## Notice of an Application for an Amendment to a Planning Permit



| The land affected by the application is located at: | L8 PS417883 V1045 F897 2 Livestock Way, Pakenham VIC 3810   |
|---|---|
| The application is to:                              | Amendment to Planning Permit T240180 use of land for car sales to amend the preamble and permit conditions to include variation to Covenant V985892X and display of business identification and pole signage. |

| APPLICATION DETAILS                               |                          |  |  |  |  |
|---|--------------------------|--|--|--|--|
| The applicant for the amendment to the permit is: | Pursell Holdings Pty Ltd |  |  |  |  |
| Application number:                               | T240180 - 1              |  |  |  |  |

You may look at the application and any documents that support the application at the office of the Responsible Authority:

Cardinia Shire Council, 20 Siding Avenue, Officer 3809.

This can be done during office hours and is free of charge.

Documents can also be viewed on Council's website at <a href="mailto:cardinia.vic.gov.au/advertisedplans">cardinia.vic.gov.au/advertisedplans</a> or by scanning the QR code.



## **HOW CAN I MAKE A SUBMISSION?**

This application has not been decided. You can still make a submission before a decision has been made. The Responsible Authority will not decide on the application before:

## 12 September 2025

## WHAT ARE MY OPTIONS?

Any person who may be affected by the proposed amendment to permit may object or make other submissions to the responsible authority.

If you object, the Responsible Authority will notify you of the decision when it is issued. An objection must:

- be made to the Responsible Authority in writing;
- include the reasons for the objection; and
- state how the objector would be affected.

The Responsible Authority must make a copy of every objection available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.



Application

lodged



Application is here







Notice

Consideration of submissions

Assessment

Decision

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# Request to amend a current planning permit application

This form is used to request an amendment to an application for a planning permit that has already been lodged with Council, but which has not yet been decided. This form can be used for amendments made before any notice of the application is given (pursuant to sections 50 / 50A of the *Planning and Environment Act* 1987) or after notice is given (section 57A of the Act).

## PERMIT APPLICATION DETAILS

| Application No.:  | T240180-1APP   |  |  |  |  |  |  |  |  |
|---|--|--|--|--|--|--|--|--|--|
| Address of the Land:  | 2 Livestock Way, Pakenham 3810   |  |  |  |  |  |  |  |  |
| APPLICANT DETAILS   | This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any |  |  |  |  |  |  |  |  |
| Name:   | dissemination, distribution or copying of this document is strictly prohibited.  |  |  |  |  |  |  |  |  |
| Organisation:   | Pursell Holdings Pty Ltd   |  |  |  |  |  |  |  |  |
|   |  |  |  |  |  |  |  |  |  |
|   |  |  |  |  |  |  |  |  |  |
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|   |  |  |  |  |  |  |  |  |  |
|   |  |  |  |  |  |  |  |  |  |
| Section 50A - Amendment to application at request of responsible authority before notice:                 |  |  |  |  |  |  |  |  |  |
| Section 57A - Amendme   | nt to application <b>after</b> notice is given:  |  |  |  |  |  |  |  |  |
| AMENIONATIVE DETAILS  |  |  |  |  |  |  |  |  |  |
| AMENDMENT DETAILS   |  |  |  |  |  |  |  |  |  |
| What is being amended?  | (select all that apply)  |  |  |  |  |  |  |  |  |
| What is being applied for   | Plans / other documents  ✓ Applicant / owner details   |  |  |  |  |  |  |  |  |
| Land affected   | Other  |  |  |  |  |  |  |  |  |
| Describe the changes. If  | you need more space, please attach a separate page.  |  |  |  |  |  |  |  |  |
| The proposed amendme  | nts to the planning permit remain as noted in the original application form.   |  |  |  |  |  |  |  |  |
| The Section 50 Amendment refers to a reduction in the scope of variation sought to the existing covenant. |  |  |  |  |  |  |  |  |  |
| The variation sought is now only for items (c) and (g) of Covenant V985892X. We no longer seek to vary    |  |  |  |  |  |  |  |  |  |
| items (a), (e) or (f).  |  |  |  |  |  |  |  |  |  |

The planning submission, covenant text document, development plans and landscape plan have also been

updated to reflect Council's requests and the abovementioned change in scope of covenant variation.

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| Specify the estimated cost of any de | evelopment for which the permit is requ | uired:        |
|--------------------------------------|---|---------------|
| Not applicable                       | Unchanged 🗸                             | New amount \$ |

#### **DECLARATION**



Please submit this form, including all amended plans/documents, to mail@cardinia.vic.gov.au

You can also make amendments to your application via the Cardinia ePlanning Portal at <a href="https://eplanning.cardinia.vic.gov.au/">https://eplanning.cardinia.vic.gov.au/</a>

If you have any questions or need help to complete this form, please contact Council's Statutory Planning team on 1300 787 624.

### IMPORTANT INFORMATION

It is strongly recommended that before submitting this form, you discuss the proposed amendment with the Council planning officer processing the application.

Please give full details of the nature of the proposed amendments and clearly highlight any changes to plans (where applicable). If you do not provide sufficient details or a full description of all the amendments proposed, the application may be delayed.

No application fee for s50/s50A requests unless the amendment results in changes to the relevant class of permit fee or introduces new classes of permit fees. The fee for a s57A request is 40% of the relevant class of permit fee, plus any other fees if the amendment results in changes to the relevant class (or classes) of permit fee or introduces new classes of permit fees. Refer to the *Planning and Environment (Fees) Regulations 2016* for more information.

The amendment may result in a request for more under section 54 of the Act and/or the application requiring notification (or re-notification). The costs associated with notification must be covered by the applicant.

Council may refuse to amend the application if it considers that the amendment is so substantial that a new application for a permit should be made.

Any material submitted with this request, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act* 1987.

Cardinia Shire Council 2

Application agree that you will only use the document for the purpose specified ap-Office Use Only



Planning Enquiries Phone: 1300 787 624 Web: www.cardinia.vic.gov.au

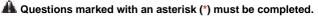
## Application to AMEND a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the end of this form.

📥 Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the Planning and Environment Act 1987. If you have any questions, please contact Council's planning department.



- · amend a permit or part of a permit if the Victorian Civil and Administrative Tribunal (VCAT) has directed under section 85 of the Act that the responsible authority must not amend that permit or that part of the permit (as the case requires); or
- amend a permit issued by the Minister under Division 6 of Part 4 of the Act (these applications must be made to the Minister under section 97I of the Act).



2

Click for further information.

## The Land I

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Unit No.:

Street Address \*

#### Livestock Way Postcode: 3810 Suburb/Locality: Pakenham Formal Land Description \* Complete either A or B. ○Lodged Plan Title Plan (X) Plan of Subdivision Lot No.: 8 This information can be OR found on the certificate of title. В Section No.: Crown Allotment No.:

Parish/Township Name:

St. No.:

## Planning Permit Details I

What permit is being amended?\*

If this application relates to more than one address, attach a separate sheet

setting out any additional property

| Planning Permit No.: | T240180 |
|----------------------|---------|
|                      |         |

## The Amended Proposal i

🛕 You must give full details of the amendment being applied for. Insufficient or unclear information will delay your application

### What is the amendment being applied for?\*

- Indicate the type of changes proposed to the permit.
- List details of the proposed changes.

If the space provided is insufficient, attach a separate sheet.

| This application seeks to amend:   |   |
|------------------------------------|---|
| X What the permit allows           | X Plans endorsed under the permit         |
| X Current conditions of the permit | Other documents endorsed under the permit |

See enclosed planning submission for full details:

- 1. Amend the permit pre-amble to include:
  - a. Variation of existing covenant pursuant to Clause 52.02; And
  - b. Advertising signage pursuant to Clause 52.05.
- 2. Delete condition 2 d) v).
- 3. Delete condition 3 d) i) 9).
- 4. Add new conditions 13A and 13B requiring the formal amendment of the covenant prior to the commencement of use, erection of approved signage or installation of approved landscaping.
- 5. Endorsed the enclosed development plans and landscape plans in accordance with the relevant conditions of the amended planning permit.

| Provide plans clearly identifying all proposed changes to the endorsed plans, together with: any information required by the planning scheme, requested by Council or outlined in a Council checklist; and if required, include a description |
|---|
| of the likely effect of the proposal.   |

No.: 417883K



## Development Cost 1

## Estimate cost of development\*

If the permit allows development, estimate the cost difference between the development allowed by the permit and the development to be allowed by the amended permit.

| Cos  | et of proposed amended development: |   |    |   | permitted<br>pment: |   | Cost differe | nce (+ or –): |
|--|-------------------------------------|---|----|---|---------------------|---|--------------|---------------|
| \$   | 0                                   | _ | \$ | 0 |                     | = | \$<br>0      |               |
| Insert 'NA' if no development is proposed by the permit. |                                     |   |    |   |                     |   |              |               |
| A You may be required to verify this estimate.           |                                     |   |    |   |                     |   |              |               |

## Existing Conditions 1

### Describe how the land is used and developed now

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

| Have the conditions of the land changed since the time of the original permit application? Yes X No If yes, please provide details of the existing conditions. |
|--|
| The site contains an existing building used for the sale of agricultural supplies and equipment (Elders)   |
|  |
| Provide a plan of the existing conditions if the conditions have changed since the time of the original permit application.                                    |

## Title Information i



Encumbrances on title \*

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- Yes (If 'yes' contact council for advice on how to proceed before continuing with this application.)
- No The proposal seeks to vary the existing covenant
- Not applicable (no such encumbrance applies).

Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

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## Applicant and Owner Details I

Provide details of the applicant and the owner of the land.

| Applicant *   | Name:  |  |                   |                          |                               |  |  |  |
|---|--|--|-------------------|--------------------------|-------------------------------|--|--|--|
| The person who wants the permit.  | Title:   | First Name: Surname:   |                   |                          |                               |  |  |  |
|   | Organisation (if applicable): Pursell Holdings Pty Ltd       |  |                   |                          |                               |  |  |  |
|   | Postal Address: If it is a P.O. Box, enter the details here: |  |                   |                          |                               |  |  |  |
|   | Unit No.:  | St. No.: 43  | St. Name:         | The Peninsula            | a l                           |  |  |  |
|   | Suburb/Locality:   | Noosaville   |                   | State: Qld               | Postcode: 4566                |  |  |  |
| Please provide at least one contact phone number *  | Contact information for applicant OR contact person below    |  |                   |                          |                               |  |  |  |
| рпопе питьег  | Business phone:  | 9  | Er                | Email:                   |                               |  |  |  |
|   | Mobile phone:  |  | Fa                | ax:                      |                               |  |  |  |
| Where the preferred contact person for the application is different from the applicant, provide the details of that person.                   | Contact person's   | details*   |                   |                          |                               |  |  |  |
|   | Organisation (if a   | pplicable): Toro Plannii   | ng Pty Ltd        |                          |                               |  |  |  |
|   | Postal Address:  |  | If it is a P.O. E | Box, enter the details h | ere:                          |  |  |  |
|   | Unit No.: 1  | St. No.: 3   | St. Name:         | Lawborough A             | venue                         |  |  |  |
|   | Suburb/Locality:   | Parkdale   |                   | State: Vic               | Postcode: 3195                |  |  |  |
| Owner *   |  |  |                   |                          | Come or surficent Ly          |  |  |  |
| The person or organisation  | Name:  |  |                   |                          | Same as applicant X           |  |  |  |
| who owns the land   | Title:   | First Name:  |                   | Surname:                 |                               |  |  |  |
| Where the owner is different  | Organisation (if   | Organisation (if applicable):  |                   |                          |                               |  |  |  |
| from the applicant, provide<br>the details of that person or  | Postal Address:  |  | If it is a P.O. I | Box, enter the details h | ere:                          |  |  |  |
| organisation.   | Unit No.:  | St. No.:   | St. Name          |                          |                               |  |  |  |
|   | Suburb/Locality:   | 300  |                   | State:                   | Postcode:                     |  |  |  |
|   | Owner's Signatu  | ure (Optional):  |                   | Date:                    |                               |  |  |  |
|   |  |  |                   | day / month / year       |                               |  |  |  |
|   |  |  |                   | **                       |                               |  |  |  |
| Declaration I   |  |  |                   |                          |                               |  |  |  |
| This form must be signed by th  |  |  |                   |                          |                               |  |  |  |
| Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit. |  |  |                   |                          |                               |  |  |  |
| Need help with the  |  |  |                   |                          |                               |  |  |  |
| If you need help to complete this for information about the planning pro-   |  |  |                   |                          |                               |  |  |  |
| Contact Council's planning departme<br>information may delay your application   | ent to discuss the spe                                       | the product of the same of the | application a     | and obtain a check       | list. Insufficient or unclear |  |  |  |
| Has there been a pre-application  |  |  |                   |                          |                               |  |  |  |
| meeting with a council planning officer   | O No X Ye  | If 'Yes', with   |                   |                          |                               |  |  |  |
|   |  | Date: Various  |                   | day / month /            | year                          |  |  |  |
|   |  |  |                   |                          |                               |  |  |  |



## Checklist i

## Have you:

| X Filled in the form completely?                               |   |  |  |  |  |  |  |
|--|---|--|--|--|--|--|--|
| X Paid or included the application fee?                        | Most applications require a fee to be paid. Contact Council to determine the appropriate fee. |  |  |  |  |  |  |
| X Attached all necessary supporting information and documents? |   |  |  |  |  |  |  |
| x Completed the relevant council planning permit checklist?    |   |  |  |  |  |  |  |
| X Signed the declaration above?                                |   |  |  |  |  |  |  |

## Lodgement i



Lodge the completed and signed form and all documents with:

Cardinia Shire Council

PO Box 7

Pakenham VIC 3810

In person: 20 Siding Avenue, Officer

#### **Contact information:**

Telephone: 1300 787 624 Fax: (03) 5941 3784

Email: mail@cardinia.vic.gov.au

DX: 81006

Deliver application in person, by post or by electronic lodgement.

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The Victorian Government exknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture, The Victorian Government extends this respect to their entering

## REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 10425 FOLIO 857

Security no : 124124235470Y Produced 07/05/2025 12:59 PM

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LAND DESCRIPTION

Lot 8 on Plan of Subdivision 417883K.

PARENT TITLES:

Volume 08720 Folio 116 to Volume 08720 Folio 117

Created by instrument PS417883K 05/02/1999

## REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

PURSELL HOLDINGS PTY LTD of 43 THE PENINSULA NOOSAVILLE QLD 4566
AW599826P 02/03/2023

#### ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AW599827M 02/03/2023 AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

COVENANT V985892X 12/04/1999

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

NOTICE Section 45 Melbourne Strategic Assessment (Environment Mitigation Levy) 2020 AT390549E 01/07/2020

## DIAGRAM LOCATION

SEE PS417883K FOR FURTHER DETAILS AND BOUNDARIES

#### ACTIVITY IN THE LAST 125 DAYS

NIL

----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 2 LIVESTOCK WAY PAKENHAM VIC 3810

#### ADMINISTRATIVE NOTICES

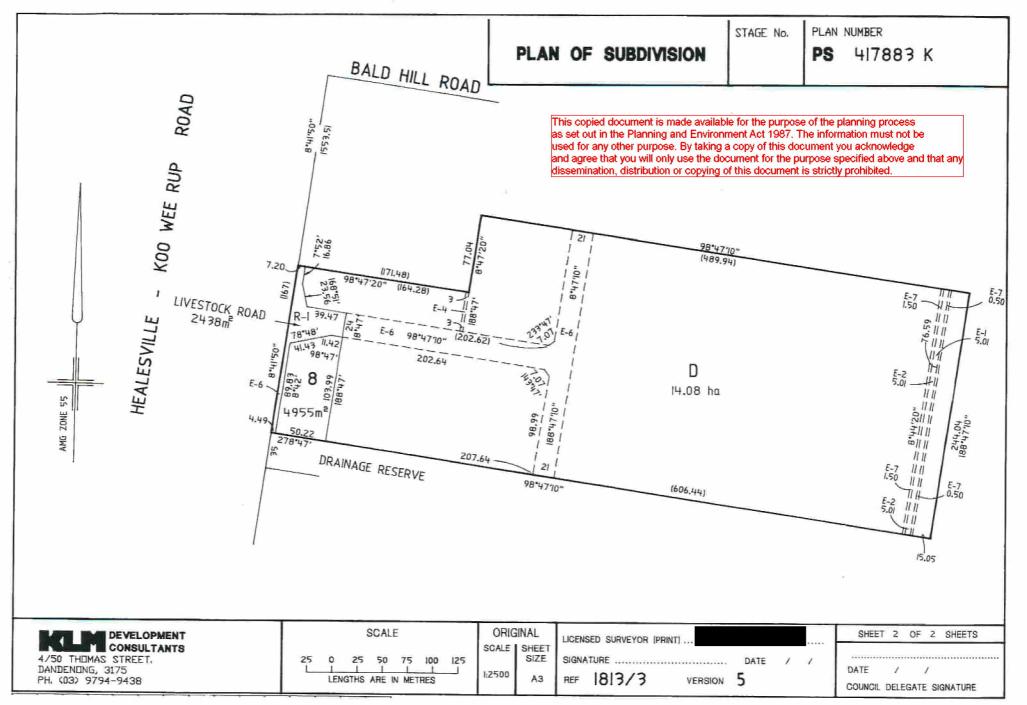
NIL

eCT Control 16165A AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED Effective from 02/03/2023

DOCUMENT END

PLAN NUMBER LTO USE ONLY STAGE No. 417883 K PLAN OF SUBDIVISION **EDITION** PS COUNCIL CERTIFICATION AND ENDORSEMENT LOCATION OF LAND NAR NAR GOON PARISH: REF: 598/080 COUNCIL NAME: CARDINIA SHIRE 1. This plan is certified under Section 6 of the Subdivision Act 1988. TOWNSHIP: 2. This plan is certified under Section 11/7 of the Subdivision Act 1988. Date of original certification under Section 6. 13 / 10 / 38 SECTION: -3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. CROWN ALLOTMENT: 31 (PART) OPEN SPACE (i) A requirement for public open space under Section 18 of the Subdivision Act 1988 CROWN PORTION: has/has not been made. LTO BASE RECORD: TITLE REFERENCES: CHART VOL.8720 FOL.II6, VOL.8720 FOL.II7 (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in Stage Council Delegate LAST PLAN REFERENCE/S: LOT2 PS. 413515 N Council Seal Date / / 1140-1170 HEALESVILLE-KOO WEE RUP RD. PAKENHAM POSTAL ADDRESS: (At time of subdivision) Re-certified under Section 11(7) of the Subdivision Act 1988. AMG Co-ordinates 367 500 F Council Delegate (of approx centre of land in plan) ZONE: 55 N 5782 000 Council Seal Date 18/1/39 VESTING OF ROADS AND/OR RESERVES COUNCIL/BODY/PERSON IDENTIFIER NOTATIONS CARDINIA SHIRE COUNCIL ROAD R-I STAGING This is/is not a staged subdivision. Planning permit No. DEPTH LIMITATION DOES NOT APPLY. This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited. THIS PLAN IS/IS NOT BASED ON SURVEY THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No. 161 147 IN PROCLAIMED SURVEY AREA No. 71

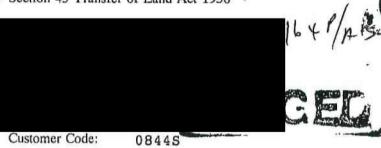
|                       |   | SEMENT            | INFORMATION  | F                             | LTO USE ONLY   |
|-----------------------|---|-------------------|--|-------------------------------|--|
| LEGEND                | A - Appurtenant Easement  | E - Encumb        | ering Easement R   | - Encumbering Easement (Road) | STATEMENT OF COMPLIANCE/<br>EXEMPTION STATEMENT                    |
| Easement<br>Reference | Purpose   | Width<br>(Matres) | Origin   | Land Benefited/in Favour Of   | RECEIVED   |
| E-I                   | SEWERAGE  | 5.0               | C/E H916121  | PAKENHAM SEWERAGE AUTHORITY   |  |
| E-2                   | SEWERAGE  | 5.01              | C/E J929659  | PAKENHAM SEWERAGE AUTHORITY   | DATE 29/12/98  |
| E-4                   | DRAINAGE & SEWERAGE<br>SEWERAGE   | SEE DIAG.         | PS 413515 N<br>PS. 413515 N                              | SOUTH EAST WATER LIMITED      | LTO USE ONLY   |
| E-6                   | WAY, DRAINAGE, SEWERAGE,<br>WATER, GAS, ELECTRICITY<br>AND TELEPHONE.<br>DRAINAGE | SEE DIAG.         | PS. 413515 N   | MELBOURNE WATER CORPORATION   | PLAN REGISTERED TIME 3.02 DATE 5 / 2 / 99                          |
|                       | SEWERAGE & WATER  | SEE DIAG.         | PS. 413515 N<br>PS. 413515 N                             | GAS AND FUEL CORPORATION      | DATE 3 / X / /9  |
|                       | GAS<br>POWERLINE  | SEE DIAG.         | PS. 413515 N, SEC 44<br>ELECTRICITY INDUSTRY<br>ACT 1993 | EASTERN ENERGY LIMITED        |  |
| E-7                   | SEWERAGE  | SEE DIAG.         | PS. 413515 N   | SOUTH EAST WATER LIMITED      | SHEET I OF 2 SHEETS  |
| DANDE                 | DEVELOPMENT CONSULTANTS THOMAS STREET. NONG, 3175 3) 9794-9438                    |                   | LICENSED SURVEYOR (I                                     | , states 36 G                 | DATE 18 / 1 / 39 COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3 |



