

6.1.5 Two Lot Subdivision at Lot AA PS814723U, Cotswold Crescent, Officer VIC 3809

File Reference: T200214
Responsible GM: Tracey Parker
Author: Meghan Ablett

Recommendation(s)

That Council issue a Notice of Decision to Refuse to Grant Planning Permit T200214 for two lot subdivision at Cotswold Crescent, Officer VIC 3809 on the following grounds:

1. The proposal is contrary to the strategies of Clause 15.03-1S - Heritage Conservation as it does not ensure an appropriate setting and context for the heritage place is maintained or enhanced and does not support the adaptive reuse of the heritage buildings.
2. The proposal is contrary to the Purpose and Decision Guidelines of Clause 43.01 - Heritage Overlay as the subdivision does not conserve and enhance the significance of the heritage place and will adversely affect the significance of the heritage place.
3. The proposal is contrary to the Planning and Design Guidelines for Image and Character (Table 5, CA3) in the Officer Precinct Structure Plan and the subdivision does not:
 - a) Integrate heritage sites with adjacent subdivision design.
 - b) Ensure view lines to the front of the heritage buildings from existing roads is maintained.

Attachments

1. Locality Map [6.1.5.1 - 1 page]
2. Plans Assessed [6.1.5.2 - 3 pages]

Executive Summary

APPLICATION NO.:	T200214
APPLICANT:	Timbertop East Pty Ltd C/- Veris Australia
LAND:	Cotswold Crescent, Officer VIC 3809
PROPOSAL:	Two lot subdivision
PLANNING CONTROLS:	Clause 37.07 - Urban Growth Zone – Schedule 3 Clause 32.08 - Applied Zone – General Residential Zone

	<p>Clause 52.29 - Land Adjacent to a Road Zone Category 1</p> <p>Clause 45.06 - Development Contributions Plan Overlay – Schedule 4</p> <p>Clause 43.01 - Heritage Overlay - HO104</p> <p>Officer Precinct Structure Plan</p> <p>Clause 21 – Municipal Strategic Statement</p> <p>Clause 15.01-3S – Subdivision Design</p> <p>Clause 15.03-1S – Heritage Conservation</p> <p>Clause 56 – Residential Subdivision</p> <p>Clause 65 - Decision Guidelines</p>
NOTIFICATION & OBJECTIONS:	Notice of the application was not given.
KEY PLANNING CONSIDERATIONS:	<p>Compliance with Planning Policy</p> <p>Appropriateness of the proposed subdivision</p> <p>Impact on existing heritage elements</p>
RECOMMENDATION:	Notice of Decision to Refuse to Grant Planning Permit T200214 on the grounds outlined by this report

Background

The James Hicks Pottery site covered by the Heritage Overlay (HO104) contains the brick kiln, chimney and clay pit. These interrelated heritage elements have historical significance for their association with the Hicks family and the origins and development of the important district brick, pipe and pottery industries, dating back to the 1880s.

An aerial image of James Hicks Pty Ltd Pottery showing the clay pit/dam, kiln and chimney (taken from the draft Conservation Management Plan) is shown below:



The Officer Precinct Structure Plan (the PSP) identifies the brick kiln, chimney and clay pit as having regional significance. In March 2019, a nomination for state significance was lodged with Heritage Victoria. This application is under review.

The subject site has had various planning permits and applications which are listed below:

- Planning Permit T170233 for the Use of the land for a restaurant and alteration of access from a Road Zone Category 1, was issued on 14 September 2017. The permit has been extended and the use must commence prior to 14 September 2023. Twenty seven (27) car parking spaces were permitted.
- Planning Permit T170128 for Buildings and works including demolition of part of a building (associated structure) and construction of a freestanding wall in a Heritage Overlay generally in accordance with the endorsed plans was issued on 7 September 2017.
- Planning Permit T130742 for the subdivision of land and creation of a reserve was issued on 3 November 2016.
- Planning Application T140447 for the demolition of a building (kiln and associated structures) in a Heritage Overlay was refused on 4 May 2015.
- Planning Application T120401 for the subdivision of the land into two lots was withdrawn 14 December 2012.
- Planning Application T070440 for the use and development of the land for a hotel, bottle shop, nightclub, 60 gaming machines and access to the RDZ1 licenced premise and removal of native vegetation was withdrawn.
- Planning Application T070177 for a market was withdrawn on 18 July 2007.
- Planning Permit T060681 issued 12 February 2007 for the removal of heritage building (weatherboard/cement sheet building).
- Planning Permit T060442 for the removal of non-native vegetation was issued on 6 November 2006.

