

# **1 AMENDED PERMIT - THE DEVELOPMENT OF 5 DWELLINGS AT 5 AND 6 SPENCER PLACE PAKENHAM**

FILE REFERENCE INT1652883

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Isla English

## **RECOMMENDATION**

That a Notice of Decision to Grant Amended Planning Permit T130758 - 2 be issued for the development of the land for the purpose of five (5) dwellings, generally in accordance with the approved plans at 5 Spencer Place, Pakenham subject to the conditions attached to this report.

## **Attachments**

1	Locality plan	1 Page
2	Development plans	4 Pages
3	Copies of objections circulated to Councillors only	12 Pages

## **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T130758-2
APPLICANT:	Studio Three
LAND:	Lot 12 and Lot 13 PS545653, 5 and 6 Spencer Place Pakenham.
PROPOSAL:	Amended planning permit - the development of land for five (5) dwellings
PLANNING CONTROLS:	General Residential 1 Zone Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , by sending notices to adjoining land owners and occupiers. Council has received 8 objections from 5 people to date.
KEY PLANNING CONSIDERATIONS:	Amenity impact
RECOMMENDATION:	Notice of Decision

## **BACKGROUND:**

Planning Permit T130758 was issued on July 14 2014 under delegation, for the development of five dwellings on the site. A Secondary Consent\* applications was approved by Council in October 2014 that reduced the floor level of dwelling four (4) and five (5) and increased the floor level of dwelling one (1) and two (2).

On the 17 November 2014, concern was raised by a nearby resident at the extent of the works been undertaken on the site. An investigation by Council Compliance Officers was undertaken which revealed extensive fill had been placed on the site. This resulted in the raise of ground level, which in turn raised the finished floor level of three of the five dwellings being constructed up to 1 metre.

No building or works has been undertaken on the site since December 2014. The applicant applied under Secondary Consent for approval; however Council Officers considered that the amendment could not be undertaken as Secondary Consent and directed the applicant to apply for an amended planning permit.

A report was prepared for Council to determine at last October's Town Planning Meeting however the applicant requested it be withdrawn and a new solution sought. There have been onsite meetings between consultants and neighbours over Christmas, with an aim at addressing neighbours issues to the built form of the units.

In February a new application was received to amend the plans to approve the development site with a final change received in June 2016. Following the third set of plans advertised, in less than 12 months, Council officers are able to present this application to Council for determination.

*\*Secondary Consent is the approval of an amendment without having to go through the assessment process (referrals, advertising etc.). It is undertaken for minor changes to proposals or where a small mistake has been made on a planning permit.*

## **SUBJECT SITE**

The main characteristic of the surrounding area is residential. Spencer Place is located on the Manna Gum Estate ridgeline, parallel with Army Road. Dwellings 1, 2 and 3 are positioned to view across Kenney Creek and onto the Pakenham Ridge bushland reserve, parallel to Pakenham Road, with view over towards Westernport Bay.

Sweet Gum Court is located west of the subject site, with dwellings built into the hill side, below natural ground level of the subject site. As a result, the dwellings in Sweet Gum have large excavated areas with retaining walls built along the rear property boundary with the neighbouring fence built two to three meters above their amended ground level and open space areas.

The site is located on the northern side of Spencer place in the bowl of the court. The site consists of two lots with two crossovers located on the southern side of the subject site. There is a 2 metre wide sewerage easement along the southern boundary of Lot 12.

The site topography originally consisted of over a 2 metre fall over the site falling from north east to south west. It has been modified and has been built up resulting in minimal fall over the land.

The site currently contains five dwellings partially constructed. The frames are built with some brick work having commenced and the rooves are on. Council's building department issued a stop work notice on 23 December 2014 when it came to Council's attention the works being undertaken were not in accordance with permit issued.

### *Site fill*

A significant site fill has occurred on the site, which was not approved. This raised the finished floor levels by 1 metre for two of the five dwellings and 500mm for dwelling 3 which significantly impacts the amenity of the adjoining residences.

