

Town Planning Committee Meeting

Agenda

Monday 7 July 2025

Commencing 7:00 PM

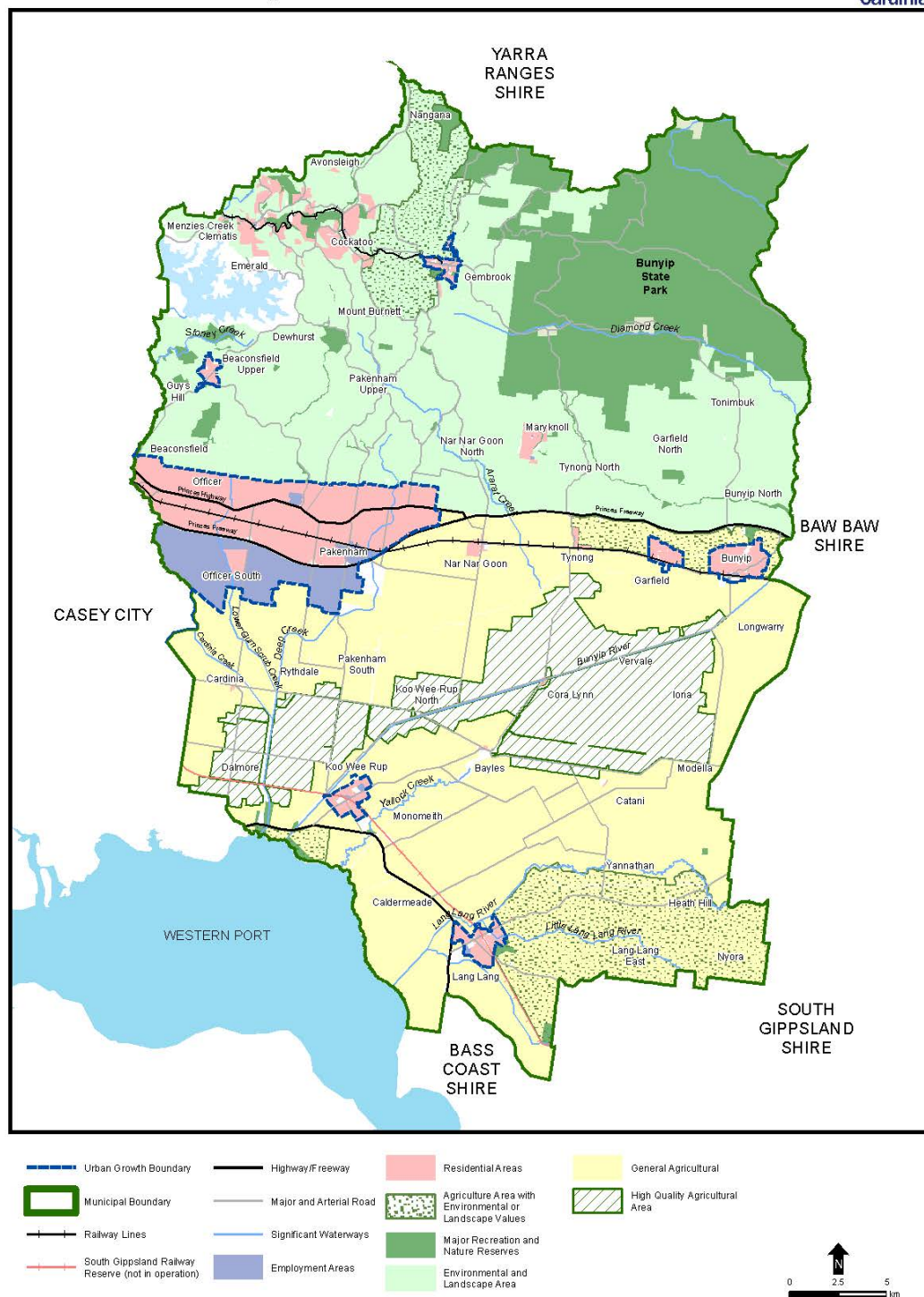
Council Chambers
20 Siding Avenue, Officer
Victoria

The Cardinia Shire Strategic Framework Plan (Figure 1) sets out the general pattern for land use and development to respond to the key influences and issues to achieve the strategic vision for the municipality.

The purpose of the framework is to provide an overview of land use in the Cardinia Shire and to identify locations where specific land use outcomes will be supported and promoted.

Figure 1:

Cardinia Shire Strategic Framework Plan



Printed: 24-Oct-18 Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL

Town Planning Committee Meeting

Monday 7 July 2025 at 7:00 PM.

Members: Cr Jack Kowarzik Mayor
Cr Alanna Pomeroy Deputy Mayor
Cr Liz Roberts
Cr Samantha-Jane Potter
Cr Casey Thomsen
Cr David Nickell
Cr Collin Ross
Cr Brett Owen
Cr Trudi Paton

Officers: Peter Benazic Interim Chief Executive Officer
Debbie Tyson General Manager Community & Planning Services
Wayne Mack General Manager Corporate Services
Peter Harris Manager Governance, Safety & Property
Duncan Turner Manager Planning & Design
James Kelly Acting Manager Community Infrastructure Delivery
Natasha Berry Senior Governance Officer

Dear Councillor,

You are advised that a meeting will be held in the **Council Chambers, Cardinia Shire Council Civic Centre, 20 Siding Avenue, Officer** on **Monday 7 July 2025** commencing at **7:00 PM**.

Peter Benazic
INTERIM CHIEF EXECUTIVE OFFICER

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1 Opening And Reflection

I would ask those gathered to join us now for a few moments of silence as we reflect on our roles in this chamber. Please use this opportunity for reflection, Prayer or thought, to focus on our shared intention to work respectfully together for the well-being of our whole community.

2 Acknowledgements

Cardinia Shire Council acknowledges that we are on the traditional land of the Bunurong and Wurundjeri people and pay our respects to their elders past, present and emerging.

3 Apologies

4 Declaration Of Interests

5 Ordinary Business

5.1 T240258 PA - SUBDIVISION OF LAND INTO FOUR (4) LOTS (CONSOLIDATION AND RE-SUBDIVISION) AT CA 9 SEC G, HAREWOOD PARK ROAD & LOT 4 ON PS627026, 19 KNIGHT ROAD, GEMBROOK

Responsible GM:	Debbie Tyson
Author:	Evie McGauley-Kennedy
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	<p>4.1 We support our productive land and employment land to grow local industries</p> <p>4.1.1 Facilitate better planning for our agricultural land to support industry, innovation, local food economy and local job growth.</p> <p>5.1 We practise responsible leadership</p> <p>5.1.1 Build trust through meaningful community engagement and transparent decision-making.</p>

Recommendation

That Council resolve to issue a Notice of Decision to Refuse to Grant a Permit for Planning Permit Application T240258 for the subdivision of land into four (4) lots (consolidation and re-subdivision) at CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook on the following grounds:

1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and scenic features, protect important agricultural land such as those in Gembrook, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 21.02-2 – Landscape
2. The proposal is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
 - a. Will have a detrimental impact on the rural economy, due to the extent the proposal would increase the value of the land;
 - b. Does not enhance agricultural production or appropriately relate to rural land use;
 - c. Reduces the availability of land for future sustainable agricultural activities, and is not a subdivision consistent with sustainable land management practices;
 - d. Will compromise the preservation, protection and enhancement of significant agricultural land, primarily by further intensifying the potential for rural residential land use that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area;
 - e. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape due to potential for proliferation of additional buildings in the landscape; and

- f. Would adversely impact landscape features, vistas and natural scenic beauty of the area due to potential for proliferation of additional buildings in the landscape.
3. The proposal is inconsistent with the relevant purposes and decision guidelines of Schedule 1 to the Environmental Significance Overlay, as it does not have proper regard to the soil quality of the site identified by the *Land Capability Study for the Cardinia Shire (February 1997)* as it relates to agricultural capacity and development capacity.
4. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
5. The proposal includes a restrictive covenant relating to building envelopes, for which permission has not been sought pursuant to Clause 52.02.

Application Details

APPLICATION NO.:	T240258
APPLICANT:	XWB Consulting
LAND:	CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook)
PROPOSAL:	Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision)
PLANNING CONTROLS:	Zone: <ul style="list-style-type: none"> - Green Wedge Zone (Schedule 2) Overlays: <ul style="list-style-type: none"> - Environmental Significance Overlay (Schedule 1) - Bushfire Management Overlay - Significant Landscape Overlay (Schedule 1)
NOTIFICATION & OBJECTIONS:	Notice of the application was given pursuant to section 52 of the <i>Planning and Environment Act 1987</i> by placing signs on the site and sending notices. No objections have been received.
KEY PLANNING CONSIDERATIONS:	Subdivision of Green Wedge Zone land Protection of agricultural land Avoiding the fragmentation of productive agricultural land
REASON FOR MEETING:	Refusal

RECOMMENDATION:

Notice of Decision to Refuse to Grant a Permit

Executive Summary

The purpose of this report is to consider an application to subdivide two (2) contiguous parcels of land known as CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) into four (4) lots, which was deferred at the Town Planning Committee Meeting on 5 May 2025 to allow the applicant to provide Council with additional information. The Applicant has since provided additional information regarding water rights for the properties, which is discussed later in this executive summary.

The land is subject to the Green Wedge Zone (Schedule 2), Environmental Significance Overlay (Schedule 1), Bushfire Management Overlay and Significant Landscape Overlay (Schedule 1).

The proposal involves the consolidation and re-subdivision of the lots.

The allotments are currently configured as follows:

- Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) currently measures an area of 27.05 hectares. On its own it cannot currently be further subdivided.
- CA 9 SEC G, Harewood Park Road currently measures 40.02 hectares. On its own it can currently be subdivided into two (2) lots.

A permit is required to subdivide land under the zone pursuant to Clause 35.04-3 and lots must be at least the area specified in the Schedule to the Zone. In this instance Schedule 2 of the Green Wedge Zone specifies that each lot to be created must be at least 15 hectares in area. Each proposed lot exceeds this requirement; therefore, a subdivision can be considered.

It is a well-established principle of robust and good planning that '*just because a permit can be granted does not imply that a permit should or will be granted*'. This principle is echoed throughout many Tribunal decisions and largely appears in decisions involving subdivision where there is a minimum lot size 'threshold'.

The subject land is within the 'Hills' region of Cardinia's Green Wedge Zone and Gembrook which is recognised for its scenic and environmental values and has a rich history of being productive farmland.

Reduced lot sizes, along with perceived entitlement to construct a dwelling and ancillary buildings that the proposed building envelopes provide for, has implications for the environmental and scenic landscape character of the 'Hills' and risks irreversibly creating an environment where the viability of using land for agricultural or other uses (i.e. tourism, recreational) contemplated by the purpose of the Green Wedge Zone are eroded.

Despite the Gembrook area being subject to the Dieldrin contamination (an organochlorine compound used from mid-century up until as recent as the late 1980's to control pests on potato crops) and the presence of the potato cyst nematode (PCN) in the area, both of which halted the potato growing industry, Gembrook is recognised under the planning scheme to have highly valuable soils to support sustainable agricultural land use. The subject site is identified in the *Land Capability Study of the Cardinia Shire, February 1997* as being a mix of 'Class 2 and 3' (Fair to Good).

The Victorian Legislative Assembly Environment and Planning Committee (the Committee) report into *Securing the Victorian food supply* (November 2024) observed that:

Subdivision is fragmenting farming regions, rising land values are reducing the viability of food production and inappropriate residential development is permanently sterilising some of the most fertile farmland in the state.

The Committee report follows the State Governments release in March 2024 of the *Planning for Melbourne's Green Wedges and Agricultural Land Action Plan 2024* with 20 actions to protect Melbourne's green wedges and Victoria's agricultural land to:

- strengthen protections for green wedge land within 100 kilometres of Melbourne
- reduce conflicts between farmers and other landholders
- emphasis the non-urban value of green wedges, including their agricultural value

In response to Council's deferral of the application at the Town Planning Committee Meeting on 5 May 2025, the Applicant has provided a letter of advice from Falcone & Adams Lawyers (**Attachment 4**), to assist in Councils consideration of the current Officer recommendation (Refusal).