2015 Draft Conservation Management Plan:

Permit T130742 required the endorsement of a Conservation Management Plan (CMP). This report was prepared by Heritage Insight Pty Ltd and was commissioned by Timbertop East Pty Ltd and dated October 2015. This report was submitted by the permit applicant in lieu of submitting an amended CMP, as requested.

The 2015 Conservation Management Report states that the structural remains of the kiln and chimney are in relatively well-preserved condition as they are protected within a shed and that the structural remains of the kiln and chimney are to be retained and all structural instability rectified in a manner approved for heritage conservation. The shedding has since been removed and the structural remains of the kiln and chimney have been exposed to the natural elements over the last 5 years. As an updated report was not provided the exact structural condition of the kiln and chimney at present is unknown, however it has been observed that the structural remains of the kiln and chimney appear to have significantly deteriorated over time.

Earlier this year, Parklea the landowners and developers of the Timbertop Estate in Officer approached Council with a proposal to transfer ownership of a portion of the site that holds the kiln (514smq) to Council at no cost. At a general Council Meeting held on 16 March 2020 the recommendation of Council was to accept the land associated with the Officer kiln subject to conditions being met to Council's satisfaction. The offer from Parklea was withdrawn on 17 March 2020.

Subject Site

The site is located on the north side of Princes Highway and south of Grace Street. The site is accessed via Grace Street and there are easements along the south, west and north property boundaries. The site contains an existing brick kiln and associated chimney with temporary fencing surrounding. The remainder of the site is vacant and the topography of the land is flat.

The main characteristics of the surrounding area are:

NORTH: Developing residential land forming part of the Timbertop East Estate

SOUTH: Princes Highway and south of the highway is Berwick Pottery and developed residential land forming part of Potters Grove Estate.

EAST: Existing public open space and Eloise Circuit within the Potters North Side Estate

WEST: Associated heritage clay pit within the reserve, Timbertop retarding basin and developed residential land forming part of Timbertop Estate.



Relevance to Council Plan

Nil.

Proposal

The proposal is for two lot subdivision. Details are as follows:

Lot 1:

- 1245 square metres in size
- The indicative building envelope is an irregular shape and is approximately 656 square metres in area.
- Setbacks of the indicative building envelope are as follows: 6 metres from southern boundary, 6 metres from eastern boundary, 4 metres from northern boundary, 3 metres from western boundary and 9 metres from the south west boundary corner

Lot 2:

- Contains the existing kiln and chimney
- 514 square metres in size
- The indicative building envelope is 20 metres by 10 metres.

- Setbacks of the indicative building envelope are as follows: 6 metres from the southern boundary, 2 metres from the eastern boundary and 4 metres from the northern and western boundaries.

It is noted that the indicative building envelopes demonstrates that a dwelling could be developed on each lot. A planning permit would be required for any development on land covered by the Heritage Overlay.

Planning Scheme Provisions

State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 15.01-3S – Subdivision Design
- Clause 15.03-1S – Heritage Conservation

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21 – Municipal Strategic Statement

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Officer Precinct Structure Plan
- Clause 52.29 – Land Adjacent to a Road Zone Category 1
- Clause 56 – Residential subdivision
- Clause 65 – Decision Guidelines

Cardinia Shire's Liveability Plan 2017-2029

This proposal has regard to Cardinia Shire's Liveability Plan 2017-2029, in particular:

- *Social Cohesion – conserving heritage places that are of cultural and social significance.*

Zone

The land is subject to the Urban Growth Zone - Schedule 3 and the applied Zone is General Residential Zone

Overlays

The land is subject to the following overlays:

- Development Contributions Overlay – Schedule 4
- Heritage Overlay – H0104

Planning Permit Triggers

The proposal for **two lot subdivision** requires a planning permit under the following Clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 37.07-10 of the Urban Growth Zone a planning permit is required to subdivide land.
- Pursuant to Clause 32.08-3 of the General Residential Zone a planning permit is required to subdivide land.
- Pursuant to Clause 43.01 Heritage Overlay of the Cardinia Planning Scheme a permit is required to subdivide land.

Public Notification

Notice of the application was not given.

Referrals

External Referrals:

Heritage Victoria

The application was referred to Heritage Victoria as a non-statutory referral for comment. No response from Heritage Victoria has been received at the time of drafting this report.

