

5.6 T220321 PA - Construction of Twenty-Six (26) Dwellings, Removal of Native Vegetation and Reduction in Car Parking Requirements at Lot H PS400130, Princes Highway, Pakenham VIC 3810

Responsible GM: Debbie Tyson
Author: Dean Haeusler

Recommendation

- A. That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T220321 for '*Construction of Twenty-Six Dwellings (26), Removal of Native Vegetation and Reduction In Car Parking*' at land known and described as LH PS400130, Princes Highway Pakenham on the following grounds:
1. The proposal is inconsistent with the purpose and decision guidelines of the Mixed Use Zone as it does not appropriately respond to the existing character of the area.
 2. The proposal does not appropriately respond to relevant Planning Policy Framework considerations as follows:
 - a. Clause 12.01-1S Protection of Biodiversity, Clause 12.05-2 Landscapes and Clause 21.02-3 Biodiversity as the proposal does not adequately seek to protect or enhance the biodiversity of the site.
 - b. Clause 15.01-1S Urban Design, Clause 15.01-1R, Clause 15.01-2S Building Design, Clause 15.01-5S, Clause 21.03-1 Housing and Clause 21.06-1 Urban Design as the proposal does not respond appropriately to the existing character of the area and results in poor built form and urban design outcomes.
 - c. Clause 16.01-1S Housing Supply, Clause 16.01-1R Housing Supply – Metropolitan Melbourne, Clause 16.01-2S Housing Affordability and Clause 21.03-1 Housing as the proposal has limited diversity within the development or provide appropriate levels of differing accommodation for a wide spectrum of the market.
 3. The proposal is inconsistent with the purpose and decision guidelines of Clause 52.06 (Car Parking).
 4. Insufficient information has been provided to assess the application against Clause 52.17 Native Vegetation and the proposal has not sufficiently sought to avoid and minimise native vegetation removal.
 5. The proposal does not meet the standard and/or objectives of Clause 55, including:
 - a. Clause 55.02-1 (Standard B1) – Neighbourhood Character;
 - b. Clause 55.02-3 (Standard B3) Dwelling Diversity;
 - c. Clause 55.02-5 (Standard B5) Integration with the Street;
 - d. Clause 55.03-7 (Standard B12) Safety;
 - e. Clause 55.03-8 (Standard B13) Landscaping
 - f. Clause 55.03-10 (Standard B15) Parking Location;
 - g. Clause 55.05-1 (Standard B25) Accessibility;

- h. Clause 55.05-2 (Standard B26) Dwelling Entry;
- i. Clause 55.05-3 (Standard B28) Private Open Space;
- j. Clause 55.05-5 (Standard B29) Solar Access to Open Space;
- k. Clause 55.05-6 (Standard B30) Storage;
- l. Clause 55.06-1 (Standard B31) Design Detail; and
- m. Clause 55.06-4 (Standard B34) Site Services

AND

- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's advocates on any future application for review at the Victorian Civil and Administrative Tribunal.

Attachments

1. T 220321 PA - Council report - Refusal [5.6.1 - 25 pages]
2. T 220321 PA - Locality map [5.6.2 - 1 page]
3. T 220321 PA - Development Plans [5.6.3 - 8 pages]

Application Details

APPLICATION NO.:	T220321 PA
APPLICANT:	Pakenham Property Holdings Pty Ltd
LAND:	LH PS400130, Princes Highway, Pakenham VIC 3810
PROPOSAL:	Construction of Twenty-Six Dwellings (26), Removal of Native Vegetation and Reduction In Car Parking requirements.
PLANNING CONTROLS:	<ul style="list-style-type: none"> • Mixed Use Zone – Schedule • Land adjacent to the Principal Road Network (Transport 2 Zone) • Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	The application was put on public notice in accordance with Section 52 of the Planning and Environment Act. Notices were sent to neighbouring properties and signage erected on-site for fourteen (14) days. No objections have been received to date.
KEY PLANNING CONSIDERATIONS:	<ul style="list-style-type: none"> • Detailed design standards for internal amenity and safety • Interface with adjoining land uses • Integration with streetscape and neighbourhood character • Detail of assessment to support native vegetation removal • Car parking location and number

REASON FOR MEETING:	Recommendation for Refusal.
RECOMMENDATION:	Issue a Notice of Decision to Refuse to Grant a Planning Permit

Executive Summary

A Planning Permit application has been lodged for the construction of twenty-six (26) dwellings, removal of native vegetation and reduction of car parking requirements on the southern portion of the site.

The northern portion was subject to Planning Permit T150215 that has now expired, and allowed for the *'Use and development of a service station and associated convenience shop, food and drink premises and development of shops'*. A time extension request to the permit is currently the subject of an appeal through VCAT (P1039-2024) and scheduled to be heard 17th December 2024. Accordingly, uncertainties arise in the assessment of appropriate interfaces and amenity between the proposed townhouses and the service station, as there is no guarantee the service station will be constructed. Ultimately though the proposed townhouse application provides poor integration if the permitted service station is constructed or alternatively is a poor outcome on its own merits if the service station does not proceed.

Whilst the Mixed-Use Zone does anticipate increased densities, the proposal has bulk, scale and design detail shortcomings that fail to respond to the established character of the area and the required standard of amenity and safety for future occupiers. The lack of dwelling diversity undermines state and local policy objectives. Poor waste management design, visitor parking consideration and incomplete application material suggest that the proposal has not been thoroughly conceived. Council officers have advised the applicant of the concerns, and the applicant does not seek to make any changes to the proposal.

Council Officers recommend refusal of the application due to the inadequate response to policy and controls of the Cardinia Planning Scheme that seek to achieve high quality building design that is well-integrated and responds both to housing needs and the character of the area.

Relevance to Council Plan

2.1 We support the creation of liveable spaces and places

2.1.3 Plan for housing diversity that meets community need, is affordable and delivers environmental sustainability, safety and healthy living outcomes.

APPLICATION FOR CONSIDERATION
REFUSAL
OFFICER REPORT

Application Details:

Proposal	Construction of Twenty-Six (26) Dwellings, Removal of Native Vegetation and Reduction In Car Parking requirements.
Applicant	Pakenham Property Holdings Pty Ltd
Date Received:	17 May 2022
Statutory Days:	899 at 15 November 2024
Section 50/50A/57A Amendment	<input checked="" type="checkbox"/> None
Application Number	T220321 PA
Planner	Dean Haeusler
Land/Address	LH PS400130, Princes Highway, Pakenham VIC 3810
Property No.	1701163450
Zoning	Mixed Use Zone – Schedule Land adjacent to the Principal Road Network (Transport 2 Zone)
Overlay/s	Development Contributions Plan Overlay – Schedule 1
Permit Trigger(s)	<ul style="list-style-type: none"> • Pursuant to Clause 32.04-7 (Mixed Use Zone), a permit is required to construct two or more dwellings on a lot. • Pursuant to Clause 52.06-3 (Car Parking), a permit is required to reduce the number of car parking spaces required under Clause 52.06-5. • Pursuant to Clause 52.17-1 (Native Vegetation), a permit is required to remove, destroy or lop native vegetation, including dead native vegetation.
Aboriginal Cultural Sensitivity	<input checked="" type="checkbox"/> No
Section 55 Referrals	<input checked="" type="checkbox"/> None
	<i>Note: The application has not proceeded to the referral stage as insufficient information was provided in which to make an assessment against Clause 52.17 of the Cardinia Planning Scheme and as such, it is uncertain if the application would have required referral to the Department of Environment, Land, Water and Planning (DEECA) pursuant to Clause 62.02-2 of the Cardinia Planning Scheme.</i>
Registered restrictions on Title	<input checked="" type="checkbox"/> Yes, list below: <ul style="list-style-type: none"> ▪ Section 173 Agreement S012533S

Recommendation	<input checked="" type="checkbox"/> Issue a Notice of Refusal to Grant a Planning Permit
Ward Councillor communications	<input checked="" type="checkbox"/> None
Documents relied on	<ul style="list-style-type: none"> ▪ Application Form [Dated: 17 May 2022] ▪ Title Documentation [Dated: 17 April 2024] ▪ MPL Certificate [Dated: 19 April 2022] ▪ Cover Letter, prepared by Connect Town Planning [Dated: 12 May 2022] ▪ Arboricultural Report, prepared by John Patrick Landscape Architects [Dated: April 2022] ▪ Traffic Impact Assessment, prepared by Onemilegrid [Dated: 17 May 2022] ▪ Waste Management Plan, prepared by Leigh Design [Dated: 12 April 2022] ▪ Town Planning Report, prepared by Connect Town Planning [Dated: May 2022] ▪ Development Plan Set, prepared by Valeo [Dated: 3 May 2022] ▪ Site Survey, prepared by LandSurveys [Dated: 28 March 2022]

Proposal

The proposal seeks for the development of land for twenty-six (26) townhouses, reduction in car parking requirements and removal of native vegetation.

Townhouses

All twenty-six (26) townhouses are to be double-storey and incorporate three (3) bedrooms. The townhouses are proposed in two rows flanking an internal accessway. All townhouses are to be 'rear loaded' (accessed via a rear laneway) and incorporate reverse living (living areas at the upper floor). The layout of the townhouses is consistent or mirrored, with limited diversity with the exception of the two dwellings that front Sir Thomas Drive.

Each townhouse is proposed to incorporate a double garage, bedroom with ensuite and bathroom, separate powder room and front entry at ground level. First floor level will include the living, dining and kitchen areas facing onto a 12sqm balcony and two additional bedrooms.

Townhouse 1-13 are to be located on the southern side of the internal laneway/driveway.

Each townhouse is to have a pedestrian access from a walkway which extends the length of the southern boundary (83m), with a master bedroom suite located on the ground floor. At the upper floor, private open space is provided via a balcony facing and overlooking the internal laneway/driveway accessed via a living room, with two additional south-facing bedrooms.

Townhouses 14-26 are to be located on the northern side of the internal laneway/driveway.

Each townhouse is to have a pedestrian access from a walkway which extends the length of the site (83m), with a master bedroom suite located on the ground floor facing the walkway and courtyard. At the upper floor, private open space is provided via a balcony facing and overlooking the balance of the land via a living room, with two additional south-facing bedrooms.

Access is provided via a double-crossover to a gun-barrel straight laneway/driveway, whilst two visitor parking spaces are located within the front setback to Sir Thomas Drive.

Indicative landscaping is proposed adjoining the pedestrian walkways, within front terrace gardens, the front and rear setback and in small landscape pockets along the driveway – however, no Landscape Plan has been provided.

Information pertaining to floor areas and open space dimensions is not provided on plans.

The proposed building height is approximately 6.6m with flat roof formations, and a generally subdued external material, finish and colour palate is proposed.

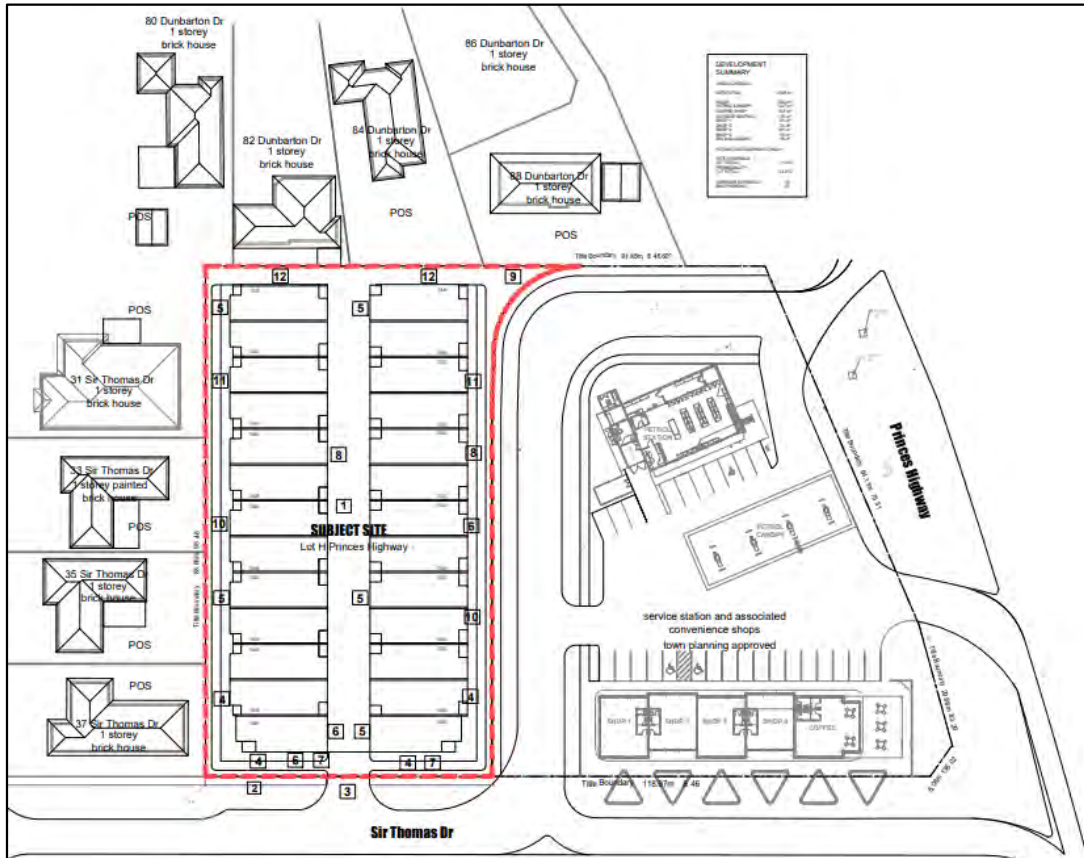


Figure 1 - Site Plan showing the southern portion of the site in red, and the historically permitted but not constructed (and expired) service station to the north.

