APAM. The Neeshams suggested that airport policy should have primacy over other policy in any policy weighing exercise.

The Applicant submitted that the existing facility was located within an established area and that the proposal did not prejudice or limit the objectives of Clauses 18.04-1S or 18.04-1R being achieved and provided for the expansion and creation of a facility for which there was "*an express need*". It adopted the acoustic evidence of Mr Tardio.

Mr Tardio's evidence acknowledged that the subject land was within the 25-30 ANEF 'unacceptable' contour. However, he identified notes 4 and 5 within AS2021 contemplated planning authorities allowing development that was necessary in existing built up areas where the noise attenuation levels were met and focused primarily on new development in greenfield sites. He identified that the site was in a built up area that primarily included sensitive uses already and was until recently within the 20 ANEF contour and conditionally acceptable. He further noted that the subject land was outside the '6 or more events of greater than 60dB(A) at night' minimising noise impacts to relatively low levels when people are more sensitive to noise. He referred to the NASF which identified that development in existing areas:

... may be acceptable where the site provides other desirable outcomes such as providing housing near transport or meeting urban consolidation targets. In some circumstances, redevelopment of sites already exposed to aircraft noise can result in a better outcome through better design and construction responses.

Mr Tardio considered the necessary ANR noise levels specified in AS2021 could easily be achieved through noise requirements consistent with the September 2019 Acoustic report through roof insulation, lightweight or masonry facades and double glazed windows. He confirmed through cross examination that ANR levels were based on internal measurements with doors and windows closed, but did not limit doors and windows being openable and that no objective assessment criteria existed for external areas. He noted qualitative measures for external areas were not a high priority for aged care facilities where residents primarily used internal spaces. Mr Tardio also confirmed that the existing dwellings in Payne

Street were classified as sensitive uses as was the existing nursing home and its proposed expansion.

In relation to the possible impacts on Essendon Fields Airport, the Applicant identified that EAPL had not objected to the proposal and that it accepted the proposed condition. It considered that the proposal represented a minor exceedance and did not anticipate an issue in seeking the relevant consent noting other airspace intrusions which were higher and closer to the airport.

#### **(iv) Discussion and findings**

##### **Strategic considerations**

In some respects this matter runs the clear risk of the ‘the tyranny of small decisions’. A situation in which a number of decisions, individually small and insignificant in size and time perspective, cumulatively result in a larger and significant outcome which is neither optimal nor desired.

It can be tempting in these sorts of planning matters to form the view that the relative minor impact of the one proposal is somehow acceptable. This is a fundamentally unfair approach. It is not fair to permit proposals that go against the broader public interest on the basis that their transgression is only minor. There are clear policy settings to protect the airport and they ought to apply to everybody.

The Australian standard clearly states that an age care facility within the noise profile of the site is unacceptable.

While there are possible exceptions for need, it is not clear to the Committee that there is a specific need for this facility on this site, rather than a broader need for aged care in the Hume region.

The impact of the noise would play out in several ways. As Mr Tardio clearly stated, the only way for a resident to achieve an acceptable noise standard would be to shut their window. For residents in aged care facilities who may be bedridden, and have limited opportunity to leave the site, this essentially means a choice between fresh air and noise. It is not clear to the Committee that this can be said to deliver a high quality living environment as required by Clause 53.17. It also means that the outside areas of the facility are subject to aircraft noise and that a resident who may wish to take solace in the garden, or the family of residents who may wish to spend some time in the garden, would also be exposed to aircraft noise.

The Committee accepts that certain forms of accommodation are acceptable in noisy areas but these forms of accommodations are those where the residents can readily leave to find quite a areas, or are only staying for a short period of time, such as an hotel.

It is not acceptable that residents of an aged care facility who have limited mobility and who are not able to leave the facility on a regular basis, if at all, should be forced to be inside with their windows shut if they wish to enjoy an acceptable noise outcome.

The noise implications also play out in terms of what the overall bulk or future development of the area will be if the airport is to be protected. Development in the surrounding area would be limited in this respect as there is no real prospect that other development in the area for other forms of accommodation will reach the height or bulk of this proposal.



## Essendon Airport

The proposal exceeds the obstacle limitation surface for Essendon Fields Airport. This requires separate permission from the Secretary under the *Airports (Protection of Airspace) Regulations 1996*. It is by no means clear that this permission would be granted. The Committee notes that development in the Melbourne CBD is also limited by the obstacle limitation surface from Essendon Fields Airport. It is not clear why there would be any justification for exceeding this limit. The Committee notes Mr Cicero's observation that there are taller buildings close to Essendon Fields Airport but the Committee does not know how these fit within the obstacle limitation surface given the surface is set by AHD and not specifically how tall a building is.

## Findings

The Committee finds:

- there is no justification or identified need to intensify aged care accommodation in an area that has been identified as unacceptable for that use
- amenity of residents of the facility would be significantly adversely impacted by aircraft noise noting that they could only achieve acceptable noise levels when inside with the windows closed – this is not appropriate for an age care facility
- it is unclear whether the height of the building would be deemed acceptable by the Secretary under the *Airports (Protection of Airspace) Regulations 1996*.

## 4.2 Neighbourhood character and built form

### (i) The issue

The issue is whether the proposal's built form, scale and height appropriately respond to the site and its context.

### (ii) Planning policy and provisions

Clause 15 identifies that planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context and contribute to a sense of place and cultural identity.

Clause 16.01-7S includes the objective "*to facilitate the development of well-designed and appropriately located residential aged care facilities*" and the following strategies:

- Recognise that residential aged care facilities contribute to housing diversity and choice, and are an appropriate use in a residential area.
- Recognise that residential aged care facilities are different to dwellings in their purpose and function, and will have a different built form (including height, scale and mass).
- Ensure that residential aged care facilities are designed to respond to the site and its context.
- Promote a high standard of urban design and architecture in residential aged care facilities.

Clause 21.04 similarly seeks to ensure "*that development responds to its context and that buildings, streets and public spaces are designed to work together to create a liveable city that supports a healthy, prosperous and sustainable community.*"

Clause 22.07 includes objectives that seek to:

- To encourage the construction of attractive, well-designed aged accommodation that meets the needs of future occupants, in appropriate locations throughout the residential areas of the City.
- To support the provision of affordable housing for older persons.
- To ensure that aged accommodation is sited and designed to protect and enhance the character and amenity of the surrounding area.

It identifies that aged accommodation should be:

- designed to (amongst other things) resemble residential housing stock in the surrounding area in terms of height, scale, bulk and appearance
- provide residents with a reasonable level of privacy and protection from overlooking and noise
- make adequate provision for parking.