Internal Referrals:

Sustainability and Heritage Planner

The application was referred to Council's Sustainability and Heritage Planner for comment who objects to the proposal for the following reasons:

- The proposed subdivision separates the original clay pit from the associated kiln site, directly impacting on the significance of the site and compromising the context of the site as a whole.
- The applicant has not provided an adequate response to the requested information and there are concerns for the future of the heritage site and the overall impact the subdivision will have on the site.
- The Conservation Management Plan from 2015 is a draft version and the plan does not adequately provide recommendations for future development or subdivision of the kiln site.
- None of the recommendations that were included in the draft Conservation Management Plan have been implemented, including the following;
 - A heritage architect/conservator (built heritage) must be engaged to provide advice on the structural conservation of the kiln and chimney, as well as advice on the removal of the associated shedding that is currently attached to the structures. The heritage architect can assist in the forward planning and design in relation to the future use/s of the structures by providing information as to the best methods of conservation, and whether such conservation works will result in any limitations in terms of the future adaptive reuse.
- Since the development of the Conservation Management Plan the site has not been protected from weather conditions has deteriorated substantially. It has been observed that little to no effort has been made to protect and conserve the Kiln site.

Engineering Department

The application was referred internally to Councils Engineering Department for comment who support the proposal subject to standard conditions.

Discussion

The proposed two lot subdivision is not consistent with the aims and objectives of the State Planning Policy Framework, Local Planning Policy Framework and other relevant planning provisions as outlined below.

Urban Growth Zone – Schedule 3

The application has been assessed against the relevant precinct structure plan, being the Officer Precinct Structure Plan (Amended November 2019), as discussed below.

Officer Precinct Structure Plan (Amended November 2019)

The Officer Precinct Structure Plan identifies the kiln and associated chimney and clay pit to be protected for its heritage values to the local community. The PSP outlines the following relevant Planning and Design Guidelines for Image and Character (Table 5, CA3) that must be met:

- *Integrate heritage sites with adjacent subdivision design*
- *Respond to the key features of identified heritage sites*
- *Ensure view lines to the front of the heritage buildings from existing roads is maintained by:*
 - *siting new development and buildings to the side and rear*
 - *ensuring the land between the front of the heritage buildings and existing road reserves is used for public open space, private open space or a road.*

The PSP identifies the brick kiln, chimney and clay pit as having regional significance for the community.

The proposed subdivision does not adequately integrate the heritage site. The proposed subdivision will result in separation of the interrelated heritage elements being the clay pit located in the reserve to the west of the subject site and the kiln and chimney proposed to be located within Lot 2. The subdivision is excising off the kiln and chimney (Lot 2) with no regard for how the kiln, chimney and clay pit are historically connected.

The applicant has not provided sufficient evidence to show how the subdivision of the land into two lots responds to the key features of the heritage site. The applicant has stated in their letter dated 7 July 2020 that “*Should lot 2 be used/developed Council will have the opportunity to assess the actual proposal and ensure the heritage values of the site are protected and enhanced*”. This is not considered an acceptable response to address how the subdivision responds to the key features of the heritage site. The proposal significantly reduces the land size containing the kiln and chimney which affects the types of use and development opportunities that could be built on the site in the future. It is not considered reasonable to ignore this requirement until an application is received for development of the site.

The proposal does not respond to the heritage features of the site, as it is proposed to excise the heritage features from the remaining vacant land to enable development of that land without having to restore or redevelop the kiln and chimney. In a letter dated 7 July 2020 by the permit applicant, it is stated “*the owner is not obliged to use or develop it [kiln and chimney]*” and “*if lot 2 is not used/developed, then such lot would continue hosting the heritage structures in the same way the subject site hosts them today*”. It is clear that under the current application, it is not proposed to positively restore or adaptively redevelop the heritage place to conserve this place of significance.

The kiln is located 5.1 metres from the southern boundary that abuts the Princes Highway and 5.3 metres from the western boundary abutting an existing reserve. The building envelope plan shows a building envelope on Lot 1 which is setback 6 metres from southern boundary, 6 metres from eastern boundary, 4 metres from northern boundary, 3 metres from western boundary and 9 metres from the south west boundary corner. Currently there are no structures between the kiln/chimney and the reserve to the west where the associated clay pit is located.

There is concern that if proposed Lot 1 was to be developed in the location shown on the proposed building envelope plan, this would block view lines from the public realm including from the existing reserve and impact on view lines from Princes Highway. The proposal creates opportunity to develop the land between the kiln and existing reserve containing the clay pit and it is likely that development on that lot will have an adverse effect on the significance, character and appearance of the kiln and chimney when viewed from the public realm.