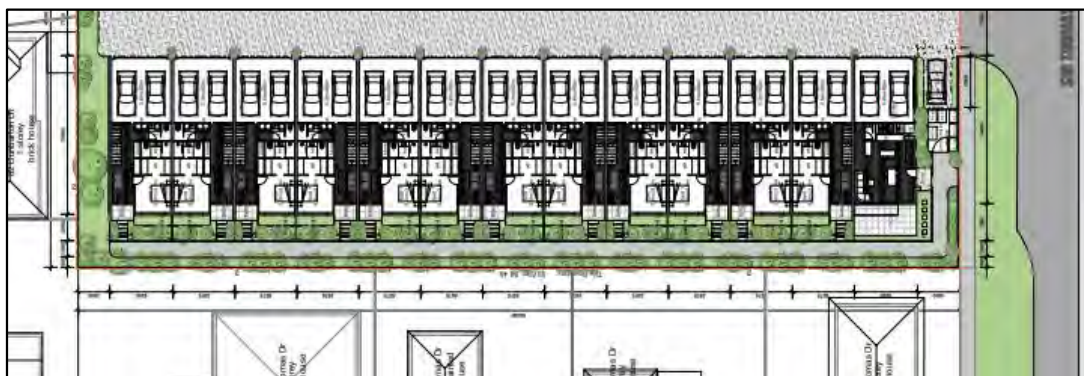


Figure 2 - Ground floor of southern flank of townhouses (Townhouses No. 1-13)

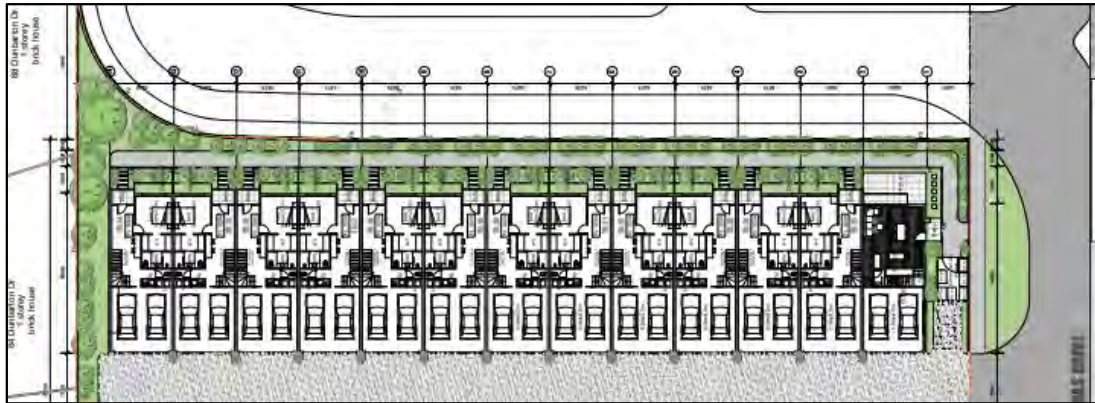


Figure 3 - Ground floor of northern flank of townhouses (Townhouses 14-26)



Figure 1 - Elevation plans.

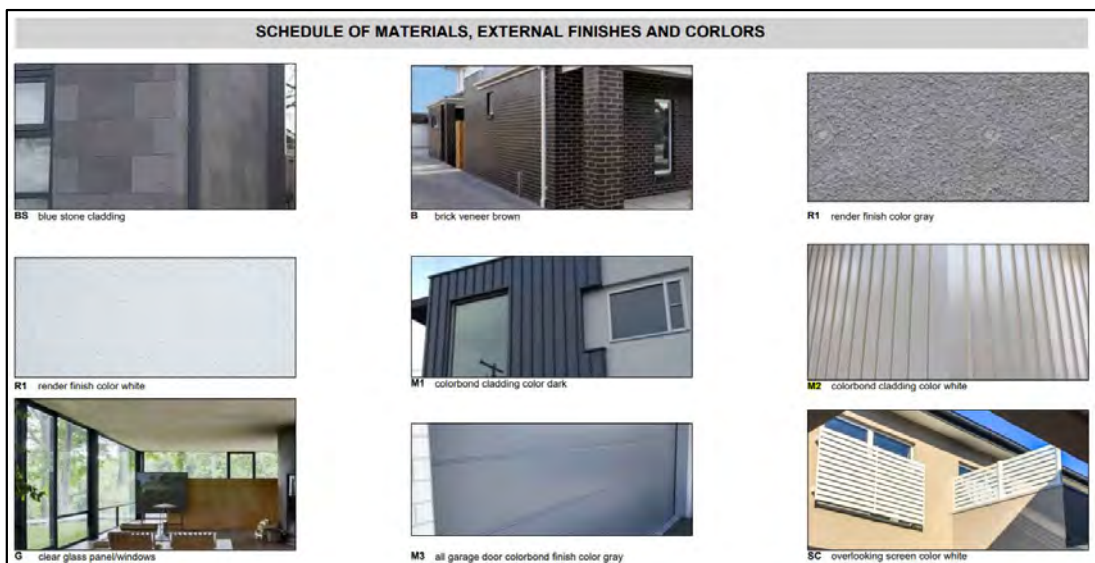


Figure 2 - Proposed material, colour and finishes schedule.

Removal of Vegetation

It is proposed to remove all existing vegetation from the site (a total of 16 trees), and the Arborist Report provided has determined that the majority of vegetation is considered 'fair' to 'good' health, with most of 'low' arboricultural value.

Of the trees to be removed, two trees (Tree 2 and 4) require planning permission for removal pursuant to Clause 52.17 - Native Vegetation of the Cardinia Planning Scheme. Further, the Arborist reports that additional trees may be required to be removed and may trigger a planning permit however the area was unable to be accessed due to Gorse and Blackberry undergrowth.

No Native Vegetation Removal Report has been provided with the application, with the Town Planning Report identifying a request to provide suitable permit conditions to capture offsets.

Car Parking Provision

Each three-bedroom dwelling is provided with two (2) garaged car parking spaces meeting the requirement of Clause 52.06-5. However, a twenty-six (26) townhouse development requires five (5) visitor car parking spaces to be provided.

The development proposes only two (2) visitor car parking spaces within the setback to Sir Thomas Drive, and the application seeks for a dispensation to allow for a shortfall of three (3) spaces.

Waste Management

Communal storage areas are located within the front setback, and private collection is proposed with a Waste Management Plan provided to demonstrate the proposed collection arrangements.

Subject Site & Locality

The 9,124m² site is located on the south-western corner of the Princes Highway/Sir Thomas Drive intersection, with no formalised access point. The site has a frontage of 84.77m to the north (Princes Highway), and a depth of 118.97m to its eastern boundary (Sir Thomas Drive). The land falls approximately 1.5m from west to east.

The site is currently vacant of structures and incorporates canopy vegetation (predominantly regrowth less than 10 years of age) and an understory noted for its gorse and other weed species such as blackberries. The vegetation is generally restricted to near the southern and western boundaries.

The portion of the land subject to the development forming this application is 3,980m² (southern portion), whilst the balance of the land (northern portion) is not proposed to be developed as part of this application.



Figure 3 - Subject site (shown in blue) and immediate surrounds (Nearmap, August 2023)



Figure 4 - Outline of subject site and area of the site subject to this application shaded red (Taken from application material)

The site is located within an existing residential area, with lots generally subject to single dwellings on a lot. Built form incorporates both single and double-storey dwellings. Whilst lot sizes vary, the predominant lot size range is 350m² to 750m² to the south and west and of the site.

The subject site shares property boundaries with 8 lots to the south and west, ranging from 530m² to 1000m² – all containing single detached dwellings with the exception of No's. 1 and 2 Dunbarton Drive.

Some exceptions occur, with multi-unit development noted immediately to the east of Sir Thomas Drive where multi-lot development has occurred. Further east, accessed via Oaktree Drive are large rural lifestyle lots ranging from 10,000m² to 15,000m².

This results in an eclectic lot size range of ~350m² to 15,000m² being located within 150m of the site.



Figure 5 - Subject site (shaded blue) and wider surrounds (Nearmap, August 2023)

Whilst the site is located within Pakenham's urban area with access to appropriate road and pedestrian infrastructure, a number of core community services are located some distance from the site.

The site is located the following distances from key services and facilities:

- Cardinia Lakes Shopping Centre – 350m to the north-east
- Pakenham Golf Course – 400m east
- Closest Bus Stop – 500m west (Bus Route 929 (Pakenham / Army Road))
- Pakenham East Primary School – 650m north-east
- Pakenham Hills Primary School – 650m north-west
- Pakenham Place Shopping Centre – 1.8km south-west
- Pakenham Activity Centre – 2km south-west (to the edge)
- Pakenham Train Station – 2km south-west
- Pakenham Secondary College – 3km west



Figure 6 - 1.5km radius (orange) around the subject site (blue) in contrast with the Pakenham township (Nearmap, August 2023).

Permit/Site History

The history of the site includes:

- Planning Permit application **T140318** was lodged for “Use and Development of the land for the purpose of a supermarket, medical centre, four shops, café, petrol station, restricted recreational facility (gym), alteration of access to a Road Zone Category 1 and reduction in car parking” and lapsed in December 2014.
- Planning Permit application **T150215** for a “Multi Purpose Facility” (preamble amended through the application process to read “Use and development of a service station and associated convenience shop, food and drink premises, development of 4 shops, reduction in the loading and unloading requirement of Clause 52.07, variations to Clause 52.12 (crossover width and landscape buffer), alter access to a Road in a Category 1 Road Zone and the erection of advertising and business identification signage.”) was issued in February 2015.
 - An extension of time issued to the permit in May 2023 via VCAT Ref P272/2023, pursuant to Section 127 of the Victorian Civil and Administrative Tribunal after Council had refused the Extension of Time Request. The extension required development to start by 22 May 2024.
 - Plans to Comply (PC1) with condition 1 of the permit was refused by Council as the documents did not comply with Conditions 1a (I & ii), 1 b (i), 1 c, 1d and 1e (iii)

A fourth extension of time to the permit (ET49-24) was refused on the basis of warehousing among other reasons. A Section 81(1) appeal was lodged with the Tribunal under VCAT ref P1039/2024 that is scheduled to be heard in December 2024.

- **GE220364** – An application was made to Council in May 2022 to end Section 173 Agreement T148994L registered to title. The Agreement prevented the land being developed for dual occupancies, split blocks or flats as defined in the Pakenham Planning Scheme on any lot with the exception of lot 148.

In-principal support was issued to the applicant in January 2023 on the basis that the land was currently zoned for higher intensity residential development. An appeal was lodged (P1351-2023) later that year under Section 184(2) a for a failure to decide. During the course of the appeal, the Tribunal directed that public notice be undertaken. One Statement of Grounds was lodged, however they chose not to be a party to the proceeding.

A proposed consent order between parties to end the Section 173 Agreement was submitted to the Tribunal early March 2024. On 12 March 2024, Orders by Consent were issued and the Section 173 Agreement was removed from the title.

Planning Scheme Provisions

Zone

The land is subject to the following zones:

- Mixed Use Zone – Schedule.

Overlays

The land is subject to the following overlays:

- Development Contributions Plan Overlay – Schedule 1.

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11 – Settlement (including Clause 11.01 Victoria).
- Clause 12 – Environmental and Landscape Values (including Clause 12.01-1S Protection of Biodiversity and Clause 12.01-2S Native Vegetation Management).
- Clause 15 – Built Environment and Heritage (including Clause 15.01-1S Urban Design, Clause 15.01-1R Urban Design – Metropolitan Melbourne, Clause 15.01-2S Building Design and Clause 15.01-5S Neighbourhood Character).
- Clause 16 – Housing (including Clause 16.01-1S Housing Supply).

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.01 – Cardinia Shire Key Issues and Strategic Vision.
- Clause 21.02 – Environment.
- Clause 21.03 – Settlement and Housing.
- Clause 21.06 – Particular Uses and Development.

Relevant Particular/General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.06 – Car Parking.
- Clause 52.17 – Native Vegetation.
- Clause 55 – Two or More Dwellings on a Lot and Residential Buildings.
- Clause 65 Decision Guidelines.

Planning Permit Triggers

The proposal requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.04-6 (Mixed Use Zone); a permit is required to construct two or more dwellings on a lot.
- Pursuant to Clause 52.06-3 (Car Parking); a permit is required to reduce the number of car parking spaces required under Clause 52.06-5.
- Pursuant to Clause 52.17-1 (Native Vegetation); a permit is required to remove, destroy or lop native vegetation, including dead native vegetation.

Public Notification

The application has been advertised pursuant to Section 52 (1) a, c & d of the *Planning and Environment Act 1987* via letter to neighbouring properties and the erection of two signs on the Princes Highway and Sir Thomas Drive road frontages.

No objections or submissions have been received against the application to date.

Referrals

The application has not been referred to internal departments as Council Planning Officers are unsupportive of the proposal in its current form, and the applicant does not seek to and/or has not made any amendments to the proposal from its originally submitted form.