Clause 53.17 has the following purposes:

- To facilitate the development of well-designed residential aged care facilities to meet existing and future needs.
- To recognise the residential aged care facilities have a different scale and built form to the surrounding neighbourhood.
- To ensure residential aged care facilities do not unreasonably impact on the amenity of adjoining dwellings.

If there is any inconsistency between a requirement in Clause 53.17 and a requirement in another provision of the planning scheme, then Clause 53.17 prevails. It includes specific requirements that override mandatory and discretionary requirements of the applicable zone and overlays relating to building height, site coverage, setbacks, internal amenity and external amenity. Table 2 sets out the site requirements for the proposal based on Clause 53.17 and the extent to which they are met by the proposal (as identified in Council's Assessment Report of 24 August 2020).

**Table 2 Site requirements for the proposal based on Clause 53.17**

| Criteria               | Requirement <sup>5</sup>   | Proposal   |
|------------------------|--|--|
| Building height        | 16 metres in GRZ (mandatory)   | 16 metres at roof line excluding plant room (met)  |
| Street setback         | 7.82 metres  | 7.59 metres (marginally not met)   |
| Side and rear setbacks | a new building not on or within 200mm of a boundary should be set back from side or rear boundaries by 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9. Some encroachment permitted | Northern wing – minor non-compliance for stairwell and rubbish chute at level 4 at western and eastern boundaries<br>Southern wing – non-compliance for all level 4 bedrooms on western side |
| Walls on boundaries    | A new wall constructed on or within 200mm of a side or rear boundary of a lot should not exceed identified length  | None proposed (met)  |

<sup>5</sup> Requirements identified should be met unless identified as mandatory (which must be met).

| Criteria                           | Requirement <sup>5</sup>   | Proposal  |
|------------------------------------|--|---|
| Daylight to existing windows       | Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky  | None proposed (met)   |
| North-facing windows               | If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window                 | None proposed (met)   |
| Overshadowing open space           | Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September  | Not met for 19 Payne Street   |
| Overshadowing solar energy systems | Buildings sited and designed to ensure that the performance of existing rooftop solar energy systems on adjoining dwellings in a GRZ are not reduced   | None overshadowed (met)   |
| Overlooking                        | A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space of an existing dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio.<br>Requirements identify treatments where distances not met (sill height, obscure glazing or screens) | Generally satisfied by obscure glazing, sill height or window shrouds and screens |
| Noise impacts                      | Noise sources, such as mechanical plant, should not be located near bedrooms of immediately adjacent existing dwellings  | Acoustic report identifies can be met with appropriate strategies                 |

| Criteria                | Requirement <sup>5</sup>  | Proposal   |
|-------------------------|---|--|
| Daylight to new windows | All new windows face onto an outdoor space that exceeds 3 square metres in size and has a minimum dimension of 1 metre and is clear to the sky  | Met  |
| Site coverage           | 80 per cent   | 57 per cent (met) (with the Committee noting that a significant portion of the unbuilt area is the driveway and at grade car parking area) |
| Access                  | <p>Provide direct access to on site designated areas for car and bicycle parking.</p> <p>Provide direct access to the building for emergency vehicles.</p> <p>Provide access for service and delivery vehicles to on site loading bays and storage areas.</p> <p>Ensure vehicles can enter and exit a development in a forward direction.</p> <p>Provide a carriageway width of at least 5.5 metres and an internal radius of at least 4 metres at a change of direction.</p> <p>The number and location of access points from streets to the site and the design of crossovers must be to the requirements of the relevant road authority.</p> <p>Shared access ways or car parks should be located at least 1.5 metres from the windows of habitable rooms.</p> | Met (swept path details required to establish)   |
| Building entry          | <p>Have convenient access from a street, be sheltered from the weather, have convenient access from on site car parking.</p> <p>Have a designated vehicle standing area suitable for use by a community bus and a disabled parking area that is convenient for the drop off and pick up of residents</p>  | Met  |
| Communal open space     | Accessible and useable communal open space should be provided for residents and staff   | Provided on ground and upper levels (met) (with the Committee noting that the open space will be exposed to aircraft noise)                |
| Front fence             | Front fence should not exceed 1.5 metres height   | No front fence proposed (met)  |

In addition to the Clause 65 decision guidelines, Clause 53.17 includes the following decision guidelines:

- The Municipal Planning Strategy and the Planning Policy Framework.
- How the proposed development responds to the site and context description.
- Where the requirements of this clause are not met, the impact on the amenity of the adjoining dwellings.
- The proposed amenity for future residents of the residential aged care facility.

### **(iii) Submissions and evidence**

Council submitted that the proposal does not respond to the site or its context as required by Clause 53.17 and is not well-designed and appropriately located as sought by Clause 16.01-5S. It accepted that Clause 53.17 supports the provision of aged care facilities and anticipates a different built form and scale but not so as to obviate the need to respond to the context consistent with Clause 53.17, the GRZ and the planning policy framework.

Council identified the following about the proposal's response to what it described as low scale area:

- the five storey building height, building mass and scale
- the Payne Street setback should be met given the domestic setting
- dominance of hard standing area in the front setback and limited landscaping opportunities.

It identified that Clause 53.17 did not provide for an 'anything goes' approach and not all sites are equal in terms of the scales and form of development they can accommodate. It submitted that local policy did not anticipate the area being a focus for housing intensification despite the proximity of the shopping centre identifying that its adopted Housing Diversity Strategy identified the area as a 'Limited Change Area'. Accordingly, the building could not be absorbed into a higher built form context over time.

Mr White supported an expansion and refurbishment of the existing aged care but agreed with Council that Clause 53.17 did not provide for a free for all and a proposal that was out of scale, built form and context with the neighbourhood. He considered that the objective of Clause 22.07 to protect and enhance character and amenity was not achieved and that the proposal bore no resemblance to the prevailing height, scale and character of the neighbourhood. He identified that the limited options for subdivision in the area would not result in any substantial change in housing form and scale.

The Neeshams' submission considered that the development had failed to create a well-designed building as required by Clause 53.17 considering it to have an 'institutional' appearance in terms of its bulk and height. They considered the proposal an overdevelopment and inappropriate intrusion into Payne Street, with limited provision made for meaningful landscaping. The submission considered that not exceeding the height or setback provisions of Clause 53.17 does not mean that it was well designed or acceptable. It considered that the scale of the building overwhelmed the dwelling at 13 Payne Street and the outlook from its private open space and views to open sky and daylight. The submission expressed concern about the potential damage to their house and water and sewerage pipes from trees planted adjacent to the side boundary and maintenance issues associated with falling leaves.