The proposal is not in keeping with the Planning and Design Guidelines for Image and Character for the Officer PSP.

Applied Zone – General Residential Zone

In accordance with Clause 32.08-3 an application for subdivision must meet the requirements of Clause 56 - Residential Subdivision (except for Clauses 56.02-1, 56.03-1 to 56.03-4, 56.05-2, 56.06-1, 56.06-3 and 56.06-6). In accordance with Clause 32.08-3 an approved Precinct Structure Plan applies (being the Officer PSP) and therefore the garden area requirements are not applicable.

Clause 56 Residential Subdivision

The application is generally in accordance with the standards and objectives of Clause 56 with an exception of the following:

Clause 56.03-4 – Built environment: The proposal does not contribute to the cultural identity of the site and therefore does not comply with Standard C5.

Clause 56.03-5 – Neighbourhood Character: The proposed subdivision does not respond to neighbourhood character as it does not appropriately protect the significant site features (kiln and chimney) and therefore does not comply with Standard C6.

Land Adjacent to a Road Zone Category 1

The subdivision of land into two lots does not require a planning permit provided no new access is required. The proposal does not create any new access arrangements and therefore a planning permit is not triggered under this Clause.

Heritage Overlay – H0104

The subject site is within a Heritage Overlay, listed as H0104 in the Schedule to the Heritage Overlay. The Heritage Overlay outlines the following purpose:

- To conserve and enhance heritage places of natural or cultural significance
- To conserve and enhance those elements which contribute to the significance of heritage places
- To ensure that development does not adversely affect the significance of the heritage places
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

The proposed subdivision separates the original clay pit from the associated kiln and chimney site. The proposed subdivision locates Lot 1 between Lot 2, containing the kiln and chimney, and the original clay pit that adjoins west of the subject site within the existing reserve. In the VCAT hearing *Bucovaz v Greater Geelong CC* [2013] the Tribunal refers to *The Heritage Overlay Guidelines – Subdivision and Consolidation* (Victorian Government Department of Sustainability and Environment 2007). The tribunal states that the Guidelines provide useful rationale for consideration of the subdivision of the land in a Heritage Overlay:

The significance of a Heritage Place sometimes relies on it being seen in its original setting and context, with all the related elements such as gardens, outbuildings, fences, paths or interrelated buildings. The physical relationship of separate structures to each other, as well as the spaces between buildings, may also be of significance. Consequently, in some cases, if a part of a Heritage Place is isolated from its setting, its significance may be diminished or even lost.

This statement is relevant to the proposed subdivision as the proposal impacts on the physical relationship of the separate elements of the heritage place by creating a vacant lot between the clay pit and the kiln and chimney. The proposal isolates parts of the heritage place being the chimney and kiln from its setting adjoining the clay pit. Separating the interrelated heritage elements associated with the Hicks family and early brick and pottery industries in Officer located on the subject site adversely impacts the context and setting of the site as a whole and diminishes the significance of the heritage place.

Clause 15.03-1S Heritage Conservation

The objective of this Clause is to ensure the conservation of places of heritage significance. This Clause identifies strategies to meet this objective, including:

- Ensure an appropriate setting and context for the heritage places is maintained or enhanced.
- Support adaptive reuse of the heritage buildings where *their use has become redundant*.

As discussed above, the clay pit, kiln and chimney are interrelated heritage elements associated with James Hicks Ptd Ltd Pottery and that is why the Heritage Overlay (HO104) covers the area including the kiln and chimney as well as the clay pit located west of the kiln. The proposed subdivision isolates the kiln and chimney from the associated clay pit adjoining west of the subject site. Separating these interrelated heritage elements does not respect the original spacing and setting of James Hicks Pottery Pty Ltd and adversely impacts the context and significance of the heritage place. The proposal will diminish the appearance and character of the heritage Pottery place as the clay pit and the chimney and kiln will no longer be located within adjoining lots. The proposal also creates the potential for development to be located between the interrelated heritage elements which will disrupt the setting and context of the Pottery site.