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## TRANSFER OF LAND ---

- Section 45 Transfer of Land Act 1958





MADE AVAILABLE / CHANGE CONTROL

Land Titles Office Use Only

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

together with any easements created by this transfer;

subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and

subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: (volume and folio reference)

Lot 8 on Plan of Subdivision No.417883K Parish of Nar Nar Goon contained in Volume 10425 Folio 857

Estate and Interest: (e.g. "all my estate in fee simple")

all its estate and interest in fee simple

Consideration:

TWO HUNDRED & TWENTY FIVE THOUSAND DOLLARS (\$225,000.00)

Transferor: (full name)

VICTORIAN LIVESTOCK EXCHANGE LIMITED ACN 078 839 031

Creation and/or Reservation and/or Covenant



Continued on T2 Page 2.

Approval No: 3779708A

ORDER TO REGISTER Please register and issue title to

STAMP DUTY USE ONLY

Signed

Cust. Code:

Original Transfer of Land Stamped with: \$9,160.00 Trn: 463240 12-APR-1999 Stamp Duty Victoria, DMNO

THE BACK OF THIS FORM MUST NOT BE USED

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Approved Form A1 Victorian Land Titles Office

## ANNEXURE PAGE

Transfer of Land Act 1958



AND the said Transferees with the intent that the benefit of this covenant shall be attached to and run at law and in equity with each and every lot on Plan of Subdivision No. 417883K other than the said lot hereby transferred and that the burden of this covenant shall be annexed to and run at law and equity with the said lot hereby transferred DO HEREBY for ourselves our heirs executors administrators transferees registered proprietors for the time being of the land hereby transferred hereby and as separate covenants jointly and severally covenant with the said transferor and other the registered proprietor or proprietors for the time being of each and every lot on the said Plan of Subdivision other than the said Lot hereby transferred that :

- The proprietor shall not erect on the land any building or buildings the total ground area of which (measured from the outermost extremity of any building at any level) including any under cover car parking, terrace, pergola or verandah is more than forty per cent (40%) of the area of the land.
- (b) The proprietor shall not use more than 90% of the area of the land other than as landscaped garden open space properly kept, in keeping with the subdivision as a superior industrial development. The proprietor shall not plant or grow or permit to be planted or grown within or upon the landscaped garden open space trees other than trees indigenous to southern Australia (with the exception of mature trees growing upon the land at the date hereof).
- (c) The proprietor shall not plant or permit to be grown within 3 metres of any title boundary abutting a roadway any landscaped garden other than open grassed land generally conforming with the natural contour of the land.

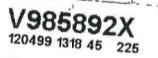
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- The proprietor shall not within the distance specified or any boundary specified build, erect or establish (e) any building, fence, landscaping works or carpark:
  - (i) Buildings - 7.5 metres from any title boundary abutting Livestock Way;
  - (ii) Buildings - 7.5 metres from any title boundary abutting Exchange Drive;
  - (iii) Buildings - 15 metres from any title boundary abutting Healesville, Koo-Wee-Rup Road, north of Livestock Way.
- (f) The proprietor shall not erect or permit to be erected on the land any building, fence or associated works with:
  - (i) not less than ten per cent (10%) of the total roof are of any building having a pitch of not less than fifteen degrees measured from the horizontal;
  - (ii) not less than fifteen per cent (15%) of the floor area of same capable of being used as an office, showroom, or retail outlet. For the purposes of this covenant, in calculating the total building floor area of such building, a structure which is substantially adjacent to another shall

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- (iii) external walls, vertical structures and vertical services (including but not limited to plumbing and ventilation), excluding windows, constructed of materials or finished with a surface other than a material or finish having a matt or low reflective appearance;
- (iv) more than eighty-five per cent (85%) of such external walls, vertical structures and vertical services (all by the collective area of all such external walls, vertical structures or vertical services substantially facing the title boundary) being of any one colour (treating tone or shades of a colour as one colour);
- (v) wire, metal or other material of less than five millimetres diameter or face measurement used as fencing, nor with any support structures for such fencing (other than wooden supports) or any other component connected therewith (and in all respects including gates) being untreated or covered, coated or encased in any treatment other than dark green or black polyvinyl chloride (PVC) or polycarbonate or similar substance.
- (g) The proprietor shall not erect or permit to be erected any sign having an area of more than one square metre for each five metres of the title boundaries abutting any road or being of a height greater than five lineal metres above the surface of the surrounding land, measured from the height of the land adjoining the property at the nearest title boundary.

AND IT IS INTENDED that this covenant shall be set out as an encumbrance on the Certificate of Title issued OR to issue for the said lot HEREBY TRANSFERRED AND SHALL run with the land.

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Victorian Land Titles Office

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Approved Form A1 Victorian Land Titles Office

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## VARIATION OF COVENANT V985892X TEXT (VERSION 2)

Covenant V985892X is proposed to be amended as follows (red text = proposed deletion and blue text

= proposed insertion):

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## ITEM (c)

## Item (c) reads as follows:

(c) The proprietor shall not plant or permit to be grown within 3 metres of any title boundary abutting a roadway any landscaped garden other than open grassed land generally conforming with the natural contour of the land.

Item (c) is proposed to be amended to read as follows:

(c) The proprietor shall not plant or permit to be grown within 3 metres of any title boundary abutting a roadway any landscaped garden other than landscaping approved by the Responsible Authority open grassed land generally conforming with the natural contour of the land.

## ITEM (g)

## Item (g) reads as follows:

(g) The proprietor shall not erect or permit to be erected any sign having an area of more than one square metre for each five metres of the title boundaries abutting any road or being of a height greater than five lineal metres above the surface of the surrounding land, measured from the height of the land adjoining the property at the nearest title boundary.

Item (g) is proposed to be amended to read as follows:

(g) The proprietor shall not erect or permit to erect, unless otherwise with the written consent of the Responsible Authority (Council), any individual sign having an area of more than one square metre for each five metres of the title boundaries abutting any road or being of a height greater than five six (6) lineal meters above the surface of the surrounding land, measured from the height of the land adjoining the property at the nearest title boundary.





5th August, 2025

Planning Department Cardinia Shire Council PO Box 7 PAKENHAM VIC 3810 This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited.

Dear Sir / Madam,

APPLICATION NO: T240180 PA

ADDRESS: NO. 2 LIVESTOCK WAY, PAKENHAM

PROPOSAL: USE OF LAND FOR CAR SALES – SECTION 72 AMENDMENT TO PERMIT & PLANS

#### 1.0 INTRODUCTION:

We refer to the abovementioned planning permit at No. 2 Livestock Way, Pakenham and confirm that we act on behalf of the owner and future operator of the site in this matter.

In short, we seek to amend the existing planning permit under Section 72 of the *Planning and Environment Act 1987* as follows:

- 1. Amend the permit pre-amble to include:
  - a. Variation of existing covenant pursuant to Clause 52.02; And
  - Advertising signage pursuant to Clause 52.05.
- Delete condition 2 d) v).
- Delete condition 3 d) i) 9).
- Add new conditions 13A and 13B requiring the formal amendment of the covenant prior to the commencement of use, erection of approved signage or installation of approved landscaping.
- 5. Endorsed the enclosed development plans and landscape plans in accordance with the relevant conditions of the amended planning permit.

The purpose of this amendment is to facilitate the relocation of the existing business operations to the subject site and address relevant covenant, signage and plan approvals in order to facilitate the commencement of the business operations on the subject site in late 2025 / early 2026.





## 2.0 SUBMITTED DOCUMENTATION:

Please find enclosed our Section 72 Amendment seeking amendments to the planning permit and endorsed plans. We provide the following documentation for your consideration in this matter:

- Completed Section 72 Amendment to a Planning Permit Form.
- Full and current copy of Title.
- Amended proposed variation of Covenant V985892X text document (Version 2).
- Additional covenant beneficiaries information in an excel spreadsheet and PDF prepared by Dinah Newell, being a Director of Feigel and Newell Pty Ltd – Professional Title Searchers.
- Copies of all Register Search Statements for each of the benefiting properties used to extract the
  proprietor details, street address, lot number, plan of subdivision number, volume / folio and postal
  address of each of the benefiting properties.
- Amended Development Plans V2 prepared by SJS Design & Drafting (Ref: Drawing No.: SJS0136, Revision B, dated 13/06/2025, Total 3 Sheets).
- Landscape Plan V2 prepared by Green Daze Garden Design (Ref: Landscape Plan, Job No.: 654, dated 9/06/2025, Total 1 Sheet).
- Amended Planning Submission (Version 2) below updated to reflect the proposal as amended.

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## 3.0 SECTION 72 - PLANNING & ENVIRONMENT ACT 1987:

This application is made under the provisions of Section 72 of the Planning and Environment Act 1987 which states:

## Application for amendment of permit

- A person who is entitled to use or develop land in accordance with a permit may apply to the responsible authority for an <u>amendment</u> to the <u>permit</u>.
- (2) This section does not apply to—

## S. 72(2)(a) substituted by No. 3/2013 s. 60.

- (a) a permit or a part of a permit issued at the direction of the Tribunal, if the Tribunal has directed under section 85 that the responsible authority must not amend that permit or that part of the permit (as the case requires); or
- (b) a permit issued under Division 6.