The Applicant submitted that the buildings height and scale would not generate unreasonable visual bulk impacts and should regardless, be assessed against Clause 53.17

which anticipates taller and larger built forms. It noted that the design detail, graduated height and upper level setbacks provided good separation to adjacent secluded private open space and opportunities for landscaping to “*mitigate and temper the form*” and provide a garden setting. It submitted that respecting neighbourhood character (or scale) in this instance was not a decision guideline and that the site could accommodate a more robust built form based on future infill development and possible redevelopment of the shopping centre. The Applicant submitted that the question should be ‘is the proposal acceptable’.

The Applicant considered that the proposal responded positively to Clause 16.01-7S by providing a well-designed architectural response, supporting an existing aged care facility to expand and location in a residential area with access to services and public transport.

Ms Loke provided planning evidence on behalf of the Applicant. Ms Loke agreed that the area was low scale but could be expected to change as a result of housing infill and redevelopment activity. She identified the potential for the shopping centre to increase in height given the lack of height limit restrictions and its role as a Major Activity Centre on the Principle Public Transport Network. She considered this context provided the capacity for the site to accommodate a more robust form, noting that the building’s visibility was not determinative of its acceptability. She noted that the height and site coverage requirements of Clause 53.17 were met while and the front setback variations proposed were minor, not readily appreciable and acceptable. Her evidence identified that the recessive nature of the upper building levels ameliorated the impacts of the buildings visual bulk and at Payne Street presented as a two storey building. She considered the landscaping proposed was meaningful and provided enough softening of the built form. Under cross examination Ms Loke considered that in the context of Clause 22.07 the proposal enhanced the character of the area by introducing a contemporary form.

**(iv) Discussion and findings:**

Clause 16.01-7S provides a clear policy direction that supports the provision of residential aged care facilities across Melbourne to meet the needs of an ageing population. No submissions disputed the need for further aged care facilities in Hume or indeed (airport issues aside) the provision of additional aged care beds on the site and centre refurbishment and redevelopment.

Clause 16.01-7S supported by Clause 53.17 acknowledges that the built form will be different from the usual dwelling building form particularly in terms of height and site coverage. These clauses do not however obviate the need to consider their context, with both clauses seeking that such facilities are designed to respond to the site and their context.

The Committee acknowledges that the building includes interesting architectural detail and articulation and recessive upper levels and is within the 16 metre maximum height and site coverage requirements of Clause 53.17. The Committee however agrees with Council that the prevailing low scale character is unlikely to change significantly. While it accepts that there will be some housing stock replacement, infill and smaller medium density housing activity in the area, its prevailing lot size and location within the MAEO2 will limit any significant change. This is consistent with Council’s adopted Housing Strategy. Redevelopment of the Gladstone Park Shopping Centre may occur in the future, but its land holding arrangements, and the height limit imposed by the obstacle limitation surface of Essendon Fields Airport, limit redevelopment potential. In such a context a five level building is unable to be readily absorbed into the neighbourhood; it will be:

- a visually dominant element in the neighbourhood and overwhelming for adjoining residents
- inconsistent with Clause 22.07 aspirations that buildings are designed to protect and enhance the character and amenity of the surrounding area.

While the Committee considers that the aspirations of Clause 22.07 need to be somewhat tempered given that it is unreasonable to expect that aged care developments will be limited to a low residential scale and appearance and that some additional height should be anticipated. This is particularly the case given the objectives of Clause 16.01-7S and provisions of Clause 53.17 and requiring low scale responses would be rendered ineffectual.

While the Committee notes that to roof level the building does not exceed 16 metres in height a substantial portion of the building extends towards 16 metres. The Committee accepts that taken on their own the minor encroachments on front and side setbacks appear reasonable. However, these encroachments are symptomatic of a development that is too large for its site and setting. The effect of the design is to extend a large building footprint into a low scale residential area rather than focusing it towards the southern end of the site towards the shopping centre and South Circular Drive. Instead the building design, while visually interesting with recessive elements, will appear almost monolithic when viewed from Payne Street (refer Figure 8) with limited opportunity provided for meaningful landscaping that might ameliorate views to it from the neighbourhood and adjacent dwellings.

The Committee considers the impact of the building scale and height is so great that it should not override the broader policy objectives to encourage aged care housing in larger building formats.

**Figure 8** Payne Street view of proposal



The Committee finds:

- the proposal's built form, scale and height is excessive and does not appropriately responds to the site or its context and will result in a built form that is unreasonably visually dominant of its setting and overwhelming for adjoining land owners
- there is no policy imperative to set aside the issues of built form, scale and height.

### 4.3 Amenity impacts

#### (i) The issue

The issue is whether the proposal will result in unreasonable amenity impacts including overlooking, overshadowing, noise, traffic movement and parking.

**(ii) Submissions and evidence****Side and rear setbacks**

Council submitted that while the incursions into the side setback requirements of Clause 53.17 were minor they reflected the limited opportunity on the site to accommodate meaningful landscaping to provide some relief from the mass and scale of the building as viewed from 13 and 19 Payne Street. It identified that the visual bulk impacts of the building wrapping around the private open space of 13 Payne Street were significant and created a sense of enclosure.

The Neeshams' submission included an assessment of the extent of non-compliance with side setbacks and considered that in the site context it would overwhelm 13 Payne Street.

Ms Loke considered that the proposed side setback variations were minor, not readily appreciable and acceptable. She considered that 13 Payne Street would not be overwhelmed given recessive setbacks, the building's level of visual interest, landscaping and the maintenance of outlook to the south-east. Ms Loke said that the reduced setback to the shopping centre shared boundary was reasonable given the nature of its use and that the landscaping response provided enough softening of the built form.

**Overshadowing**

Council submitted that 19 Payne Street would not receive 5 hours of sunlight to its private open space area between 9.00am and 3.00pm, with it completely in shadow at 9.00am, predominantly in shadow at 10.00am and partially at 11.00am. It considered this an unacceptable response at a very sensitive interface.

Ms Loke's evidence acknowledged that the requirement for overshadowing was not met for 19 Payne Street and represented a shortfall of 1 hour. She considered that the shadow impact was likely to be related to the fourth floor. She identified that the area of the secluded private open space receiving sunlight between 11.00am and 3.00pm exceeded the minimum 40 square metre requirement.

The Applicant adopted the evidence of Ms Loke relating to overshadowing.

**Overlooking**

Council submitted that conditions could be included on a permit if one were to issue requiring confirmation of overlooking treatments.