Reducing the lot size that the kiln and chimney are located within will limit the ability of any future adaptive reuse of the kiln and chimney. The proposal has no regard as to the how the site could be adaptively reused and redeveloped in the future within a reduced lot size (514sqm). It is recognised that the kiln/chimney site is already constrained with existing boundary setbacks on the north, east and south sides, however the land area to west allowed an opportunity for a potential adaptive reuse of the heritage site. The reduction of the lot size containing the kiln and chimney limits the ability of the site to be redeveloped and to conserve the heritage elements, as it would limit the possibility of a range of potential uses due to lack of space for car parking and restricted building size, as shown in the building envelope plan provided by the applicant. The applicant has stated in letter dated 7 July 2020 that *“if Lot 2 is*

to be used/developed, then its most likely would be residential". The applicant has failed to provide evidence of how this site could be used/developed for residential purposes, as the kiln and chimney are located in the middle of the building envelope plan provided by the applicant.

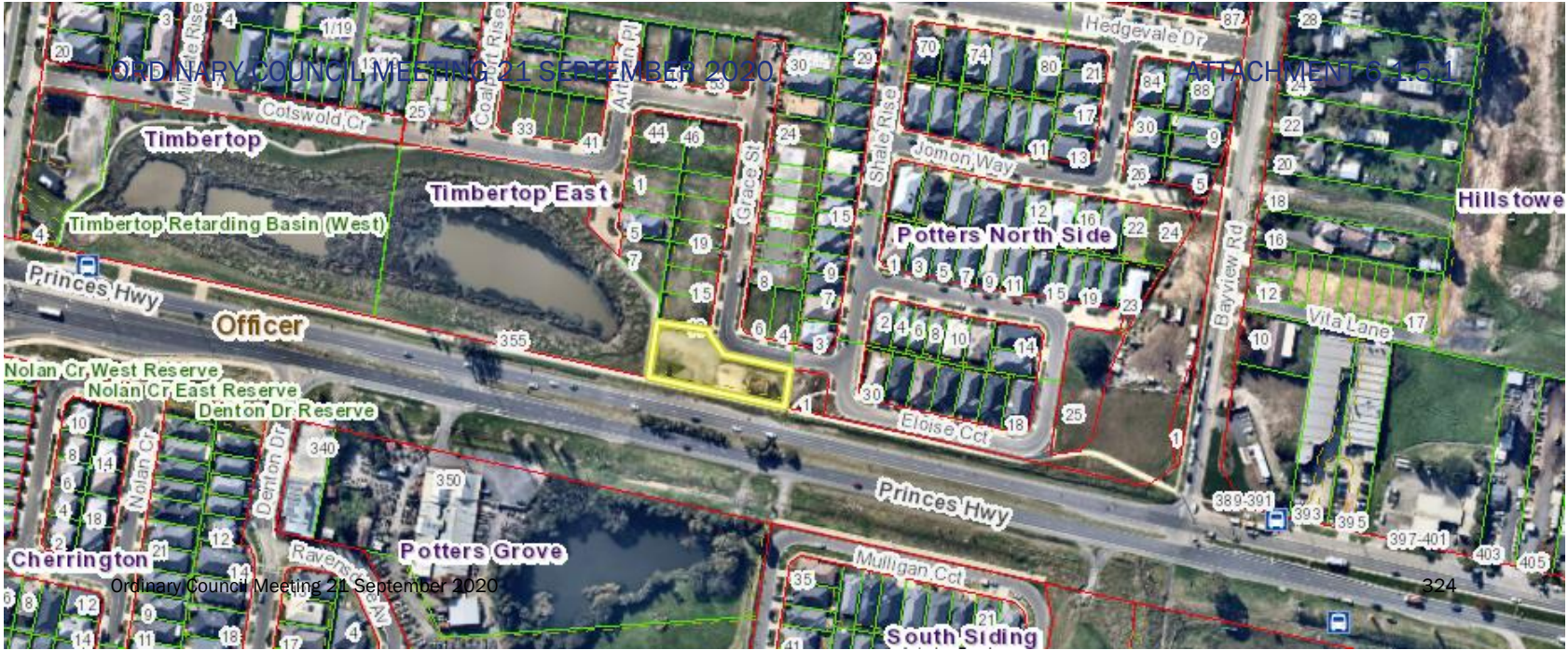
Some other potential adaptive reuses for the kiln and chimney could be a food and drink premises, office and shop. If Lot 2 was to be adaptively reused and redeveloped into a food and drink premises, office or shop, 7-8 car parking spaces would be required for a building of 200m². The distances proposed for Lot 2 to be setback from the building envelope show limited space for car parking and vehicle access. The lack of consideration for the viability and availability of space for potentially adaptive reuse and redevelopment of the kiln and chimney is not in keeping with the strategy outlined above and does not ensure the conservation of places of heritage significance.