Importantly, <u>amendment</u> and <u>permit</u> are defined as follows under the definitions section of the Planning and Environment Act:

"amendment" includes addition, deletion or substitution;

"permit" includes any plans, drawings or other documents approved under a permit;

It is clear that the proposal falls within the ambit of consideration under Section 72, as the proposal seeks amendment to the permit pre-amble, deletion of permit conditions, addition of permit conditions and amendment to the development plans originally considered as part of the planning permit.

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## **SUBJECT SITE & SURROUNDS**

#### SUBJECT SITE 4.1

The subject site is located on the south-east corner of the intersection of Livestock Way and Healesville-Koo Wee Rup Road, Pakenham as illustrated in the aerial photograph below:

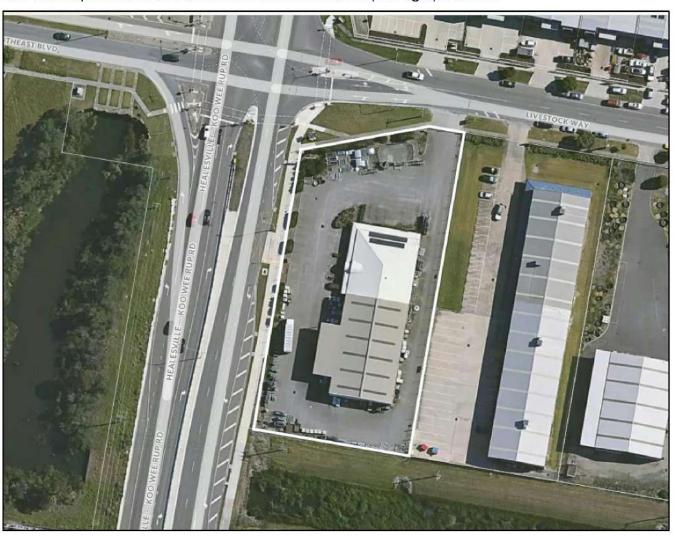


Figure 1: Aerial Photograph of the Subject Site.

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- The subject site is formally identified as Lot 8 on Plan of Subdivision 417883K.
- The site is generally rectangular in shape with an irregular northern boundary as a direct result of the location on a major intersection.
- The site has a maximum width of 50.22 metres, a maximum depth of 103.99 metres and a total area of approximately 4955 square metres.
- Vehicle access to the site is via an approximate 10.5 metre wide vehicle crossover located in the





north-east corner of the subject site.

- As illustrated in the aerial photograph above, the subject site currently contains a large commercial building which comprises an office / retail component at its northern end and a warehouse / storage component at its southern end.
- The site is provided with concrete hardstand surrounding the commercial building with part of this concrete hardstand line marked with carparking in some locations.
- Limited landscape beds with small to medium sized shrubs and plants are provided along the part of the northern and western boundaries of the site.
- The site is not encumbered by any easements.
- The existing building contains a number of existing signs as illustrated in the images below:





Figures 2-3: Existing building façade sign located on north side of existing building opposite the vehicle crossover and pole sign located in the north-west corner of the subject site.





Figures 4-5: Existing building façade sign located on west side existing building (left image) and south side of the existing building (right image).

As illustrated in the above images, the site is currently use for an Elders which is a rural agricultural franchise which provide a range of services for farming and rural industries. In this particular instance, this Elders franchise site provides a range of livestock product sales, farming / rural supplies and equipment sales and agronomy services from the subject site.





## 4.2 SURROUNDING AREA

The subject site is located within an industrial zoned area which comprises a range of commercial and industrial land uses and built forms. The broader zoning map and broader aerial illustrate the existing conditions on adjoining and surrounding land as well as identifying immediately surrounding land uses.

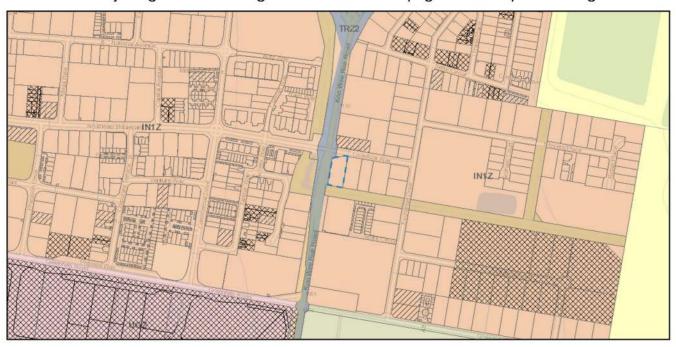


Figure 6: Zoning Map of Surrounding Area.



Figure 7: Broader Aerial Identifying Existing Conditions, Drainage Corridor & Surrounding Land Uses.





## **SECTION 72 AMENDMENT REQUEST:**

The proposal seeks a number of different elements to be considered as part of this Section 72 Amendment request. These are detailed individually below:

5.1 Amendment to Planning Permit Pre-Amble: the permit pre-amble is proposed to be amended to include the following additional elements (blue text = proposed insertion):

> The permit allows: Use of land for car sales, advertising signage and variation of Covenant V985892X in accordance with the endorsed plans

## Reason for Amendment:

The site is subject to an existing covenant which limits the ability to provide certain signage and landscape outcomes on the subject site amongst other elements. The proposed variation of the covenant is detailed below in this submission with an assessment against the relevant advertising signage provisions of the planning scheme also provided. In short, it is submitted that the proposed variation to the covenant and proposed advertising signage is entirely appropriate in the context of the subject site, the surrounding area and the applicable planning controls and subject to undertaking the formal planning processes, the inclusion of these elements in the permit preamble is appropriate and warrants support.

5.2 Delete Condition 2 d) v) of the permit: Condition 2 d) v) is proposed to be deleted in its entirety (red text = proposed deletion and blue text = proposed insertion):

> Condition 2 d) v): \*\*\* DELETED\*\*\* Removal of existing business identification signage exceeding total display area of 8 square metres, and existing sky/pole sign.

## Reason for Deletion:

This purpose of deleting this condition is that the proposed amendment to this permit will facilitate the erection of advertising signage as illustrated in the submitted plans for endorsement. Accordingly, this condition is no longer required nor appropriate for inclusion on the amended planning permit.

5.3 Delete Condition 3 d) i) 9) of the permit: Condition 3 d) i) 9) is proposed to be deleted in its entirety (red text = proposed deletion and blue text = proposed insertion):





Condition 3 d) i) 9): \*\*\* DELETED\*\*\* Within 3 metres of any title boundary abutting the roadway, landscaping must be shown as open grassed land generally conforming with the natural contour of the land in accordance with Covenant This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be

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## Reason for Deletion:

This purpose of deleting this condition is that the proposed amendment to this permit will facilitate the planting of new vegetation on the site in line with the submitted landscape plan as well as the variation of the existing covenant. Accordingly, this condition is no longer required nor appropriate for inclusion on the amended planning permit.

5.4 Add new Conditions 13A and 13B to facilitate amendment to Covenant: It is requested that new conditions be added to the planning permit which facilitates the formal variation of the covenant. We provide the following suggested wording for these new conditions (blue text = proposed insertion):

**New Condition 13A:** Prior to the commencement of the approved use, erection of the approved signage or installation of the landscaping approved under this permit, the Variation to Covenant V985892X Text (Version 2) document submitted to Council as part of this application must be endorsed.

**New Condition 13B**: Prior to the commencement of the approved use, erection of the approved signage or installation of the landscaping approved under this permit, Covenant V985892X must be amended in accordance with the variation of covenant text endorsed under Condition 13A of this permit.

#### Reason for New Conditions:

The new conditions are requested to ensure that the covenant is varied prior to the commencement of the approved use, erection of signage or the installation of landscaping that would otherwise contravene the existing covenant. We have provided the above suggested new conditions, however, we welcome any alternative suggestions by Council in facilitating the proposed covenant variation.

5.5 Endorse the amended Development Plans under Condition 2 and Landscape Plan under Condition 3 of the planning permit.

As part of this proposed Section 72 Amendment, we seek endorsement of the amended plans





enclosed with this application. The enclosed plans illustrate the layout originally approved for the car sales land use in accordance with the required changes under Condition 2 whilst also illustrating the proposed signage to be erected on the site.

Additionally, a landscape plan has been enclosed in line with Condition 3 (excluding condition 3 d) i) 9) which is proposed to be deleted whilst also illustrating the proposed landscaping to be provided once the covenant is varied in lieu of 'lawn' along the northern and western boundaries of the site.

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## S.O ASSESSMENT:

The assessment of this Section 72 Amendment has been broken down into the following logical matters for ease of consideration by Council:

- Is the land use consistent with the approved planning permit.
- Are the proposed variations to the covenant appropriate.
- Are the proposed advertising signs appropriate.
- Are the proposed amendments to the permit pre-amble appropriate.
- Are the proposed deletion of Condition 2 d) v) and Condition 3 d) i) 9) appropriate:
- Are the proposed new conditions 13A and 13B appropriate:
- Are the proposed amended plans appropriate.

## 6.1 Is the land use consistent with the approved Planning Permit.

The proposed Section 72 Amendment does not seek to alter the approved land use which is expected to commence operation in late 2025 / early 2026 when the current tenant (Elders) vacates the subject site. Accordingly, given the existing permit and operations will be in line with the permit issued by Council, the land use will continues to be appropriate under the provisions of the Industrial 1 Zone.

## 6.2 Are the proposed variations to the covenant appropriate.

A full assessment against the planning scheme and legislative requirements in varying a covenant is provided at Appendix A of this submission. However, in short, we note the following comments:

- The Covenant came into effect more than 25 years ago at a time when the immediate and surrounding area was initially developing commercial and industrial land uses with the area having undergone significant change in the preceding period of time.
- The measures implemented as part of the original subdivision of the land do not sit comfortably with council's contemporary planning tools which are largely performance and merits-based assessments and decisions.
- Accordingly, the covenant is an outdated and crude form of planning control which implements
  prospective measures from the late 1990's when the site was located in a rural area surrounded by
  farmland and rural development and land uses.
- The above is illustrated in the historical aerial image below from April, 2001 and the zoning maps for
  the site from December 2000 and August, 2002 which demonstrate that the policy and context
  settings were significantly different at the time that the covenant was implemented compared to
  the current policy and context settings.