The application has not been referred to any external departments in accordance with the requirements of Clause 66 (Referral and Notice Provisions) of the Cardinia Planning Scheme, as insufficient information was provided in which to make an assessment against Clause 52.17 (Native Vegetation) of the Cardinia Planning Scheme and as such, it is uncertain if the application would have required referral to the Department of Environment, Land, Water and Planning (DEECA) pursuant to Clause 62.02-2 of the Cardinia Planning Scheme.

Assessment

A number of matters require consideration for a proposal of this nature, including:

- Response to Planning Policy Framework
- Response to the Mixed Use Zone
- Response to Particular and General Provisions inclusive of:
 - Clause 52.06 – Car Parking
 - Clause 52.17 – Native Vegetation Removal
 - Clause 55 – Two or More Dwellings on a Lot and Residential Buildings
- Response to general planning matters inclusive of:
 - Neighbourhood Character
 - Design Detail
 - Landscaping
 - Waste Management
 - Clause 65 Decision Guidelines

These matters are explored below.

Response to Planning Policy Framework

A number of policies are relevant and require consideration. It is noted that the Local Planning Policy Framework provides local context to the State Planning Policy Framework provisions, and as such these policies are assessed together under themes.

These themes generally reflect the “Key Issues” explored within Clause 21.01 Cardinia Shire Key Issues and Strategic Vision regarding environment, settlement and housing.

Clause 11 Settlement, Clause 16 Housing and Clause 21.03 Settlement and Housing

Clause 11 identifies that *“planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing...”* and that planning is to recognise the need for and contribute towards diversity of choice, economic viability, high standard of urban design and amenity.

To achieve these objectives, Clause 11.01 – Victoria identifies a need to *“guide the structure, functioning and character of each settlement taking into account municipal and regional contexts and frameworks”* and to *“limit urban sprawl and direct growth into existing settlements.”* One way to direct growth is noted as to *“encourage a diversity of housing types at higher densities in and around activity centres.”*

Clause 16 identifies that planning should provide for diversity, ensure the long-term sustainability of new housing and include the provision of land for affordable housing.

Clause 16.01-1S – Housing Supply incorporates the objective to *“facilitate well-located, integrated and diverse housing that meets community needs.”* Associated strategies seek for an *“appropriate quantity, quality and type of housing (be) provided”* in appropriate locations, facilitating *“diverse housing that offers choice and meets changing household needs.”* It is further noted that development should provide *“a high level of internal and external amenity.”*

At a Local Planning Policy Framework level, Clause 21.03 – Settlement and Housing incorporates Clause 21.03-1 – Housing which identifies that *“housing within the Cardinia Shire is currently dominated by detached dwellings”* and key issues include a need to provide *“for a diversity of housing types and densities... around activity centres”* as well as a need for *“affordability and availability of housing choice”*, with a recognised *“demand for specialist design housing including housing for the aged, people with a disability or mobility issues.”* A number of objectives are listed seeking to respond to these issues, which generally regard to encourage diversity in housing, and to provide housing that caters to a wide demographic.

Whilst the Mixed Use Zone does certainly anticipate increased densities, it is submitted that the proposal provides for poorly designed townhouses that do not provide for integrated housing that meets community needs. The townhouses lack diversity and accessibility, and the proposal appears to seek to maximise yield above all other considerations. The site is appropriate for infill development to assist with housing affordability and changing demographics, however the proposed outcome does not appropriately respond to the intent of these clauses and further to this seeks to only use a portion of the site and not the site in its totality resulting in a poor planning outcome for a site which possesses opportunity to positively provide for a mixture of uses or housing at higher densities in a more appropriate manner.

Clause 12 Environmental and Landscape Values and Clause 21.01 Environment

Clause 12 identifies that *“planning should help to protect the health of ecological systems and the biodiversity they support.”*

Clause 12.01-1S – Protection of Biodiversity seeks to *“protect and enhance Victoria’s biodiversity”* by ensuring that *“decision making takes into account the impacts of land use and development on Victoria’s biodiversity”* whilst Clause 12.01-2S – Native Vegetation Management seeks to *“ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.”* An associated strategy is to *“ensure decisions that involve, or will lead to, the removal, destruction or lopping of native vegetation, apply the three-step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017)”*

At a Local Planning Policy Framework level, Clause 21.01 – Environment incorporates Clause 21.01-3 – Biodiversity which identifies that Cardinia Shire contains a diverse environment, and that use and development pressures have resulted in a decline and fragmentation of the environment. Objectives and

strategies seek to “achieve no net loss in the quantity and quality of native vegetation” and “ensure that the siting of buildings and works avoids and minimises the removal or fragmentation of native vegetation” as well as maintain and enhance the diversity of indigenous habitats and species.

Whilst the applicant can seek for removal of vegetation in accordance with the three-step approach, the application is premature and does not assess all relevant vegetation, nor provide the appropriate information to determine the assessment pathway or offset calculations.

The proposal seeks to remove all vegetation on site, when it is apparent that some vegetation can be practically retained if the avoidance and minimisation of Native Vegetation removal is given sufficient weight to facilitate more appropriate design outcomes.

The proposal does not meet the intent of the above-mentioned policies.

Clause 15 Built Environment and Heritage and Clause 21.06 Particular Uses and Development

Clause 15 identifies that “*planning should ensure all land use and development appropriately responds to its surrounding landscape and character, valued built form and cultural context*” and that “*planning must support the establishment and maintenance of communities by delivering functional, accessible, safe and diverse physical and social environments, through the appropriate location of use and development and through high quality buildings and urban design.*”

Additionally, it is highlighted that planning should promote excellence in the built environment to create places that are “*enjoyable, engaging and comfortable to be in,*” “*accommodate people of all abilities*” and “*contribute positively to local character.*”

Clause 15.01-1S – Urban Design seeks to “*create urban environments that are safe, healthy, functional and enjoyable.*” Strategies listed to meet this objective include for “*development to respond to its context in terms of character*” and to ensure development that each development improves the “*quality of living and working environments, facilitating accessibility and providing for inclusiveness*” and “*supports public realm amenity.*” Additionally, this Clause directs that each development “*provides landscaping that supports the amenity, attractiveness and safety of the public realm.*” It is acknowledged these strategies and objectives are generally supported by, aligned with or expanded upon by subsequent clauses such as Clause 15.01-1R – Urban Design – Metropolitan Melbourne, Clause 15.01-2S – Building Design and Clause 15.01-5S – Neighbourhood Character.

Additionally, Clause 21.03-2 – Urban Established Area - Beaconsfield and Pakenham reflects the above key issues and objectives.

At a Local Planning Policy Framework Level, Clause 21.06 – Particular Uses and Development incorporates a number of relevant sub-clauses.

Clause 21.06-1 – Urban Design identifies that good design is “*based on the principle of being site responsive, designing to take into account the character and constraints of a site and wider area.*” This clause incorporates a number of strategies and objectives seeking for development to contribute to character.

Character and design detail is discussed in greater detail in this report, and the subsequent chapter discussing these matters should be read in conjunction with the above-mentioned policies. Although no site-specific strategic document applies to the land, it is clear and evident that the proposal does not adequately respond to the existing or future character envisaged for the area, and would otherwise result in a poor outcome that does not accommodate people of all abilities, does not promote safe, healthy or functional living, lacks appropriate landscaping opportunity and does not appropriately respond to the public realm.

Response to the Mixed Use Zone

Purposes of the Mixed Use Zone include:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To provide for a range of residential, commercial, industrial and other uses which complement the mixed-use function of the locality.*
- *To provide for housing at higher densities.*

- To encourage development that responds to the existing or preferred neighbourhood character of the area.
- To facilitate the use, development and redevelopment of land in accordance with the objectives specified in a schedule to this zone.

Whilst the proposal provides housing at a higher density, this density does not respond to the existing neighbourhood character of the site as explored within the design detail and neighbourhood character chapters of this report.

Clause 32.04-6 identifies that an application to construct two or more dwellings on a lot must meet the requirements of Clause 55. Further, Clause 32.04-10 identifies that “any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone, or Township Zone must meet the requirements of Clauses 55.03-5, 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.” These matters are assessed elsewhere within this report.

Clause 32.04-14 Decision Guidelines outlines matters that the Responsible Authority must consider, as appropriate. These matters are assessed below:

Relevant Decision Guideline	Response
<p><u>General</u></p> <p>Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:</p> <ul style="list-style-type: none"> • The Municipal Planning Strategy and the Planning Policy Framework. • The objectives set out in a schedule to this zone. • Any other decision guidelines specified in a schedule to this zone. • The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in a Mixed Use Zone or Residential Growth Zone. 	<p>The proposals response to Clause 65 is explored elsewhere in this report with concerns noted, and the assessment against the Municipal Planning Strategy and Planning Policy Framework also identifies deficiencies with the application.</p> <p>There are no objectives set out in the Schedule to this zone.</p>
<p><u>Construction of Two or More Dwellings</u></p> <ul style="list-style-type: none"> • For two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55. This does not apply to an apartment development of five or more storeys, excluding a basement. 	<p>An assessment against Clause 55 is provided elsewhere in this report.</p>

As such, the proposal does not appropriately respond to the Mixed Use Zone.

Response to Particular and General Provisions

A number of particular and general provisions are relevant to the consideration of the application.

Clause 52.06 – Car Parking

The purposes of this Clause include to ensure the provision of car parking spaces is appropriate and ensure that car parking does not adversely affect the amenity of the locality, and to “ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.”

Pursuant to Clause 52.06-5 – Number of Car Parking Spaces Required under Table 1, one (1) visitor car parking space must be provided for every five (5) dwellings. Noting twenty-six (26) townhouses are proposed, a total of five (5) visitor spaces must be provided.

Only two visitor spaces are provided on the application documentation, therefore pursuant to Clause 52.06-3 – Permit Requirement, a permit is required regarding the shortfall of visitor spaces required.

A Car Parking Demand Assessment has been provided which acknowledged that the site has ‘limited access’ to sustainable transport modes, and that a shortfall of three (3) visitor spaces is generated by the development plans. Whilst the Car Parking Demand Assessment identifies that based on a review of “*historical aerial photography*” that there is ample on-street parking available to accommodate the shortfall and the proposal is considered “suitable” it is considered that this shortfall is not appropriate when consideration is given to the decision guidelines of Clause 52.06-10 as:

- Public transport is limited to two bus services (840 and 929) with stops located greater than 700 metres from the subject site.
- The shortfall is proposed to maximise yield, and is a poor planning outcome.
- The location of proposed visitor spaces within the front setback minimises landscaping potential and results in poor presentation to the street.
- The Car Parking Demand Assessment does not consider the potential of the development of the balance of the land, and how that may impact on-street car parking.
- Equally, the visitor spaces can comfortably be provided on the ‘balance’ of the land if the adjoining development was not to proceed
- The location of the visitor spaces near to solid walls may cause conflict with vehicles traversing from the site down the internal driveway due to lack of appropriate visibility
- There are no visitor spaces located towards the middle or rear of the site, resulting in the need for visitors to walk up to 80m to rear townhouses which is not an appropriate outcome for visitors with limited mobility.

As such, the visitor car parking dispensation is not supported.

Clause 52.17 – Native Vegetation Removal

Pursuant to Clause 52.17-1, a permit is required to remove, destroy or lop native vegetation.

Documentation submitted with the application identifies two (2) trees that trigger the need for planning permission, being Tree 2 (Sallow Wattle) and Tree 4 (Sallow Wattle) which are located towards the south-west section of the site and will be directly impacted by the development.

Whilst all sixteen (16) assessed trees are to be removed from the site, the other fourteen (14) assessed trees are identified as being either not native to Victoria or are recent regrowth and exempt from the need for planning permission.

However, the Arborist report notes two matters that require consideration:

“The services of an ecologist will be required to fully assess the origin of vegetation other than trees such as grasses, plants, shrubs, etc which may require permits and offsets for their removal.”

*“Area C is an overgrown section of the site located in the north-west corner. It was inaccessible due to the dense growth of blackberries and gorse. Trees within the area could not be accessed to be measured. Species noted in the area were *Acacia mearnsii* (Late Black Wattle), *Acacia implexa* (Lightwood), *Eucalyptus sp.* (Gum), *Fraxinus sp.* (Ash), and other weedy taxa. The largest tree DBH in the area is estimated to be ~17cm. Some of these species are native to Victoria and may be over 10 years old. **These trees may be subject to Clause 52.17 and require a permit for their removal. A more detailed study of the area will need to be conducted once access to the trees can be obtained.**”*

As such, it is apparent that the application lodged to Council is not complete in terms of an assessment of Native Vegetation on the site. Application material does not identify whether these trees are to be retained or removed, and the application material ‘ignores’ the wider northern portion of the site.

The purposes of Clause 52.17 Native Vegetation are:

“To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. This is achieved by applying the following three step approach in accordance with the Guidelines for the removal, destruction or lopping of native vegetation (Department of Environment, Land, Water and Planning, 2017) (the Guidelines):

- 1. Avoid the removal, destruction or lopping of native vegetation.*
- 2. Minimise impacts from the removal, destruction or lopping of native vegetation that cannot be avoided.*
- 3. Provide an offset to compensate for the biodiversity impact if a permit is granted to remove, destroy or lop native vegetation.*

To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.”