Conclusion

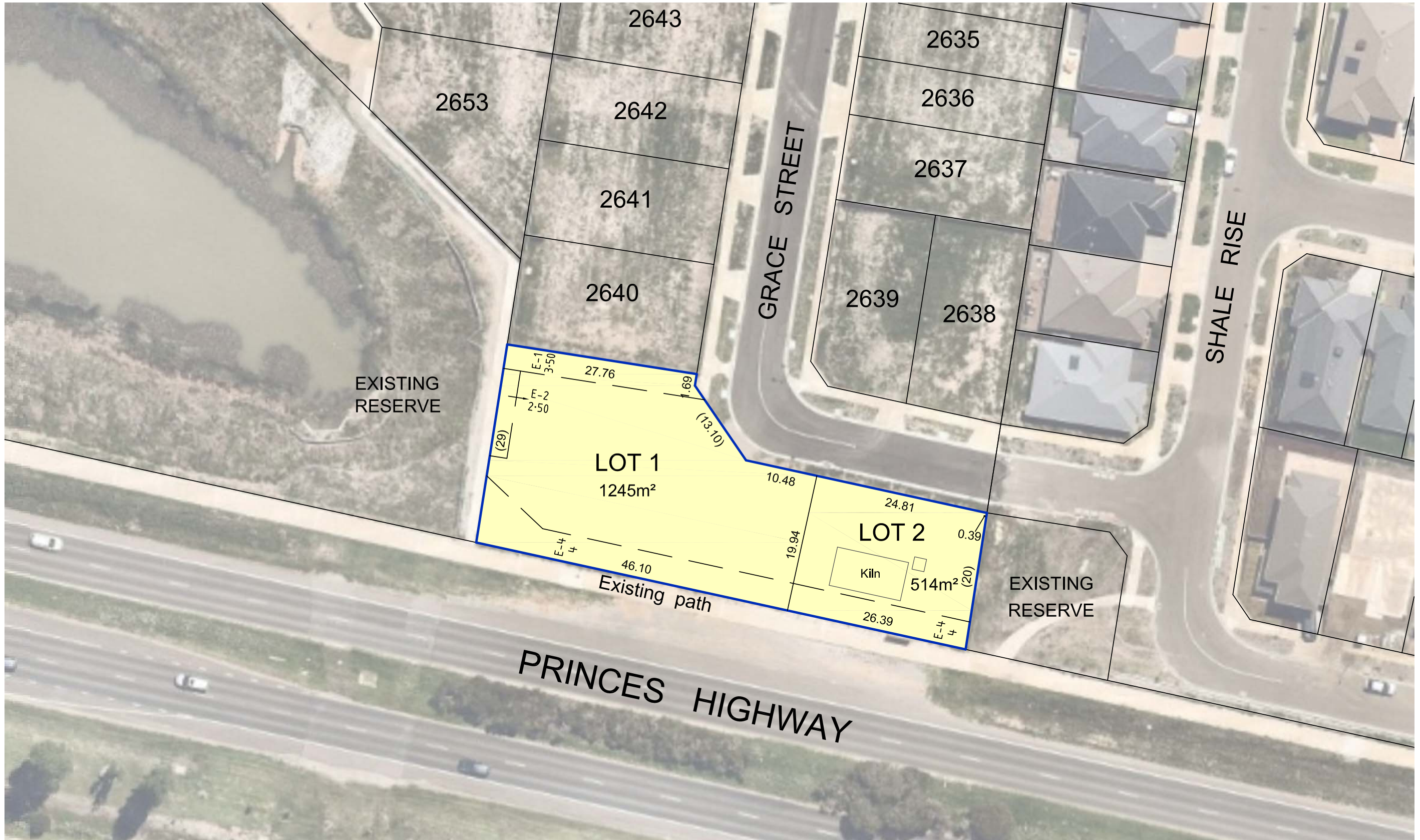
The proposed **two lot subdivision** is contrary to the purpose and objectives of the Cardinia Shire Planning Scheme and such should not be supported.