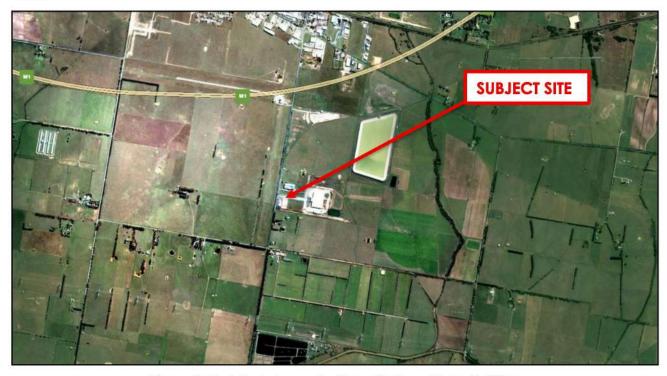


Figure 8: Aerial photograph of the site from 15 April, 2001.

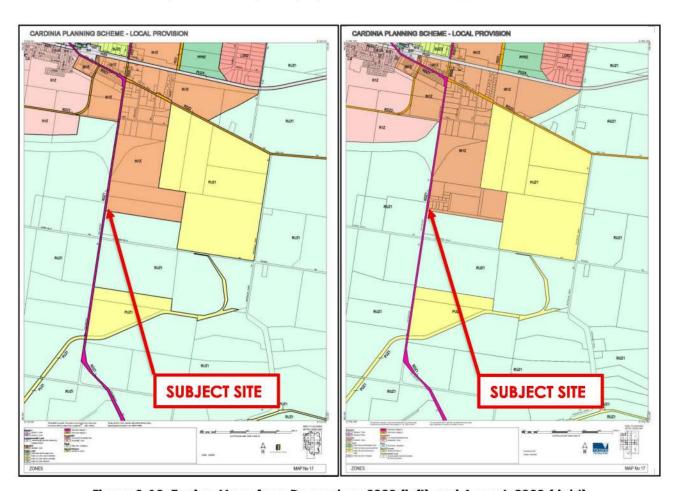


Figure 9-10: Zoning Maps from December, 2000 (left) and August, 2002 (right)





- It is the registered proprietors submission that the variation of the covenant is appropriate in this
  case as any development proposed on the subject site (including advertising signage and
  landscaping) is adequately controlled by the provisions of the Cardinia Planning Scheme and as
  part of the existing planning permit through the endorsement of landscape and signage plans.
- Furthermore, the variation of the covenant in itself will not cause detriment (or perceived detriment)
  in any way to the existing beneficiaries of the covenant or immediately adjoining or surrounding
  properties, and therefore, it is our submission that a permit should be granted to vary the covenant
  on the subject site.

### 6.3 Are the proposed advertising signs appropriate.

A full assessment against the planning scheme provisions with respect to advertising signage is provided at Appendix B of this submission. However, in short, we make the following comments:

- The proposed building façade signage is considered minimal in the context of the overall size of the
  existing building and will not add to visual clutter.
- All signage is non-illuminated and not externally lit, therefore not impacting on adjoining or surrounding properties.
- Notwithstanding Council's views on the legality of the existing pole sign, the pole sign has been erected on site since the existing building was originally constructed in the early 2000's with no impact to adjoining or surrounding properties of the operation of Healesville-Koo Wee Rup Road. Specifically, we do not seek to rely upon Clause 52.05-5 of the planning scheme we just simply not that the pole sign is currently on site and has been for approximately 25 years without concern being raised by any third party including Council, neighbours or beneficiaries.
- The proposed signage is consistent with the signage of adjoining and surrounding properties and the Cardinia Planning Scheme.
- Subject to the amendment of the existing covenant, the proposed signage is in accordance with the restriction on title.

Accordingly, the proposed signage is acceptable and warrants support.

#### 6.4 Are the proposed amendments to the permit pre-amble appropriate.

There are two (2) elements to the pre-amble which are sought to be amended. In light of the detailed assessment provided at Appendix A (variation of covenant) and Appendix B (advertising signage), it is submitted that the proposed amendments to the permit pre-amble are entirely appropriate and warrant support.

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#### 6.5 Are the proposed deletion of Condition 2 d) v) and Condition 3 d) i) 9) appropriate:

In light of the detailed assessment provided at Appendix A (variation of covenant) and Appendix B (advertising signage), it is submitted that the proposed deletions of these conditions is necessary to ensure that the advertising signage and landscape outcomes as illustrated on the enclosed plans can be suitably delivered as part of the approved land use on the site.

#### 6.6 Are the proposed new conditions 13A and 13B appropriate:

We make the following comments with respect to these proposed new conditions:

- The new conditions are suggested to ensure that the covenant (pending approval of this permit)
  will be formally amended through the titles office prior to the commencement of the use, erection
  of the signage or installation of the landscaping as illustrated on the enclosed plans.
- We have provided wording for the suggested new conditions, however, we welcome any alternative suggestions by Council in facilitating the proposed covenant variation.

Accordingly, the proposed new conditions are appropriate and warrant support.

#### 6.7 Are the proposed amended plans appropriate.

The enclosed development and landscape plans have been amended to reflect:

- The conditions of permit save for condition 2 d) v) and condition 3 d) i) 9) which are proposed to be deleted.
- The business identification signage proposed as part of this amendment subject to variation of the existing covenant.
- The proposed landscaping to be provided subject to variation of the existing covenant.

The amended plans are consistent with the conditions of permit and achieve a suitable landscape and signage outcome. Accordingly, it is submitted that the proposed amended plans are appropriate and warrant support.

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#### 7.0 CONCLUSION

Overall, it is submitted that the proposed amendments to the covenant, permit and plans are appropriate in the context of the overall approved land use and surrounding area. Accordingly, the proposal in its amended form warrant support in this instance.

We trust the amended plans and documentation is to Council's satisfaction to enable the expeditious consideration of the application including notification of the application and referral as necessary.

Vind rogards

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#### APPENDIX A: PROPOSED COVENANT VARIATION

#### PROPOSED AMENDMENTS TO COVENANT WORDING

Covenant V985892X is proposed to be amended as follows (red text = proposed deletion and blue text = proposed insertion):

#### Item (c) is proposed to be amended to read as follows:

(c) The proprietor shall not plant or permit to be grown within 3 metres of any title boundary abutting a roadway any landscaped garden other than landscaping approved by the Responsible Authority open grassed land generally conforming with the natural contour of the land.

#### Item (g) is proposed to be amended to read as follows:

(g) The proprietor shall not erect or permit to erect, unless otherwise with the written consent of the Responsible Authority (Council), any individual sign having an area of more than one square metre for each five metres of the title boundaries abutting any road or being of a height greater than five six (6) lineal meters above the surface of the surrounding land, measured from the height of the land adjoining the property at the nearest title boundary.

We note that the above revised wording will facilitate the installation of landscaping and advertising signage on the subject site in line with the enclosed plans submitted with this correspondence.

#### PLANNING CONTROLS & LEGISLATIVE REQUIREMENTS

The following planning controls trigger the need for a planning permit in order to vary a covenant:

#### Clause 52.02: Easements, Restrictions and Reserves:

- Pursuant to Clause 52.02 (Easements, Restrictions and Reserves), a permit is required before a
  person proceeds 'under Section 23 of the Subdivision Act 1988 to create, vary or remove an
  easement or restriction or vary or remove a condition in the nature of an easement in a Crown
  arant.'
- In addition to the permit trigger, Clause 52.02 identifies that before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

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#### Legislative Requirements:

The Planning and Environment Act 1987 sets out the specific requirements and matters to be





considered as part of any application to remove or vary a covenant. We set these out below for ease of reference: This copied document is made available for the purpose of the planning process

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- The responsible authority must not grant a permit which allows the removal or (2) variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—
  - (a) financial loss; or
  - (b) loss of amenity; or
  - (c) loss arising from change to the character of the neighbourhood; or
  - (d) any other material detriment as a consequence of the removal or variation of the restriction.

#### S. 60(3) inserted by No. 128/1993 s. 15, amended by No. 81/2004 s. 23(2)(a)(b).

Despite subsection (1)(c), if no notice is required to be given under section 52(1) or 57B or the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

#### S. 60(3A) inserted by No. 53/2012 s. 7, amended by Nos 3/2013 s. 76(5), 30/2015 s. 4(2).

(3A) If an application for a permit is of a class that is exempted by a planning scheme wholly or in part from the requirements of subsections (1)(b) to (f), (1A) and (1B), the responsible authority is not required to consider the exempted matters before deciding the application.

#### S. 60(4) inserted by No. 128/1993 s. 15.

- Subsection (2) does not apply to any restriction which was—
  - (a) registered under the Subdivision Act 1988; or
  - (b) lodged for registration or recording under the <u>Transfer of Land Act 1958</u>; or
  - (c) created before 25 June 1991.

#### S. 60(5) inserted by No. 128/1993 s. 15.

The responsible authority must not grant a permit which allows the removal or of a restriction referred to in subsection (4) unless it is satisfied that—





- (a) the <u>owner</u> of any <u>land</u> benefited by the restriction (other than an <u>owner</u> who, before or after the making of the application for the <u>permit</u> but not more than three months before its making, has consented in writing to the grant of the <u>permit</u>) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and
- (b) if that <u>owner</u> has objected to the grant of the <u>permit</u>, the objection is vexatious or not made in good faith.

### S. 60(6) inserted by No. 128/1993 s. 15, amended by No. 52/1998 s. 191(1).

(6) If an application for a <u>permit</u> to remove or vary a restriction referred to in subsection (4) was made on or after 25 June 1991 and the responsible authority had made a decision in respect of the application before the commencement of section 15 of the Planning and Environment (Amendment) Act 1993, the <u>Tribunal</u> must determine in accordance with subsection (5) any appeal under this Act in respect of that

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## S. 60(7) inserted by No. 128/1993 s. 15.

decision.

(7) Nothing in subsection (4), (5) or (6) affects the validity of a <u>permit</u> to remove or vary a restriction issued under this Act before the commencement of section 15 of the Planning and Environment (Amendment) Act 1993.

We note that not all sections noted above are applicable in the assessment of this application – we simply outline the legislative requirements under the *Planning and Environment Act 1987*. The relevant sections of the *Planning and Environment Act 1987* are discussed in more detail below in this submission.

#### PLANNING CONSIDERATIONS FOR VARIATION OF COVENANT

Before providing an assessment against the provisions of the *Planning and Environment Act 1987*, it is important to set out the facts in the consideration of this request. The facts are as follows:

- Covenant V985892X was registered on the subject site on 12<sup>™</sup> April, 1999 more than 25 years ago
  in which time the area has substantially evolved and has developed extensively.
- The proposal seeks variation of this covenant to allow for a landscaping and signage outcome
  which is consistent with the Cardinia Planning Scheme.
- The subject site currently contains one large warehouse / office building with extensive hardstand.