This letter advises that the landowner (their client) *'is the holder of various Melbourne Water Take & Use Licences, with a combined total volume of 80.0 megalitres'*. The letter also advises that *'the land on which the water is to be used is all of the land... subject of Planning Permit Application No. T240258 PA.'*

The letter also confirms an intent that upon registration of the proposed Plan and transfer of the land from the landowner to a third party, that water licenses will be transferred to the third party along with the transfer of that lot to the third party and that the current license will be subdivided to facilitate this process.

Council Officers have concerns about the logistics of this process as the transfer of water licenses to the relevant third parties will have to occur outside of the planning permit process for subdivision.

Based on the relevant consideration of the state and local planning policies in the Cardinia Planning Scheme, despite this additional information, it is recommended that the proposal be refused based on the grounds listed above.

Gender Impact Assessment

In the preparation of this report, Council has considered its obligations under the *Gender Equality Act 2020*. It was determined that a Gender Impact Assessment (GIA) was not required as the subject matter of this report does not relate to a policy, program or service that has a direct or significant impact on the community.

Attachments

1. Attachment 1 - T240258 PA Officer Report Refusal [5.1.1 - 25 pages]
2. Attachment 2 - T240258 PA - Locality Map [5.1.2 - 1 page]
3. Attachment 3 - T240258 PA - Decision plans [5.1.3 - 4 pages]
4. Attachment 4 - T240258 PA - Additional Information regarding Melbourne Water entitlements [5.1.4 - 1 page]

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NOTICE OF DECISION TO REFUSE A PLANNING PERMIT OFFICER REPORT



Application Details

Proposal:	Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision)	
Application Number:	T240258	
Property Number:	5000036834	
Address:	CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook)	
Applicant:	XWB Consulting	
Date Received:	12 June 2024	
Statutory Days:	72 days as of 11 April 2025	
Planner:	Evangeline McGauley-Kennedy	
Decision	<input checked="" type="checkbox"/> Refusal	
Plans to Endorse:	<input checked="" type="checkbox"/> No (refusal)	
Decision to be sent internally:	<input checked="" type="checkbox"/> Subdivisions (all applications relating to subdivisions, easements, restrictions, etc.)	<input type="checkbox"/> Waste Department (all applications with Waste Management Plans)
	<input type="checkbox"/> Environment (all applications with Environment referral responses)	<input type="checkbox"/> Development Contributions (applications on land affected by a DCPO–decision sent to DCP team)
	<input type="checkbox"/> Other, specify:	<input type="checkbox"/> Not Required
Decision to be sent externally:	<input checked="" type="checkbox"/> Yes, specify below:	<input type="checkbox"/> No
	<ul style="list-style-type: none"> • AusNet Services • APA Group • APA VTS (Pipeline Authority) • Country Fire Authority • Yarra Valley Water • Melbourne Water 	

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Can the application be decided under delegation?	<input checked="" type="checkbox"/> No The application is recommended for refusal.
Have any amendments been made to the application?	<input checked="" type="checkbox"/> No

Proposal

Description of proposal:
<p>Approval is sought for to subdivide two (2) contiguous parcels of land known as CA 9 SEC G, Harewood Park Road, Gembrook and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) into four (4) lots. The proposal involves the consolidation and re-subdivision of these lots.</p> <p>The allotments are currently configured as follows:</p> <ul style="list-style-type: none"> - Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) currently measures an area of 27.05 hectares. On its own it cannot currently be further subdivided. - CA 9 SEC G, Harewood Park Road currently measures 40.02 hectares. On its own it can currently be subdivided into two (2) lots. <p><u>Can the application be made?</u></p> <p>Originally there was concern raised by officers that the proposed subdivision appeared prohibited as Lot 4 on PS627026L currently measures 27.09ha in size, which cannot currently be subdivided into 2 lots due to the minimum lot size of the Green Wedge Zone (Schedule 2).</p> <p>i.e. $27.09 / 2 = 13.545\text{ha}$</p> <p>Additionally, a Section 173 Agreement AF546766C applies to the title which prohibits further subdivision unless certain conditions have been met. The Section 173 Agreement states:</p> <p><i>"Except for the subdivision of the Land into two (2) lots in accordance with the Plan of Subdivision, the Owner will not further subdivide the Land other than a subdivision which does not create any additional lots unless the land is consolidated with an adjoining parcel of land to create a lot which exceeds the minimum lot size specified in the zone in which the land is included under the scheme".</i></p> <p>Compliance with the Section 173 Agreement is discussed later in this report.</p> <p>In order to address this concern, the applicant provided a legal opinion which advised the following:</p> <ol style="list-style-type: none"> <i>the permit application is not prohibited by the provisions of the S173 Agreement. The permit application is arguably not for a further subdivision which creates 'additional lots' on the Eastern Parcel, however even if it is, the exemption as set out in clause 1 of the S173 Agreement applies; and</i> <i>the permit application is not prohibited by the provisions of the Cardinia Planning Scheme. The permit application includes both of the Existing Parcels as the planning unit, and the</i>

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Green Wedge Zone Schedule 2 (GWZ2) provisions simply require an analysis of whether each of the proposed lots would meet the minimum subdivision area (which they will).

Basically the advice found that in order to facilitate the subdivision, the plan essentially proposes to consolidate Lot 4 on PS627026 and CA 9 SEC G so that the combined area measures approximately 67.11 hectares. The land can then be subdivided into four (4) lots comprising:

- Proposed Lot 1, a vacant parcel measuring 16.01 hectares. This lot is proposed to contain a building envelope.
- Proposed Lot 2, a vacant parcel measuring 16.01 hectares. This lot is proposed to contain a building envelope.
- Proposed Lot 3, a parcel containing an existing dwelling and agricultural shedding measuring 19.49 hectares.
- Proposed Lot 4, a parcel containing an existing dwelling and small outbuildings, measuring 16.61 hectares.

Creation of Restriction

The proposal also involves the creation of restrictions in the form of two (2) building envelopes on the two (2) southern lots, being proposed Lots 1 and 2. The application includes building envelopes but has not sought permission to create a restriction on the plan of subdivision (under Clause 52.02).

Images of relevant plans:

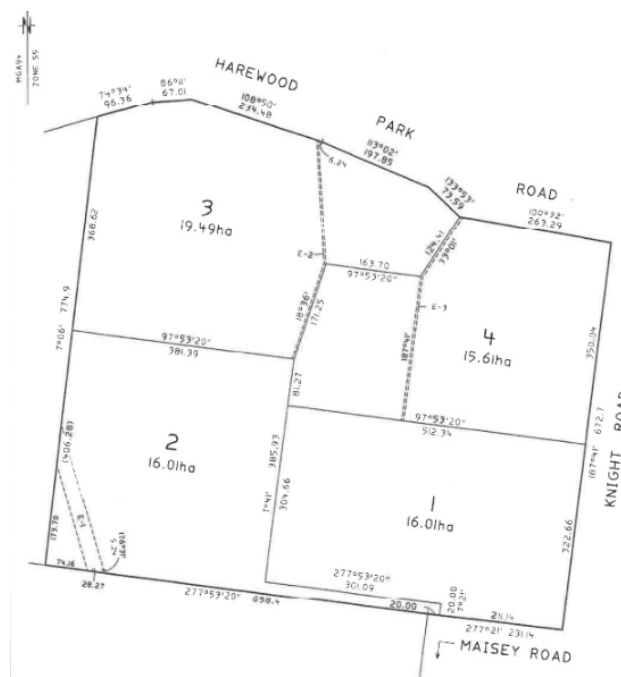
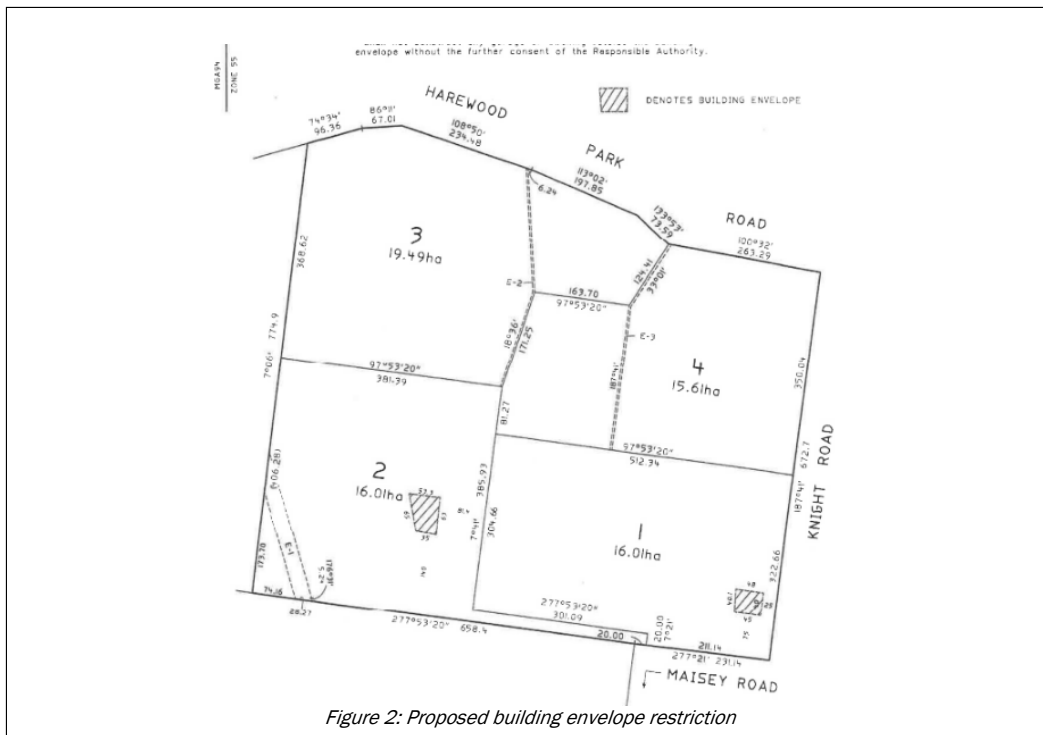


Figure 1: Proposed plan of subdivision

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Land Details

Description of site and surrounding area:

An inspection of the site and the surrounding area has been undertaken. Both lots are irregular in shape and are located on the southern side of Harewood Park Road and northern side of Maisey Road.

CA 9 SEC G, Harewood Park Road measures 40.02 hectares and Lot 4 on PS627026, 19 Knight Road measures 27.09 hectares.

Combined, the land measures approximately 67.11 hectares.

CA 9 SEC G, Harewood Park Road, currently contains a dwelling, paddocks and large agricultural shedding, with access being provided from Harewood Park Road to the north. The south-west portion of the site is used for crop raising.

Lot 4 on PS627026, 19 Knight Road currently contains a dwelling, outbuilding and paddocks, with access being provided from Harewood Park Road to the north.

There is a gas pipeline easement running diagonally north-west to south-east through the south-west corner of CA 9 SEC G, Harewood Park Road.

The topography of the land is undulating.