The application does not seek to avoid removal of native vegetation. The two trees to be impacted are close the property boundary, and could quite easily be retained with a modified design however it appears that the design has considered the site as cleared to achieve maximum yield.

Further, no Native Vegetation Removal Report is provided with the application material to determine appropriate assessment pathway or offsets. As such, Council are unable to undertake a complete assessment against this provision.

As the proposal does not explore all vegetation on site, does not provide a Native Vegetation Removal Report, nor seek to avoid the removal of vegetation, the application does not meet the purpose of this Clause nor respond appropriately to good planning principles.

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

Clause 32.04-6 identifies that an application to construct two or more dwellings on a lot must meet the requirements of Clause 55. Further, Clause 32.04-10 identifies that “any buildings or works constructed on a lot that abuts land which is in a General Residential Zone, Neighbourhood Residential Zone, Residential Growth Zone, or Township Zone must meet the requirements of Clauses 55.03-5, 55.04-1, 55.04-2, 55.04-3, 55.04-5 and 55.04-6 along that boundary.”

As a result of Planning Scheme Amendment VC243, a number of changes have occurred and been formalised as to the assessment process of Clause 55. In summary:

- If a development meets standard B6, B7, B8, B17, B18, B19, B20, B21, B22, B27, B28, B30 or B32, it is deemed to meet the objective for that standard.
- Where standard B6, B7, B8, B17, B18, B19, B20, B21, B22, B27, B28, B30 or B32 is met the decision guidelines for that standard do not apply to the application.

As such, this assessment reflects the direction from VC243.

Further, please note that for the purposes of the Clause 55 Assessment, the wider subject site is to be taken into consideration.

Clause 55.01 - Neighbourhood and Site Description and Design Response		
An application must be accompanied by:	Clause 55.01-1 Neighbourhood and site description	Satisfactory The applicant has provided a written statement / report.
A neighbourhood and site description	Clause 55.01-2 Design Response	
A design response		

Clause 55.02 - Neighbourhood Character and Infrastructure		
Standard No. & Objective	Standard	Comments
Standard B1: Neighbourhood character Design respects existing neighbourhood character	The design response must be appropriate to the neighbourhood and the site. The proposed design must respect the existing or preferred neighbourhood character and respond to the features of the site.	Does not comply Refer to the discussion chapter regarding neighbourhood character and built form outcomes.

or contributes to -a preferred neighbourhood character. Development responds to features of the site and surrounding area.		
Standard B2: Residential Policy Residential development is consistent with housing policies in the SPPF, LPPF including the MSS and local planning policies. Support medium densities in areas to take advantage of public transport and community infrastructure and services.	Written statement describing how development is consistent with planning policies for housing in the Planning Scheme.	Satisfactory The applicant provided a written statement / report identifying the sites response to the relevant Planning Policy Framework. However, Council query the response to the relevant policies as explored throughout this report.
Standard B3: Dwelling Diversity Encourages a range of dwelling sizes and types in developments of ten or more dwellings.	Developments of ten or more dwellings should provide a range of dwelling sizes and types, including: Dwellings with a different number of bedrooms. At least one dwelling that contains a kitchen, bath or shower, and a toilet and wash basin at ground floor level.	Does not comply The proposal regards over 10 dwellings and does not provide a suitable range of dwelling sizes or types. The proposed development lacks meaningful diversity.
Standard B4: Infrastructure Integrate the layout of development with the street.	Development should: Be connected to reticulated services, including reticulated sewerage, drainage, electricity and gas, if available. Not unreasonably exceed the capacity of utility services and infrastructure, including reticulated services and roads. In areas where utility services or infrastructure have little or no spare capacity, developments should provide for the upgrading of or mitigation of the impact on services or infrastructure.	Satisfactory The subject site is located within an established residential area and benefits from all available services. It is expected the proposal and can be readily connected to various infrastructure/ services and there are no known capacity concerns.
Standard B5: -Integration With The Street Integrate the layout of development with the street.	Development should provide adequate vehicular/pedestrian links that maintain/enhance local accessibility Dwellings should be oriented to front existing and proposed streets. High fencing in front of dwellings should be avoided if practicable. Development next to existing public open space should be laid out to complement the open space.	Does not comply Two dwellings face the street, and whilst both dwellings incorporate pedestrian access facing Sir Thomas Drive, the dwellings are located behind communal bin storage areas and visitor parking, whilst the dwelling floor plans identify one window adjacent to the door facing the street (contrary to the elevation plans). As such, the development is not orientated appropriately to the street.

Clause 55.03 - Site Layout and Building Massing		
Standard No. & Objective	Standard	Comments
Standard B6: -Street Setback The setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.	IF THERE ARE EXISTING BUILDINGS ON BOTH ABUTTING ALLOTMENTS The average distance of the setbacks of the front walls of the existing buildings on the abutting allotments facing the front street or 9 metres, whichever is the lesser.	Satisfactory The site is a 'corner lot' in that it is located on the corner of Sir Thomas Drive and Princes Highway, albeit the development footprint is set some distance from the true 'corner' of the lot. As 37 Sir Thomas Drive faces a different portion of road, the front setback should be 4m.

		The proposed front setback is 4m, however it is noted that bin storage is located within the front setback.
<p>Standard B7: -Building Height Building height should respect the existing or preferred neighbourhood character.</p>	<p>Changes of building height between existing buildings and new buildings should be graduated. FLAT SITE The maximum building height should not exceed 9 metres. SLOPING SITE -If the slope of the natural ground level at any cross section wider than 8 metres of the site of the building is 2.5 degrees or more, the maximum building height should not exceed 10 metres.</p>	<p>Satisfactory The maximum building height should not exceed 9m. The proposed building height is in the range of 7.36m, and as such meets this standard.</p>
<p>Standard B8: -Site Coverage Site coverage should respect the existing or preferred neighbourhood character and respond to the features of the site.</p>	<p>The site area covered by buildings should not exceed 60 %.</p>	<p>Satisfactory The proposed site coverage is 60% if considering the portion of the site subject to this application, or much less if the balance of the site is not developed. As such, the proposal meets this standard.</p>
<p>Standard B9: -Permeability Reduce the impact of stormwater run-off on the drainage system and facilitate on-site stormwater infiltration.</p>	<p>At least 20% of the site should not be covered by impervious surfaces.</p>	<p>Satisfactory The proposed level of permeable surface is 20% if considering the portion of the site subject to this application, or much less if factoring in the wider site. As such, the proposal meets this standard.</p>
<p>Standard B10: -Energy Efficiency Achieve and protect energy efficient dwellings and residential buildings. Ensure orientation and layout reduces fossil fuel energy use and makes appropriate use of daylight and solar energy.</p>	<p>Buildings should be: Oriented to make appropriate use of solar energy. Sited and designed to ensure that the energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced. Living areas and private open space should be located on the north side of the dwelling, if practicable. Dwellings should be designed so that solar access to north-facing windows is maximised.</p>	<p>Satisfactory The northern flank of townhouses benefit from a north facing courtyard and bedroom with north facing windows at the ground level, and a north facing balcony at the upper storey. The southern flank of townhouses have no north facing windows at the ground floor, but do benefit from a north facing balcony at the upper level accessed from a living room. Further, as the townhouses are attached, the ground floor can benefit from additional east or west facing windows and rely solely on the southern facing window to the bedroom. As the ground floor includes one bedroom only, this is deemed an acceptable outcome.</p>
<p>Standard B11: -Open Space Integrate layout of development with any public and communal open space provided in or adjacent to the development.</p>	<p>If any public or communal open space is provided on site, it should: Be substantially fronted by dwellings, where appropriate, and be accessible and useable. Provide outlook for as many dwellings as practicable. Be designed to protect any natural features on the site.</p>	<p>Satisfactory Communal pedestrian pathways to provide access to the dwelling is fronted by dwellings. However, there are design concerns associated with this communal accessway explored elsewhere within this report.</p>

<p>Standard B12: Safety Layout to provide safety and security for residents and property</p>	<p>Entrances to dwellings/residential buildings should not be obscured or isolated from the street and internal accessways. Planting which creates unsafe spaces along streets and accessways should be avoided. Developments should provide good lighting, visibility and surveillance of car parks and internal accessways. Private spaces within developments should be protected from inappropriate use as public thoroughfares.</p>	<p>Does not comply Whilst entrances are not isolated from the internal walkways, the walkways themselves are poorly considered and result in an unsafe environment. Residents and visitors are required to utilise a relatively narrow pathway with one entrance and exit only. Further, these pathways are to be constructed near to solid fencing, further reducing an appropriate 'safe' outcome. Surveillance of these pathways are also limited, noting the ground floor of dwellings incorporates a bedroom facing the street only, and upper floors have limited views of the pathways due to window treatments (southern flank of townhouses) or required balcony screening (northern flank of townhouses).</p>
<p>Standard B13: Landscaping To provide appropriate landscaping To encourage: Development that respects the landscape character of the neighbourhood. Development that maintains and enhances habitat for plants and animals in locations of habitat importance. The retention of mature vegetation on the site.</p>	<p>The landscape layout and design should: Protect any predominant landscape features of the neighbourhood. Take into account the soil type and drainage patterns of the site. Allow for intended vegetation growth and structural protection of buildings. In locations of habitat importance, maintain existing habitat and provide for new habitat for plants and animals. Provide a safe, attractive and functional environment for residents. Development should provide for the retention or planting of trees, where these are part of the character of the neighbourhood. Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made. The landscape design should specify landscape themes, vegetation (location and species), paving and lighting.</p>	<p>Does not Comply The proposal includes limited landscaping, not congruent or respectful of the available size of the site. The site incorporates a character element of large canopy trees and large private open space located within a garden setting, and the proposed landscaping response does not fit the landscape character of the wider surrounds.</p>
<p>Standard B14: Access Ensure the safe, manageable and convenient vehicle access to and from the development. Ensure the number and design of vehicle crossovers respects neighbourhood character.</p>	<p>Access ways should: Be designed to allow convenient, safe and efficient vehicle movements and connections within the development and to the street network. Be designed to ensure vehicles can exit a development in a forward direction if the accessway serves five or more car spaces, three or more dwellings, or connects to a road in a Road Zone. Be at least 3 metres wide. Have an internal radius of at least 4 metres at changes of direction. Provide a passing area at the entrance that is at least 5 metres wide and 7 metres long if the accessway serves ten or more spaces and connects to a road in a Road Zone. The width of access ways or car spaces should not exceed 33% of the street frontage, or if the</p>	<p>Satisfactory The proposed 7m crossover (which would be required to be reduced if a permit were to be issued in accordance with Council Engineering conditions), equates to 14% of the portion of the site subject to development, and much less if considering the wider site.</p>

	width of the street frontage is less than 20 metres, 40% of the street frontage. No more than one single-width crossover should be provided for each dwelling fronting a street. The location of crossovers should maximise the retention of on-street car parking spaces. The number of access points to a road in a Road Zone should be minimised. Developments must provide for access for service, emergency and delivery vehicles.	
Standard B15: Parking Location Provide resident and visitor vehicles with convenient parking. Avoid parking and traffic difficulties in the development and the neighbourhood. Protect residents from vehicular noise within developments.	Car parking facilities should: Be reasonably close and convenient to dwellings and residential buildings. Be secure. Be designed to allow safe and efficient movements within the development. Be well ventilated if enclosed. Large parking areas should be broken up with trees, buildings or different surface treatments. Shared access ways or car parks of other dwellings and residential buildings should be located at least 1.5 metres from the windows of habitable rooms. This setback may be reduced to 1 metre where there is a fence at least 1.5 metres high or where window sills are at least 1.4 metres above the access way.	Does not comply The location of visitor parking is not considered sufficient, as no visitor parking is located within the central or rear portion of the site. Those with limited mobility may find it difficult to park within the front setback and walk 80m + to the front door of rear dwellings.