Accordingly, the following assessment is made with respect to the relevant planning considerations for the variation of the covenant having regard to the abovementioned facts and the proposed wording for the variation of the covenant.

#### Response to Clause 52.02 – Easements, Restrictions and Reserves:

The provisions of this Clause requires the responsible authority to consider the interests of affected people. It is our submission that the proposed variation of the existing covenant will not impact on adjoining or surrounding properties, owners or occupiers or beneficiaries.

The covenant is an outdated control on the land imposed at a time where development controls were limited and the immediate and surrounding area was primarily rural in nature (as illustrated at Figures 8-10 above). The variation of the covenant does not suggest that the land can be used and developed for proposals contrary to existing planning scheme provisions and building regulations. Rather, any future proposal (similar to the current proposal before Council to provide new landscaping and advertising signage) will be based on merit rather than an outdated arbitrary requirement imposed by the original land owner to limit development opportunities at a time where the adjoining and surrounding area was rural in nature.

Accordingly, it is submitted that the proposed variation of the existing covenant will not detrimentally impact the interests of adjoining and surrounding properties, owners, occupiers or beneficiaries, and therefore, a permit should be granted for the variation of the existing covenant.

#### Response Clause 65.01 – Decision Guidelines

The table below provides a response to the decision auidelines as they relate to the proposed covenant variation:

| DECISION GUIDELINES                  | RESPONSE  |  |  |
|--------------------------------------|---|--|--|
| The matters set out in section 60 of | The relevant matters of Section 60 of the Planning and          |  |  |
| the Act:                             | Environment Act 1987 are detailed below in this                 |  |  |
|                                      | submission.   |  |  |
| The Municipal Planning Strategy      | The subject site is in an area used and developed primarily     |  |  |
| and the Planning Policy Framework:   | for industrial / commercial / employment purposes with a        |  |  |
|                                      | range of land uses, lot sizes, building footprints and          |  |  |
|                                      | development outcomes.   |  |  |
|                                      | The proposed variation of the existing covenant will ensure     |  |  |
|                                      | that the land continues to be used and developed for            |  |  |
|                                      | industrial purposes in line with the relevant provisions of the |  |  |

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|                                       | Cardinia Planning Scheme.   |  |  |
|---------------------------------------|---|--|--|
| The purpose of the zone, overlay or   | The subject site is located within an Industrial 1 Zone with                      |  |  |
| other provision:                      | the proposed variation of the covenant not impacting on                           |  |  |
|                                       | the purpose, objectives or requirements of this zone                              |  |  |
|                                       | overlay or other provisions applicable to the site.                               |  |  |
| Any matter required to be             | The variation of the covenant will not impact on any other                        |  |  |
| considered in the zone, overlay or    | provision associated with the applicable zoning of the                            |  |  |
| other provision:                      | subject site.   |  |  |
| The orderly planning of the area      | <ul> <li>The variation of the existing covenant will not prejudice the</li> </ul> |  |  |
|                                       | orderly planning of the area.   |  |  |
|                                       | Any future application (as is the case with the curren                            |  |  |
|                                       | proposal) will be subject to rigorous planning assessments                        |  |  |
|                                       | which take this guideline into account and which will need                        |  |  |
|                                       | to be assessed by Council on the basis of the planning                            |  |  |
|                                       | controls and provisions applicable at the time of such an                         |  |  |
|                                       | application.  |  |  |
| The effect on the amenity of the      | The application proposes the variation of an existing                             |  |  |
| area:                                 | covenant and will not detrimentally impact the amenity of                         |  |  |
|                                       | the area as a result of this application as demonstrated by                       |  |  |
|                                       | the plans illustrating signage and new landscaping which                          |  |  |
|                                       | are consistent with the immediate and surrounding areas                           |  |  |
|                                       | as well as the Cardinia Planning Scheme.  |  |  |
| The proximity of the land to any      | • The subject site is in an industrial area which i                               |  |  |
| public land:                          | characterised by a range of commercials and industrial                            |  |  |
|                                       | built forms and land uses.  |  |  |
|                                       | Variation of the covenant will not impact on any existing                         |  |  |
|                                       | surrounding public lands.   |  |  |
| Factors likely to cause or contribute | The variation of the existing covenant will not cause or                          |  |  |
| to land degradation, salinity or      | contribute to any land degradation, salinity or reduce                            |  |  |
| reduce water quality:                 | water quality.  |  |  |
| Whether the proposed                  | The variation of the existing covenant will have no impact                        |  |  |
| development is designed to            | on the quality of stormwater within or exiting the subject                        |  |  |
| maintain or improve the quality of    | site.   |  |  |
| stormwater within and exiting the     |   |  |  |
| site.                                 |   |  |  |
| The extent and character of native    | The subject site contains some vegetation of varying                              |  |  |





| vegetation and the likelihood of its | species and heights although we note that the proposed      |  |  |
|--------------------------------------|---|--|--|
| destruction.                         | landscape plan will seek to introduce new indigenous        |  |  |
|                                      | species in line with the conditions of the planning permit  |  |  |
|                                      | including provision of suitable planting in areas currently |  |  |
|                                      | unable to be landscaped due to the wording of the           |  |  |
|                                      | existing covenant.  |  |  |
| Whether native vegetation is to be   | Not applicable.   |  |  |
| or can be protected, planted or      |   |  |  |
| allowed to regenerate.               |   |  |  |
| The degree of flood, erosion or fire | The variation of the covenant will not increase the flood,  |  |  |
| hazard associated with the location  | erosion or fire hazards to the subject site or surrounds.   |  |  |
| of the land and the use,             |   |  |  |
| development or management of         |   |  |  |
| the land so as to minimise any such  |   |  |  |
| hazard.                              |   |  |  |
| The adequacy of loading and          | Not applicable as a result of the proposed variation of the |  |  |
| unloading facilities and any         | existing covenant.  |  |  |
| associated amenity, traffic flow and |   |  |  |
| road safety impacts.                 |   |  |  |

#### Response to Relevant Sections of the Planning & Environment Act 1987:

Sections 60(2) and 60(5) of the Act apply to the consideration of any permit application to remove or vary a restrictive covenant made under clause 52.02 of the planning scheme. If a covenant was created on or after 25 June 1991, section 60(2) applies. If the covenant was created before this date, section 60(5) applies.

As Covenant V985892X on the subject land was registered in 1999, section 60(2) of the Planning and Environment Act 1987 is applicable in the consideration of this application. Section 60(2) provides as This copied document is made available for the purpose of the planning process follows:

as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any S. 60(2) inserted by No. 48/1991 s. 61(2)(b). dissemination, distribution or copying of this document is strictly prohibited.

(2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not





more than three months before its making, has consented in writing to the grant of

- financial loss; or (a)
- (b) loss of amenity; or

the permit) will be unlikely to suffer— This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited

- loss arising from change to the character of the neighbourhood; or (c)
- any other material detriment— (d)

as a consequence of the removal or variation of the restriction.

We provide the following comments in response in support of the proposed variation in covenant to the matters to be considered under Section 60 (2) of the Planning and Environment Act 1987:

- A total of twenty-eight (28) properties are beneficiaries of the existing covenant on the land.
- These benefiting properties were part of the original parent title when originally subdivided and the covenant was created.
- All benefiting lots have been developed with a range of built form outcomes, both new and older in construction, with a range of land uses occurring on each of these allotments.
- The proposed variation of the covenant does not seek to detrimentally impact or restrict affect the benefitting properties in any way.
- The variation of the covenant simply seeks to allow the owner of the land to:
  - o Provide an improved landscape outcome along the road frontages of the site subject to approval by Council through suitable landscape plans (as illustrated in the enclosed plans).
  - o Provide signage consistent with adjoining and surrounding properties and as approved by Council in accordance with Clause 52.05 of the Cardinia Planning Scheme (as illustrated in the enclosed plans).
- Ultimately, the proposed variation of the covenant provides for the owner to seek approval from Council to provide improved landscaping and advertising signage outcomes without being restricted by an arbitrary and crude mechanism on title that was adopted at a time when the site and surrounds were primarily rural farmland.
- The covenant variation continues to require the owner to comply with planning scheme provisions at the time any future application may be made and Council would still retain the ultimate control on approval of any future application.
- The variation of the covenant does not seek to remove any third party rights from benefiting parties with respect to future planning applications that may be made beyond the current advertising signage and landscape amendments being sought, rather, it provides a basis where a merits based approach to current planning permit requirements is to dictate the appropriateness of any proposal.







In addition to the above, we provide the following submissions with respect to the matters outlined in Section 60(2) of the Planning and Environment Act 1987 which requires Council to be satisfied that an owner of any land benefited by the covenant will be unlikely to suffer financial loss; or loss of amenity; or loss arising from change to the character of the neighbourhood; or any other material detriment;

- Financial loss: We make the following comments:
  - We do not consider that any benefitting allotment will suffer any financial loss as a result of the proposed signage and landscaping to be adopted through the variation of the covenant.
  - o The application for the installation of new landscaping on the subject site in no way impacts for benefiting allotments in a financial manner. The proposed landscaping will be indigenous in nature and does not block visibility to benefitting allotments or impact on the ability for benefitting allotments to develop or landscape their properties.
  - The application for the installation of new advertising on the subject site utilising a pole structure which has been in place for 25 years and additional signage on the existing building will in no way impact on benefiting allotments in a financial manner. The proposed signage will be nonilluminated and will not block visibility to adjoining benefitting allotments nor cause any potential detriment with respect to their size or location.
- Loss of amenity: We make the following comments:
  - We consider that the installation of new landscaping in line with the submitted plans will indeed improve amenity for the site and adjoining properties. Landscaping has been designed to be low maintenance and provide for a range of indigenous species along the northern and western boundaries of the site as well as adjoining car parking locations. Landscaping will not impact on visibility of benefitting allotments, will not cause amenity impacts given landscaping is set well away from benefiting lots and will not impact on the ability to develop benefitting allotments in their own rights.
  - o The proposed signage will not impact on the amenity of benefiting allotments given:
    - All proposed signs are non-illuminated in nature thereby ensuring no light spill to adjoining properties.
    - The pole sign is existing (notwithstanding Council's views on a lack of previous approval) and the face of this existing structure is to be amended to reflect the approved car sales land use.
    - All remaining signs are minimal in size ion the context of the existing building and their colours and text will not detract from the amenity of the area.
    - No sign proposed impacts on benefitting lot view lines or block benefitting lots existing signage or ability to promote themselves.
- Loss arising from change to the character of the neighbourhood: We make the following comments:
  - o The character of the area is commercial / industrial in nature and the proposed variation to the





- covenant to facilitate improved landscape and signage outcomes will not change this established character with respect to the commercial / industrial nature of the area.
- The land use approved being a car sales business is of a commercial / industrial nature and this will remain as part of the proposed variation.
- o The new landscaping and signage will not change the character of the area and therefore, no loss can be attributed to the variation of the covenant to allow for improved landscaping and advertising signage outcomes on the site.
- Any other material detriment: As noted previously, the proposed variation of the covenant is simply
  to facilitate improved landscape outcomes on the site and to allow for the installation of advertising
  signage which is consistent with the Cardinia Planning Scheme. We do not consider that either of
  these matters as illustrated on the enclosed plans will cause any detriment to any benefitting
  allotment.