The main characteristics of the surrounding area are:

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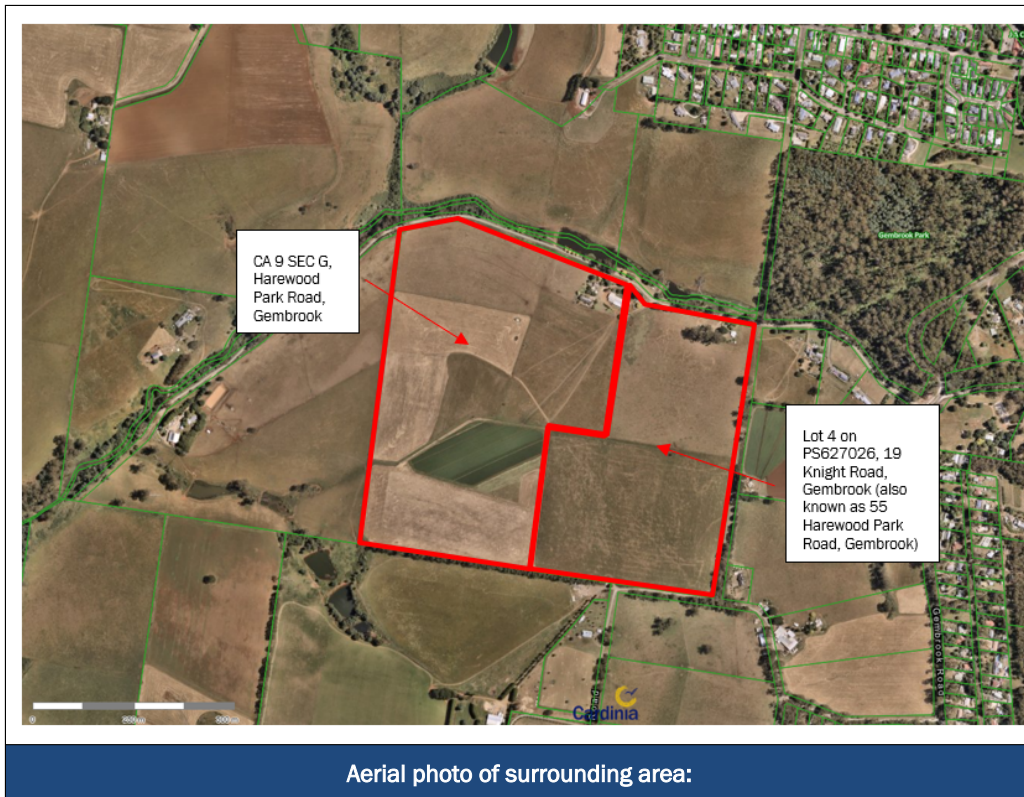
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	<ul style="list-style-type: none"> • North: North of the site is a similarly sized land holding currently used as part of this farm for agricultural activities such as grazing cattle. Further north is Belgrave-Gembrook Road and the Puffing Billy Railway. • South: South of the site is a similarly sized land holding, along with some smaller land holdings that each appear to contain a dwelling. These lots appear to be lifestyle / hobby farms with the larger property appearing to be undertaking agriculture in the form of crop raising. • East: East of the site are smaller properties containing dwellings, with some of the larger properties undertaking agriculture in the form of crop raising. • West: West of the site is another similarly sized property which contains a dwelling and appears to be used for grazing.
Permit/Site History:	<p>The history of the site includes:</p> <ul style="list-style-type: none"> • Planning Permit T040321 was issued for the subdivision of the land into four (4) lots on 20 April 2006. <ul style="list-style-type: none"> ○ This permit appears to be for the same proposal, however as the subdivision was not fully acted upon within the permit timeframes, it has since expired. ○ It is noted that the planning zoning controls have not changed since this permit was issued, however, given that nearly 20 years have passed since the issue of this permit, with planning policy and Tribunal decisions strengthening the protection of the green wedge within this timeframe. What may have been considered a good decision 20 years ago, is now at odds with how green wedge policy has progressed and been strengthened within the planning scheme. • Planning Permit T070244 was issued to develop the land for the purpose of a three (3) lot re-subdivision (boundary realignment) and the variation of an easement along the southern boundary on 12 October 2007. • Planning Permit T080764 was issued to develop the land for the purpose of a four (4) lot re-subdivision (boundary re-alignment) on 13 August 2009.
Aerial photo of site:	

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Aerial photo of surrounding area:

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Aboriginal Cultural Sensitivity:	<input type="checkbox"/> No
	<input checked="" type="checkbox"/> Yes, a CHMP is: The land is partially covered by areas of Aboriginal Cultural Sensitivity
<input checked="" type="checkbox"/> Not required In accordance with Reg. 49 of the Aboriginal Heritage Regulations, 2018: <i>(1) The subdivision of land into 3 or more lots is a high impact activity if—</i>	

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Cardinia

		<p>a) <i>the planning scheme that applies to the activity area in which the land to be subdivided is located provides that at least 3 of the lots may be used for a dwelling or may be used for a dwelling subject to the grant of a permit; and</i></p> <p>b) <i>the area of each of at least 3 of the lots is less than 8 hectares.</i></p> <p>The subject land is zone Green Wedge Zone, which is not a residential zone. Despite this, in accordance with Reg. 49(1)(a) the subject land may be used for a dwelling, subject to the grant of a planning permit. Therefore, in order to be exempt from a CHMP, in accordance with Reg. 49(1)(b), the area of at least 3 of the lots must be less than 8ha in size.</p> <p>Due to the minimum lot size of Schedule 2 to the Green Wedge Zone, each lot proposed in this subdivision must be at least 15ha in area.</p> <p>Therefore, as all 4 lots exceed 8ha in area, a CHMP is not required.</p>	
Zoological/ Botanical significance?	<input checked="" type="checkbox"/> None	<input type="checkbox"/> Zoological	<input type="checkbox"/> Botanical
Restrictive covenants or section 173 agreements:	<input type="checkbox"/> None	<p><input checked="" type="checkbox"/> Yes, list/describe below:</p> <p>Section 173 Agreement AF546766C prohibits further subdivision unless certain conditions have been met. The Section 173 Agreement states:</p> <p><i>"[the prohibition:] Except for the subdivision of the Land into two (2) lots in accordance with the Plan of Subdivision, the Owner will not further subdivide the Land other than a subdivision which does not create any additional lots <u>unless</u> [the exemption:] the land is consolidated with an adjoining parcel of land to create a lot which exceeds the minimum lot size specified in the zone in which the land is included under the scheme"</i></p> <p>The applicant's legal opinion provided advice that the Agreement is not breached as:</p>	

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		<ul style="list-style-type: none"> - <i>There is clearly a consolidation of the Existing Parcels before they are to be re-subdivided to create the four proposed lots. The proposed subdivision is unable to occur without the current common boundary being first 'obliterated' and then re-formed as shown in the Proposed Plan. This has consistently been held to be a consolidation and (then) re-subdivision of the planning unit; and</i> - <i>All of the proposed new lots as shown on the Proposed Plan would exceed 15ha (being "the minimum lot size specified in the zone in which the land is included under the scheme").</i>
		Would the grant of a permit breach a restriction?
		<input checked="" type="checkbox"/> No

Planning Provisions

Zoning:	GWZ1 - Green Wedge Zone - Schedule 2
Overlays:	BMO - Bushfire Management Overlay (partially covered in north-east corner) ES01 - Environmental Significance Overlay - Schedule 1 SL01 - Significant Landscape Overlay - Schedule 1
Other Provisions / Documents:	Other provisions and documents relevant to the assessment of the application include: <ul style="list-style-type: none"> • Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions • Clause 52.02 Easements, restrictions and reserves • Clause 53.01 Public Open Space contribution • Clause 53.02 Bushfire Planning • Clause 65 Decision Guidelines • Clause 66 Referral and notice provisions <ul style="list-style-type: none"> ○ Clause 66.03 Referral of permit applications under other state standard provisions • Clause 71.02-3 Integrated Decision Making • <i>Land Capability Study for the Cardinia Shire (February 1997)</i> • <i>Gembrook Rural Review - Action Plan, 2004 (Reference document)</i>

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	<ul style="list-style-type: none"> ▪ <i>Casey and Cardinia Regional Agricultural Audit and Action Framework, 2004 (Reference document)</i> ▪ <i>Alternative Agricultural Land use Options Report, 2004 (document outside of the planning scheme)</i> • <u>Ragusa v Cardinia SC [2010] VCAT 1280 (27 July 2010)</u> • <u>Awesomeness Aussie Agricultural Life Group Pty Ltd v Cardinia SC [2024] VCAT 1137</u> • <u>Griffiths v Mitchell SC [2023] VCAT 811</u> • <u>Roussac-Hoyne v South Gippsland SC [2022] VCAT 577</u> • <u>Hart v Greater Shepparton CC [2022] VCAT 764</u>
Planning Policy Framework (including LPPF)	<p>The planning policies that are relevant to the assessment of the application include:</p> <ul style="list-style-type: none"> • Clause 11.01-1S Settlement • Clause 11.01-1R Green Wedges - Metropolitan Melbourne • Clause 13.07-1S Land use compatibility • Clause 14.01-1S Protection of agricultural land • Clause 19.01-3S Pipeline Infrastructure <p>Local Planning Policy Framework (LPPF)</p> <p>The relevant clauses of the LPPF are:</p> <ul style="list-style-type: none"> • Clause 21.01 Cardinia Shire Key Issues and Strategic Vision • Clause 21.01-3 Key Issues • Clause 21.02 Environment <ul style="list-style-type: none"> ○ Clause 21.02-2 Landscape ○ Clause 21.04-2 Agriculture

Permit Triggers

A permit is required for the following reasons:

Green Wedge Zone

Clause 35.04-3 – A permit is required to Subdivide land. Each lot must be at least the area specified in the schedule to the Zone.

- Schedule 2 to the Green Wedge Zone has a minimum subdivision area of 15ha. Each lot to be created exceeds 15ha.

Environmental Significance Overlay

Clause 42.01-2 – A permit is required to Subdivide land

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Bushfire Management Overlay

Clause 44.06-2 – A permit is required to Subdivide land

A permit is also required, and has not been applied for under Easements, restrictions and reserves

Clause 52.02 – A permit is required before a person proceeds under Section 23 of the Subdivision Act 1988 to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.

Notice

Notice of the application was given pursuant to section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices.
- Placing 3 signs on site.

Objections/Submissions

No objections or submissions have been received.

External Referrals/Notice

Referral Authority	Type	Advice/response/conditions:
AusNet Services	S55 Determining	No objection, subject to conditions.
APA Group APA VTS (Pipeline)	S55 Determining	No objection, subject to conditions.
CFA	S55 Recommending	No objection, subject to conditions
Yarra Valley Water	S55 Determining	No objection, subject to conditions.
Melbourne Water	S55 Determining	No objection, subject to conditions

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Internal Referrals

Internal Referral Department	Advice/response/conditions:
Subdivisions	Supported, no conditions.
Environment	Supported, no conditions.
Engineering	Supported, no conditions.
Traffic	Supported, subject to conditions.
Strategic & Urban Design	Supported, subject to conditions (removal of building envelopes).

Assessment

The application is for the Subdivision of the Land into Four (4) Lots (Consolidation and re-subdivision) and creation of a restriction, which requires a planning permit under the provisions of the Green Wedge Zone, Environmental Significance Overlay, Bushfire Management Overlay and Clause 52.02 (Easements, restrictions and reserves).

The key considerations of this application relate to:

- The relevant policies of the Planning Policy Framework.
- The Green Wedge Zone, Environmental Significance Overlay and Bushfire Management Overlay.
- The creation of restrictions pursuant to Clause 52.02.
- The compliance of the proposal with any restrictive covenants that apply to the land.
- Victorian Civil and Administrative Tribunal decisions.
- The overall acceptability of the proposal.

An assessment of these matters is provided below.

Planning Policy Framework (PPF) & Local Planning Policy Framework (LPPF)

A number of Planning Policies (including Local Planning Policy) are relevant to this application, and further demonstrate that this application provides an inappropriate response to planning principles and supports the position that the application be refused.

Clause 11.01-1S (Settlement) seeks to “*deliver networks of high-quality integrated settlements that have a strong identity and sense of place*” whilst “*balancing strategic objectives to achieve improved land use and development outcomes*” and “*preserving and protecting features of rural land and natural resources and features to enhance their contribution to settlement and landscapes*”.

Clause 11.01-1R (Green Wedges – Metropolitan Melbourne) seeks to “*to protect the green wedges of Metropolitan Melbourne from inappropriate development*” by “*promoting and encouraging the key features and related values of each green wedge area*”, “*consolidating new residential development in existing settlements and in locations where planned services are*

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available and green wedge values are protected”, “protecting important agricultural areas” and protecting areas of environmental, landscape and scenic value.

Whilst the application does not directly propose, or permit, use and/or development, subdivisions such as this one, play a role in the use and development environment. Reduced lot sizes, along with perceived entitlement to construct a dwelling that the proposed building envelopes play (such as what is proposed by this application), create an environment where the viability of using land for agricultural or other uses (i.e. tourism, recreational) contemplated by the purpose of the Green Wedge Zone are eroded. Generally, these types of subdivisions can erode the core purposes of the Zone due to the likely economics that come into play, which in turn reduces the viability of the land for its primary function.

Because of this, proposal does not preserve or enhance rural land and natural resources or achieve improved land use and development outcomes. Contrarily, this proposal has the potential to erode the rural land and its natural resources, as well as cause land use conflicts between what will likely become ‘rural residential lots’ owing to their reduced size and proposed building envelopes and agricultural activities occurring on neighbouring and surrounding land.

Clause 13.07-1S (Land use compatibility) seeks to “*protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts*” by “*a voiding or otherwise minimising adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measure*” and by “*protecting commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively*”.