The Neeshams considered the extent of overlooking was excessive not only from bedrooms but from common areas and outdoor terraces by residents, staff and guests alike and would substantially impact their amenity. Mr White considered that the building height would result in overlooking well beyond the adjacent dwellings.

Ms Loke identified that further detail was required to be shown on the plans to confirm that the overlooking provisions of Clause 53.17 were met but that this could be addressed by a permit condition.

The Applicant noted Ms Loke's evidence and considered that overlooking issues had been considered at the design stage using shrouds and other angled blade devices and could be managed by permit condition.



**Light spill**

The Neeshams submitted that the 24 hour nature of the facility would mean that there would be continual light spillage (from internal and external sources) including from the curtain wall area. They cited several examples from other aged care facilities.

Ms Loke did not consider light spill to be an issue and identified its consideration was not a requirement of Clause 53.17.

The Applicant submitted that any light spill from the building would be like an apartment building and that external lighting could be managed by a permit condition through baffling and other treatments.

**Site access, traffic and parking**

The Neeshams identified that the development did not provide any carparking off Payne Street and as a result was likely to result in high vehicle movements in Payne Street with overflow carparking in Payne Street. This, they said, would result in pedestrian conflict, particularly during school pick up/drop off times when the street was congested. Mr White identified similar concerns about overflow parking impacts in Payne Street and the likelihood of visitors preferring the ease of on street parking near the main entrance rather than using the basement carpark.

The Applicant considered that the proposal provides an appropriate dedicated drop off/pick up and loading area and highly legible entrance frontage. Additional measures could be conditioned directing visitors to the parking area accessed off South Circular Drive. It identified that the carparking provisions of Clause 52.06 and access requirements of Clause 53.17 were met and that the Traffic Assessment Impact Assessment provided with the application supported the proposal.

**Noise**

The Neeshams raised concerns about the noise impacts of deliveries, drop offs and garbage collection in an area adjacent to their dwelling and bedroom windows. Additionally, they identified noise from residents, visitors and staff coming and going or from outdoor communal and terrace areas and mechanical services.

Mr White suggested that Sunday food deliveries should not be permitted or restricted to after 10.00am to manage potential noise impacts.

The Applicant identified that the proposal did not generate noise greater than a typical residential building and services/plant noise could be attenuated and conditioned. The Applicant supported the reduction in Sunday food delivery hours to after 10.00am.

Ms Loke made similar observations to the Applicant regarding noise.

**Odour**

The Neeshams identified concerns about the management of waste on site and the storage of waste bins in the waste collection area before collection and associated odours. They sought a stricter management regime including bins not being left out at night.

The Applicant submitted that odour issues would be restricted to the waste area which will be located in the basement with collection occurring in the loading bay and could be conditioned if required. Ms Loke's evidence agreed with this proposition.

**Construction management**

The Neeshams sought that the Construction Management Plan should address the possibility of asbestos material and include provision for a dilapidation survey to be undertaken to ensure there were no impacts on their dwelling as a result of construction works.

The Applicant identified that construction impacts could be adequately managed by a permit condition. It considered that other regulations and requirements relating to building protection notices or the management of asbestos materials provided the proper management of such issues without a duplication of permit conditions. Council agreed.

**Aged care resident amenity**

The Neeshams' submission suggested that the proposal should be referred to the Minister responsible for ageing and that it failed a range of design elements identified in the 'health.vic' ageing and aged care 'Designing new residential facilities' strategies and principles to achieve meaningful amenity for the centre's residents. These included room size and design and access to a range of outdoor areas and quiet areas. They submitted from a facility resident's perspective the proposal was light on amenity.

The Applicant in response to the Neeshams' submission identified that any internal design considerations would be subject to the necessary future approvals and licencing processes but that the site had been designed in full recognition of relevant guidelines and requirements given its client ran several other aged care facilities.

**Easements**

The Applicant identified that it had had discussions with YVW relating to build over consents relating to the water and sewerage easements that extend over the site.<sup>6</sup>

The Neeshams considered the 'in principle' agreement with YVW was unacceptable and that the nature of changes required in the event it was not given should require that consent to be issued before the application is considered.

**(iii) Discussion and findings**

The Committee does not agree with the suggestion that the development presents as a residential or apartment building. The nature of the 24 hour use, number and movement of staff and visitors and deliveries means that it will operate quite differently and the impacts of noise from plant and equipment and deliveries, odour, light spill and parking and drop off/pick up activity have the potential to impact on resident amenity. This is not to say these factors are a result of overdevelopment, rather they require careful management. The Committee has viewed the Acoustic Report and Waste Management Plan provided with the application and consider that they have appropriately recognised and addressed some of the potential amenity impacts. Accordingly, the Committee is comfortable these issues as well as light spill and construction management can be appropriately managed through permit conditions to minimise the impact on the amenity of adjacent residents.

While the Committee recognises that the proposal will introduce additional traffic movements in Payne Street and South Circular Drive, based on the Traffic Engineering Assessment and Council's support of that assessment, it considers that these impacts can be accommodated within the street network. The carparking requirements are satisfied on site

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<sup>6</sup> Document 26

and with appropriate signage and management the Committee is confident the proposal will not result in unreasonable traffic impacts in Payne Street. The Committee notes however that the need for vehicle access from Payne Street and the orientation of the building's public presence to Payne Street is another example of the proposal's overall impact on the neighbourhood.

The Committee, while acknowledging that the internal and external arrangement of resident spaces and facilities is an element of a well-designed facility and resident amenity is an important consideration, these design issues are a matter for subsequent assessment and licensing processes.

The Committee is satisfied that the issue of building over easements can be reasonably managed with a condition of any permit issued, noting YVW comments.

The Committee considers that the more difficult to manage amenity impacts relate to overlooking and overshadowing. The impact of overshadowing on 19 Payne Street is significant and a direct result of the upper levels of the proposed building. Similarly, while overlooking can technically be managed to achieve the requirements of Clause 53.17 the cumulative impact of overlooking and close proximity of the building on the dwellings at 13 and 19 Payne Street to the degree it overwhelms the outlook from the secluded private open space of those dwellings. This degree of impact is considered inappropriate and unreasonable. The Committee is less concerned about the reduction in setback to the shopping centre given this is not a sensitive use.

The Committee finds:

- the proposal has the potential to result in significant amenity impacts to adjoining residents. While some of these issues can be managed by permit conditions, issues of overshadowing and overlooking will result in an unreasonable amenity impact and are symptomatic of a development that is inappropriate in scale and bulk.

## 5 Reasons and recommendations

### 5.1 Reasons

The Committee does not think that this project should proceed.