Accordingly, given the above comments, it is our submission that the proposed variation of covenant:

- Will not result in a financial loss for beneficiaries:
- Will not result in a loss of amenity for beneficiaries;
- Will not result in a loss arising from change to the character of the neighbourhood for beneficiaries;
   and
- · Will not result in any other material detriment for beneficiaries.

Given the above assessment and comments with respect to the considerations under Section 60(2) as well as Clause 52.02, it is submitted that the proposed variation of the existing covenant will not detrimentally impact (including perceived detriment) on the amenity of the beneficiaries of the covenant in any way. It is therefore our opinion that the matters under Section 60(2) are subsequently satisfied. Furthermore, based on the abovementioned assessment, we are of the opinion that there is no detriment caused to any other property in the immediate vicinity of the subject site by the proposed variation to the existing covenant.

Accordingly, it is submitted that a permit should be granted for the variation of the said covenant.

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#### APPENDIX B: ADVERTISING SIGNAGE ASSESSMENT

#### **CLAUSE 52.05: SIGNS**

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- To regulate the development of land for signs and associated structures.
- To ensure signs are compatible with the amenity and visual appearance of an area, including the existing or desired future character.
- To ensure signs do not contribute to excessive visual clutter or visual disorder.
- To ensure that signs do not cause loss of amenity or adversely affect the natural or built environment or the safety, appearance or efficiency of a road.

Pursuant to Clause 52.05-2 (Requirements), a permit is required to erect signage if the proposed signage is identified as a Section 2 permit required sign. The Industrial 1 Zone is identified as a Category 2 – Office and Industrial area with respect to signage provisions.

Clause 52.05-13 - Category 2 - Office and Industrial areas is identified as having 'Low Limitation' with the purpose identified 'To provide for adequate identification signs and signs that are appropriate to office and industrial areas.'

The proposed signs are illustrated on the development plans with the table below providing a snapshot of the range of advertising signage proposed as part of this application:

| SIGN | DESCRIPTION, DIMENSIONS & TEXT   | PLANNING SCHEME DEFINITION   |
|------|--|------------------------------|
| 1    | <ul> <li>Non-illuminated single sided 2.7 metres wide by 1.8 metres high, 4.86 square metres in size.</li> <li>Located above verandah on north side of existing building.</li> <li>Text 'South East Commercials 4 x 4 Specialist'</li> </ul>                   | Business Identification Sign |
| 2    | <ul> <li>Non-illuminated single sided 1.9 metres wide by 1.9 metres high, 3.61 square metres in size.</li> <li>Located on southern wall of existing building 2.5 metres above ground level.</li> <li>Text 'South East Commercials 4 x 4 Specialist'</li> </ul> | Business Identification Sign |
| 3    | <ul> <li>Non-illuminated single sided 2.7 metres wide by 1.8<br/>metres high, 4.86 square metres in size.</li> </ul>   | Business Identification Sign |





| SIGN | DESCRIPTION, DIMENSIONS & TEXT  | PLANNING SCHEME DEFINITION   |
|------|---|------------------------------|
|      | <ul> <li>Located on eastern wall of existing building 2.6 metres above ground level.</li> <li>Text 'South East Commercials 4 x 4 Specialist'</li> </ul>   |                              |
| 4    | <ul> <li>Non-illuminated single sided 9.29 metres wide by 0.9 metres high, 8.36 square metres in size.</li> <li>Located on canopy of western façade of existing building.</li> <li>Text 'South East Commercials 4 x 4 Specialist'</li> </ul>  | Business Identification Sign |
| 5    | <ul> <li>Non-illuminated double sided 3.7 metres wide by 1.6 metres high, 5.92 square metres in size.</li> <li>Located in north-west corner of the site on a pole with a clearance of 4.4 metres under and a maximum height of 6 metres.</li> <li>Text 'South East Commercials 4 x 4 Specialist'</li> </ul> | Pole Sign                    |

The location of the proposed advertising signage are illustrated in the image below at figure 11 being an extract of the submitted plans:

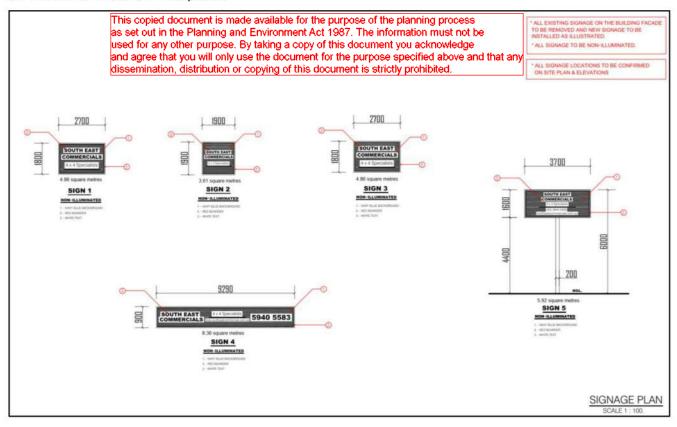


Figure 11: Extract of proposed signage.





We make the following comments with respect to the proposed advertising signage having regard to the policy provisions of Clause 52.05 of the Cardinia Planning Scheme:

- Clause 52.05-12 Category 2 Office and Industrial identifies each of the proposed signs as Section 1 – Permit Not Required. However, this clause attaches a condition which states: The total display area of all signs to each premises must not exceed 8 sqm. This does not include a direction sign. Accordingly, as the total area of all signage proposed exceeds 8 square metres, a permit is triggered for all proposed signs.
- We have noted that signs 1-4 are defined a 'Business Identification Signs' in line with the signage definitions of Clause 73.02. We do not that sign 1 does not meet the definition of 'Above Verandah Sign' as it does not project more than 0.3 metres outside of the site. Sign 5 is appropriately defined as a 'Pole Sign' as it is on a pole not forming part of the building, is no more than 7 metres high, has an advertising area of under 6 square metres and has a clearance of at lease 2.7 metres under it.
- We make the following comments in response to the proposed signage in response to the provisions of Clause 22.09 and Clause 52.05:
  - o Sign 1-4 are proposed to be relocated from the operators current premises as illustrated in the images below:





Figures 12-13: Existing signage to be relocated from operators current premises to subject site.

- Signs 1-4 are minimal in size in the context of the size of the existing building.
- One (1) sign is provided per building façade ensuring that advertising signage is not visually intrusive.
- None of the proposed signage is greater in height than the existing building height.
- All signage is proposed to be non-illuminated.
- o The proposed pole sign is an existing structure (notwithstanding Council's assertions that it is an





- illegal sign) and has been on the site in its current location for in excess of 20 years.
- o The pole sign is non-illuminated and is entirely located within the subject site.
- o As evidenced by the images provided below, the pole sign does not impact on the operation of Livestock Way or Healesville-Koo Wee Rup Road.







Figures 14-16: Images of existing pole sign in north-west corner of the site.

o The pole sign is not dissimilar to other pole / pylon signs in the immediate vicinity of the subject





site including the pylon signs from the adjoining property to the south being the BP Service Station as well as other premises to the north of the site being Kennards hire, McDonalds, Bunnings, 7/11 all within industrial 1 Zones and all located along the Transport Zone 2.









Figures 17-20: Images of similar pylon signs.

- o The extent of signage proposed is submitted to be an appropriate response to the provisions of Clause 52.05, in that it provides advertising signage commensurate to the proposed land use and built form of the proposal without being over bearing, cluttered or creating amenity implications or traffic safety implications.
- o The business identification signage proposed is largely limited to business names and logos on the





facia of the existing building with the existing pole sign to be provided with a new text.