It is well established that the subdivision of land within the green wedge has potential to exacerbate or create conflicts between existing and future farming activities (i.e. via noise, keeping of livestock, odours, spraying) occurring on land and the subdivided parcels, as they become smaller and therefore, more attractive as lifestyle properties or hobby farms where higher levels of amenity are expected from occupants. It is evident that this could be a likely outcome of this subdivision as it proposes to create building envelopes, further enshrining the perception that the land is intended to be developed for more residential purposes. This is in conflict with the purpose of the zone and the protection of agricultural land uses of the land and surrounds, as well as the ‘right to farm’.

Clause 14.01-1S (Protection of agricultural land) and Clause 14.01-1R (Protection of agricultural land – Metropolitan Melbourne) seeks to “*protect the state’s agricultural base by preserving productive farmland*” by (in particular):

- *Protecting productive farmland that is of strategic significance in the local or regional context.*
- *Protecting productive agricultural land from unplanned loss due to permanent changes in land use.*
- *Preventing inappropriately dispersed urban activities in rural areas.*
- *Protecting strategically important agricultural and primary production land from incompatible uses.*
- *Limiting new housing development in rural areas by:*
 - *Discouraging development of isolated small lots in the rural zones from use for dwellings or other incompatible uses.*
 - *Encouraging consolidation of existing isolated small lots in rural zones.*
- *In considering a proposal to use, subdivide or develop agricultural land, consider the:*

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- *Desirability and impacts of removing the land from primary production, given its agricultural productivity.*
- *Impacts on the continuation of primary production on adjacent land, with particular regard to land values and the viability of infrastructure for such production.*
- *Compatibility between the proposed or likely development and the existing use of the surrounding land.*
- *Avoid the subdivision of productive agricultural land from diminishing the long-term productive capacity of the land.*
- *Give priority to the re-structure of inappropriate subdivisions where they exist on productive agricultural land.*

The application fails to align with almost all of these strategies outlined above. On balance these strategies seek to do the opposite of what is proposed for the reasons set out below.

The application also fails to appropriately respond to planning policy at a local level. Many Local Planning Policy Frameworks seeks similar outcomes as those outlined above. In particular Clause 21.01 (Cardinia Shire key issues and strategic vision) which identifies the red volcanic soils around Gembrook, which have been historically significant for potato growing and that a key influence within the Shire is urban growth, including urban pressures on the rural hinterland and management of green wedge areas. The following relevant key issues are identified:

- *The protection of environmentally significant areas including the northern hills.*
- *The protection and sustainable use of agriculture.*
- *The management of urban growth, including urban pressures on the rural hinterland.*
- *The protection and sustainable use of agricultural land.*

Similarly, Clause 21.04-2 (Agriculture) again identifies Gembrook's agricultural significance and identifies that '*protecting productive agricultural land from incompatible uses and inappropriate development and subdivision, including non-soil based farming on lands with high soil quality*' is a key issue that can be addressed through the following strategies to maintain agriculture as a strong and sustainable economic activity within the municipality:

- *Protect agricultural land, particularly areas of high quality soils, from the intrusion of urban uses, inappropriate development and fragmentation which would lead to a reduction in agricultural viability, the erosion of the right of farmers to farm land, and ultimately the loss of land from agricultural production.*
- *Ensure the use or development, including subdivision, of agricultural land takes into consideration land capability.*

Whilst the subject land is within the 'Hills' region of Cardinia's Green Wedge Zone, it is located within Gembrook which has a rich history of being productive farmland. Despite more recently being subject constraints resulting from widespread Dieldrin contamination (an organochlorine compound used from mid-century up until as recent as the late 1980's to control pests on potato crops) and the presence of the potato cyst nematode (PCN) in the area, both of which halted the potato growing industry, Gembrook is still considered to have highly valuable soils capable of growing a variety of crops and pasture.

The subject site is identified in the *Land Capability Study of the Cardinia Shire, February 1997* as being a mix of 'Class 2 and 3' (Fair to Good), noting that 'Class 2' is the second highest rating given (discussed further below). Class 1 applies to much of Schedule 1 to the Special Use Zone (Horticultural Preservation Zone), with Class 2 applying to much of the Green Wedge Zoned land within the Cardinia Westernport Green Wedge, for comparison.

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Figure 3: Land Capability Study soil classification mapping

Mapping reference number	Land capability and classification
'Tvc1' (Tertiary volcanics, moderately steep slope)	Shown as 'pink' has a Class 4-5 (poor - very poor) rating for all potential agricultural and residential uses/development specified in the LCA.
'Tvd1' (Tertiary volcanics, moderate slope)	Shown as 'purple' has a Class 3-4 (fair - poor) rating for all potential agricultural and residential uses/development specified in the LCA.
'Tve1' (Tertiary volcanics, gentle crest)	Shown as 'yellow' has a Class 2 (good) rating for agricultural uses and Class 3-4 (fair - poor) all other potential uses/development specified in the LCA.

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'Tvf1' (Tertiary volcanics, gentle slope)	Shown as 'red' has a Class 2-3 (good - fair) rating for agricultural uses and Class 4-3 for all potential uses/development specified in the LCA.
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Figure 4: Land Capability Study soil classification table in reference to mapping in Figure 3

Therefore, this lands contribution to the agricultural land base, should not be discounted or ignored, due to the 'perceived' limitations of Dieldrin contamination (which is decreasing and will eventually no longer be an issue) and PCN.

As such, emphasis must be placed on planning policy that seeks the protection of this regionally significant agricultural land from inappropriate subdivision (and development) as subdivision is likely to diminish the long-term productive capacity of the land and the land surrounding it.

Clause 21.02-2 (Landscape) includes key issues such as '*recognising the pressures to develop land in locations of high scenic value*' and seeks to protect it by '*ensuring that development in the urban growth area does not intrude or adversely impact on the landscape values of the area north of the Princes Highway and maintains significant vistas.*'

It is also important to consider the environmental and scenic landscape character of 'Hills' and the potential for the proposed subdivision of land to erode this through potential for more buildings (including dwellings) to be constructed on within the landscape.

The proposal compromises the purpose of the Metropolitan Green Wedge Land: Core Planning Provisions (Clause 52.01) which seeks to protect productive agricultural land from incompatible uses and development by creating a rural residential lot amongst an active agricultural use.

Based on the above policy assessment, on balance the application should not be supported as it fails achieve the objectives of both state and local planning policy that seeks to protect and enhance important agricultural land from inappropriate subdivision and, in particular the long-term effects of smaller allotments with building envelopes, that exacerbate land use conflict and attract land uses such as dwellings associated with 'rural lifestyle lots' and/or 'hobby farms' on productive agricultural land due to the scenic nature of the area.

Green Wedge Zone

Aside from implementing the Municipal Planning Strategy (MPS) and Planning Policy Framework (which as discussed above, the proposal is not considered to achieve), purposes of the Green Wedge Zone are as follows:

'To provide for the use of land for agriculture.

To recognise, protect and conserve green wedge land for its agricultural, environmental, historic, landscape, recreational and tourism opportunities, and mineral and stone resources.

To encourage use and development that is consistent with sustainable land management practices.

To encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses.

To protect, conserve and enhance the cultural heritage significance and the character of open rural and scenic non-urban landscapes.

To protect and enhance the biodiversity of the area.'

A permit is required to subdivide land under the zone pursuant to Clause 35.04-3. Lots must be at least the area specified in the Schedule to the Zone. In this instance Schedule 2 of the Green

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Wedge Zone specifies that each lot to be created must be at least 15 hectares in area. Each lot exceeds this requirement, therefore a subdivision can be considered. As discussed at the outset of this report, there was a question as to whether this application could be made due to the Section 173 Agreement that applies to the land and the current size of Lot 4 on PS627026, however, as also noted above this was resolved and the application permitted to proceed.

Despite overcoming the threshold issue of whether the application could be made, the proposal is not considered to achieve these purposes of the Green Wedge Zone, and the applicant was advised from the outset of the application.

Notwithstanding each proposed lot meeting the minimum lot size of Schedule 2 to the Green Wedge Zone, it is a well-established principle of robust and good planning that *'just because a permit can be granted does not imply that a permit should or will be granted'*. This principle is echoed throughout many Tribunal decisions, but largely appears in applications involving subdivision where there is a minimum lot size 'threshold'. Whilst meeting the minimum lot size is a 'test' that must be met, it is not the only 'test' on which a decision rests. Other 'tests' include meeting the purpose and decision guidelines of the zone, overlays, consideration of policy and other provisions of the Planning Scheme.

Cardinia Shire Council is no stranger to this principle, definitely no stranger as it relates to the subdivision of green wedge land in Gembrook. In affirming Council's decision to refuse to grant a planning permit to subdivide the land in *Ragusa v Cardinia SC [2010]* Member Keaney explained at paragraphs 48 & 49:

On my analysis, I am struggling to find a reference point in support of this application in the Cardinia Planning Scheme. I accept Mr McKenzie's submission that a key reference point might be the 15ha minimum lot size in the schedule to the zone and the fact that not only do the lots comply with this provision, the proposed lots are about 50% larger than that minimum. I also accept that Amendment C124 will seemingly not modify that lot size.

However, I think it is important to understand that just because a land parcel is of a size that can arithmetically be divided in accordance with the zone schedule, does not mean that it automatically follows that it will be approved. If it were that simple then presumably no permit would be required for subdivision above that size. But as noted at Clause 65 (which is a variation on the earlier Clause 31.02) a decision must be made based on whether the proposal would produce "acceptable outcomes" taking into account (and among other things), land suitability, existing uses, possible future development, the need for more lots, the physical characteristics of the land, and the size and dimensions of the lots.

As it relates to this application, just because a land parcel is of a size that can be divided in accordance with the zone schedule, does not mean that it automatically follows that it will be approved.

As Member Keaney says, Council officers must be satisfied that the proposal results in an 'acceptable outcome', taking into account other factors such as policy relating to protection of agricultural land, land use compatibility, possible future uses and development (in particular agricultural uses / other uses which align with the purpose of Zone / overlays), the need for the subdivision of land, among other factors.

The applicant has made submissions that the *Gembrook Rural Review – Action Plan, 2004* (Reference document) which they state was informed by the *'Alternative Agricultural Land use Options Report, 2004'*, partly informed Clause 21.04-2 (Agriculture) following the decline of the potato industry, anticipated the creation of smaller lots to allow for smaller agricultural enterprises, hobby farms, and lifestyle business (i.e. tree farming, horses, berries and gourmet foods). It is acknowledged that the *'Alternative Agricultural Land use Options Report, 2004'*

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discusses issues such as the 15ha minimum lot size within Schedule 2 of the Green Wedge Zone and the *potential* challenges of conducting sustainable agricultural operations on lots exceeding 15ha, calling for smaller lots and facilitation of 'lifestyle farms'. However, it is important to note that this document is not referenced in the Cardinia Planning Scheme and these recommendations did not completely inform the themes and actions of the *Gembrook Rural Review – Action Plan, 2004*. Whilst the *Gembrook Rural Review – Action Plan, 2004* identifies themes such as 'Promoting new productive land use opportunities' and 'Address soil constraints', it does not explicitly suggest that these issues be tackled by allowing for the subdivision of agricultural land.

It suggests and seeks the support of alternative agricultural and other land uses on Green Wedge land. It suggests that the current subdivision minimum (15ha) may actually be a barrier to attracting more intensive, smaller scale productive uses, but despite this, suggests that there are still promising, larger scale industries suited to larger lots that can replace the potato industry (i.e. forestry, nursery, horse industry, cattle) on lots of comparable (existing) size to the subject land.

The decision of *Ragusa* addressed the *Gembrook Rural Review – Action Plan, 2004*, with Member Keaney concentrating on the clear focus of the green wedge zone (and applicable PPF and LPPF) for its agricultural use and environmental protection.

Member Keaney emphasised the purpose of the Green Wedge Zone 'to encourage sustainable farming activities and provide opportunity for a variety of productive agricultural uses'. In referencing the *Gembrook Rural Review*, Member Keaney acknowledged the constraints that Dieldrin and PCN have on the land, but did not give weight to this issue, favouring that policy points to protecting and encouraging agriculture (including alternative and innovative agriculture) in the area, with there being no discussion on land fragmentation or the prospects of 'rural living opportunities' in the area.

In closing Member Keaney noted:

In the end I accept Council's submission that while the proposal may meet the arithmetic calculation of the zone schedule, there are important state and local strategies, and important local zone and overlay provisions which discourage the fragmentation of rural land.