Whilst excavation and fill are not planning triggers under the planning scheme, the development of retaining walls, the development of the dwellings and the finished floor levels are planning considerations.

A large retaining wall 1.2m in height and 53m long has been built along the western boundary wall. This has been undertaken without consent with land fill added to raise the ground level.

Dwelling 1 has been built with a finished floor level of 81.45m, an increase of 1 metre for the dwelling (approved 80.45m). The natural ground level is 79.41m. The residents to the west have a ground level of 77.22m, with land along the rear of the property terraced along the western boundary.

Dwelling 2 has been built with a finished floor level of 81.450m, an increase of 450mm for the dwelling (approved 81.00m) and an increase of 1 metre for the garage (80.450m). The natural ground level is 80.34m.

The residents to the west have a finished floor of 100m. The finished floor level of the dwelling is 102.06m.

Dwelling 3 has been built with a finished floor level of 81.45m, an increase of 450mm for the dwelling (approved 81.00). The natural ground level is 80.34m.

The residents to the west have a ground level of 77.93m, which has been excavated into terraces along the western boundary.

Dwelling 4 and 5 has been built with a finished floor level of 81.75m, an increase from 81.50m.

#### *Dwelling form and materials*

All new dwellings are to be of single storey construction, with brick walls and pitched concrete tiled roof. All dwellings comprises of three bedrooms, two bathrooms, kitchen, family and meals areas, laundry and double car garages.

The dwellings have a general wall height of 2.4-2.5 metres with an overall height of 5 metres.

#### *Access and parking*

Access to the site will be via a shared access way, which will run in between the dwellings. The driveway will be a minimum of 3 metres width and will allow for landscaping works directly along the northern boundary.

Each dwelling is provided with a double garage with internal dimensions of 5.5 metres by 6 metres.

#### *Fencing*

There is an existing fence along the western, southern and eastern boundaries of the site and height is varying from 1.65 metres to 1.8 metres. No front fencing is proposed as part of this development. All internal fencing between each dwelling is to be approximately 1.8 metres in height and will be constructed as timber fences.

The design, siting and form of the dwellings have already been approved under a Planning Permit.

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## PROPOSAL

An application has been received to approve amended plans for the development of five dwellings.

As previously stated, there has been significant site fill that has occurred on the land which was not approved. This raised the finished floor levels by 1 metre for two of the five dwellings and 500mm for dwelling 3 which significantly impacts the amenity of the adjoining residences.

The changes proposed include the removal of the soil from the land and the removal of the 53m retaining wall to the west side of the property or rear of Dwellings 1 to 3.

Approximately 159m<sup>3</sup> to 238m<sup>3</sup> of soil is proposed to be removed from the rear of dwellings 1, 2 and 3.

By reducing current ground levels to the bottom of the existing fence line, the overlooking issues are reduced, which was a major concern.

Currently the units sit on top of the existing fence between houses in Sweet Gum Court. Dwellings in Sweet Gum Court already have rear boundary fence/wall heights of approximately 3.65m. If the dirt is not removed from the site, a new fence will be required to be built on top of the existing fence to mitigate overlooking by residents. This will have resulted in residences of Sweet Gum Court rear back fences at an approximate height of 5.45m

## PLANNING SCHEME PROVISIONS

### State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.02-1 - Supply of urban land
- Clause 15.01-1 – Urban design
- Clause 15.01-2 – Urban design principles
- Clause 15.01-5 – Cultural identity and neighbourhood character
- Clause 16.01-1 – Integrated housing
- Clause 16.01-2 – Location of residential housing
- Clause 16.01-4 – Housing Diversity
- Clause 16.01-5 – Housing affordability

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01-4 – Strategic vision
- Clause 21.01-5 – Strategic framework plan
- Clause 21.03-1 – Housing
- Clause 21.03-3 – Townships
- Clause 21.06-1 – Design and built form

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**Relevant particular/general provisions and relevant incorporated or reference documents**