Clause 55.04 – Amenity Impacts		
Standard No. & Objective	Standard	Comments
Standard B17: Side And Rear Setbacks Ensure the height and setback respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings	A new building (if not built on a boundary) should be set back from side or rear boundaries 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.	Satisfactory All dwellings comply with the required site and rear setbacks of this standard.
Standard B18: Walls On Boundaries Ensure the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the amenity impacts on existing dwellings.	A new wall or carport constructed on a side or rear boundary of a lot should not abut the boundary for a length of more than: 10 metres plus 25% of the remaining length of the boundary of an adjoining lot, or Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports, whichever is the greater. The height of a new wall or carport constructed on a side or rear boundary should not exceed an average height of 3 metres with no part higher than 3.6 metres unless abutting a higher existing or simultaneously constructed wall	Satisfactory There are no walls on boundaries proposed.
Standard B19: Daylight To Existing Windows Allow adequate daylight into existing habitable room windows.	Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky. Walls or carports more than 3 metres in height opposite an existing habitable room window should be set back from the window at	Satisfactory The proposed built form is located in such a way as to ensure this standard is met.

	least 50% of the height of the new wall if the wall is within a 55 degree arc from the centre of the existing window. The arc may be swung to within 35 degrees of the plane of the wall containing the existing window.	
Standard B20: -North-Facing Windows Allow adequate solar access to existing north-facing habitable room windows	If a north-facing habitable room window of an existing dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metre for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window.	Satisfactory No impacts to existing north facing windows are envisaged.
Standard B21: Overshadowing Open Space Ensure buildings do not significantly overshadow existing secluded private open space	Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75%, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of 5 hours of sunlight between 9 am and 3 pm on 22 September.	Satisfactory Shadow diagrams have been provided as part of the permit application that demonstrate that the numerical requirement is achieved. However, it is noted that the proposed vs existing shadow is not delineated on the plan set.
Standard B22: Overlooking Limit views into existing secluded private open space and habitable room windows.	A habitable room window, balcony, etc. should be located and designed to avoid direct views into the secluded private open space and habitable room windows of an existing dwelling within 9 metres.	Satisfactory All relevant windows or balconies are provided with treatment to avoid overlooking and meet this standard.
Standard B23: Internal Views Limit views into existing secluded private open space and habitable room windows of dwellings and residential buildings within the same development.	Windows and balconies should be designed to prevent overlooking of more than 50% of the secluded private open space of a lower-level dwelling or residential building directly below and within the same development	Satisfactory Internal overlooking will not occur due to window/balcony treatments.
Standard B24: Noise Impacts Protect residents from external noise and contain noise sources in developments that may affect existing dwellings.	Noise sources, such as mechanical plant, should not be located near bedrooms of immediately adjacent existing dwellings. Noise sensitive rooms and secluded private open spaces of new dwellings and residential buildings should take account of noise sources on immediately adjacent properties. Dwellings and residential buildings close to busy roads, railway lines or industry should be designed to limit noise levels in habitable rooms.	Satisfactory No impacts are envisaged in the existing residential area that would otherwise be uncommon. However, it is relevant to consider the permit approved service station and potential noise impacts to the northern flank of dwellings if Council were of the opinion to grant a planning permit.

Clause 55.05 - On Site Amenity and Facilities		
Standard No. & Objective	Standard	Comments
Standard B25: Accessibility Consider people with limited mobility in the design of developments.	The dwelling entries of the ground floor of dwellings and residential buildings should be accessible or able to be easily made accessible to people with limited mobility.	Does not comply Whilst the dwellings themselves may be accessible, concerns are raised with the length of the communal pedestrian paths to the rear townhouses, whilst no units incorporate any elevators/lifts. As such, whilst someone with limited mobility may enter the dwelling, they may be unable to reach the upper

		floor. As such, the development has not overly considered those with limited mobility.
Standard B26: Dwelling Entry Provide a sense of identity to each dwelling/residential building.	Entries to dwellings and residential buildings should: Be visible and easily identifiable from streets and other public areas. Provide shelter, a sense of personal address and a transitional space around the entry.	Does not comply Whilst the entrances of dwellings can be seen from the communal walkway, there are limited views of public areas to the walkway. With the provision of standard side boundary fencing, the common walkway and dwelling entries may not feel spacious or have a unique sense of identity.
Standard B27: Daylight To New Windows Allow adequate daylight into new habitable room windows.	A window in a habitable room should be located to face: An outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky, not including land on an abutting lot, or A verandah provided it is open for at least one third of its perimeter, or A carport provided it has two or more open sides and is open for at least one third of its perimeter.	Satisfactory All dwellings comprise habitable windows with an area of 3 square meters clear to the sky.
Standard B28: Private Open Space Provide reasonable recreation and service needs of residents by adequate private open space	A dwelling or residential building should have private open space consisting of: An area of 40 square metres, with one part of the private open space to consist of secluded private open space at the side or rear of the dwelling or residential building with a minimum area of 25 square metres, a minimum dimension of 3 metres and convenient access from a living room, or A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living room, or A roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.	Does not comply Dwelling 1 and 26 do not provide for 40m ² of private open space, but does provide for 25m ² of secluded private open space. All other dwellings meet the requirement via provision of appropriately sized balconies.
Standard B29: -Solar Access To Open Space Allow solar access into the secluded private open space of new dwellings/buildings.	The private open space should be located on the north side of the dwelling, if practicable. The southern boundary of secluded private open space should be set back from any wall on the north of the space at least (2 + 0.9h) metres, where 'h' is the height of the wall.	Does not comply The built form is provided in two east-west 'flanks' of townhouses, with all (with the exception of Dwelling 1) having north facing private open space. Whilst only 1 of 26 townhouses do not meet this standard, it is not deemed appropriate to provide such an outcome noting the vast area of the site.
Standard B30: Storage Provide adequate storage facilities for each dwelling.	Each dwelling should have convenient access to at least 6 cubic metres of externally accessible, secure storage space.	Does not comply Whilst the Town Planning Report identifies the relevant storage will be provided within the garage, the northern flank of dwellings annotates storage under the stairwell (not externally accessible) whilst it is not clear how/where the southern flank of townhouses provides the required storage.
Standard B31: -Design Detail	The design of buildings should respect the existing or preferred neighbourhood character.	Does not comply

Encourage design detail that respects the existing or preferred neighbourhood character.	Garages and carports should be visually compatible with the development and the existing or preferred neighbourhood character.	For reasons explored elsewhere in this report, the proposal does not appropriately respond to this Clause.
--	--	--

Clause 55.06 - Detailed Design		
Standard No. & Objective	Standard	Comments
Standard B32: Front Fences Encourage front fence design that respects the existing or preferred neighbourhood character	The design of front fences should complement the design of the dwelling and any front fences on adjoining properties. A front fence within 3 metres of a street should not exceed: Streets in a Road Zone, Category 1: 2 metres Other streets: 1.5 metres	Satisfactory Whilst fencing detail is not shown on floor/site plans, elevation plans identify a short semi-transparent fence to the street. However, it appears this fence is associated with Dwelling 1 and 26, and is not a 'true' front fence.
Standard B33: Common Property Ensure car parking, access areas and other communal open space is practical, attractive and easily maintained. Avoid future management difficulties in common ownership areas.	Developments should clearly delineate public, communal and private areas. Common property, where provided, should be functional and capable of efficient management.	Satisfactory There is a clear delineation between communal and private areas, and areas of communal use are capable of being efficiently managed.
Standard B34: Site Services Ensure site services and facilities can be installed and easily maintained and are accessible, adequate and attractive.	The design and layout of dwellings and residential buildings should provide sufficient space (including easements where required) and facilities for services to be installed and maintained efficiently and economically. Bin and recycling enclosures, mailboxes and other site facilities should be adequate in size, durable, waterproof and blend in with the development. Bin and recycling enclosures should be located for convenient access by residents. Mailboxes should be provided and located for convenient access as required by Australia Post.	Does Not Comply. Plans identify a sufficient provision and/or areas for services. However, bin storage within the front setback is an inappropriate outcome.

In summary, the proposal does not meet the standard and/or objectives of:

- Clause 55.02-1 Neighbourhood Character,
- Clause 55.02-3 Dwelling Diversity,
- Clause 55.02-5 Integration with the Street,
- Clause 55.03-7 Safety,
- Clause 55.03-8 Landscaping
- Clause 55.03-10 Parking Location,
- Clause 55.05-1 Accessibility,
- Clause 55.05-2 Dwelling Entry,
- Clause 55.05-3 Private Open Space,
- Clause 55.05-5 Solar Access to Open Space,
- Clause 55.05-6 Storage,
- Clause 55.06-1 Design Detail and
- Clause 55.06-4 Site Services.

Response to General Planning Matters

A number of matters require detailed assessment and are referenced throughout the relevant policy and this report.

Neighbourhood Character

The character of the area is typified by large single storey dwellings on lots with substantial front and rear setbacks set within a garden/landscaped setting. The existing housing stock is identified by conventional roof forms and external brick or weatherboard cladding. An emerging pattern of multi-unit development on large sites is apparent – inclusive of sites to the east, however these are generally detached or semi-detached units and remain an exception to the overall development character.

Whilst the provision of attached townhouses is not necessarily discouraged, the design introduces continuous built form across the length of the site, and results in relatively unarticulated, mirrored design that lacks positive design attributes. Further, the density of development (one dwelling per 153m²) is not consistent with a positive outcome when balanced with the design of the dwellings.

Respecting character does not require mimicking of existing built form, however the shared-wall construction, lack of articulation, ground level open space, provision for landscaping, the flat roof design and relatively high levels of site coverage indicates that the proposal will not respect the dominant character of this area.

Design Detail

Many of the neighbourhood character concerns overlap with design detail deficiencies. Many of these concerns are listed elsewhere in the report.

- The location of the communal bin storage within the front setback is a poor outcome, is a visual impact to the streetscape, removes areas that could otherwise be used for landscaping, reduces the visibility of the front dwellings and is not supported.
- The two ~80m long pedestrian pathways are not supported as they do not provide safe, adequate or functional access to the dwellings. The location of the pathway close to the southern boundary also reduces landscape potential to reduce any bulk and massing concerns when the site is viewed from the south.
- The extent of attached double-storey built form results in bulk, scale and massing concerns and is not compatible with the existing character of the area.
- The dwellings lack meaningful diversity in layouts/number of bedrooms.
- The lack of articulation and capacity for meaningful landscaping within the central driveway area does not result in an appropriate planning outcome.
- 24 of 26 dwellings rely on balconies to provide secluded private open space, but do not allow for appropriate views or a sense of spaciousness due to overlooking of the internal driveway and 'rear' of the northern flank of dwellings, or would otherwise overlook a service station (if constructed). If the service station is not constructed, the northern dwellings have screened balconies for limited reasons.
- The lack of visitor spaces through the central portion or rear of the site has not been justified.
- The flat roof and relative lack of articulation or breaks in built form result in a poor design outcome.
- The design does not allow for appropriate landscaping to assist in the screening of continuous double-storey built form.

Waste Management

Private collection is proposed, and it is queried whether the location of the communal bin area (whilst convenient for the contractor) results in an appropriate streetscape outcome.

Section 173 Agreements

One Section 173 Agreement applies to the site being S012533S. This agreement seeks to facilitate the rezoning of what was the parent subdivision from a Residential 4 zone to part Residential 2 and part Highway Facilities 2 zone and enable the subdivision of the land. The agreement required amongst other matters the vesting of land free of charge to the responsible authority for a community facility. This agreement has no bearing on the current permit application as the matters required to be satisfied and obligations set out have been addressed and satisfied under the previous rezoning of the land.

A previous Section 173 Agreement (T148994L) did apply to the land at the time the application was submitted however this was the subject of a separate application to end the Agreement that was ultimately settled via consent between the applicant and Council and the agreement was removed from the title in April this year.

Clause 65 Decision Guidelines

The context and matters of Clause 65 have been considered and referenced throughout this report, and it is evident that the proposal does not appropriately respond to a significant number of decision guidelines. As a result, the proposal does not translate to an appropriate or orderly town planning outcome.

Conclusion

The proposal is submitted to be an overdevelopment of the site that results in bulk, scale and design detail concerns that fail to respond to the established character of the area, while a lack of dwelling diversity undermines state and local policy objectives.

Poor waste management design, visitor parking consideration and an incomplete application suggest that the proposal is premature and has not been thoroughly conceived.

The proposal provides poor integration with the remainder of the site if the permitted service station is constructed, or alternatively is a poor outcome on its own merits if the service station does not proceed.

On balance, when considered against the relevant state and local policies, the zone, and Clause 52.17 and 55, the proposal results in an unacceptable outcome that should not be supported.

For the reasons set out above, Planning Permit application T220321 for the construction of twenty-six (26) dwellings, removal of native vegetation and reduction in car parking requirements should not be supported.

Recommendation

Refusal to Grant a Planning Permit

- A. That Council having caused notice of Planning Application No. T220321 to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987*, Issue a Notice of Refusal to Grant a Permit in respect of the land known and described as LH PS400130, Princes Highway Pakenham, for the 'Construction of Twenty-Six Dwellings (26), Removal of Native Vegetation and Reduction In Car Parking' on the following grounds:
1. The proposal is inconsistent with the purpose and decision guidelines of the Mixed Use Zone as it does not appropriately respond to the existing character of the area.
 2. The proposal does not appropriately respond to relevant Planning Policy Framework considerations as follows:
 - a. Clause 12.01-1S Protection of Biodiversity, Clause 12.05-2 Landscapes and Clause 21.02-3 Biodiversity as the proposal does not adequately seek to protect or enhance the biodiversity of the site.
 - b. Clause 15.01-1S Urban Design, Clause 15.01-1R, Clause 15.01-2S Building Design, Clause 15.01-5S, Clause 21.03-1 Housing and Clause 21.06-1 Urban Design as the

- proposal does not respond appropriately to the existing character of the area and results in poor built form and urban design outcomes.
- c. Clause 16.01-1S Housing Supply, Clause 16.01-1R Housing Supply – Metropolitan Melbourne, Clause 16.01-2S Housing Affordability and Clause 21.03-1 Housing as the proposal has limited diversity within the development or provide appropriate levels of differing accommodation for a wide spectrum of the market.
3. The proposal is inconsistent with the purpose and decision guidelines of Clause 52.06 (Car Parking).
 4. Insufficient information has been provided to assess the application against Clause 52.17 Native Vegetation and the proposal has not sufficiently sought to avoid and minimise native vegetation removal.
 5. The proposal does not meet the standard and/or objectives of Clause 55, including:
 - a. Clause 55.02-1 (Standard B1) Neighbourhood Character;
 - b. Clause 55.02-3 (Standard B3) Dwelling Diversity;
 - c. Clause 55.02-5 (Standard B5) Integration with the Street;
 - d. Clause 55.03-7 (Standard B12) Safety;
 - e. Clause 55.03-8 (Standard B13) Landscaping
 - f. Clause 55.03-10 (Standard B15) Parking Location;
 - g. Clause 55.05-1 (Standard B25) Accessibility;
 - h. Clause 55.05-2 (Standard B26) Dwelling Entry;
 - i. Clause 55.05-3 (Standard B28) Private Open Space;
 - j. Clause 55.05-5 (Standard B29) Solar Access to Open Space;
 - k. Clause 55.05-6 (Standard B30) Storage;
 - l. Clause 55.06-1 (Standard B31) Design Detail; and
 - m. Clause 55.06-4 (Standard B34) Site Services.