What can be drawn from this decision is that green wedge land in Gembrook is important for a number of reasons, mainly, its agricultural and environmental significance and that the subdivision of this land, even when meeting the minimum lot size, is not appropriate when considering the MPS and the purpose of the zone. With this in mind, coupled with the building envelopes proposed as part of this application it should be concluded that land fragmentation or the prospects of 'rural living opportunities' in the area are not the intention of the MPS and the Zone.

This position has been echoed in a number of recent Tribunal decisions relating to the subdivision of both Green Wedge and Farming Zone land throughout Cardinia and the state and will not be repeated here. However, some recent decisions tackling similar themes, (including subdivisions that meet the minimum lot size) include:

- *Hart v Greater Shepparton CC [2022] VCAT 764*
- *Awesomeness Aussie Agricultural Life Group Pty Ltd v Cardinia SC [2024] VCAT 1137*
- *Griffiths v Mitchell SC [2023] VCAT 811*
- *Roussac-Hoyne v South Gippsland SC [2022] VCAT 577*

These decisions have been made using the same framework provided to council in this application. It has been discussed at length above that the proposal fails to achieve the

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objectives of policy and the purpose of the zone, but it must also consider the decision guidelines before being satisfied of what decision to make.

The majority of decision guidelines of the Green Wedge Zone relate to buildings and works, or uses, however, the underlying consideration is that decisions must take into account the ongoing viability of the land, and its capacity to provide for uses which are encouraged by the zone.

The decision guidelines for the zone leverage heavily the State, Regional and Local policy, which sets out the expectations for the land. As the previous assessment within this report has clearly set out and is inconsistent with the purpose to the zone. However, for completeness, an assessment of the relevant decision guidelines is provided below:

Decision Guideline	Assessment
General Issues	
<i>How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation or tourism.</i>	<p>No use of land is proposed, and the only development proposed is subdivision of land.</p> <p>The proposed subdivision is considered likely to detrimentally impact these considerations – most notably rural land use.</p> <p>Specifically (and as discussed above), the subject site (both lots) is considered to have fair to good capability for broadacre agriculture. Based on this, both lots are better suited (and due to their current sizes 40.02 and 27.09 hectares), capable of meaningful agricultural operations (with further capacity possible once dieldrin - which reduces over time - is no longer present in the soil). The proposed subdivision of the land is likely to reduce the current capability of both lots for this purpose, which is not responsive to this decision guideline.</p>
<i>Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.</i>	<p>The site is not considered suitable for the proposed subdivision, given the characteristics of the land and surrounding area.</p> <p>'Fragmented' lots are not prevalent in the area, with the majority of land in surrounding the site used for agricultural purposes.</p> <p>While this use/development is not proposed as part of the current application, the proposed subdivision is considered to increase the potential for dwellings to be constructed on the new lots (owing to the proposed building envelopes), which would likely cause land use conflicts and materially alter the use/development of either lot. For these reasons the subdivision is considered incompatible with land uses in the surrounding area.</p>
Rural Issues	
<i>The maintenance of agricultural production and the impact on the rural economy.</i>	<p>The proposed subdivision is considered likely to detrimentally impact agricultural production or the rural economy, by risking the attraction of rural lifestyle and hobby farms, increasing the</p>

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<i>The environmental capacity of the site to sustain the rural enterprise.</i>	land value of the site and impacting the viability of the land to sustain sustainable agricultural pursuits. Currently the land has good environmental capacity to sustain rural enterprise. The proposed subdivision is likely to reduce this, and potentially remove the land for the agricultural base altogether via a permanent change in land use encouraged by the proposed building envelopes (suggestive that the land will be targeted as rural lifestyle land).
<i>The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses.</i>	No use or development (other than subdivision) is proposed as part of the application. As noted above, there are agricultural activities operating in the surrounding area (and on the subject site) which will likely be impacted by the subdivision as previously discussed. The proposed subdivision is therefore, considered likely to materially alter the existing use/development of the subject site (both lots), and as such adverse impacts on surrounding land are considered likely.
<i>The protection and retention of land for future sustainable agricultural activities.</i>	As noted above, it is a potential that the subdivision will permanently remove any land from the 'base' that is useable for sustainable agriculture. The land is identified as having fair to good agricultural capacity and has been identified as being regionally significant. Once subdivided, the land use could likely be transformed into one that is of rural lifestyle or hobby farm which is often the result of these types of subdivision.
Environmental Issues	
<i>The need to protect and enhance the biodiversity of the area, including the retention of vegetation and faunal habitat and the need to revegetate land including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge area.</i>	As noted above and discussed further below (in response to ESO1 and Clause 52.17), the proposed subdivision entirely avoids removal and consequential loss of vegetation. There are no known areas of saline discharge or erosion issues on the broader subject site. Given this, no adverse environmental/biodiversity impacts are considered likely as a result of the subdivision. However, this does not mitigate against the recommendation for refusal.

Based on the decisions of the Tribunal and the above assessment against the Zone, it is recommended that the application be refused.

Environmental Significance Overlay

The environmental objectives specified in Schedule 1 to the Environmental Significance Overlay (ESO1) are as follows:

'To protect and enhance the significant environmental and landscape values in the northern hills area including the retention and enhancement of indigenous vegetation.

To ensure that the siting and design of buildings and works does not adversely impact on environmental values including the diverse and interesting landscape, areas of remnant

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vegetation, hollow bearing trees, habitat of botanical and zoological significance and water quality and quantity.

To ensure that the siting and design of buildings and works addresses environmental hazards including slope, erosion and fire risk, the protection of view lines and maintenance of vegetation as the predominant feature of the landscape.

To protect and enhance biolinks across the landscape and ensure that vegetation is suitable for maintaining the health of species, communities and ecological processes, including the prevention of the incremental loss of vegetation.'

These objectives are not heavily focused on subdivision, with considerations more centred around impacts of buildings and works on the landscape.

Given no vegetation removal or buildings and works are proposed, the only relevant decision guidelines (for subdivision) are assessed in the table below.

Decision Guideline	Assessment/Response
<i>The Land Capability Study for the Cardinia Shire (February 1997).</i>	<p>The subject site is located within four map units – 'Tvc1' (Tertiary volcanics, moderately steep slope), 'Tvd1' (Tertiary volcanics, moderate slope), 'Tvf1' (Tertiary volcanics, gentle slope) and 'Tve1' (Tertiary volcanics, gentle crest) as shown in Figure 3 (above).</p> <p>'Tvc1' has a Class 4-5 (poor - very poor) rating for all potential agricultural and residential uses/development specified in the LCA.</p> <p>'Tvd1' has a Class 3-4 (fair - poor) rating for all potential agricultural and residential uses/development specified in the LCA.</p> <p>'Tve1' has a Class 2 (good) rating for agricultural uses and Class 3-4 (fair - poor) all other potential uses/development specified in the LCA.</p> <p>'Tvf1' has a Class 2-3 (good - fair) rating for agricultural uses and Class 4-3 for all potential uses/development specified in the LCA.</p> <p>These classifications further the contention above that the site has fair to good capability for broadacre agriculture, with the lots proposed to be created (southern portion of the land) being more capable of agricultural output, with limited input subject to the 'Class 2' classification. Its also outlines that all of the land has a fair to very poor rating for other uses and development relating to things like effluent disposal, building foundations and rural residential uses. This clearly identifies that the subject land is best used for agriculture, further supporting that the land is not suitable for subdivision due to the</p>

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	<p>adverse impacts it may have on the agricultural viability of the land.</p> <p>This is of importance to the application as it demonstrates the good capability of the land to sustain agriculture which is likely to be degraded by the subdivision of the land for the reasons stated above.</p>
<p><i>Measures to address environmental hazards or constraints including slope, erosion, drainage, salinity and fire.</i></p>	<p>There are no known salinity or drainage issues on or surrounding the subject site. The subdivision achieves an acceptable response to the relevant bushfire policy, as discussed later in this report.</p> <p>While the land features steep slopes in portions, this is considered inconsequential with regard to the current application – given no buildings and works are proposed.</p> <p>Erosion considerations are discussed in response to the above decision guideline.</p> <p>Despite this, it does not mitigate against the recommendation for refusal as discussed throughout this report.</p>

Bushfire Management Overlay and Clause 53.02 – Bushfire Planning

For completeness, only a small portion of the north-eastern corner of the site is subject to the Bushfire Management Overlay (Figure 4). The proposed lots are not located within the BMO, however an existing dwelling on Lot 4 is located within the BMO.

The application was referred to the CFA under Clause 66.03 as a permit is required pursuant to Clause 44.06-2, who had no objection to the proposed subdivision. Based on this, if the subdivision were to be supported, it is not considered that it would result in an unacceptable risk to life and property.

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Figure 5: Bushfire Management Overlay Mapping

Significant Landscape Overlay

For completeness, it is noted that a planning permit is not required to subdivide land within the Significant Landscape Overlay.

Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions)

The proposal is contrary to the purposes of Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions). The relevant purposes within this particular provision are:

1. To protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values, and
2. To protect productive agricultural land from incompatible uses and development.

As discussed above, the proposed subdivision would result in the permanent loss of agricultural land in an area of agricultural significance for the region. The subdivision will introduce smaller lots with building envelopes that are incompatible with agriculture because it would not only result in this loss, but it would also introduce a myriad of amenity conflicts with nearby farming enterprises. Therefore, the application is inconsistent with Clause 51.02.

Clause 52.02 - Proposed Building Envelope Restriction

As discussed, the application includes building envelopes but has not sought permission to create a restriction on the plan of subdivision (under Clause 52.02). This restriction involves creation of a building envelopes on Lots 1 and 2. Given the agricultural focus of this land, it is determined

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that it would not be appropriate to approve the subdivision with building envelopes as a registered restriction on title, given the 'perceived' entitlement for a dwelling to be constructed on the land.

As such, if a permit is to be issued, a condition should require the removal of the building envelopes from the title.

Clause 53.01 - Public Open Space

Under Clause 53.01, a person who proposes to subdivide land for urban residential purposes must make a contribution to Council for public open space of an amount specified in the schedule to this clause (or where an amount is not specified, in accordance with Section 18 of the *Subdivision Act 1988*). The subdivision is not for urban purposes. Should a permit be granted, the proposal is exempt from requiring payment of any open space contribution.

Clause 65.01

As discussed above the proposal fails to comply with the Municipal Planning Strategy, the Planning Policy Framework, the purpose the Green Wedge Zone and Clause 51.02 of the Cardinia Planning Scheme. The proposed subdivision will not contribute to the orderly planning of the area, being as it further fragments productive agricultural land. The proposed building envelopes also invite perspective buyers to expect a house right on the land and will likely lead to inflated land prices that directly impact the rural economy.

Conclusion

The proposal is an unacceptable planning outcome that does not demonstrate compliance with the relevant provisions of the Cardinia Planning Scheme and the *Planning and Environment Act 1987* and should therefore be refused.

Decision

Refusal

Having considered all of the matters required under section 60 of the *Planning & Environment Act 1987* and the Cardinia Planning Scheme, it is decided that Council refuses to grant a permit for the land known and described as CA 9 SEC G, Harewood Park Road, Gembrook; and Lot 4 on PS627026, 19 Knight Road, Gembrook (also known as 55 Harewood Park Road, Gembrook) as per the following table and subject to the below grounds.