The relevant provisions/ documents are:

- Clause 52.06 Car parking
- Clause 55 Two or more dwellings on a lot and residential buildings
- Clause 65 The decision guidelines

**Zone**

The land is subject to the General Residential 1 Zone

**Overlays**

The land is subject to the following overlays:

- Development Contribution Overlay - Schedule 1

**PLANNING PERMIT TRIGGERS**

The proposal for development of land for five dwellings requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.08-4 of the General Residential Zone planning permit is required for the development of land for five dwellings

**PUBLIC NOTIFICATION**

The application has been advertised twice pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.

The notification has been carried out correctly, and Council has received 8 objections from 5 separate owners of adjoining properties.

The key issues that were raised in the objections are:

- *Infringement of privacy*
- *Surveillance*
- *Devaluating of property*
- *Safety at the retaining wall and fencing structure been built*
- *Safety*
- *Views*
- *Out of character – high fence*
- *Breach of the building Act*
- *Drainage/flooding concerns*

**REFERRALS**

No external referrals were required

## DISCUSSION

The increase of the finished floor level has had a marked impact to the adjoining residents, particularly the owners and occupiers of Sweet Gum Court. Plans endorsed showed a finished floor level of 80.450mm for dwellings 1 and 2 which showed an increase of a metre from the approved plan. Dwelling 3 has been built up by half a metre.

This has resulted in these three dwellings been built up to the height of the existing boundary fence. Originally the applicant wanted to construct a 1.8m high fence to obscure views however this further exacerbates the problem. Residents along Sweet Gum Court have rear fencing approximately 3.5m to 4m in height, constructing further fencing would result in an overall height of 5.5m.

The applicant is now proposing to remove soil to the rear of the three dwellings to reduce the need for a new fence on top of an existing fence to the rear of the property boundary.

This is not an ideal solution; however it does reduce the impact on residents of Sweet Gum Court.

### **Clause 55 Two or More Dwellings on a Lot and Residential Buildings**

Whilst many of the requirements of clause 55 are able to be met, it is the impact of the finished floor levels that impact on the amenity of neighbouring residents.

#### **Clause 55.03-2 Building Height**

The development does not adequately address Clause 55.03-2 Building Height. The objective is to ensure that the height of buildings respects the existing or preferred neighbourhood character. Whilst the development is single storey, the result of the land fill has been to the detriment to the adjoining residents

The design guidelines require Council to consider:

- The effect of the slope of the site on the height of the building.
- The relationship between the proposed building height and the height of existing adjacent buildings.
- The visual impact of the building when viewed from the street and from adjoining properties.

Whilst the development is single storey, the result of the land fill has been to the detriment of the adjoining residents. However, by removing the dirt from the rear yards of the dwellings, it will improve the impact onto the neighbouring properties.

#### **Clause 55.04-6 Overlooking**

Clause 55.04-6 Overlooking objective requires a development to limit views into existing secluded private open space and habitable room windows.

As the dwellings have been built to such a significant level compared to the neighbours to the west, this is difficult to resolve. If additional fencing is located along the boundary line it creates a huge fence, reminisce of the acoustic fencing along the Pakenham By pass.

The removal of the soil from the dwellings along the fence line does reduce the direct overlooking. Council would require appropriate conditions to ensure the direct removed will be to a certain level.

Another mechanism that would assist overlooking is to require obscure glazing on windows to restrict overlooking into neighbouring properties, and tree planting along fence lines.

### Objector concerns

The objectors have highlighted a number of concerns with the development

- Infringement of privacy
- Surveillance
- Devaluating of property
- Safety at the retaining wall and fencing structure been built
- Safety
- Views
- Out of character – high fence
- Breach of the building Act
- Infringement of privacy / Surveillance/ Safety

*By removing the soil from the site to its approved site levels, the impacts on adjoining properties is reduced. The open space areas can be suitably landscaped and bedroom windows can be treated to reduce overlooking.*

Concern was raised with the stability of the boundary fence. If the fence needs to be removed, an amended permit condition has been placed on the permit requesting a building permit to be issued.