AND

- B. That Council authorise the Manager Planning and Design/Coordinator Statutory Planning to instruct Council's Statutory Planners and/or Council's Solicitors on any future application for review at the Victorian Civil and Administrative Tribunal.
-



Disclaimer: This content is provided "as is" without warranty of any kind. 06-Nov-2024

[View map online](#)



1 : 5,285 at A4



- 1 The subject site is a part of Lot H, Princes Highway, Pakenham, The vacant site has a total site area of 3980 sqm.
- 2 Pakenham Train approx 1.93 km
- 3 Princes Freeway via Racecourse Road approx 2.9 km
- 4 Bus stop routes 929 via Windermere Bvd approx 920m
- 5 Bus stop routes 929 via Barrington Dr approx 950m
- 6 Bus stop routes 925 via Princes Hwy approx 1.9 km
- 7 Pakenham Hills Primary School approx 920m
- 8 Pakenham Primary School approx 870m
- 9 Pakenham Kindergarten approx 2.1 km
- 10 Pakenham Secondary College approx 2.7 km
- 11 Bunnings East Pakenham approx 1.9 km
- 12 VicRoad Pakenham East approx 1.9 km
- 13 Pakenham Central Marketplace approx 2 km
- 14 Cardinia Lakes Shopping Centre approx 800m

REVISIONS

REV	DATE	DESCRIPTION	Initial	REV	DATE	DESCRIPTION	Initial
1	03/05/22	TP PRELIMINARY ISSUE	NH				



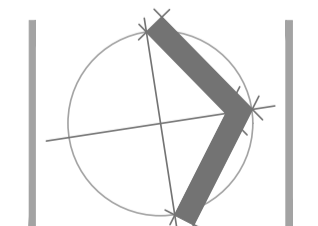
THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND MAY NOT BE REPRODUCED WITHOUT PRIOR WRITTEN CONSENT OF VALEO CONSTRUCTIONS PTY LTD.

PROPOSED RESIDENCES

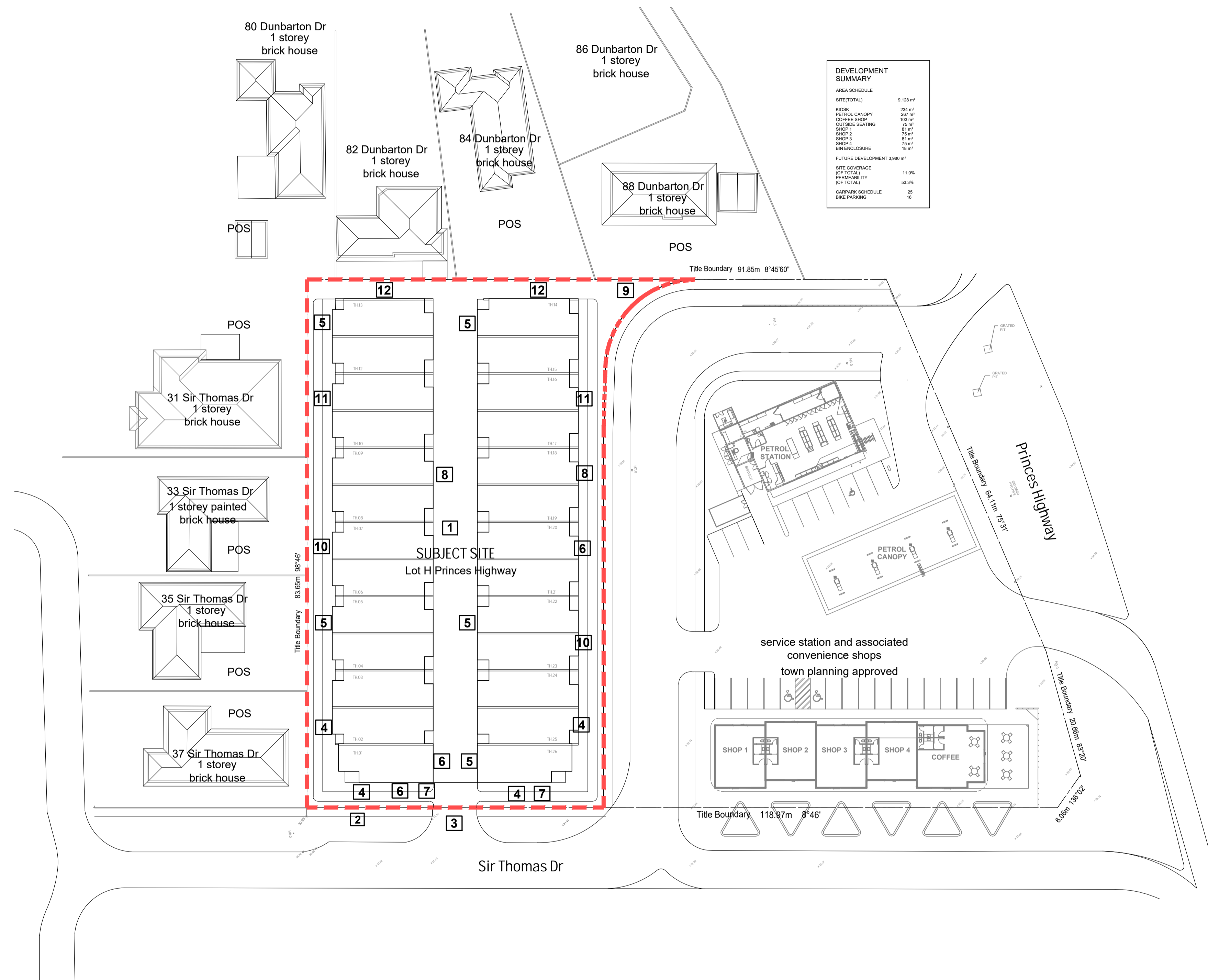
TOWN PLANNING ISSUE
 3 MAY 2022
 DRAWN BY: NH
 CLIENT: VALEO CONSTRUCTIONS

PRINCES HIGHWAY, PAKENHAM

DRAWING:
 NEIGHBOURHOOD AND SITE DESCRIPTION
 SCALE: 1:500@A1



DRWG NO:
 TPO1
 REV: 1



- 1** Subject site is a part of Lot H, Princes Highway, Pakenham. The vacant site has a total site area of 3980 sqm.
- 2** Building setback from Sir Thomas Dr boundary to comply with schedule 1 of clause 32.08 GENERAL RESIDENTIAL ZONE - GRZ1 of Cardinia Planning Scheme
- 3** Proposed new crossover has not impact on existing mature tree and on neighbourhood character
- 4** mailbox provided to each dwelling.
- 5** Screening provided to prevent over looking to adjoining POS. as per clause 55.04-6 standard B22 Rescode
- 6** Selected materials & textures to highlight architectural form and reduce visual bulk.
- 7** Town house front facades orientated to main street which is Sir Thomas Dr and maintain main entry from front street Sir Thomas Dr
- 8** Good cross ventilation and daylight access for all habitable rooms via openable windows
- 9** Maintain all existing mature tree on nature strip
- 10** Building set back to comply with rescode and reduce visual bulk to neighbours at sides.
- 11** Proposed habitable windows are orientated to maximise solar access from the north, north-east and north-west
- 12** Rear setback in accordance with 55.04-1 standard B17 Clause 55 ResCode

AREA SCHEDULE

SITE AREA :	3980SQM
SITE COVERAGE :	2400SQM (60%)
PERMEABILITY :	806SQM (20%)

REVISIONS

REV	DATE	DESCRIPTION	Initial
1	03/05/22	TP PRELIMINARY ISSUE	NH



PROPOSED RESIDENCES

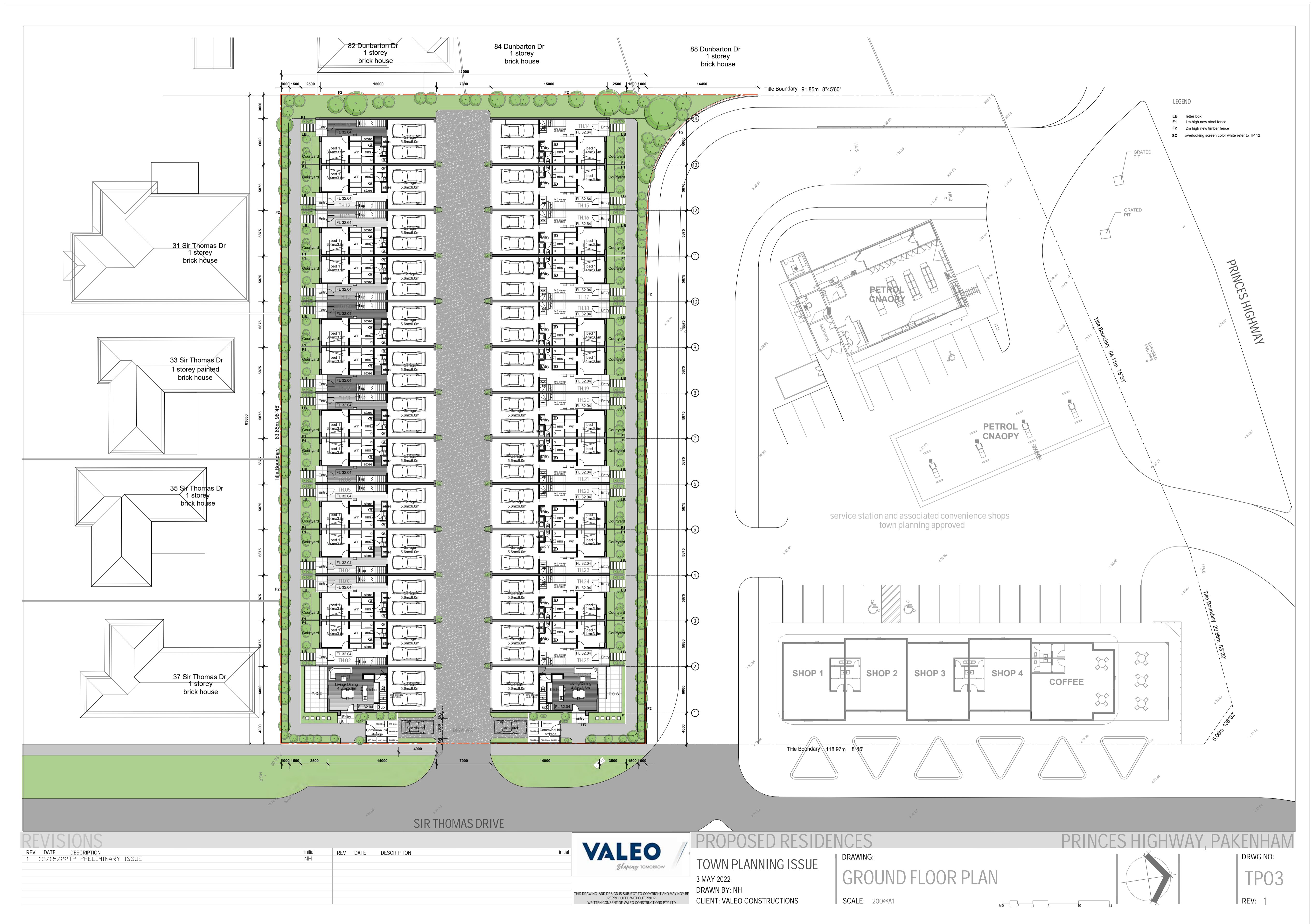
TOWN PLANNING ISSUE
 3 MAY 2022
 DRAWN BY: NH
 CLIENT: VALEO CONSTRUCTIONS

PRINCES HIGHWAY, PAKENHAM

DRAWING:
 NEIGHBOURHOOD AND SITE DESCRIPTION
 SCALE: 1:500@A1



DRWG NO:
 TPO2
 REV: 1



REVISIONS

REV	DATE	DESCRIPTION
1	03/05/22TP	PRELIMINARY ISSUE

Initial	REV	DATE	DESCRIPTION
NH			



THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND MAY NOT BE REPRODUCED WITHOUT PRIOR WRITTEN CONSENT OF VALEO CONSTRUCTIONS PTY LTD.