Planning scheme clause	Matter for which the permit has been refused
35.04-3	To subdivide land
44.06-2	To subdivide land
42.01-2	To subdivide land

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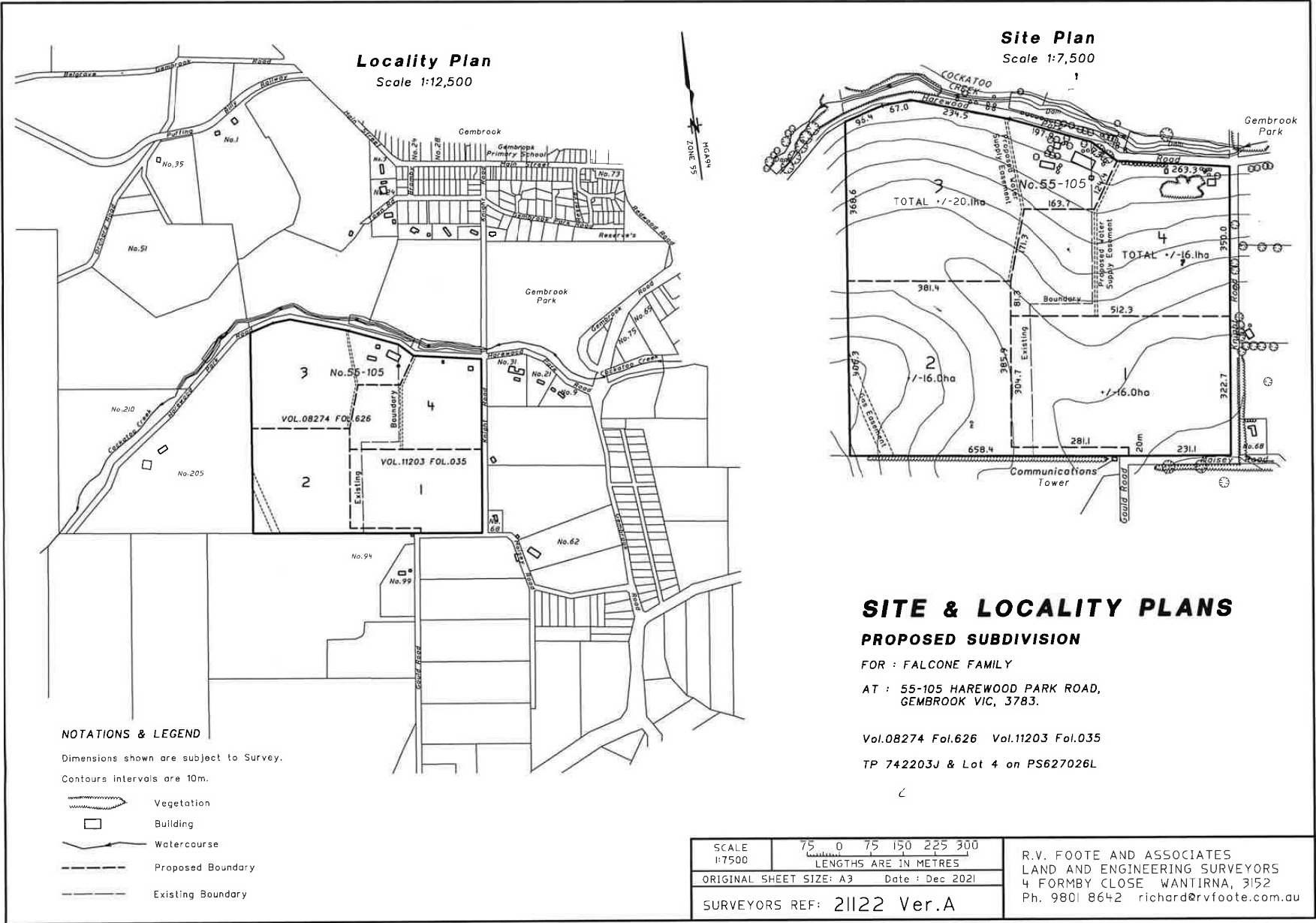
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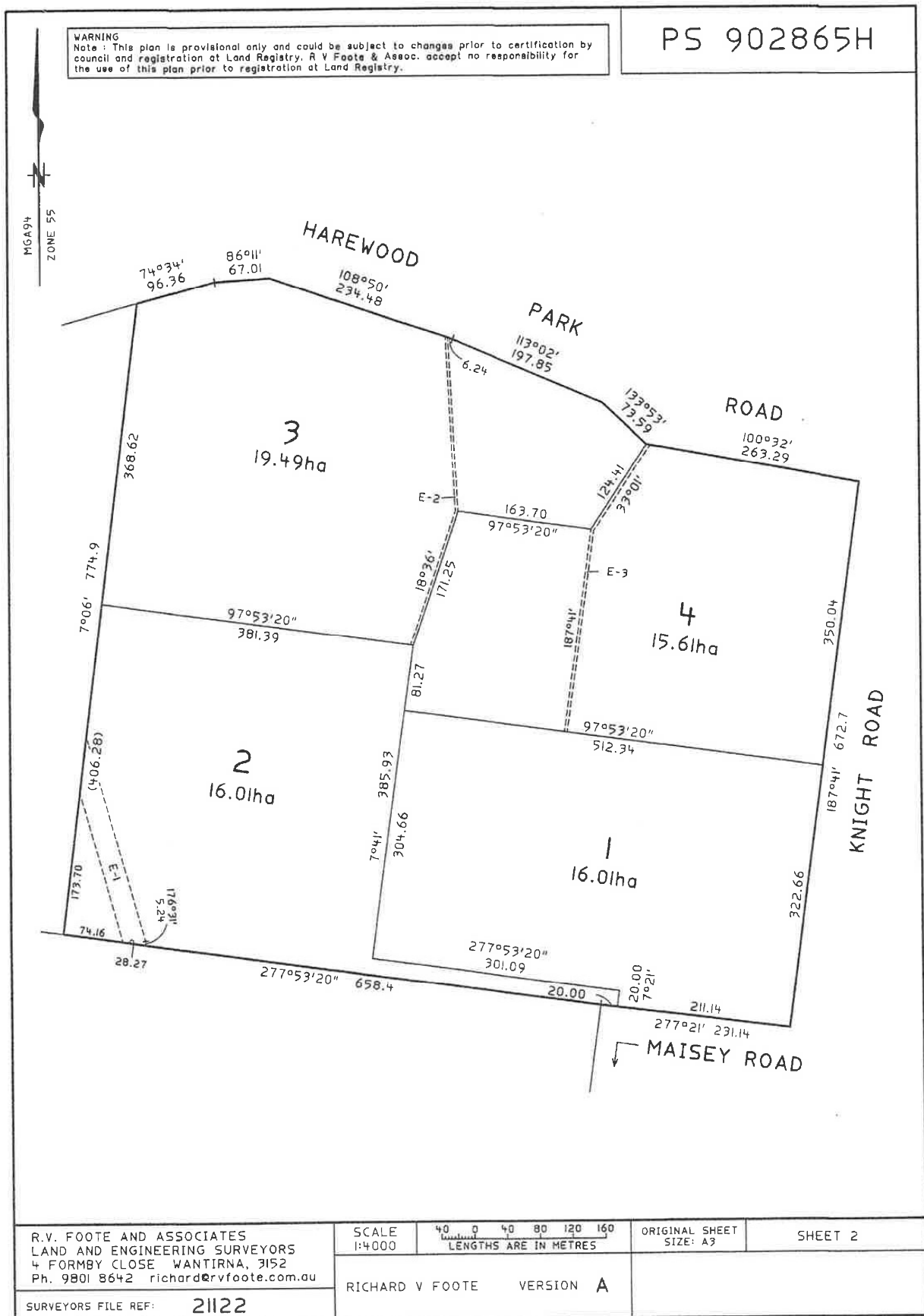
Refusal Grounds

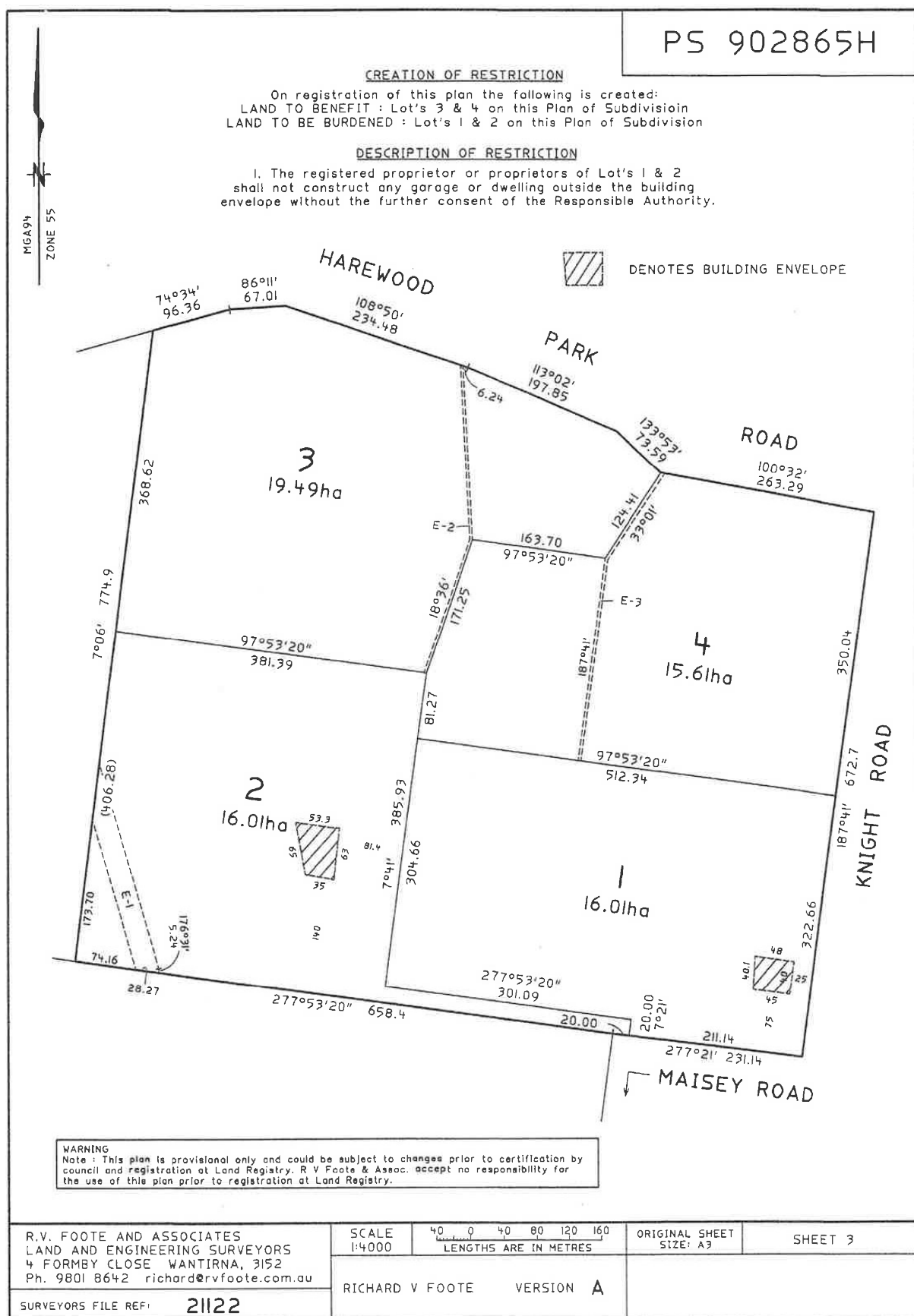
1. The proposal is inconsistent with Planning Policy Framework and Local Planning Policy Framework, that aim to preserve and protect rural land for its resources and scenic features, protect important agricultural land such as those in Gembrook, avoid the subdivision of productive agricultural land and avoiding the permanent loss of agricultural land, specifically:
 - a. Clause 11.01-1S - Settlement
 - b. Clause 11.01-1R - Green Wedges – Metropolitan Melbourne
 - c. Clause 13.07-1S – Land Use Compatibility
 - d. Clause 14.01-1S - Protection of Agricultural Land
 - e. Clause 14.01-1R - Protection of Agricultural Land – Metropolitan Melbourne
 - f. Clause 21.04-2 – Agriculture
 - g. Clause 21.02-2 - Landscape
2. The proposal is inconsistent with, and does not respond to the purposes and decision guidelines of Clause 35.04 (Green Wedge Zone), as it:
 - a. Will have a detrimental impact on the rural economy, due to the extent the proposal would increase the value of the land;
 - b. Does not enhance agricultural production or appropriately relate to rural land use;
 - c. Reduces the availability of land for future sustainable agricultural activities, and is not a subdivision consistent with sustainable land management practices;
 - d. Will compromise the preservation, protection and enhancement of significant agricultural land, primarily by further intensifying the potential for rural residential land use that would not be compatible with strategically supported agricultural land uses on the site and in the surrounding area;
 - e. Does not protect, conserve or enhance the character of the open rural and scenic non-urban landscape due to potential for proliferation of additional buildings in the landscape; and
 - f. Would adversely impact landscape features, vistas and natural scenic beauty of the area due to potential for proliferation of additional buildings in the landscape.
3. The proposal is inconsistent with the relevant purposes and decision guidelines of Schedule 1 to the Environmental Significance Overlay, as it does not have proper regard to the soil quality of the site identified by the *Land Capability Study for the Cardinia Shire (February 1997)* as it relates to agricultural capacity and development capacity.
4. The proposal is inconsistent with Clause 51.02 (Metropolitan Green Wedge Land: Core Planning Provisions), which aims to protect metropolitan green wedge land from uses and development that would diminish its agricultural values, and to protect productive agricultural land from incompatible uses and development.
5. The proposal includes a restrictive covenant relating to building envelopes, for which permission has not been sought pursuant to Clause 52.02.