- Devaluating of property

*The protection of property values is not supported by VCAT as a planning consideration*

- Safety at the retaining wall and fencing structure been built

*Any approval granted will require building permits to be issued to ensure the fencing and retaining wall are structurally sound. The retaining wall is to be removed as part of the removal of the soil and the fence will be repaired or replaced*

- Views

*Neighbouring properties have objected to views being obscured and requested to rooves being altered. This is not considered appropriate as the protection of views is not supported by VCAT as a planning consideration.*

- Out of character – high fence

*Council does not support the development of an additional fence on a fence as a solution. It is considered to be intrusive and detrimental to the adjoining property owners who are the ones impacted by it. The applicant has agreed to the remove the soil, reducing the need for a second fence.*

- Breach of the Building Act

*There are outstanding issues with the Councils building department. Once the planning application is determined, then building actions can be resolved*



- Drainage/Flooding

*There have been reports of flooding in people's backyards as a result of the retaining wall. The retaining wall is to be removed from the premises. There is an approved stormwater detention system built on the property as per permit conditions to deal with storm water on the site.*

## CONCLUSION

The increase of the finished floor level has had a marked impact to the adjoining residents, particularly the owners and occupiers of Sweet Gum Court. Plans endorsed allowed a finished floor level of 80.450mm, what has been built gives a finished floor level of 81.450, an increase of a metre.

This has resulted in the dwellings been built in excess of the existing boundary fence. As the fence is 1.65m in height, residents at number 5, 7, 9 and 11 Sweet Gum will have rear boundary fences totalling over 4m in height.

The fencing will result in an unacceptable intrusion for the residents. Council is supportive of residential developments such as this application; however it must not be approved at the expense to adjoin property owners.

It is consider that the removal of soil, the requirement of obscure glazing on windows and landscaping along the rear of the fence (proposed condition 1) will allow this development to occur without detriment to neighbouring properties

## CONDITIONS

1. Before the works continue on site, amended 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 submitted with the application* but modified to show:
  - a) An amended landscape plans from a registered landscape architect demonstrating suitable landscape treatments for the rear yards of all dwellings. It must be shown suitable plant screening in light of the topography of the site.
    - i. Details of surface finishes of pathways and driveways.
    - ii. 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.
    - iii. Landscaping and planting within all open areas of the subject land.
  - b) Place appropriate measures to reduce overlooking from bedroom 2 and 3 windows in dwelling 1 and 2 and in bedroom 3 of dwelling 3. This can be done either by having fixed, obscure glazing in any part of the window below 1.7 metre above floor level or have permanently fixed external screens to at least 1.7 metres above floor level and be no more than 25 per cent transparent.
2. The layout of the site and the size of the proposed buildings and works, as shown on the endorsed plan/s, must not be altered or modified without the written consent of the Responsible Authority.



3. Once the development has commenced it must be continued and completed to the satisfaction of the Responsible Authority.
4. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority and used for no other purpose. Any dead, diseased or damaged plants are to be replaced.
5. Before the development is occupied, all proposed areas set aside on the approved plan/s for access, circulation and car parking must be constructed with concrete, asphalt or other approved hard surfacing material, drained and the parking areas delineated to the satisfaction of the Responsible Authority. Once constructed, these areas must be maintained to the satisfaction of the Responsible Authority.
6. Before the development is occupied any redundant existing vehicle crossing must be removed and the nature strip and *kerb and channel* reinstated at the cost of the owner and to the satisfaction of the Responsible Authority.
7. Stormwater must not be discharged from the subject land other than by means of an underground pipe drain discharged to an outlet in the street or to an underground pipe drain to the satisfaction of the Responsible Authority.
8. Stormwater works must be provided on the subject land so as to prevent overflows onto adjacent properties.
9. Earthworks must be undertaken in a manner that minimises soil erosion. Exposed areas of soil must be stabilised to prevent soil erosion. The time for which soil remains exposed and unestablished must be minimised to the satisfaction of the Responsible Authority.
10. Before the development starts, drainage plans must be submitted to and approved by the Responsible Authority. The plans must show the provision of a stormwater detention system. The stormwater detention system will become the responsibility of the property owner or body corporate to maintain to the satisfaction of the Responsible Authority.