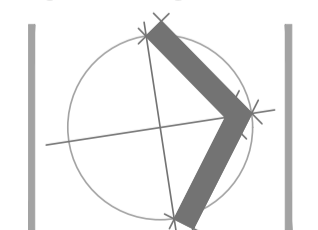
PROPOSED RESIDENCES

TOWN PLANNING ISSUE
 3 MAY 2022
 DRAWN BY: NH
 CLIENT: VALEO CONSTRUCTIONS

DRAWING:
GROUND FLOOR PLAN

SCALE: 200@A1

PRINCES HIGHWAY, PAKENHAM



DRWG NO:
TP03
 REV: 1



REVISIONS

REV	DATE	DESCRIPTION	INITIAL
1	03/05/22	PRELIMINARY ISSUE	NH



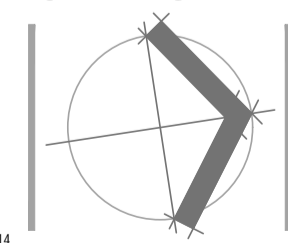
PROPOSED RESIDENCES

TOWN PLANNING ISSUE
3 MAY 2022
DRAWN BY: NH
CLIENT: VALEO CONSTRUCTIONS

DRAWING:
FIRST FLOOR PLAN

SCALE: 200@A1

PRINCES HIGHWAY, PAKENHAM



DRWG NO:
TPO4
REV: 1



REVISIONS

REV	DATE	DESCRIPTION
1	03/05/22	TP PRELIMINARY ISSUE

Initial	REV	DATE	DESCRIPTION
NH			



THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND MAY NOT BE REPRODUCED WITHOUT PRIOR WRITTEN CONSENT OF VALEO CONSTRUCTIONS PTY LTD.

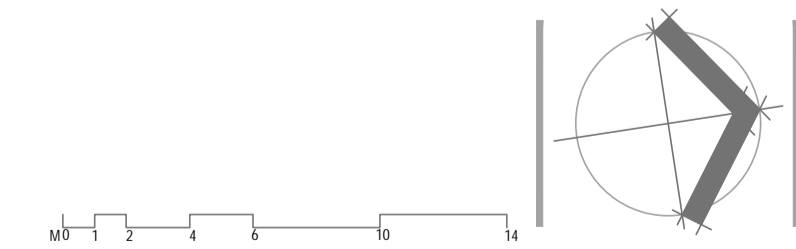
PROPOSED RESIDENCES

TOWN PLANNING ISSUE
 3 MAY 2022
 DRAWN BY: NH
 CLIENT: VALEO CONSTRUCTIONS

DRAWING:
ROOF PLAN

SCALE: 200@A1

PRINCES HIGHWAY, PAKENHAM



DRWG NO:
TP05
 REV: 1



REVISIONS

REV	DATE	DESCRIPTION	Initial
1	03/05/22TP	PRELIMINARY ISSUE	NH

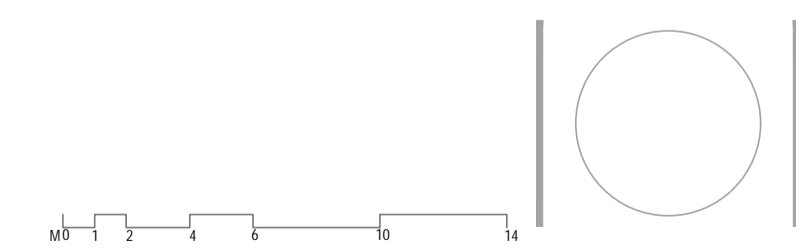


PROPOSED RESIDENCES

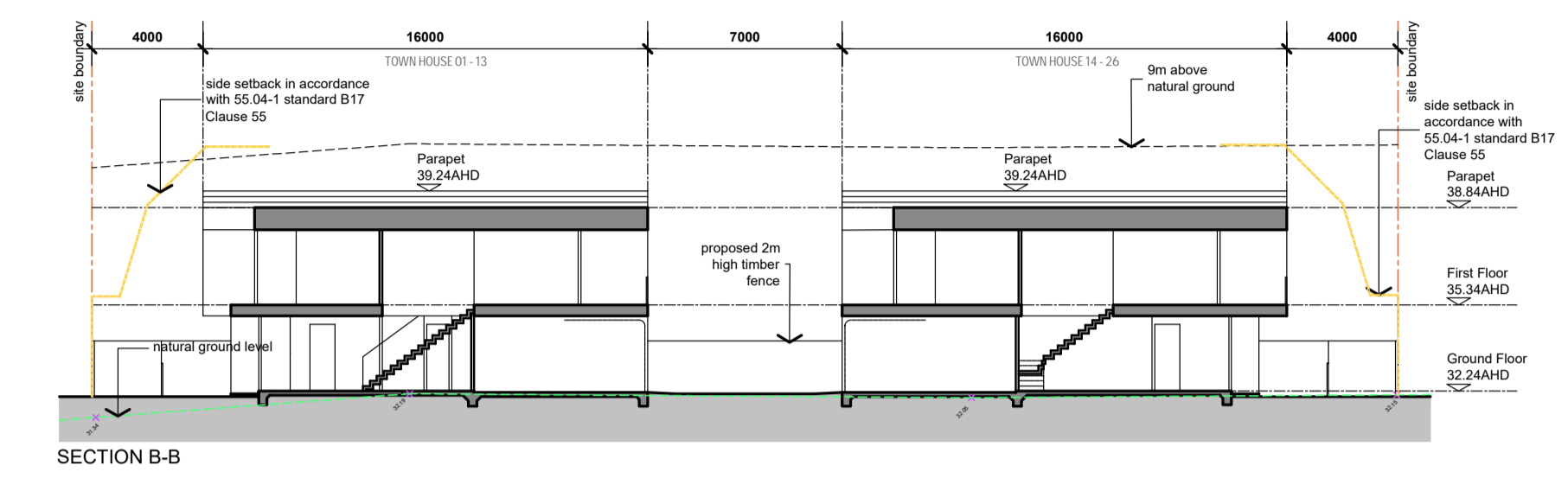
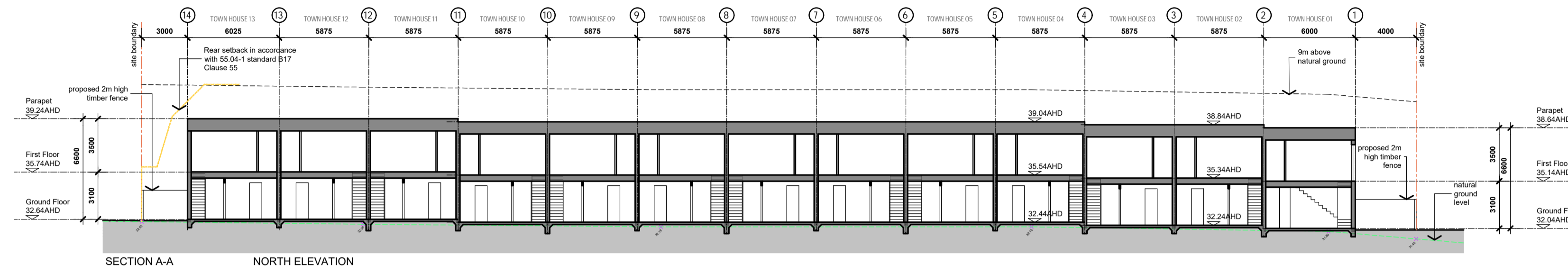
TOWN PLANNING ISSUE
 3 MAY 2022
 DRAWN BY: NH
 CLIENT: VALEO CONSTRUCTIONS

PRINCES HIGHWAY, PAKENHAM

DRAWING:
ELEVATIONS
 SCALE: 200@A1

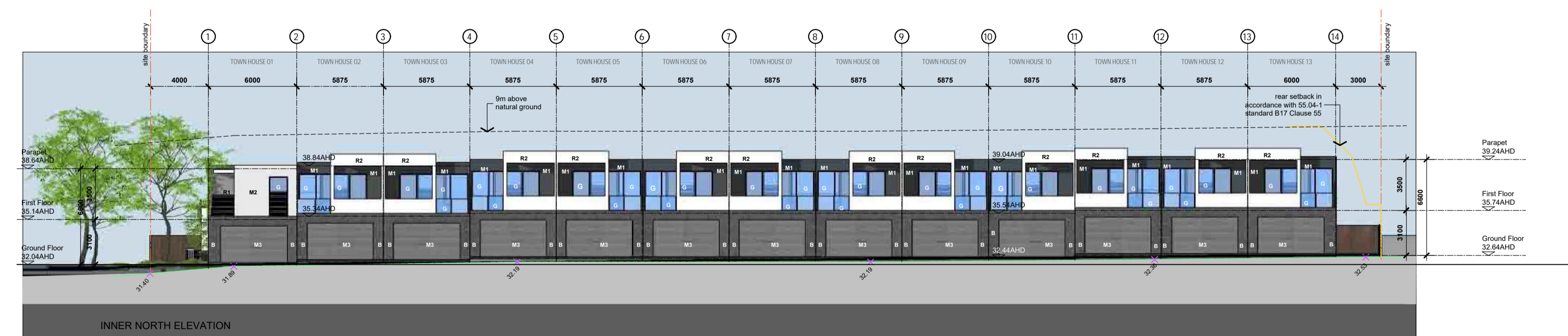


DRWG NO:
TP06
 REV: 1

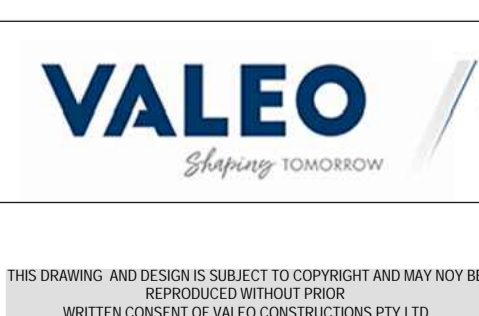


LEGEND

- B5 blue stone cladding
- B brick veneer brown
- R1 render finish color gray
- R2 render finish color white
- M1 colorbond cladding color dark
- M2 colorbond cladding color white
- G clear glass panel/windows
- M3 all garage door colorbond finish color gray
- SC overlooking screen color white