The development runs against clear policy and planning scheme provisions to protect Melbourne airport. The fact that it is just a small incursion does not alter the fact that it is an incursion and fair and orderly planning should treat all proposals in the same way. This is not a case where development up to a certain density of saturation point is acceptable. The policy and standards are clear, this use is deemed to be unacceptable in this location.

The built form is clearly out of character with the surrounding area. While the provisions of 53.17 anticipate a higher built form, the Committee believes that aged care facilities still need to have some recognisable relationship to the surrounding development. This is particularly the case here because future intensification of the residential area is unlikely given the need to protect Melbourne Airport.

The proposal would have significant amenity impact on the individual dwellings adjoining the development. Although the development is technically an extension of an existing aged care facility, the new taller form in Payne Street – a residential street where there are only dwellings – means that in some respects the proposal has the characteristics of a new development.

#### Possible permit conditions

While the Committee does not support the issue of a planning permit, for completeness it has included suggested planning permit conditions in Appendix D if it is considered that a permit should be issued. The potential conditions of a permit were discussed during the roundtable on a without prejudice basis and based on versions prepared by Council, modified by the Applicant and including conditions sought by Essendon Fields Airport, Jemena Electricity Network and YVW.<sup>7</sup>

Council and the Applicant were broadly in agreement about the possible permit conditions including the addition of a further amended plans condition for the management of overlooking. The Neeshams and Mr White sought additional conditions regarding overlooking, indemnifications from tree planting impacts, odour management from the waste collection area, delivery times reduced on Sundays and permit expiry timeframes reduced consistent with the project being 'shovel ready'. These suggestions are not supported by the Committee. However, it has proposed additions to conditions relating to landscaping (root barriers and evergreen boundary plantings) and made modifications to condition 41 relating to a peer review of the Acoustic Report. The Committee observes that while a shorter expiry timeframe could be considered there are potentially substantial building proposal changes that could be required to address easement and height limitation issues.

### 5.2 Recommendations

The Committee recommends:

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

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<sup>7</sup> Documents 19 and 27

## Appendix A 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.

A handwritten signature in blue ink, reading "Richard Wynne".

**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](mailto:planning.panels@delwp.vic.gov.au)

Ref: MBR043202



Dear Ms Mitchell

### **CALL IN OF VCAT PROCEEDING P846/2020 – 14 SOUTH CIRCULAR ROAD AND 15-17 PAYNE STREET, GLADSTONE PARK**

I refer to Victorian Civil and Administrative Tribunal (VCAT) proceeding no. P846/2020 for a five-storey residential aged care facility at 14 South Circular Road and 15-17 Payne Street, Gladstone Park. The project was referred to me by the Building Victoria's Recovery Taskforce (BVRT).

I advise that I have decided to call in the proceeding from VCAT under Clause 58(2)(a) of the *Victorian Civil and Administrative Tribunal Act 1998* and refer the matter to the Priority Projects Standing Advisory Committee (SAC) for advice and recommendations on whether planning approval should be issued and, if so, the appropriate conditions that should be imposed. I ask that the Priority Projects SAC consider, among other matters, how the project aligns with facilitating the expansion of Melbourne Airport and protecting its optimum usage as well as how the project responds to the built environment.

On 16 July 2020, the applicant lodged an appeal under section 79 of the *Planning and Environment Act 1987* after the Hume City Council failed to determine the planning permit application P22513 within the 60-day prescribed time. A compulsory conference is scheduled for 18 November 2020, with a hearing scheduled to commence on 24 February 2021.

The Hume City Council gave notice and referred the application and received 63 objections, including an objection from Melbourne Airport. Objector concerns relate to Melbourne Airport operations; traffic, access and car parking issues; design and neighbourhood character matters; residential amenity (overlooking, overshadowing and noise); and construction impacts.

The cost of the advisory committee will be met by the applicant, Hope Aged Care.

If you would like more information, please contact Dr 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](mailto:jane.homewood@delwp.vic.gov.au).

Yours sincerely

**HON RICHARD WYNNE MP**  
Minister for Planning

18 / 11 / 2020



## Appendix C Document list

| No. | Date       | Description  | Provided by               |
|-----|------------|--|---------------------------|
| 1   | 26/11/2020 | VCAT file  | VCAT                      |
| 2   | "          | Best Hooper VCAT review folder including: <ul style="list-style-type: none"> <li>- Permit application</li> <li>- Arborist report</li> <li>- 29/11/2019 response to further information request letter including:               <ul style="list-style-type: none"> <li>- Copy of titles and legal advice from Planning and Property Partners regarding covenants</li> <li>- Supplementary information from Baumgart Clark Architects</li> <li>- Town Planning Report, Hollerich Town Planning</li> <li>- Aircraft Noise Assessment, Watson Moss Growcott</li> </ul> </li> <li>- 20/12/2019 response to further information request including:               <ul style="list-style-type: none"> <li>- Urban Design Report, David Lock Associates</li> </ul> </li> <li>- Amended permit application (to include part of 16 South Circular Drive) dated 30/1/2020 including:               <ul style="list-style-type: none"> <li>- 29/5/2019 (otherwise is after the 30 Jan date) response to further information request including:                   <ul style="list-style-type: none"> <li>- amended architect drawings</li> </ul> </li> <li>- Landscape Concept package, Rupert Baynes Landscape</li> <li>- Traffic Engineering Assessment, Traffix Group</li> <li>- Stormwater Drainage Plan, GHA Engineers</li> <li>- Objection summary and response, Hollerich Town Planning</li> <li>- Sustainability Management Plan, Frater</li> <li>- Section 79 Application for Review</li> </ul> </li> <li>- Statement of Grounds from parties               <ul style="list-style-type: none"> <li>- Council report 24 August 2020 and minutes and advice to applicant about non-support reasons</li> </ul> </li> </ul> | Best Hooper for Applicant |
| 3   | 30/11/2020 | Advice to parties that the matter had been called in by the Minister and referred to the Committee   | Committee                 |
| 4   | 1/12/2020  | Advice to parties regarding arrangements for Roundtable  | "                         |
| 5   | "          | Letter from Harwood Andrews on behalf of Hume City Council seeking adjournment   | Council                   |
| 6   | "          | Advice from Mr White confirming attendance at Roundtable and representation of other objectors   | Mr White                  |
| 7   | 2/12/2020  | Letter from Applicant supporting Roundtable dates  | Applicant                 |
| 8   | "          | Letter from Ms J and Ms A Neesham supporting adjournment   | Ms Neesham                |
| 9   | "          | Response to requests for deferral of Roundtable  | Committee                 |