Note: As the development has an impervious ratio greater than 35%, the developer shall engage the services of a suitably experienced Engineer to design a stormwater detention system that will reduce the intensity of the storm water discharge entering Council's drainage system, i.e.: a detention system. The storm water detention system shall provide for the same five (5) year ARI peak discharge as that for a standard house lot with no storm water detention.

A standard house lot is assumed to have a fraction impervious area of 35%. Calculations and a plan shall be submitted to Council for approval prior to construction. The storm water detention system must be constructed prior to the occupation of the proposed development.

11. The development approved by this permit must not be occupied until the following works have been completed to the satisfaction of the Responsible Authority:
  - a) The landscaping works shown on the endorsed plans must be carried out and completed;
  - b) The areas set aside on the endorsed plan/s for access and car parks have been constructed, sealed and drained;
  - c) The construction of the stormwater detention system, if required;
  - d) The development is provided with an appropriate drainage connection point and connected to an underground drain;
  - e) The premises are connected to a reticulated sewerage system of a sewerage authority;

- f) Provision of power and telephone lines to all new dwellings must be placed underground from the main point of service supplied by the relevant authority outside the boundaries of the subject land.
  - g) A bin storage area must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood to the satisfaction of the Responsible Authority.
  - h) A mail box must be provided to the satisfaction of the Responsible Authority and Australia Post.
  - i) A clothesline must be provided for each dwelling and must be located so as not to be detrimental to the visual amenity of the neighbourhood to the satisfaction of the Responsible Authority.
  - j) Lighting must be provided near the front entrance of each dwelling to the satisfaction of the Responsible Authority.
12. The exterior colour and cladding of the development must not result in any adverse visual impact on the environment of the area and all external cladding and trim of the building, including the roof, must be of a non-reflective nature.
13. All pipes, fixtures, fittings and vents servicing any building on the subject land must be concealed in service ducts or otherwise hidden from view to the satisfaction of the Responsible Authority.
14. The site must be so ordered and maintained as not to prejudicially affect the amenity of the locality by reason of appearance.
15. All wastewater from the proposed dwellings must be discharged into the reticulated sewerage system to the satisfaction of the Responsible Authority.
16. Before an occupancy permit is approved, a survey plan must be prepared by a registered surveyor demonstrating the ground levels of public open space areas for dwellings 1, 2 and 3 are in accordance with the endorsed plans
17. If the western property boundary fence between dwellings 1 to 3 and properties at 5, 7, 9 and 11 Sweet Gum Court is damaged due to the removal of the retaining wall or works undertaken to reinstate the land, the developer must replace the fence at his cost. The replacement fence must be approved by a building surveyor to ensure its safety for residents in Sweet Gum Court

**Expiry of Permit:**

This permit will expire if one of the following circumstances applies:

- a) The development is not started within **two (2) years** of the date of this permit.
- b) The development is not completed within **four (4) years** of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing in accordance with Section 69 of the *Planning and Environment Act 1987*.

