

5 Ordinary Business

5.1 Request for consent under covenant - 8 Portobello Road, Pakenham

Responsible GM: Lili Rosic
Author: Karen Egan

Recommendation(s)

That Council resolve to provide written consent under clause 1.1 of the Covenant to allow the land at Lot 1080 PS447443, 8 Portobello Road, Pakenham to be used for:

- Restricted retail premises; and
- Restricted recreation facility.

Attachments

1. Request for consent under covenant - 8 Portobello Road, Pakenham [5.1.1 - 7 pages]

Application Details

APPLICANT:	Hatch Roberts Day
LAND:	8 Portobello Road, Pakenham 3810 more formally known as Lot 1080 on plan of subdivision 447443
PROPOSAL:	Request for written consent under clause 1.1 of the covenant AGAG274070X (the Covenant) to use the land at 8 Portobello Road, Pakenham (the subject land) for: <ul style="list-style-type: none"> • Restricted retail premises; and • Restricted recreation facility.
PLANNING CONTROLS:	Comprehensive Development Zone Schedule 1 Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	Notification of the request is not required
KEY CONSIDERATIONS:	Planning policy and relevant strategic documents support the use of land for restricted retail premises (bulky goods) on the subject land and it is considered that the use of land for a restricted recreation facility (gym) is a land use compatible and complimentary to the role of the NAC
REASON FOR MEETING:	Written consent of Council required
RECOMMENDATION:	That Council provide written consent under clause 1.1 of the Covenant to allow the subject land to be used for: <ul style="list-style-type: none"> • Restricted retail premises; and • Restricted recreation facility.

Executive Summary

Covenant AG274070X (the Covenant) was registered on Certificate of Title when the subject land was transferred from Cardinia Shire Council (Council) to Shearwater Development Pakenham Pty Ltd. The Covenant restricts the type of uses allowed to operate on the subject land without the written consent of Council.

The applicant is seeking to use and develop the subject land for restricted retail premises (bulky goods) and restricted recreation facility (gym), which are not uses listed under the Covenant.

It is Council Officers recommendation that written consent be provided to the applicant. The provision of written consent does not negate the requirement for a planning permit to be obtained.

REQUEST FOR WRITTEN CONSENT DELEGATE REPORT



Application	Proposal	Request for written consent under clause 1.1 of the covenant AGAG274070X (the Covenant) to use the land at 8 Portobello Road, Pakenham (the subject land) for: - Restricted retail premises; and - Restricted recreation facility.
Applicant	Developer	Portobello Road Investments (Pakenham) Pty Ltd
	Organisation	Hatch Roberts Day
	Name	Cameron Dash/Anthony Msonda-Johnson
Date Received	13 December 2023	
Planner	Karen Egan	
Land	Address	8 Portobello Road, Pakenham 3810 more formally known as Lot 1080 on plan of subdivision 447443
	Property No.	5000005580
	Applied PSP	Cardinia Road PSP
	PSP No.	N/a
Zoning	Head Zone	Comprehensive Development Zone Schedule 1
	Applied Zone	N/a
	Overlay/s	Development Contributions Plan Overlay Schedule 1
Title Restrictions	<input type="checkbox"/> None	<input checked="" type="checkbox"/> Yes, Covenant AG274070X
Current Use/Development	Western portion of the land is currently being used as a bottle shop (Dan Murphys)	
Recommendation	<input checked="" type="checkbox"/> That Council provide written consent under clause 1.1 of the Covenant to allow the subject land to be used for: - Restricted retail premises; and - Restricted recreation facility. <input type="checkbox"/> That Council does not provide written consent under clause 1.1 of the Covenant to allow the subject land to be used for: - Restricted retail premises; and - Restricted recreation facility.	
Ward Councillor communications	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Yes

Proposal

Covenant AG274070X (the Covenant) was registered on Certificate of Title when the subject land was transferred from Cardinia Shire Council (Council) to Shearwater Development Pakenham Pty Ltd. on 2 January 2009. The Covenant contains three operative clauses with all apart from clause 1.1 ceasing to apply to the subject land on 1 January 2022. Clause 1.1 of the Covenant states:

Except with the written consent of the transferor, not to use land for any purpose other than for one or more of the following uses ("Agreed Use")

1.1.1 retail premises (as defined in the Cardinia Planning Scheme) but only for the retail sale of:

- i. liquor; or*
- ii. stationary, office supplies and office equipment;*

1.1.2 convenience restaurant (as defined in the Cardinia Planning Scheme);

1.1.3 multi-storied retirement village (as defined in the Cardinia Planning Scheme);

1.1.4 education centre (as defined in the Cardinia Planning Scheme); and

1.1.5 dance school (as defined in the Cardinia Planning Scheme).

Together with such number of car parks as may be required by Cardinia Shire Council or any relevant authority for the improvement to be built on the land.

The applicant is seeking to use and develop the subject land for restricted retail premises (bulky goods) and restricted recreation facility (gym), which are not uses listed under the Covenant.