ORDINARY COUNCIL MEETING 21 SEPTEMBER 2020

ATTACHMENT 6 1.5.1



Ordinary Council Meeting 21 September 2020



LEGEND

- Subject land: 0.176 ha (Lot AA on PS 814723U)
- Proposed allotments
- E-4 Easements - refer to PS 814723U for further details

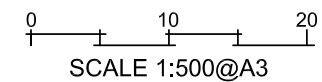
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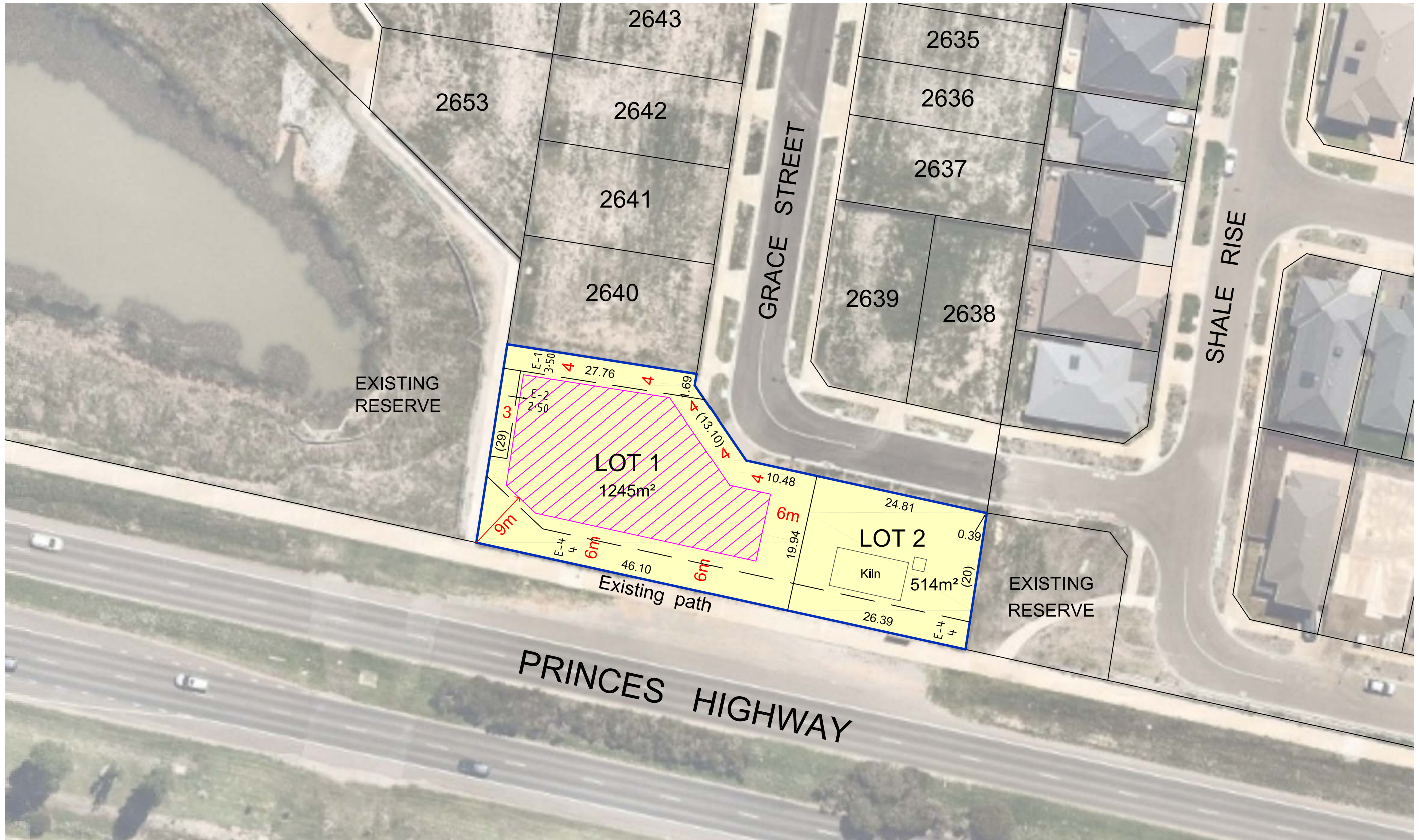


SUBDIVISION DETAIL PLAN

DATE: 17 April 2020
 REF: 328012000-PB004
 DWG: 328012UDAA



**TIMBERTOP EAST
 OFFICER**



LEGEND

- Subject land: 0.176 ha (Lot AA on PS 814723U)
- Proposed allotments
- E-4 Easements - refer to PS 814723U for further details
- 3 Building envelope and setback in metres