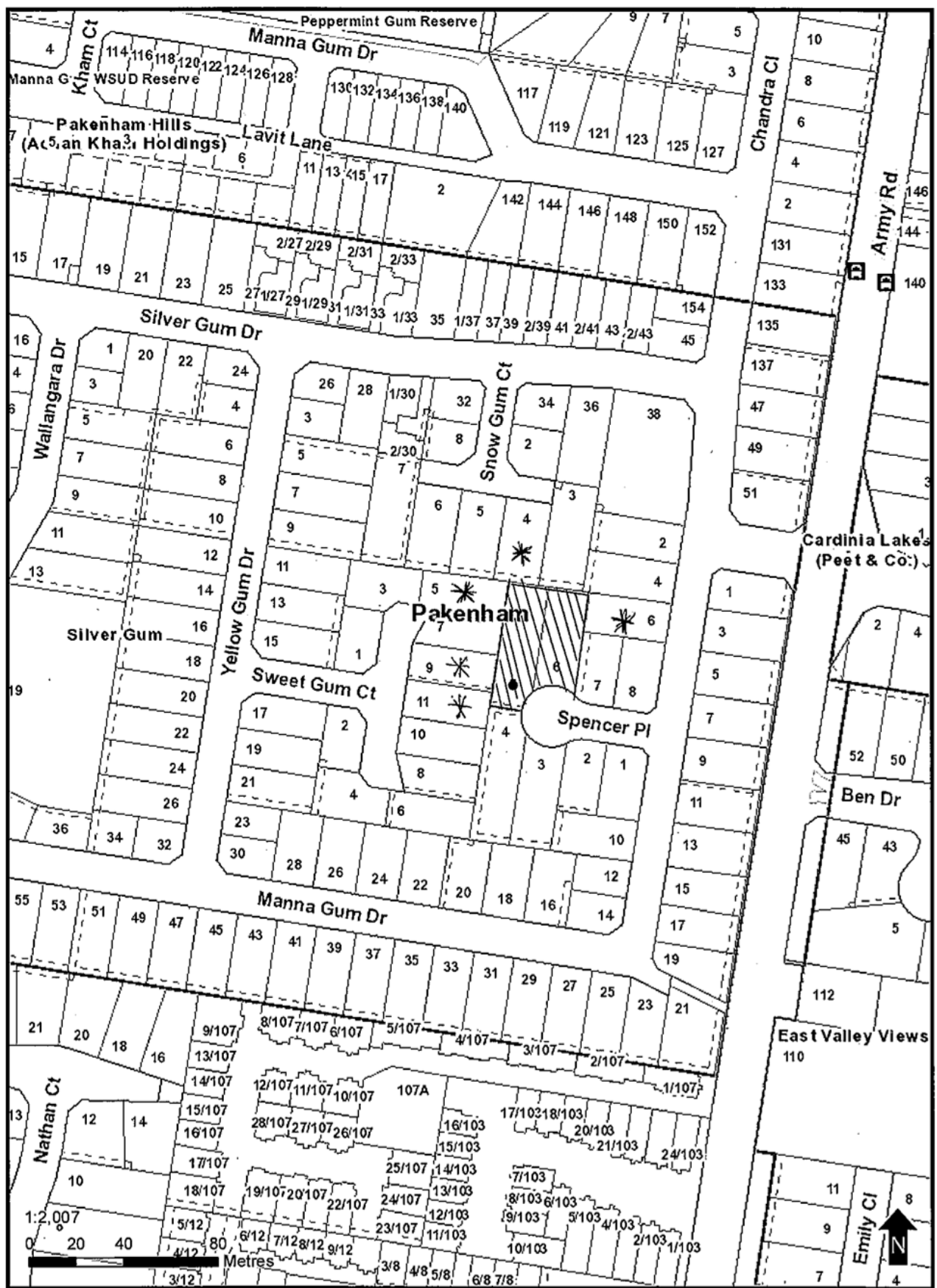
**Notes/Footnotes**

A Building Permit may be required for this development. To obtain a building permit you will need to contact a registered building surveyor.

A 'Vehicle Crossing Permit' must be obtained from Council prior to the commencement of any works associated with the proposed vehicle crossing.

Date amended:	What has been amended?	Responsible Authority
1 August 2016	Renumber conditions 1 to 15, include a new condition 1 and add condition 16 and 17	Cardinia Shire Council

## 5 &amp; 6 Spencer Pl, Pakenham



Data Source: State &amp; Local Government. © CARDINIA SHIRE COUNCIL

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