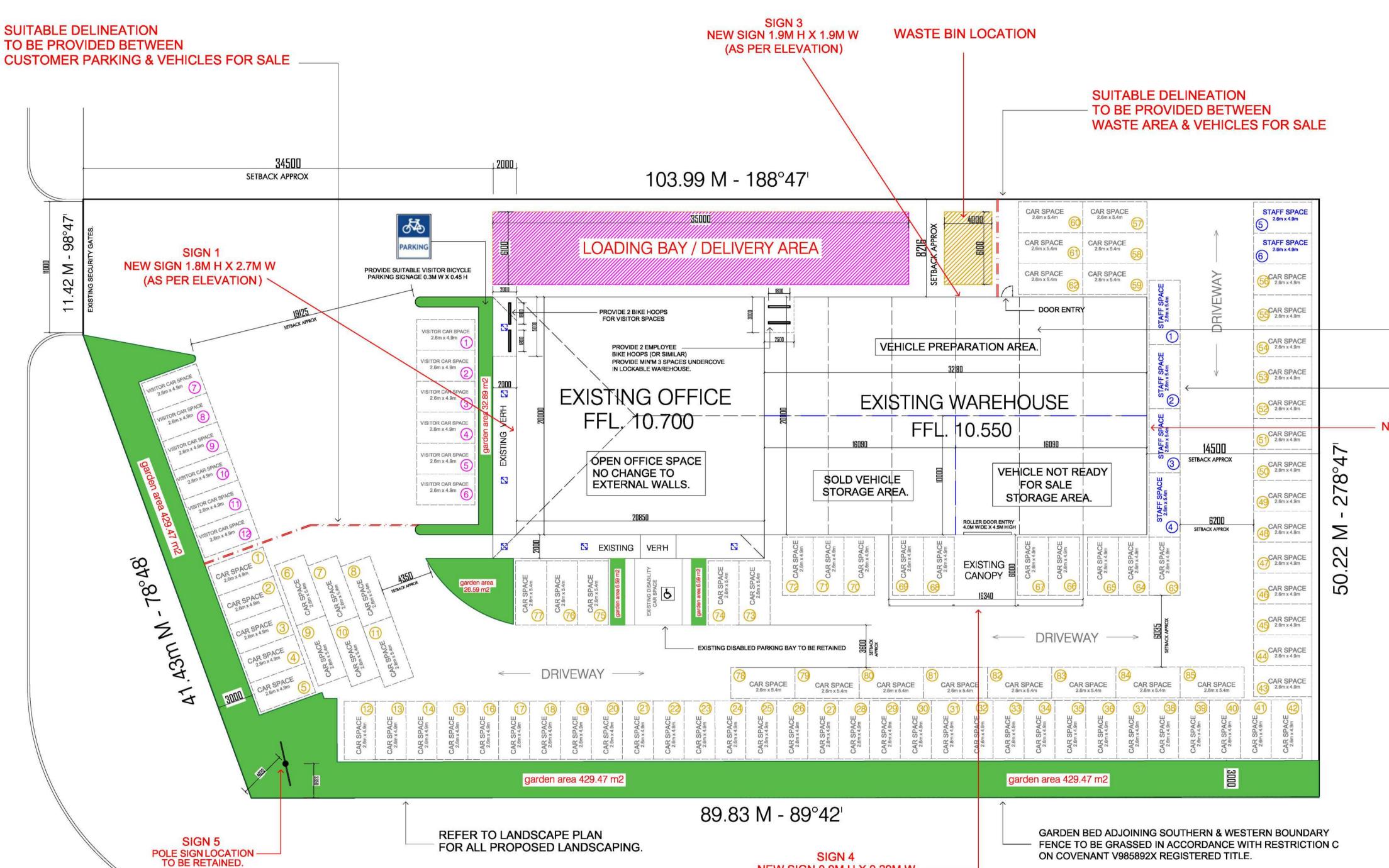
Each of the signs form part of an integrated and coordinated sign package, providing the land
 use with appropriate opportunity to identify itself, without resulting in visual clutter.

For these reasons and subject to approval of the variation of covenant, we submit that the signs provide an appropriate response to Clause 22.09 and the provisions of Clause 52.05 of the Cardinia Planning Scheme.

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# HEALESVILLE - KOO WEE RUP ROAD

\*MAX'M SIZED VEHICLE'S ALLOWED ON SITE: CAR TRANSPORT TRAILER WITH MAX'M 19.0M LENGTH\*

\* ALL EXISTING SIGNAGE ON THE BUILDING FACADE TO BE REMOVED AND NEW SIGNAGE TO BE INSTALLED AS ILLUSTRATED.

\* ALL SIGNAGE TO BE NON-ILLUMINATED.

NEW SIGN 0.9M H X 9.29M W (AS PER ELEVATION)

\* NO EXTERNAL BUILDINGS & WORKS ARE PROPOSED



- SUITABLE UNDER VERANDAH LIGHTING LOCATIONS.





- WASTE BIN AREA LOCATION



- LOADING BAY / DELIVERY LOCATION

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PROVIDE INTERNAL LIGHTING THROUGHOUT WAREHOUSE BUILDING TO PROVIDE SUFFICIENT ILLUMINATION TO BICYCLE PARKING AREA.

PARKING FOR STAFF WHO UTILIZE VEHICLES AVAILABLE FOR SALE FOR DAILY TRANSPORT.

SIGN 2 NEW SIGN 1.9M H X 1.9M W (AS PER ELEVATION)

# SITE NOTES

- \* SITE AREA: 4955 M2
- \* TOTAL LANDSCAPE AREA: 502.13 M2 / 10.13%
- \*TOTAL BUILDING AREA: 1244 M2 / 25.10%
- OFFICE / VERH AREA 502.70 M2 / 10.14%
- WAREHOUSE / CANOPY AREA 741.30 M2 / 14.96%







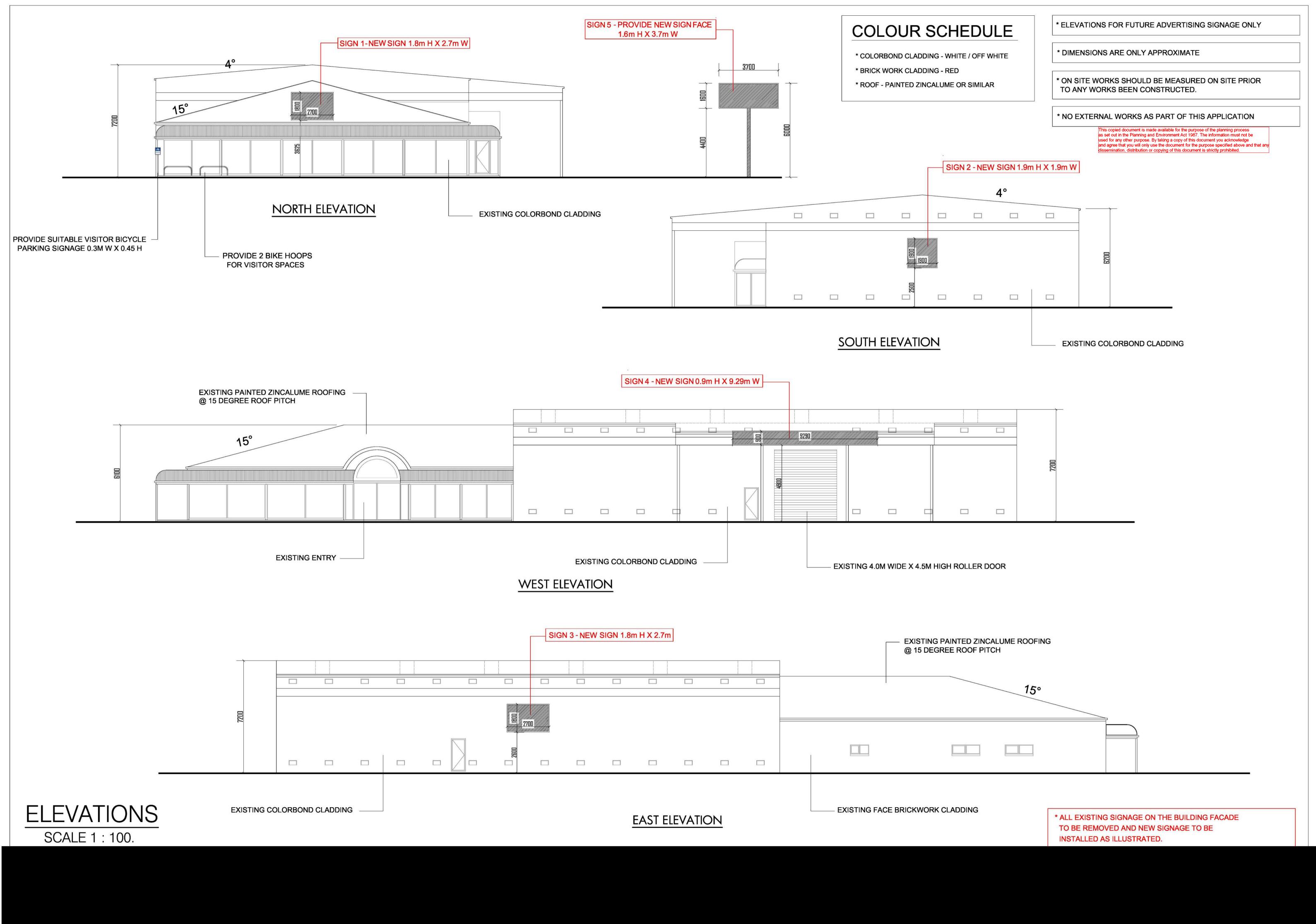
ON PERMIT NO: T240180

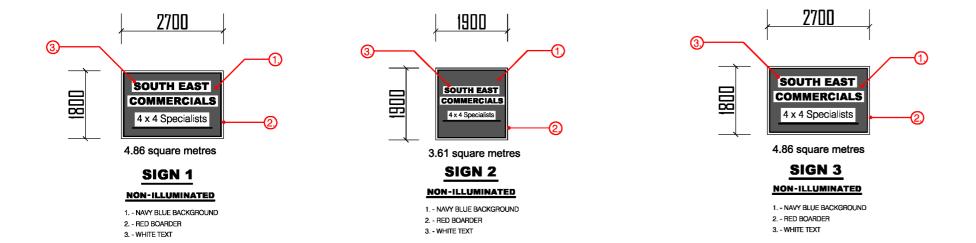
- MAXIMUM SIZED VEHICLE ALLOWED ON SITE: CAR TRANSPORT TRAILER WITH MAXIMUM 19 METER LENGTH.

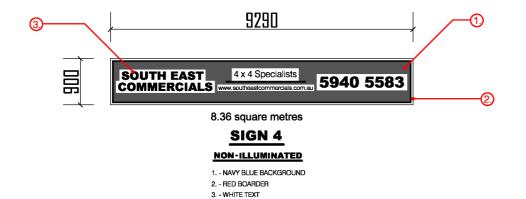
\*NOTE: CONDITION 6. ON PERMIT NO: T240180

- A MAX'M OF 91 VEHICLES FOR SALE OR AWAITING DELIVERY OR PICK UP MAY BE ON SITE AT ANY ONE TIME.

\*REFER TO LANDSCAPE PLAN FOR ALL PROPOSED LANDSCAPING.





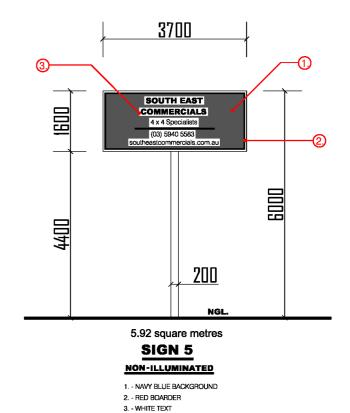


\* ALL EXISTING SIGNAGE ON THE BUILDING FACADE TO BE REMOVED AND NEW SIGNAGE TO BE INSTALLED AS ILLUSTRATED.

\* ALL SIGNAGE TO BE NON-ILLUMINATED.

\* ALL SIGNAGE LOCATIONS TO BE CONFIRMED ON SITE PLAN & ELEVATIONS

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SIGNAGE PLAN SCALE 1 : 100.