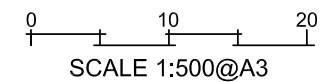
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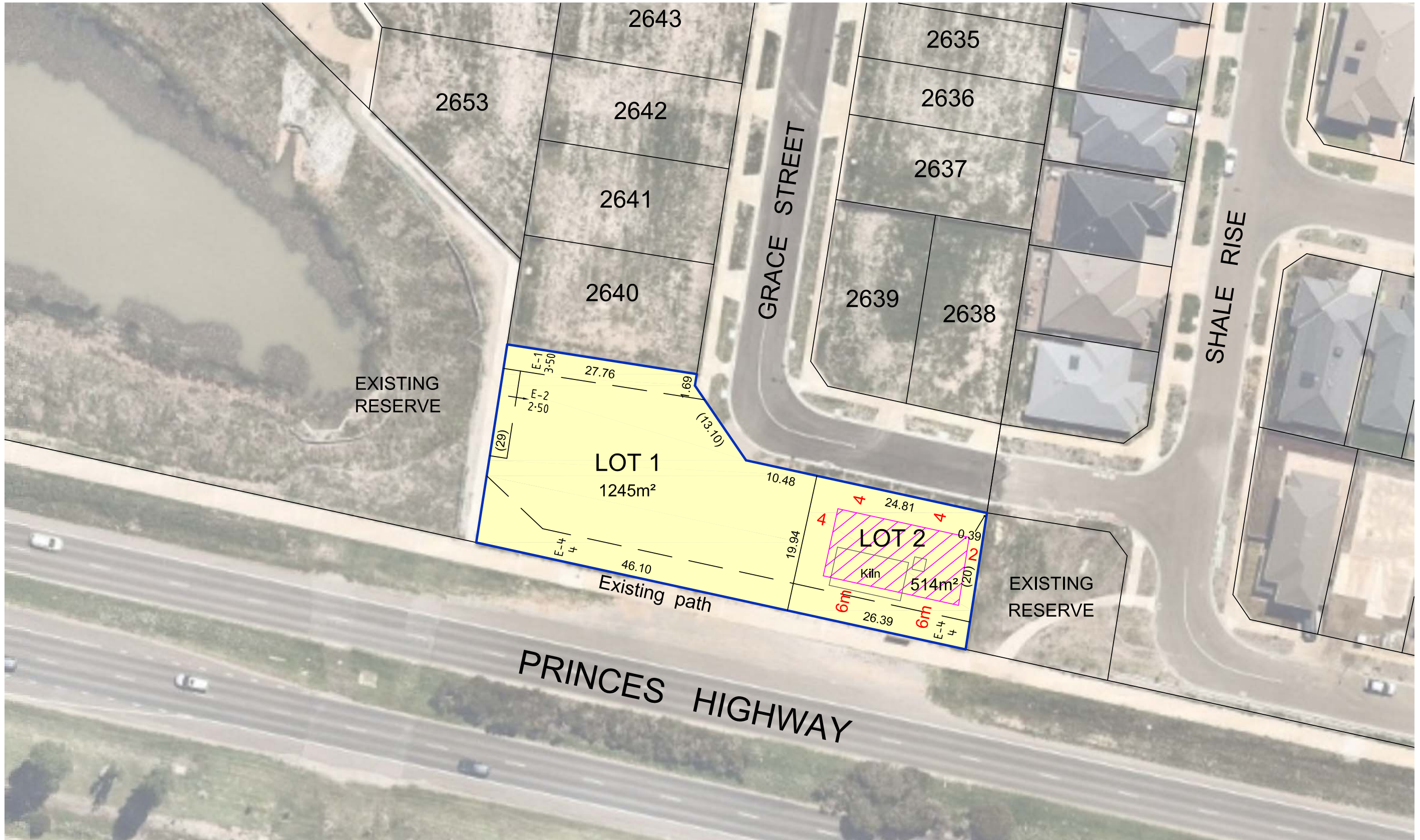


BUILDING ENVELOPE PLAN (Lot 1)

DATE: 27 May 2020
 REF: 328012000-PB004
 DWG: 328012UDAA



TIMBERTOP EAST OFFICER



LEGEND

- Subject land: 0.176 ha (Lot AA on PS 814723U)
- Proposed allotments
- E-4 Easements - refer to PS 814723U for further details
- 4 Building envelope and setback in metres

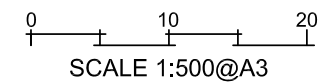
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INDICATIVE BUILDING ENVELOPE PLAN (Lot 2)

DATE: 27 May 2020
 REF: 328012000-PB004
 DWG: 328012UDAA



**TIMBERTOP EAST
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