PLAN OF SUBDIVISION		EDITION 1	PS 902865H	
<p style="text-align: center; font-weight: bold; font-size: 0.8em;">LOCATION OF LAND</p> <p>PARISH: GEMBROOK</p> <p>TOWNSHIP:</p> <p>SECTION: G</p> <p>CROWN ALLOTMENT: 9 & 10</p> <p>TITLE REFERENCE: VOL.08274 FOL.626 VOL.11203 FOL.035</p> <p>LAST PLAN REFERENCE: TP 742203J & LOT 4 ON PS 627026L</p> <p>POSTAL ADDRESS: 55-105 HAREWOOD PARK ROAD, GEMBROOK VIC, 3783. (at time of subdivision)</p> <p>MQASA ZONE 55 CO-ORDINATES: E 371 400 (of approx centre of land in plan) N 5 797 570</p>		<p style="font-weight: bold;">CARDINIA SHIRE COUNCIL</p>		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON			
NIL	NIL			
NOTATIONS				
<p>DEPTH LIMITATION : 15.24m BELOW THE SURFACE APPLIES TO ALL THE LAND IN THE PLAN</p> <p>SURVEY : This plan is/is not based on survey.</p> <p>STAGING : This is/is not a staged subdivision. Planning Permit No.</p> <p>This survey has been connected to permanent marks No(s).</p> <p>In Proclaimed Survey Area No. N/A</p>				
EASEMENT INFORMATION				
<p>LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)</p> <p>Section 12(2) of the Subdivision Act applies to all the land in this subdivision.</p>				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	GAS SUPPLY	27.00	C/E K398320	GAS & FUEL
E-2	WATER SUPPLY	2.00	THIS PLAN	LOT 2 ON THIS PLAN
E-3	WATER SUPPLY	2.00	THIS PLAN	LOT 1 ON THIS PLAN
<p>WARNING</p> <p>Note : This plan is provisional only and could be subject to changes prior to certification by council and registration at Land Registry. R V Foote & Assoc. accept no responsibility for the use of this plan prior to registration at Land Registry.</p>				
<p>R.V. FOOTE AND ASSOCIATES LAND AND ENGINEERING SURVEYORS 4 FORMBY CLOSE WANTIRNA, 3152 Ph. 9801 8642 richard@rvfoote.com.au 21122PS.SEE / 21122PS.LCD</p>		<p>SURVEYORS FILE REF: 21122</p> <p>RICHARD V FOOTE VERSION A</p>		<p>ORIGINAL SHEET SIZE: A3</p> <p>SHEET 1 OF 3</p>







FALCONE & ADAMS
L A W Y E R S
INCORPORATING ARMSTRONG ROSS LAWYERS

Our Ref: JSF:LG:123301
Contact: Joseph Falcone
Email: jfalcone@falconeadams.com.au

5 June 2025

To Whom It May Concern

Re: Melbourne Water entitlements at Harewood Park Road, Gembrook
Our client: Salvatore Falcone

We act for Salvatore Falcone in relation to his property matters.

We confirm that our client is the holder of various Melbourne Water Take & Use Licences, with a combined total volume of 80.0 megalitres. The land on which the water is to be used is all the land described in Certificates of Title Volume 8274 Folio 626 and Volume 11203 Folio 035, and being the land that is the subject of Planning Permit Application No. T240258 PA.

We further confirm that, upon registration of the proposed Plan of Subdivision 902865H ("Plan") with Land Use Victoria, and upon the subsequent transfer of any lot in the Plan from our client to a third party, a water use licence for not less than 20.0 megalitres will be contemporaneously transferred to the third party with the transfer of that lot. The current licence held by our client will be subdivided to facilitate this process. Our office has previously completed this process, and it is a standard and accepted practice.

Should you have any further queries in relation to the above, please do not hesitate to contact our office.

Yours faithfully

FALCONE & ADAMS

Per:

Joseph Falcone
Partner

Office Locations

Email: office@falconeadams.com.au
Postal: PO Box 214, Emerald VIC 3782
www.falconeadams.com.au

Emerald Head Office

Level 1, 329-331 Belgrave-Gembrook Road
Emerald VIC 3782
Tel: (03) 5968 3666

Belgrave By Appointment

Hills HQ, Suite 3, 1579 Burwood Highway
Tecoma VIC 3160
Tel: (03) 9754 7100

Pakenham By Appointment

Level 1, 25 John Street
Pakenham VIC 3810
Tel: (03) 5941 8841

Liability limited by a scheme approved under Professional Standards Legislation

5.2 PLANNING MATTERS DEALT WITH BY OFFICERS UNDER DELEGATED AUTHORITY - JULY 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Planning Matters Dealt with by Officers Under Delegated Authority – July 2025' report.

Executive Summary

The following matters have been dealt with under delegated powers since the last report to Council.

Planning Matters Report

Refer to tables on the following pages, which cover the period between 18 May 2025 and 16 June 2025.

Gender Impact Assessment

In the preparation of this report, Council has considered its obligations under the *Gender Equality Act 2020*. It was determined that a Gender Impact Assessment (GIA) was not required as the subject matter of this report does not relate to a policy, program or service that has a direct or significant impact on the community.

Attachments

Nil

Beacon Hills Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240314	67-69 St Georges Road, Beaconsfield Upper VIC 3808	Buildings and works for an extension to the existing dwelling	Issued	28/06/2024	19/05/2025
T250030	67 Wallace Street, Beaconsfield VIC 3807	Construct or put up for display a business identification sign	Issued	22/01/2025	19/05/2025
T230464 - 1	143 Quamby Road, Guys Hill VIC 3807	S72 Amendment to Change Plans and Delete Conditions 1-3	Issued	27/03/2025	20/05/2025
T250059	108 Cooina Road, Beaconsfield VIC 3807	Buildings and works (dwelling extension)	Issued	10/02/2025	26/05/2025
T200703	10 Sutherland Road, Beaconsfield Upper VIC 3808	Earthworks (in association with a dwelling)	Issued	22/10/2020	27/05/2025
T250237	96 Stoney Creek Road, Beaconsfield Upper VIC 3808	Buildings and Works (Construction of a Verandah)	Issued	1/05/2025	30/05/2025
T240649	25 Barnes Drive, Guys Hill VIC 3807	Buildings and works for an outbuilding and associated earthworks	Issued	2/12/2024	16/06/2025

Bunyip Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240539	25 View Street, Tynong VIC 3813	Buildings and Works (Alterations and Additions to an Existing Dwelling)	Issued	15/10/2024	23/05/2025
T220288 - 1	1806 Gembrook-Tonimbuk Road, Tonimbuk VIC 3815	Use and development of the land for a dwelling and the removal of vegetation	Issued	27/06/2024	27/05/2025
T240643	17 Agnoletto Court, Bunyip VIC 3815	Buildings and works for one dwelling	Issued	26/11/2024	29/05/2025
T240371	175 Jolley Road, Tonimbuk VIC 3815	Use of Land for Grazing Animal Production and Construction of Two Sheds	Issued	31/07/2024	30/05/2025
T250037	22 Home Road, Nar Nar Goon VIC 3812	Buildings and works (Alterations and Additions to an Existing Dwelling)	Issued	28/01/2025	30/05/2025
T250007	80 Ryan Road, Pakenham VIC 3810	Removal of Native vegetation under Clause 52.16 including within the Cnty Lane Road Reserves	Issued	7/01/2025	2/06/2025
T240343	44 Railway Avenue, Garfield VIC 3814	Buildings and works (Construction of six (6) dwellings)	NOD	19/07/2024	3/06/2025
T250060	139 Jefferson Road, Garfield VIC 3814	Buildings and works (construction of an agricultural building)	Issued	11/02/2025	3/06/2025

T240119	2 Richards Road, Nar Nar Goon VIC 3812	Construction of five dwellings on a lot	NOD	18/03/2024	4/06/2025
T250285	79 Wattletree Road, Bunyip VIC 3815	Buildings and Works (Construction of a Shed)	Issued	23/05/2025	6/06/2025

Central Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240525	151 Blue Horizons Way, Pakenham VIC 3810	Variation of Covenant AH232156Q on Lot 504 of PS547240	Refused	8/10/2024	4/06/2025
T250271	15 Pine Way, Pakenham VIC 3810	Construct a fence within 3 metres of a street if the fence exceeds the maximum front fence height specified under Clause 54.06-2	Issued	19/05/2025	6/06/2025

Henty Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240290	16 Toomuc Valley Road, Pakenham VIC 3810	Staged Subdivision of Land into Three (3) Lots	NOD	26/06/2024	19/05/2025
T240614	10 Kookaburra Rise, Pakenham VIC 3810	Buildings and works (Construction of a Dwelling and a Fence)	Issued	21/11/2024	19/05/2025
T240671	8 Scenic Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	12/12/2024	22/05/2025
T240636	8 Monterey Way, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	29/11/2024	27/05/2025
T240288	8-10 Hennessy Street, Pakenham VIC 3810	Buildings and works associated with five (5) Community Care Accommodation units, generally in accordance with the approved plans	Issued	4/07/2024	30/05/2025
T250233	18 Station Street, Pakenham VIC 3810	Reduction in Car Parking Requirements	Issued	30/04/2025	3/06/2025
T250119	7 Monterey Way, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	25/02/2025	10/06/2025

Officer Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T250008	64 McMullen Road, Officer VIC 3809	Use and development of the land for a childcare centre and display of business identification signage	Issued	8/01/2025	29/05/2025
T250145	Lot B on Plan of Subdivision 816031Q, Siding Avenue, Officer VIC 3809	Display of business identification signage, pole sign and promotion signage.	Issued	7/03/2025	29/05/2025
T250063	67 Tivendale Road, Officer VIC 3809	To construct and carry out works associated with an existing education centre (temporary marquee structures)	Issued	12/02/2025	4/06/2025
T230030 - 2	474 Princes Highway, Officer VIC 3809	Use and Development of the land with 8 food trucks, construction of car park and alteration of access to a TRZ2	Issued	25/03/2025	5/06/2025
T250095	451 Brown Road, Officer VIC 3809	Subdivision of land into two lots post development.	Issued	19/02/2025	12/06/2025

Pakenham Hills Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T240260	25 Solid Drive, Pakenham VIC 3810	Construction of a Dwelling, Fences and Associated Works, and Removal of Vegetation	Issued	12/06/2024	2/06/2025
T240279	10 Serene Court, Pakenham VIC 3810	Buildings and works for the construction of a dwelling and fence, and associated works including earthworks and retaining walls	Issued	20/06/2024	2/06/2025
T240536	12 Palm Court, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling, Fencing and Associated Earthworks)	Issued	14/10/2024	3/06/2025
T250077	12 Galway Rise, Pakenham VIC 3810	Buildings and Works (Construction of a Dwelling and a Fence)	Issued	14/02/2025	10/06/2025

Ranges Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T220293 - 1	4 Auhl Road, Emerald VIC 3782	S72 Amendment to Alter the Approved Plans (Increase size of approved outbuilding and include an additional outbuilding)	Issued	27/06/2024	20/05/2025
T160614 - 2	67 - 69 Tivendale Road, Officer VIC 3809	T160614 - 2 APP - Amendment to Permit Conditions and Plans (including the construction of a portable classroom building and a new canteen facility).	Issued	18/10/2023	26/05/2025

T210082 - 1	10 Mimosa Avenue, Emerald VIC 3782	Buildings and works for an outbuilding (garage) and associated earthworks	Issued	5/03/2025	27/05/2025
T210970 - 1	2979 Gembrook-Launching Place Road, Gembrook VIC 3783	Section 72 amendment to T210970 - 1 to amend the endorsed plans and to amend condition 5 of permit	Issued	13/05/2025	4/06/2025
T250246	5 Advance Boulevard, Officer South VIC 3809	Subdivision of land into two (2) lots with common property	Issued	7/05/2025	6/06/2025
T240144	Brisbanes Road, Cockatoo VIC 3781	Use and development of the land for a dwelling	NOD	1/04/2024	16/06/2025
T240230	359 Belgrave-Gembrook Road, Emerald VIC 3782	Subdivision of Land into Two (2) Lots	Issued	21/05/2024	16/06/2025