Section 61(4) of the *Planning and Environment Act 1987* provides that Council must not grant a permit which would authorise anything which would result in the breach of a registered restricted covenant. The applicant has made a request seeking written consent from Council as required by Clause 1.1 of the Covenant to use the subject land for:

- Restricted retail premises; and
- Restricted recreation facility.

The provision of written consent under the Covenant does not negate the need for a planning application to be submitted to Council and assessed against the Cardinia Shire Planning Scheme (the Scheme).

The request for written consent has been accompanied by development plans and reports to allow Council to undertake a preliminary assessment of their proposal which seeks to construct two new buildings on the undeveloped portion of the site to be occupied by three restricted retail tenancies and a restricted recreation facility. The key features of the proposal can be summarised as follows:

- Gross leasable floor area of the restricted retail premises is approximately 2,530sqm.
- Leasable floor area of the restricted recreation facility is approximately 1,118sqm.
- A single storey building located in the northern part of the subject site containing two restricted retail tenancies.
- A double storey building located in the southern part of the site contained a restricted retail tenancy at ground level and a restricted recreation facility on the first floor.
- Modification and expansion of the existing at grade car park resulting in the provision of 129 car parking spaces in total.
- A new vehicle access point from Princes Highway to provide access and egress to the subject land.
- Display of business identification signage and a pylon sign along the Princes Highway frontage.

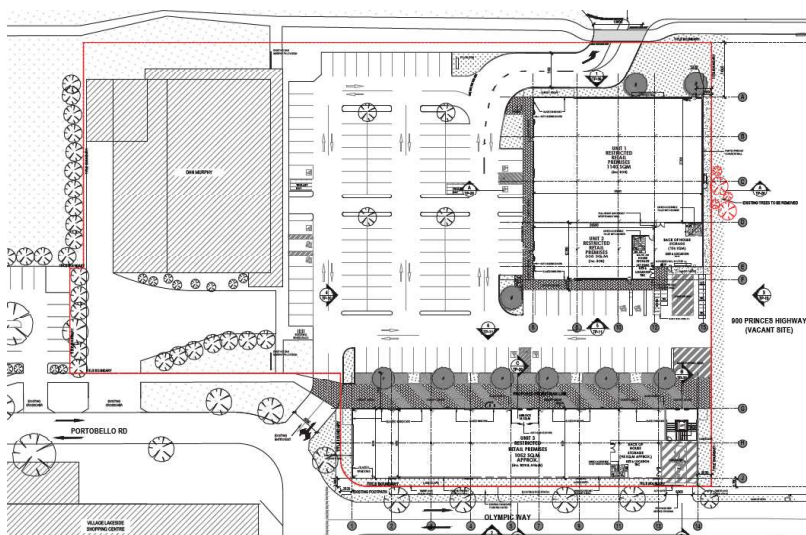


Figure 1: Site Plan



Figure 2: 3D visualisation of the proposal from Princes Highway



Figure 3: 3D visualisation aerial perspective

Subject Site & Locality

The subject site is located on the southern side of the Princes Highway and on the northern side of Portobello Road and Olympic Way in Pakenham.

The subject land is irregular in shape and has a total site area of 1.217 hectares. The site is currently developed with Dan Murphy's bottle shop, which is located on the western portion of the site. Car parking for the site is centrally located, and the east side of the site is currently vacant. Access to the site is provided from two two-way crossovers from Olympic Way and Portobello Road.

The land is relatively flat and it is not burdened by any easements. It does not contain any vegetation.



Figure 4: Aerial image of the subject land.

The main characteristics of the surrounding area are:

North	Princes Highway, Michael Street, the Pakenham Homemaker Centre and the Pakenham (Purton Road) Industrial Park
South	Portobello Road, Olympic Way, Lakeside Childcare Centre and Cardinia Life (gym and Toomuc Recreation Reserve)
East	Vacant land, Olympic Way and Toomuc Recreation Reserve
West	Lakeside Boulevard Activity Centre and O'Brien Parade

Permit History

- Planning permit T100065 was issued on 2 June 2010 and allowed the use and development of land for a bottle shop, associated signage and reduction in car parking requirements. The permit has been amended twice to date with the latest amendment allowing the display of two additional signs and was issued on 16 November 2023.

Planning Scheme Provisions

The Cardinia Shire Planning Scheme (the Scheme) establishes a framework for considering the retail and commercial needs of the municipality and has been relied upon to determine the appropriateness of the request for written consent under clause 1.1 of the Covenant.

Zone

The land is subject to the Comprehensive Development Zone Schedule 1

Overlays

The land is subject to the Development Contribution Plan Overlay – Schedule 1.