| No. | Date       | Description   | Provided by             |
|-----|------------|---|-------------------------|
| 10  | 3/12/2020  | Letter from Minter Ellison for APAM regarding its position on the referral and non-attendance at the Roundtable               | Minter Ellison for APAM |
| 11  | 4/12/2020  | Emails from Best Hooper regarding representation and evidence and provision of a Dropbox folder for documents                 | Applicant               |
| 12  | "          | Letter from Harwood Andrews identifying representation at Roundtable and procedural issue regarding VCAT proceeding reference | Council                 |
| 13  | "          | Letter from Ms A and Ms J Neesham regarding appropriateness of matter being considered by the Committee and other matters     | Ms Neesham              |
| 14  | "          | Email from Mr White regarding non-compliance with Committee Direction for providing document hub link                         | Mr White                |
| 15  | 7/12/2020  | Email from Best Hooper outlining timeframes for document circulation and objecting to any adjournment                         | Applicant               |
| 16  | 8/12/2020  | Email clarifying procedural matters raised by parties about VCAT proceeding number  | BVRT, DELWP             |
| 17  | "          | Letter to all parties responding to procedural matters  | Committee               |
| 18  | 9/12/2020  | Email to Committee and parties  | Council                 |
| 19  | "          | Without Prejudice Conditions  | "                       |
| 20  | "          | Acoustic report prepared by Watson Moss Growcott  | "                       |
| 21  | 11/12/2020 | Email correspondence raising procedural matters   | Mr White                |
| 22  | "          | Written submission  | "                       |
| 23  | "          | Written submission  | Applicant               |
| 24  | "          | Appendix 1 – updated elevations   | "                       |
| 25  | "          | Appendix 2 - Response to internal referral comments   | "                       |
| 26  | "          | Appendix 3 – Yarra Valley Water email   | "                       |
| 27  | "          | Appendix 4 – Conditions with tracked changes  | "                       |
| 28  | "          | Written submission – Part 1   | Ms J Neesham            |
| 29  | "          | Written submission  | Council                 |
| 30  | "          | Written submission – Part 2   | Ms A Neesham            |
| 31  | "          | Response to Mr White re procedural matters  | Ms Harwood, PPV         |
| 32  | 14/12/2020 | Further submission material   | Ms A Neesham            |
| 33  | 15/12/2020 | Additional submission material relating to BVRT criteria  | "                       |
| 34  | "          | Additional condition wording regarding overlooking  | Applicant               |

| No. | Date       | Description   | Provided by |
|-----|------------|---|-------------|
| 35  | 17/12/2020 | Response to conditions discussion regarding food deliveries | Applicant   |

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## Appendix D Planning permit conditions

|                            |   |
|----------------------------|---|
| <b>Permit Number</b>       | <b>P22513</b>   |
| <b>Address of the land</b> | 14 South Circular Road and part of 16 South Circular Road (easement E-6 on PS327182T) and 15 – 17 Payne Street, Gladstone Park  |
| <b>Proposal</b>            | Development of a five storey residential aged care facility adjacent to the existing residential aged care facility (including the partial demolition of the existing residential aged care facility) and a basement level car park |

1. Before the use and/or development starts, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by Baumgart Clark Architects ((TP.00 – TP.07, TP.08A, TP.14, TP.15, TP.19, TP.21, TP.22 Revision J), (TP.08 Revision R), (TP.09 Revision S), (TP.09A Revision G), (TP.10, TP.11, TP.12, TP.13 & TP.20 Revision K), (TP.10A, TP.11A, TP.12A, TP13A & TP.14A Revision F), (TP.16 Revision L), (TP.17, TP.18 & TP.99 Revision H)) dated 30 April 2020, but modified to show:
  - a) the disabled parking labelled as car space No. 2 constructed as per AS2890.6 2009.
  - b) car space no.1 deleted and replaced with a shared area for the disabled parking bay.
  - c) a swept path for a vehicle entering and exiting the disabled bay (car space No. 2) and parking bay no. 3.
  - d) how stormwater will be drained to the proposed stormwater treatment devices (including rainwater tanks).
  - e) how stormwater treatment devices will be connected to reuse facilities.
  - f) how stormwater treatment device overflows will be connected to legal points of discharge.
  - g) a reduction in the number of windows and terraces abutting the habitable room windows and secluded private open space of 13 Payne Street.
  - h) the Tree Protection Zone of all trees to be retained, including street trees.
  - i) any measures required under the Sustainability Management Plan endorsed under condition 20.
  - j) any acoustic measures required under the Acoustic Report endorsed under condition 40.
  - k) any screening measures to ensure that the requirements of Clause 53.17-3 of the Hume Planning Scheme in so far as they relate to overlooking are met in respect of any adjoining secluded private open space or habitable room windows of a dwelling.
2. The development shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
3. Once the approved development has started, it must be continued and completed to the satisfaction of the Responsible Authority except with the prior written consent of the Responsible Authority.

4. No buildings or works are to be constructed over any easement or other restriction on the land or any sewers, drains, pipes, under the control of a public authority or the Responsible Authority without the prior written consent of the Responsible Authority and any-relevant authority.
5. All tilt slab or pre-cast concrete buildings must be painted, treated, textured and maintained to the satisfaction of the Responsible Authority.
6. No plant, equipment, services or architectural features other than those shown on the endorsed plans are permitted above the roof level of the building/s without the prior written consent of the Responsible Authority.

#### **Amenity**

7. The occupation of the development must be managed so that the amenity of the area is not detrimentally affected, including through the:
  - a) transportation of materials, goods or commodities to or from the subject land;
  - b) appearance of any building, works or materials;
  - c) emission of noise, artificial light, vibration, smell (including odours from bins in the external collection area), fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
  - d) presence of vermin; or in any other way;to the satisfaction of the Responsible Authority.
8. Noise levels emanating from the land must not exceed the requirements of State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. N-1.
9. Noise levels emanating from the land must not exceed the requirements of State Environment Protection Policy (Control of Music Noise from Public Premises), No N-2.
10. Before the development is occupied, the recommendations of the Acoustic assessment undertaken by Moss Growcott Acoustics (3 December 2019) must be implemented and thereafter complied with at all times to the satisfaction of the Responsible Authority.
11. Before the use starts, all external plant and air conditioning equipment must be reasonably concealed or otherwise hidden from view to the satisfaction of the Responsible Authority.
12. Any alarm or security system installed on the land must:
  - be silent in accordance with any relevant Australian Standard;
  - be connected to a registered security firm.
13. All external cladding and roofing must be non-reflective and must be coloured or painted in muted shades to the satisfaction of the Responsible Authority.
14. External lighting must be designed, baffled and located to the satisfaction of the Responsible Authority so as to prevent any adverse effect on adjoining land.
15. A public address system must not be used on the premises so as to be audible outside the building except with the prior written consent of the Responsible Authority.