Toomuc Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T230202 - 1	19 Michael Street, Pakenham VIC 3810	Development of the land for a Store (self-storage units) and reduction to the car parking requirement	Issued	19/12/2024	2/06/2025
T250166	2 Portobello Road, Pakenham VIC 3810	Buildings and works (extension and refurbishment of existing school building)	Issued	20/03/2025	5/06/2025

Westernport Ward

Permit Number	Address	Proposal	Decision	Date Lodged	Date of Decision
T250209	35 Osborn Road, Koo Wee Rup VIC 3981	Buildings and Works (Construction of a verandah)	Issued	16/04/2025	20/05/2025
T240026	24 Whitstable Street, Lang Lang VIC 3984	Use of Land for Dog Breeding and Buildings and Works (Construction of a Fence)	NOD	24/01/2024	21/05/2025
T250239	33 Boundary Drain Road, Koo Wee Rup VIC 3981	Buildings and Works (Extension to a Dwelling)	Issued	2/05/2025	21/05/2025
T240600	1385 Manks Road, Koo Wee Rup VIC 3981	Buildings and Works (Construction of an Agricultural Building and a Rainwater Tank)	Issued	18/11/2024	22/05/2025
T240690	240 McCraws Road, Nar Nar Goon VIC 3812	Buildings and works for a dwelling extension	Issued	19/12/2024	23/05/2025
T230242	6 Link Road and 120 Westernport Road, Lang Lang VIC 3984	Subdivision of land into multiple lots, associated works, native vegetation removal and creation of access to a Transport Zone 2.	Issued	19/05/2023	29/05/2025

T250056	92 Enterprise Road, Pakenham VIC 3810	Development of land for two (2) warehouse(s) and ancillary office(s), reduction in car parking requirements and display of business identification signage	Issued	6/02/2025	30/05/2025
T240655	39 Exchange Drive, Pakenham VIC 3810	Building and Works (Construction of Two (2) Warehouses) and a Reduction to the Number of Car Parking Spaces Required	Issued	3/12/2024	3/06/2025
T250194	14 Quinny Street, Koo Wee Rup VIC 3981	Alterations and Additions to an Existing Dwelling (Verandah)	Issued	7/04/2025	11/06/2025
T240324 - 1	100 Greenhills Road, Pakenham VIC 3810	Building and works for warehouse development with ancillary office and associated car parking	Issued	7/05/2025	12/06/2025
T240333 - 1	100 Greenhills Road, Pakenham VIC 3810	Building and works for a warehouse with an ancillary office.	Issued	1/05/2025	13/06/2025
T240340 - 1	100 Greenhills Road, Pakenham VIC 3810	Development of the land for a warehouse and reduction in carparking	Issued	1/05/2025	13/06/2025

5.3 PLANNING MATTERS VCAT REPORT - JULY 2025

Responsible GM:	Debbie Tyson
Author:	Jason Gilbert
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Planning Matters VCAT Report – July 2025' report.

Executive Summary

The following list is presented to keep Council informed of applications that are currently the subject of appeals proceedings and recent decisions from the Victorian Civil and Administrative Tribunal (VCAT). This list is current as of 16 June 2025.

Gender Impact Assessment

In the preparation of this report, Council has considered its obligations under the *Gender Equality Act 2020*. It was determined that a Gender Impact Assessment (GIA) was not required as the subject matter of this report does not relate to a policy, program or service that has a direct or significant impact on the community.

Attachments

Nil

Matters Recently Lodged at VCAT

No matters recently lodged at VCAT.

Matters Currently the Subject of VCAT Appeal

Hearing Date	App. No.	Address	Proposal	Council Decision	Appealed By
5-7 /11/2025	T220800	315 Pooley Road, Nar Nar Goon North	Use and Development of Land for Rural Worker Accommodation and a Small Second Dwelling, and Removal/Lopping of Native Vegetation	Refusal (Delegate)	Applicant
20/8/2025	T240181	35 Canty Lane, Pakenham	Subdivision of land and associated works, and removal of native vegetation	FTD	Applicant
20/8/2025	T230589	215 Evans Road, Longwarry	Use of land for a Dwelling and Buildings and Works (Construction of a Dwelling, Shed and Associated Earthworks)	Refusal (TPC)	Applicant
22/07/2025	T240177	80 O'Briens Road, Yannathan	Use and Development of land for Dwelling, Outbuilding and Associated works	Refusal (TPC)	Applicant
14-15/05/2025	T210341	209 Berglund Road, Beaconsfield Upper	Use and development of the land a dwelling, outbuilding and removal of native vegetation	Refusal (TPC)	Applicant
8-10/04/2025	T230342	565 Murray Road, Vervale	Use of the land for Rural Industry (mud brick manufacturing)	Notice of Decision to Grant a Permit (TPC)	Objector
TBD	N/A	67 Officer South Road, Officer	N/A – Application for declaration in relation to the Officer Major Activity Centre Urban Design Framework	UDF adopted (Council)	Applicant

*FTD denotes an application for review of Council's failure to issue a decision within the prescribed timeframe.

Matters Recently Decided at VCAT

App. No.	Address	Proposal	Council Decision	Appealed By	Outcome	Decision Date
T230499	1 Outlook Road, Emerald	Buildings and Works (Construction of a Garage and Earthworks) and Vegetation Removal	Refusal (FTD)	Applicant	Affirmed – no permit granted (TPC)	13/06/2025

*FTD denotes an application for review of Council's failure to issue a decision within the prescribed timeframe.

5.4 PLANNING SCHEME AMENDMENTS ACTIVITY REPORT - JULY 2025

Responsible GM:	Debbie Tyson
Author:	Marcelle Bell
Staff Disclosure:	All officers involved in the preparation of this report have considered and determined that they do not have a conflict of interest in the matter.
Council Plan Reference:	5.1 We practise responsible leadership 5.1.1 Build trust through meaningful community engagement and transparent decision-making.

Recommendation

That Council note the 'Active Planning Scheme Amendments' report in Table 1.

Executive Summary

The report provides an update on the status of active planning scheme amendments and planning scheme amendment requests received.

Status of Active Planning Scheme Amendments

Table 1 details the status of active Planning Scheme Amendments being processed as of 16 June 2025.

Table 1 – Planning Scheme Amendment Activity

A/No.	Proponent	Address	Purpose	Exhibition Start	Exhibition End	Status
C278	Cardinia Shire Council	Municipal wide	Introduces a new Environmentally Sustainable Development (ESD) local policy (Clause 22.11) and makes associated changes to the Municipal Strategic Statement (MSS).	29/02/24	8/04/24	<ul style="list-style-type: none"> Council endorsed to seek authorization from the Minister for Planning to prepare proposed Amendment C278card on the 20/03/2023. Council received the Ministers authorization on the 23/10/2023 to prepare the proposed Amendment C278card. The proposed Amendment was placed on public exhibition from the 29/02/2024 until the 8/04/2024. Council received five submissions to the proposed Amendment C78card. On the 17 June 2024 Council considered the submissions made to C278card and endorsed referring the submissions to a Planning Panel appointed by the Minister for Planning. A Planning Panel Hearing was held on the 26/8/2024 and Council received the Panel report on the 6/09/2024. On the 16/12/2024 Council adopted the proposed Amendment C278card with changes based on the Panel Report and to submit the adopted Amendment to the Minister for Planning for approval. On the 23 December 2024, a Council officer submitted the Amendment to the Minister for Planning for approval.

C282	James Hicks Pottery Pty Ltd	Lot AA PS814723 Cotswold Crescent, Officer	The amendment under Section 96A of the Planning and Environment Act 1987 amends the Schedule to the Heritage Overlay (Clause 43.01) to allow Council to consider a prohibited use under the Heritage Overlay (HO104) for an office.	To be determined	To be determined	<p>On the 16 June 2025 Council resolved to:</p> <ul style="list-style-type: none"> Request authorisation from the Minister for Planning to prepare and exhibit proposed Planning Scheme Amendment C282card under Section 8A of the Planning and Environment Act 1987. Consider planning permit application T230528, concurrently with proposed Planning Scheme Amendment C282card pursuant to Section 96A and 96B of the Planning and Environment Act 1987 Exhibit proposed Planning Scheme Amendment C282card concurrently with planning permit T230528, in accordance with section 17, 18 and 19 of the Planning and Environment Act 1987, if authorisation to prepare the Amendment is received from the Minister for Planning.
C283	Cardinia Shire Council	Municipal wide	Section 20(4) Amendment to make corrections of anomalies and errors (Fix-Up Amendment).	To be determined	To be determined	<ul style="list-style-type: none"> On the 14 April 2025 Council considered the proposed Amendment C283card to seek authorisation from the Minister for Planning to prepare and exercise her Ministerial powers of intervention pursuant to Section 20(4) of the Planning and Environment Act to approve Amendment C283card. Council deferred consideration of the proposed amendment pending the results of the Agricultural Audit undertaken in 2024 and it is formally reported to Council and the community at a future Council meeting.
C284	Cardinia Shire Council	Crown Allotment 2001 next to Pakenham Cemetery	Section 20(2) Amendment to rezone former road reserve known as Crown Allotment 2001 from Urban Growth Zone Schedule 1 (UGZ1) to Public Use Zone Schedule 5 (PUZ5).	To be determined	To be determined	<p>On the 14 April Council endorsed writing to the Minister for Planning and request:</p> <ul style="list-style-type: none"> The Minister for Planning authorises Council to prepare Planning Scheme Amendment C284card to the Cardinia Planning Scheme pursuant to Section 8 of the Planning and Environment Act 1987 and for the Minister to act as the Planning Authority for the proposal. The Minister for Planning exercises the Ministerial powers of intervention pursuant to Section 20(2) of the Planning and Environment Act 1987 and direct Council to notify any potentially impacted owners and occupiers of land immediately adjacent to the east of the proposed rezoning of land included in the Amendment C284card proposal, exempting herself and Council from any other public notice requirements pursuant to the relevant provisions set out in Sections 17, 18 and 19 of the <i>Planning and Environment Act 1987</i>

						<ul style="list-style-type: none"> The Minister for Planning approves Amendment C284card pursuant to Section 35 of the <i>Planning and Environment Act 1987</i>.
Proposed Ministerial Amendment	DTP and DEECA	Lang Lang (Shire of Cardinia), Oaklands (Hume Council) and Trafalgar	Proposed Ministerial Planning Scheme Amendment under Section 20(4) of the Planning and Environment Act to introduce new planning provisions into the Cardinia Planning Scheme to protect land known to contain sand resources in Lang Lang.	2 October 2024	18 November 2024	<p>On the 16 December 2024 Council:</p> <ul style="list-style-type: none"> Noted and considered the proposed Ministerial Planning Scheme Amendment to apply new planning provisions to Strategic Extractive Resource Areas (SERAs) in Lang Lang Endorsed a submission that objected to the proposed Ministerial Planning Scheme Amendment to apply new planning provisions to Strategic Resource Areas (SERAs) in Lang Lang. Endorsed submitting the submission to the Minister for Planning accompanied by a cover letter signed by the CEO. Noted that there are fundamental gaps in the proposed Strategic Extractive Resource Areas (SERAs) Planning Scheme Amendment as reported in Council's submission. Call on the Victorian State Government to commit to fund the gap required for the Lang Lang Sand Truck Bypass. Endorse the Mayor writing to the Minister for Planning highlighting the strong dissatisfaction with the process and impact on the community and request the amendment process is ceased until appropriate due diligence on community impact and community consultation is undertaken. Commence a communication and advocacy campaign highlighting Council's submission. <p>As of the 16 June 2025, DTP are reviewing all submissions to SERA and Council is waiting to learn next steps.</p>

Gender Impact Assessment

In the preparation of this report, Council has considered its obligations under the *Gender Equality Act 2020*. It was determined that a Gender Impact Assessment (GIA) was not required as the subject matter of this report does not relate to a policy, program or service that has a direct or significant impact on the community.

Attachments

Nil

6 Meeting Closure