Planning Policy Framework (PPF)

The relevant clause of the PPF are:

- Clause 11 Settlement
- Clause 17 Economic Development

Local Planning Policy Framework (LPPF)

- Clause 21.01 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.03 Settlement and Housing
- Clause 21.04 Economic Development

Relevant incorporated or reference documents

- Cardinia Road Precinct Structure Plan (September 2008)
- Pakenham Township Development Contributions Plan (September 1997)
- Pakenham west Comprehensive development Plan (September 2005)
- Lakeside Local Structure Plan

Discussion

The subject land forms part of the 'Lakeside at Pakenham' project, a joint venture between Council and Delfin Pakenham Limited. The Development Agreement (the Agreement) entered into between Council and Delfin Pakenham Pty Ltd provides that the proposed development of the 'Lakeside at Pakenham' project should proceed in accordance with the principles set out in the Pakenham Township Strategy and the Pakenham West Comprehensive Development Plan issued 22 November 1999 as modified from time to time.

Planning Scheme Amendment C082, gazetted on 7 December 2006, updated the Pakenham West Comprehensive Development Plan that covers the 'Lakeside at Pakenham' subject land. The subject land is identified in the Pakenham Comprehensive Development Plan to be within the Neighbourhood Centre.

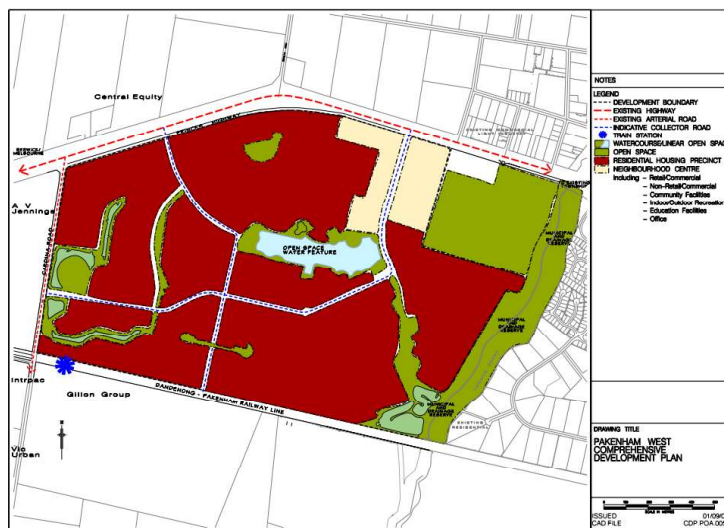


Figure 5: Pakenham Comprehensive Development

As a requirement of the Agreement a 'Local Structure Plan' was developed and approved by Council on 7 March 2001, the structure plan outlines the overall development for each part of the 'Lakeside at Pakenham' project including staging of the development. Three other iterations of the 'Local Structure Plan' were subsequently approved by Council, in 2001, 2002 and 2014. The 'Local Structure Plan' provides that the subject site is identified for commercial/retail/office uses with a note which provides that the Neighbourhood Centre should include:

- Retail @ 8,000sqm leasable floor area
- Non - retail/commercial
- Community facilities

- Indoor/outdoor recreation
- Office @ 2,500sqm leasable floor area

The 2001 and 2002 versions of the 'Local Structure Plan' also included education facilities as an appropriate use within the Neighbourhood Centre with this removed from the 2014 version.



Figure 6: Local Structure Plan 2014 version

Clause 21.03-2 Urban Growth Area, sets out a framework for the staging and development of activity centres. Pakenham and Officer are Major Activity Centres with supporting Neighbourhood Activity Centres planned at Cardinia Road (Arena) and Lakeside Boulevard. Clause 21.04-3 Activity Centres, reaffirms the need to recognise this hierarchy of activity centres by facilitating their development.

The Cardinia Road Precinct Structure Plan (PSP) echoes this policy and goes further by differentiating commercial land as either core business or peripheral commercial. Plan 12: Activity Centres within PSP provides that the subject site is identified for peripheral commercial development. The PSP details that core business provides for day-to-day needs while peripheral commercial provides other less utilised services. The subject site is identified for peripheral commercial development.

Table 6 of the PSP details that:

- Lakeside Boulevard Neighbourhood Activity Centre (NAC) is intended to provide 25,000sqm of peripheral commercial floor space; and
- The role of the NAC is to provide:
 - Neighbourhood core retail and peripheral commercial role comprising a supermarket and associated shops and services.
 - Regional peripheral commercial / bulky goods retailing role associated with the Pakenham Homemaker Precinct.

Section 3.4.2 Development Principles of the PSP report states that '*Restricted retailing should be encouraged along the Princes Highway frontage and within the Pakenham Homemaker Centre within land shown as peripheral commercial*'.



Figure 7: Plan 12: Activity Centre within Cardinia Road Precinct Plan

Conclusion

It is considered that planning policy and relevant strategic documents support the use of land for restricted retail premises along the Princes Highway frontage and that the proposed uses will not detract from the core retail element of the centre which is configured to address Lakeside Boulevard. The use of land for restricted retail purposes will complement the function of the Pakenham Home Centre and serves to connect the two activity centres. In addition, the proposed restricted recreational facility is a land use compatible and complimentary to the role of the NAC, in particular its regional recreation and community services role.

Recommendation

That Council provide written consent under clause 1.1 of the Covenant to allow the subject land to be used for:

- Restricted retail premises; and
- Restricted recreation facility.