16. Deliveries to and from the site including waste collection must only take place between the following hours:
  - a) 7:00am – 6:00pm Monday to Saturday
  - b) 10:00am – 3:00pm Sundays (food deliveries only).
17. Goods, equipment, packaging material or machinery must not be stored or left exposed outside a building so as to be visible from any public road or thoroughfare, except with the prior written consent of the Responsible Authority.

### **Waste Management**

18. Before the development starts, the Waste Management Plan prepared by Salt 25 November 2019 must be endorsed by the Responsible Authority. When endorsed the waste management plan will form part of the permit.
19. The endorsed waste managed plan must be implemented and complied with at all times to the satisfaction of the Responsible Authority and must not be varied except with the written consent of the Responsible Authority.

### **Environmentally Sustainable Development**

20. Before the plans in Condition 1 are endorsed, a Sustainable Management Plan (SMP) must be submitted to and approved by the Responsible Authority. When approved, the SMP will be endorsed and will form part of the permit. The SMP must be generally in accordance with the SMP prepared by Frater dated 23 April 2020 but modified to provide:
  - (a) a minimum of 10 percent improvement on the minimum energy efficiency requirements of the National Construction Code 2016; or
  - (b) an exceedance of the energy efficiency requirements of the National Construction Code 2019.
21. The recommendations and requirements of the endorsed SMP must be implemented and complied with to the satisfaction of the Responsible Authority and must not be varied except with the approval of the Responsible Authority.

### **Car parking & Accessways**

22. Before the use starts or the development is occupied (whichever occurs first), the areas set aside for the parking of vehicles together with the aisles and access lanes as shown on the endorsed plans must be:
  - (a) constructed;
  - (b) surfaced with a durable all-weather seal;
  - (c) drained to the nominated point of discharge;
  - (d) line-marked to indicate each car space and access lanes;
  - (e) marked to show the direction of traffic along access lanes and driveways; and
  - (f) provided with concrete kerbs or other barriers to prevent direct vehicle access to an adjoining road other than by a vehicle crossing,all to the satisfaction of the Responsible Authority.
23. The areas must be maintained in a useable condition to the satisfaction of the Responsible Authority.

24. The boundaries of all car spaces, access lanes and the direction in which vehicles should proceed along the lanes must be clearly indicated on the ground to the satisfaction of the Responsible Authority.
25. Signage must be placed at the entrance to the basement car park and within the basement car park directing users and visitors of the residential aged care facility to the location of the designated car parking for the residential aged care facility.
26. All loading and unloading of goods from vehicles associated with the approved use must at all times be carried out within the delivery/loading bay shown on the endorsed plans. The area set aside for the loading and unloading of goods must be kept free of obstruction and must not be used for any other purpose.

### Landscape Plan

27. Before the development starts, a landscape plan to the satisfaction of the Responsible Authority 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 plan must be prepared by a suitably qualified person drawn to scale with dimensions and three copies must be provided. The landscaping plan must be generally in accordance with the landscape plan dated April 2020 prepared by Rupert Baynes, except the plan must show/the plan must show:
  - 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;
  - f) two trees (minimum two metres tall when planted) in the front landscape setback on Payne Street;
  - g) an in-ground irrigation system to all landscaped areas;
  - h) a tree protection zone and structural root zone for each tree to be retained;
  - i) the location and details of root control barriers (including barriers to adjoining properties);
  - j) replacement of the following species with more suitable species from Council's recommended tree species list:
    - *Jacaranda mimosifolia*
    - *Gardenia and dwarf Murraya*
    - *Elaeocarpus reticulatus*
  - k) the provision of a tree palette that includes both evergreens and deciduous species. Evergreens should be provided along side boundaries to maximise their screening effect and minimise the impacts of leaves for adjoining properties;
  - l) the provision of native and indigenous plants as trees, shrubs and groundcovers/grasses;
  - m) the provision of stormwater treatment to best practice for all driveways;
  - n) all internal stormwater runoff to be treated before discharging to the street drainage system via a raingarden or other appropriate WSUD structure;

- o) the recommendations of the Arboricultural Report dated 30 August 2019 prepared by Tree Response;
  - p) the existing street tree #5 Lightwood (HTMS 45476) located on Payne Street to be retained.
28. Before the use starts or the development is occupied or by such later date as is approved by the Responsible Authority in writing, the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the responsible authority.
29. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including but not limited to removing weeds and replacing dead, diseased and damaged plants in accordance with the endorsed landscape planting schedule.

#### **Street tree Protection**

30. No street trees are to be removed or relocated as part of this development without the prior written consent of the Responsible Authority. Any street trees approved to be removed and/or replaced are to be removed and/or replaced by Council at the owner/developer's expense.

#### **Tree Protection Zones**

31. The tree protection zone of street tree no. 5 (Lightwood (HTMS 45476) located on Payne Street) shall be the length of the nature strip, excluding legal crossings, adjacent to where work is being undertaken.
32. Prior to the commencement of the development, a 1.8m high continuous chain wire mesh fence is to be erected around the tree protection zone of tree no. 5. The fence must be removed once the development has been completed. The fence must be repositioned at the instruction of the Responsible Authority.
33. The tree protection zone fence must not be moved towards the trunk of the tree no. 5 without the prior written consent of the Responsible Authority.

#### **Street Trees - Restricted Activities in Tree Protection Zones**

34. None of the following activities shall be permitted within the dripline of street tree no. 5 (Lightwood (HTMS 45476) located on Payne Street):
- a) alter soil levels or the water table through filling, excavation or compaction of soils;
  - b) damage root systems through amputation, cutting or crushing or exposure to the weather;
  - c) cause damage to the tree(s) through fire, storage of materials or chemicals;
  - d) poison the tree through the release of substances toxic to the tree(s), either directly into or onto the tree(s), or into or onto the soil within the dripline of the tree(s);
  - e) no chemicals or other materials are to be stored or mixed within the dripline of the tree(s);
  - f) no machinery is to be driven inside or stored inside the dripline of the tree(s);
  - g) no work (including pruning) shall be conducted on the tree(s) without the prior written consent of a Council Arborist;



- h) with the exception of work in the road itself, all excavation within the drip line of any tree shall be undertaken by either hydro excavation or air spade;
- i) disposing of water used to wash down machinery (e.g. concrete mixers) on the root plate of the tree(s) or be allowed to run off on to the root plate of the tree(s).