REVISIONS		Initial	REV	DATE	DESCRIPTION	Initial
1	03/05/22	NH	TP		PRELIMINARY ISSUE	

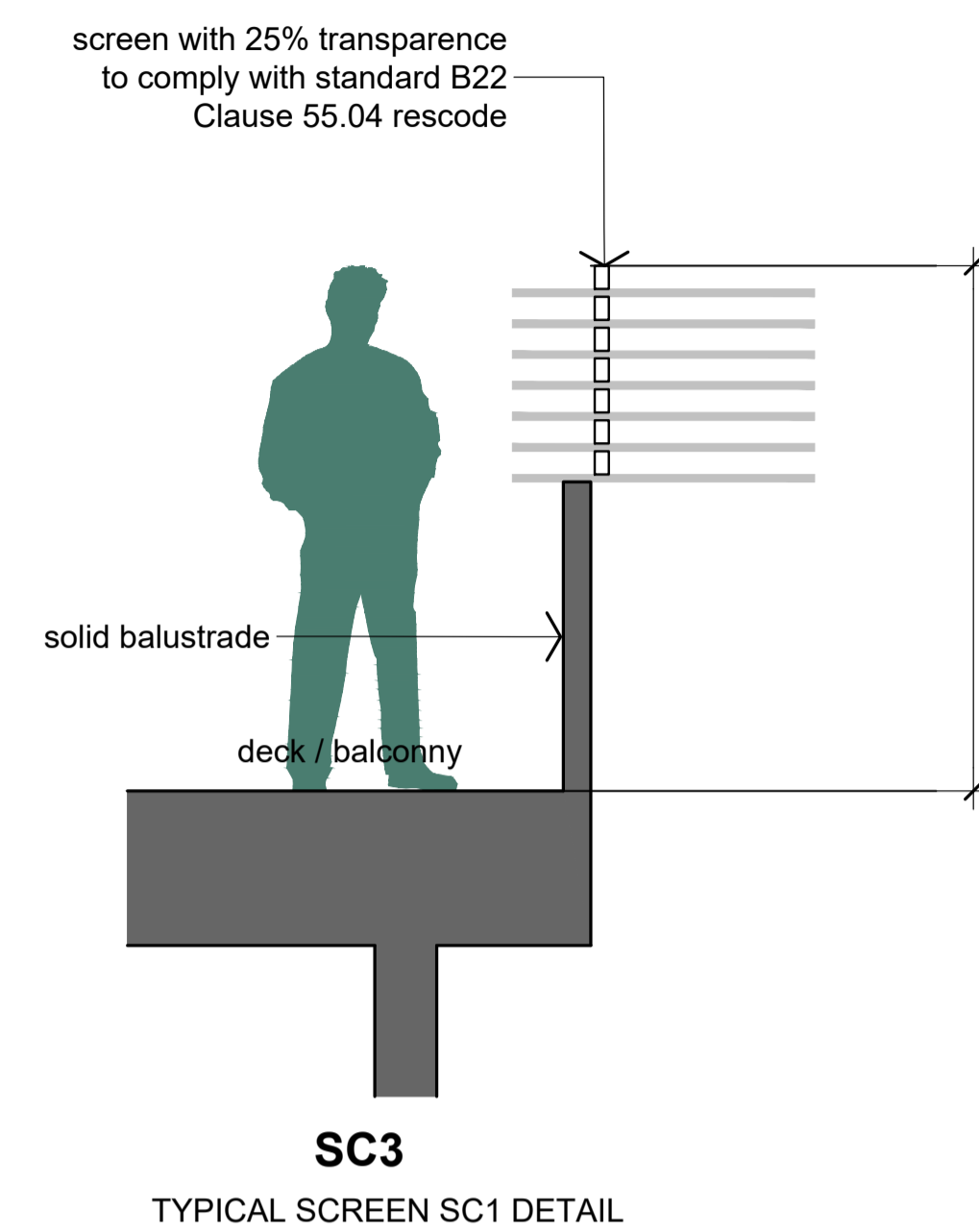
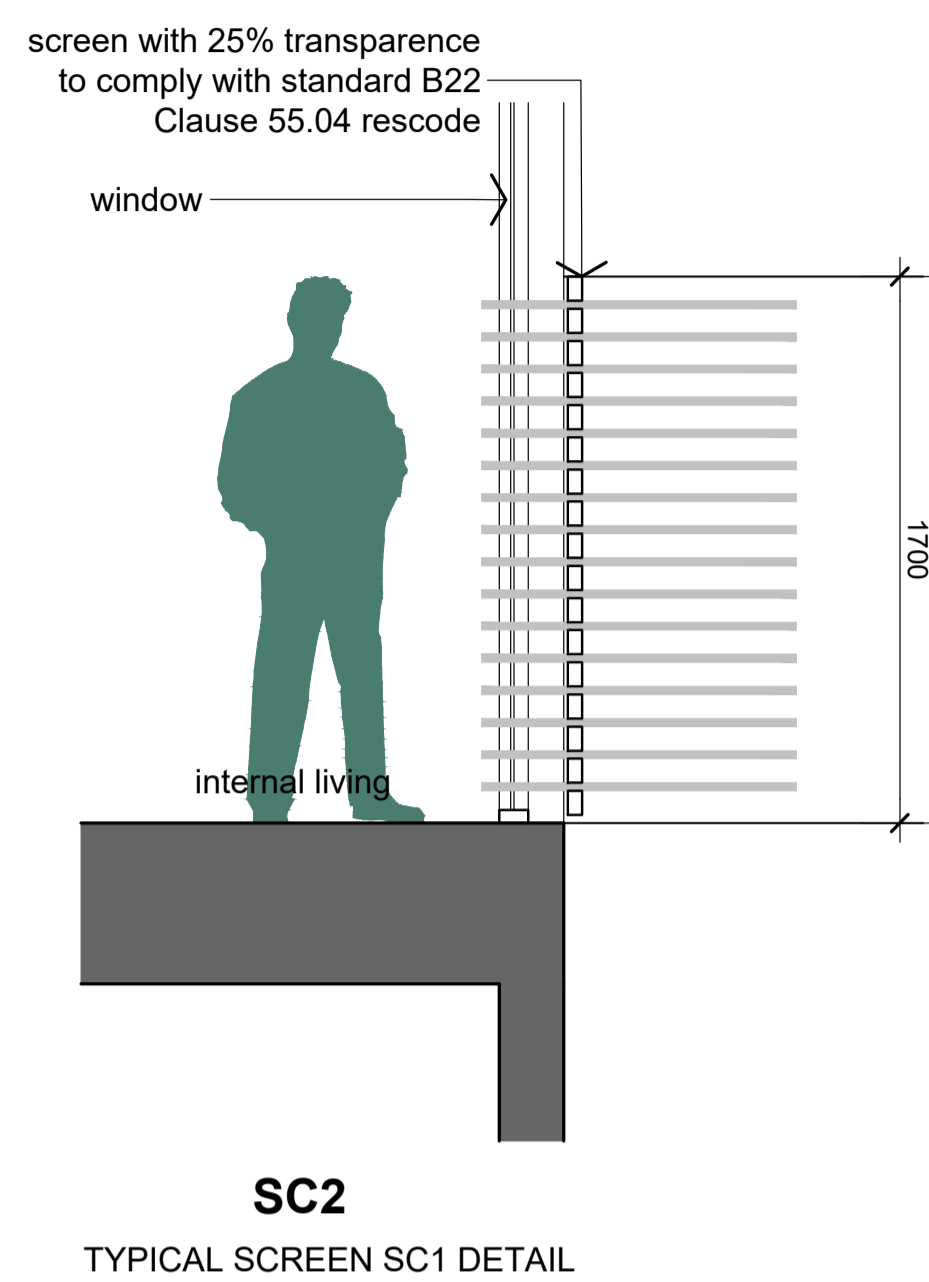
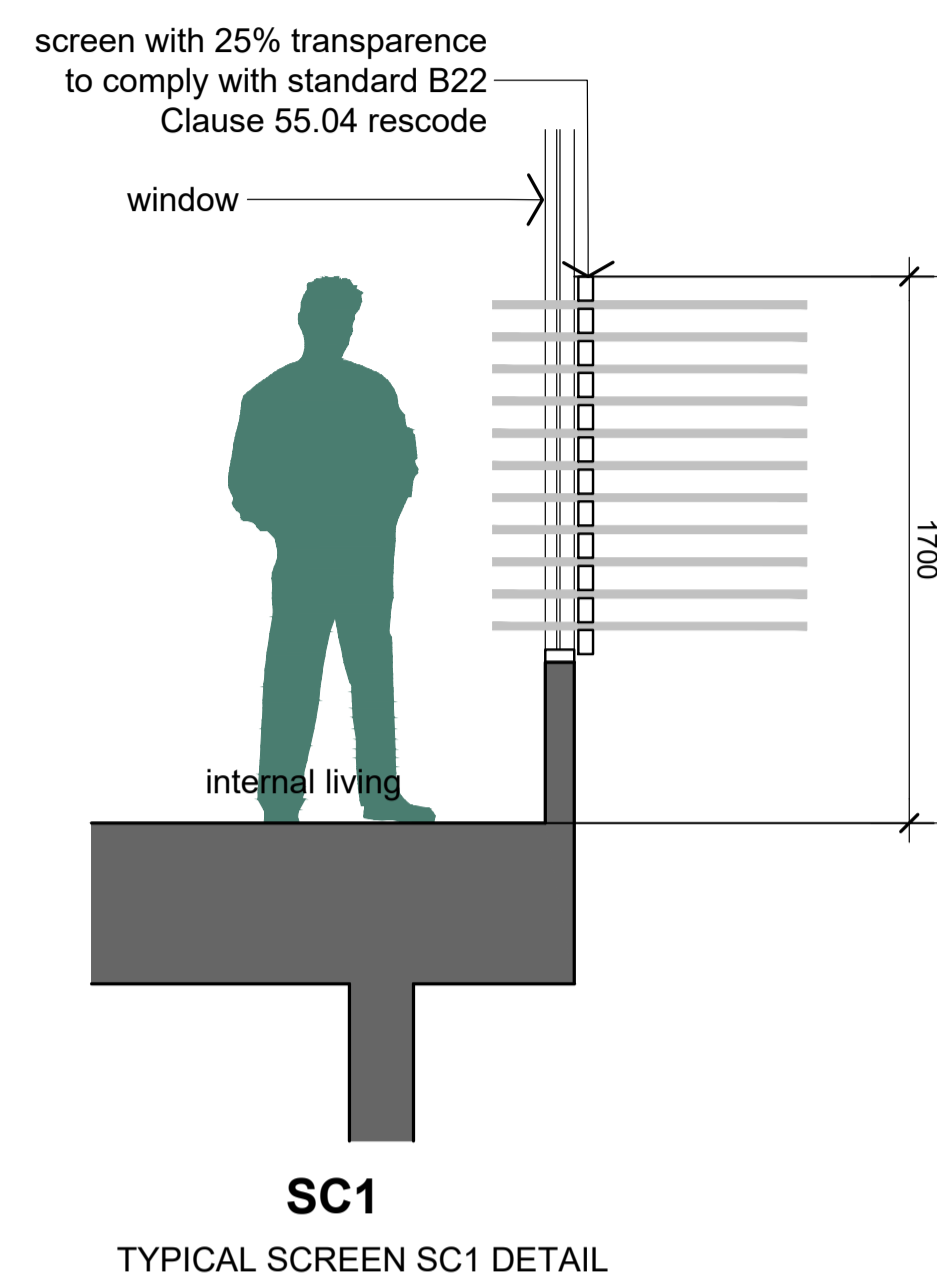


PROPOSED RESIDENCES
TOWN PLANNING ISSUE
3 MAY 2022
DRAWN BY: NH
CLIENT: VALEO CONSTRUCTIONS

DRAWING:
ELEVATIONS & SECTIONS
SCALE: 200@A1

PRINCES HIGHWAY, PAKENHAM

DRWG NO:
TP07
REV: 1



SCHEDULE OF MATERIALS, EXTERNAL FINISHES AND CORLORS



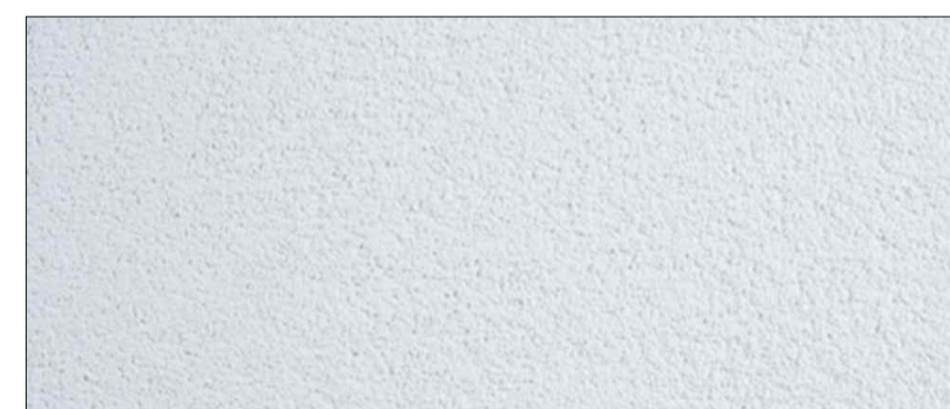
BS blue stone cladding



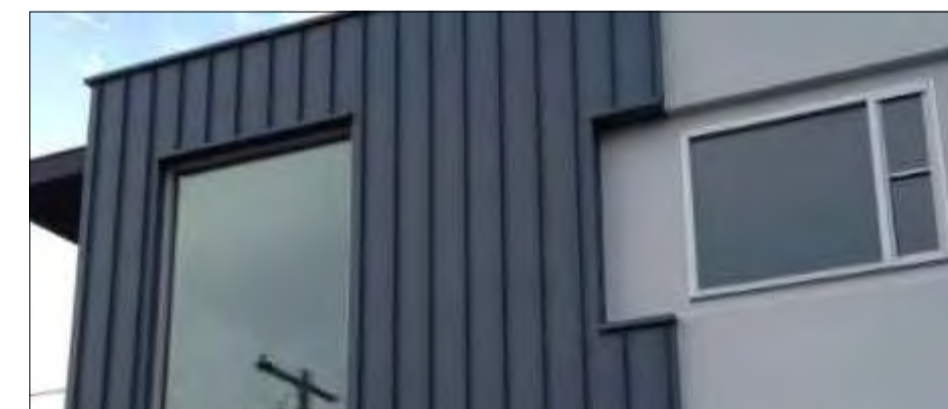
B brick veneer brown



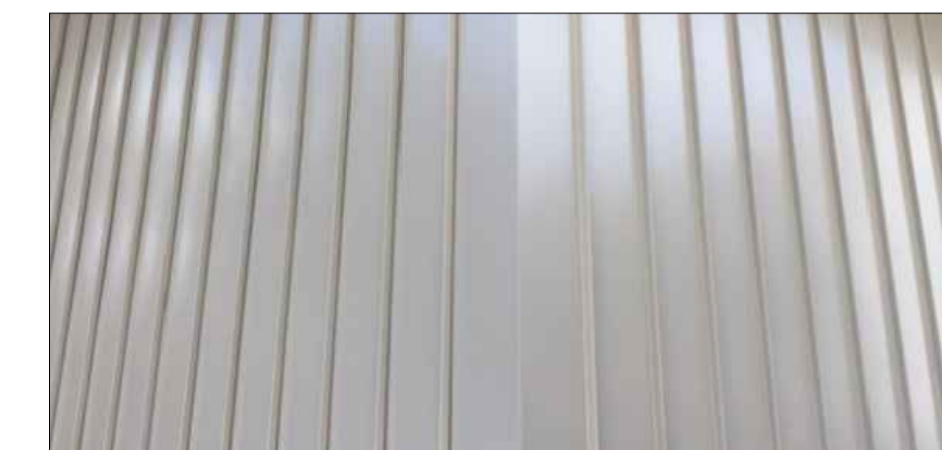
R1 render finish color gray



R1 render finish color white



M1 colorbond cladding color dark



M2 colorbond cladding color white



G clear glass panel/windows



M3 all garage door colorbond finish color gray



SC overlooking screen color white

REVISIONS

REV	DATE	DESCRIPTION	Initial	REV	DATE	DESCRIPTION	Initial
1	03/05/22	TP - PRELIMINARY ISSUE	NH				



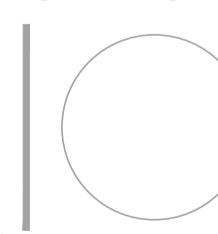
THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND MAY NOT BE REPRODUCED WITHOUT PRIOR WRITTEN CONSENT OF VALEO CONSTRUCTIONS PTY LTD.

PROPOSED RESIDENCES

TOWN PLANNING ISSUE
3 MAY 2022
DRAWN BY: NH
CLIENT: VALEO CONSTRUCTIONS

PRINCES HIGHWAY, PAKENHAM

DRAWING:
SCREEN DETAIL & FINISHES SCHEDULE
SCALE: NST@A1



DRWG NO:
TP 15
REV: 1