### **Carparking Management Plan**

35. Prior to the commencement of the use of the land, a carparking management plan must be submitted to and approved by the Responsible Authority. When approved the carparking management plan will form part of the permit. The plan must describe all measures taken to ensure that staff and commercial visitors to the facility do not park in Payne Street.

### **Construction Management Plan**

36. Prior to the commencement of any site works whatsoever, the owner must submit a Construction Management Plan (CMP) to the Responsible Authority for approval. No works are permitted to occur until the CMP has been approved in writing by the Responsible Authority. Once approved, the CMP will be endorsed to form part of this permit and must provide details of the following:
- a) hours for construction activity in accordance with EPA guidelines;
  - b) measures to control noise, dust, water and sediment laden runoff;
  - c) prevention of silt or other pollutants from entering into the Responsible Authority's underground drainage system or road network;
  - d) the location and design of a vehicle washdown bay for construction vehicles on the site;
  - e) cleaning and maintaining surrounding road surfaces;
  - f) the location of parking areas for construction vehicles and construction worker vehicles that does not rely on Payne Street or impede the use of the existing car spaces on 16 South Circular Road;
  - g) measures to ensure that sub-contractors/tradespersons operating the site are aware of the contents of the CMP;
  - h) an emergency contact that is available 24 hours a day;
  - i) public safety and site security;
  - j) a detailed schedule of works including the anticipated project timing;
  - k) preferred routes for trucks delivering to the site;
  - l) the location of any sheds and the like; and
  - m) any other relevant matters.
37. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

### **Fencing**

38. All costs associated with the provision of new fencing (including boundary fencing) are to be borne by the owner/developer under this permit.
39. Prior to the occupancy of the development, all fencing (including boundary fencing) must be in a good condition to the satisfaction of the Responsible Authority.

### **Acoustic Report**

40. Before the plans in Condition 1 are endorsed, an Acoustic Report prepared by a suitably qualified acoustic engineer and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will then form part of the permit. The report must be generally in accordance the Acoustic Report: Town Planning Application prepared by Watson Moss Growcott dated 6 December 2019 but modified to:
  - (a) demonstrate that the permitted development complies with noise attenuation measures required by Section 3 of Australian Standard AS 2021-2015, Acoustics – Aircraft Noise Intrusion – Building Siting and Construction, issued by Standards Australia Limited.
41. The Acoustic Report under condition 40 must be accompanied by an independent peer review by a suitably qualified acoustic engineer to the satisfaction of the responsible authority.
42. Within two months of the use commencing, an acoustic compliance report prepared by a suitably qualified acoustic consultant and to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The acoustic compliance report must demonstrate the required level of Aircraft Noise Reduction (ANR), measured in accordance with Appendix D of AS2021 for a representative sample of occupancies, has been achieved in accordance with Acoustic Report endorsed under condition 40 of the permit or, if not, what further buildings and works must be undertaken to achieve the required levels of noise attenuation. Any further buildings and works must be undertaken within 2 months of the acoustic compliance report being submitted to Responsible Authority or such later time as agreed to in writing by Responsible Authority.

### **Engineering and Assets Conditions**

43. Provision of litter control at stormwater inlet points within car park and paved areas. All stormwater pits to be Channel Grated or Grated as per Council's Standard Dwg SD 210/215 or SD225 respectively.
44. Stormwater from all paved area must be retained within the property and drained to the sites underground stormwater system.
45. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during construction.

### **Jemena Conditions**

46. The plan of subdivision submitted for certification under the Subdivision Act 1988 shall be referred to Jemena Electricity Networks (Vic) Ltd in accordance with Section 8 of that Act.
47. The applicant shall:
  - a) enter into an agreement for the extension, upgrading or re-arrangement of the electricity supply to lots on the plan of subdivision as required by Jemena Electricity Networks (Vic) Ltd. (A payment to cover the cost of such work will

be required and easements internal and external to the subdivision and provision of sites for substations may also be required).

- b) where buildings or other installations exist on the land to be subdivided and are connected to the electricity supply, they shall be brought into compliance with the Supply and Installation Rules issued by the Local Government Electricity Supply Association (Vic) and Distribution Authorities to the extent determined by Jemena Electricity Networks (Vic) Ltd.

### **Essendon Fields Airport**

48. No activity may occur above 123.5 metres Australian Height Datum (AHD) on the land unless approval is obtained from the Secretary under the *Airports (Protection of Airspace) Regulations 1996*. This includes buildings, antennas or cranes during construction.

### **Yarra Valley Water**

49. A build over easement application must be submitted to and approved by Yarra Valley Water prior to the commencement of any building works and all Yarra Valley Waters Build over easement requirements met.
50. Where water services are required, the owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water services.
51. Where sewer services are required, the owner of the land must enter into an agreement with Yarra Valley Water for the provision of sewerage services.

### **Expiry**

52. This permit will expire if one of the following circumstances applies:
- The development is not started within three years of the date of this permit.
  - The development is not completed within six years of the date of this permit.
  - The use has not started within two years of the completion of the development.

The responsible authority may extend the periods referred to if a request is made in writing:

- before or within six months after the permit expiry date, where the development allowed by the permit has not yet started; or
- within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

### **NOTES:**

- a) If a request for an extension of commencement/completion dates is made out of time allowed, the responsible authority cannot consider the request and the permit holder will not be able to apply to VCAT for a review of the matter.
- b) An application for a 'Consent to Dig in the Road Reserve' permit for a vehicle crossing is to be submitted to Council for approval. A copy of the Council endorsed plan showing all vehicle crossing details is to be attached to the

- application. Any service relocations are to the approval of the Service Authority and at the owners cost.
- c) Any modifications to existing vehicle crossings require an application for a 'Consent to Dig in the Road Reserve' permit for a vehicle crossing to be submitted to Council for approval. A copy of the Council endorsed plan showing all vehicle crossing details is to be attached to the application. Any service relocations are to the approval of the Service Authority and at the owner's cost.
  - d) An "Application for Legal Point of Stormwater Discharge" is required to be submitted to Council prior to connection to the drainage system.
  - e) The internal stormwater drainage design must be approved by the relevant Building Surveyor as per the Building Regulation 2006, Reg. 610.
  - f) Prior to commencement of any works within the road reserve or require alteration/connection to the Council's drainage assets in the road reserve, an **'Application form for Consent to work within a Hume City Council Road Reserve'** is required to be submitted to Council to obtain a permit to carry out the works.
  - g) Any structure built over an easement requires Council and relevant service authorities approval.
  - h) For the purpose of the conditions, the below image how to calculate the dripline of a tree:

