

## **4 TWO LOT SUBDIVISION AND VARIATION OF COVENANT PS702072L AT 14 CHANDRA CLOSE, PAKENAHM**

FILE REFERENCE INT1611059

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Vageesha Wellalage

### **RECOMMENDATION**

That a Refusal to Grant Planning Permit T150618 be issued for Lot:15 PS702072 at 14 Chandra Close Pakenham on the following grounds:

- The proposed variation would create an unreasonable detrimental impact on the adjoining properties.
- The proposed subdivision is not consistent with the existing and preferred neighbourhood character of the area.

### **Attachments**

1	Locality plan	1 Page
2	Development plans	2 Pages
3	Letters of objection circulated to councillors only	2 Pages

### **EXECUTIVE SUMMARY:**

APPLICATION NO.:	T150618
APPLICANT:	Michael Reddie
LAND:	Lot:15 PS702072; 14 Chandra Close Pakenham
PROPOSAL:	Subdivision of the land into two (2) lots in General Residential Zone and variation of covenant PS702072L
PLANNING CONTROLS:	General Residential Zone Development Contributions Plan Overlay Schedule 1
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by sending notices to the owners and occupiers of adjoining land and placing a sign on site. Council has received two (2) objections to date.
KEY PLANNING CONSIDERATIONS:	Impact of the proposed subdivision and variation of covenant on the adjoining properties Appropriateness of the subdivision and variation of covenant
RECOMMENDATION:	Refusal

## BACKGROUND:

There is no relevant planning permit history for the site.

## SUBJECT SITE

The site is located on the northern side of Chandra Close Pakenham.

A crossover is located on the eastern alignment of the site and there is an easement on the north western corner of the site.

The site currently is vacant.

The topography of the land is relatively flat.

The main characteristics of the surrounding area are:

- North Vacant
- South Access Road (Chandra Close)
- West Residential
- East Aurora Court

## PROPOSAL

Approval is sought for the subdivision of land into two lots and variation of covenant.

### *Subdivision*

The subject site is approximately 693 square metres in size and is proposed to be subdivided into two lots having land areas of 352 square metres and 342 square metres. Both the proposed lots have been provided with a building envelope each. Proposed Lot 1 will gain access from Chandra Close and proposed Lot 2 will gain access from Aurora Court via a proposed crossover. An easement has been created along the northern boundary of the proposed Lot 1 with a width of 1.2 metres for sewerage purposes and the existing easement on the north western corner will be retained.

### *Variation of covenant*

The subject site is affected by a covenant PS702072L. The covenant states the following:

The registered proprietors for the time being of all lots must not:

*“Build any building other than a building that agrees with the Building Design Guidelines, endorsed as part of Planning Permit T070313A, without the approval of the responsible authority”*

Point 4 of the relevant design guidelines state the following:

*“Dwelling Density*

*No more than one dwelling may be constructed per lot (lots 1-37, 42-65, 68-79)”*

This application seeks to amend the Covenant PS702072L by rewording the covenant ("Land to be Burdened") as follows:

Current: All lots except lots 38, 39, 40, 41, 66 & 67

To: All lots except lots **15**, 38, 39, 40, 41, 66 & 67

## PLANNING SCHEME PROVISIONS

### State Planning Policy Framework (SPPF)

The relevant clauses of the SPPF are:

- Clause 11.02-1 Supply of urban land
- Clause 15.01-3 Neighbourhood and subdivision design
- Clause 15.01-5 Cultural identity and neighbourhood character

### Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03-1 Housing

### Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 65 – The Decision Guidelines

### Zone

The land is subject to the General Residential Zone

### Overlays

The land is subject to the following overlays:

- Development Contributions Plan Overlay Schedule 1

## PLANNING PERMIT TRIGGERS

The proposal for subdivision of land into two (2) lots requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 32.08-2 of General Residential Zone, a planning permit is required for subdivision of land.

Pursuant to Clause 52.01 of Easements, Restrictions and Covenants a planning permit is required for variation of restriction.

## PUBLIC NOTIFICATION

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

- Sending notices to the owners and occupiers of adjoining land.
- Placing a sign on site

Although posting a notice on the newspaper is required for variation of covenant under the Planning and Environment Act, this has not been completed due to Council's decision to refuse the application.

The notification has been carried out correctly, and Council has received 2 objections to date.

The key issues that were raised in the objections are:

- Potential privacy and overlooking issues caused by future dwellings
- Overshadowing
- Building scale and neighbourhood character of future dwellings
- Type of residents/tenants vs owners/occupiers
- Loss of property value
- Additional Traffic and parking issues

## REFERRALS

- No referrals were required.

## DISCUSSION

State and local Planning Policy Framework, Zone and Overlays

The subdivision proposal fails to respond to the strategic directions of the Cardinia Planning Scheme. The subdivision would result in an inappropriate subdivision layout which would impact on the adjoining properties and the existing subdivision pattern. The existing subdivision pattern in Chandra Close and its surrounding streets are predominantly developed with one dwelling on a lot.

The subject lot has been created as part of the Pakenham Hills Estate. The estate contains a number of lots designated for single dwelling per lot including the subject site. The estate also contains a number of lots that are set aside for multi dwelling development. As such, the proposed estate has been created with a preferred character and it is expected that any multi dwelling developments will be located within the area designated for that purpose to avoid unnecessary fragmentation of the lots within the estate. In addition to that, the immediate area surrounding the subject property is predominantly developed with single dwelling per lot, therefore, the proposed subdivision is not consistent with the preferred character of the area.

### *Variation of covenant*

The proposed variation to the covenant will allow the development of each approved lot.

Section 60 of the Planning and Environment Act 1987 sets out the matters to be considered in making a decision on a planning permit application and includes requirements in relation to applications for the removal or variation of restrictive covenants which are set out below:

*“The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988 ) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not*

*more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—*

- (a) financial loss; or*
- (b) loss of amenity; or*
- (c) loss arising from change to the character of the neighbourhood; or*
- (d) any other material detriment—*

*as a consequence of the removal or variation of the restriction. “*

Section 60 (2) of the Planning and Environment Act 1987 establishes a much more onerous test to be satisfied before a permit may be granted for the removal or variation of a restrictive covenant, as it relates to any detriment of any kind (including any perceived detriment).

The application seeks a permit for two aspects, the subdivision of the land into two lots and the variation of the restrictive covenant that does not allow more than one dwelling on the land. Two (2) objections have been received in relation to the application from owners who are benefited of the restrictive covenant. The restrictive covenant PS702072L, and therefore the provisions of Section 60 (2) of the Planning and Environment Act 1987 apply. In light of the objections that have been received from owners who are benefited by the restrictive covenant, it is considered that Council is not able to be satisfied that the owner of any land benefited by the restriction will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction.

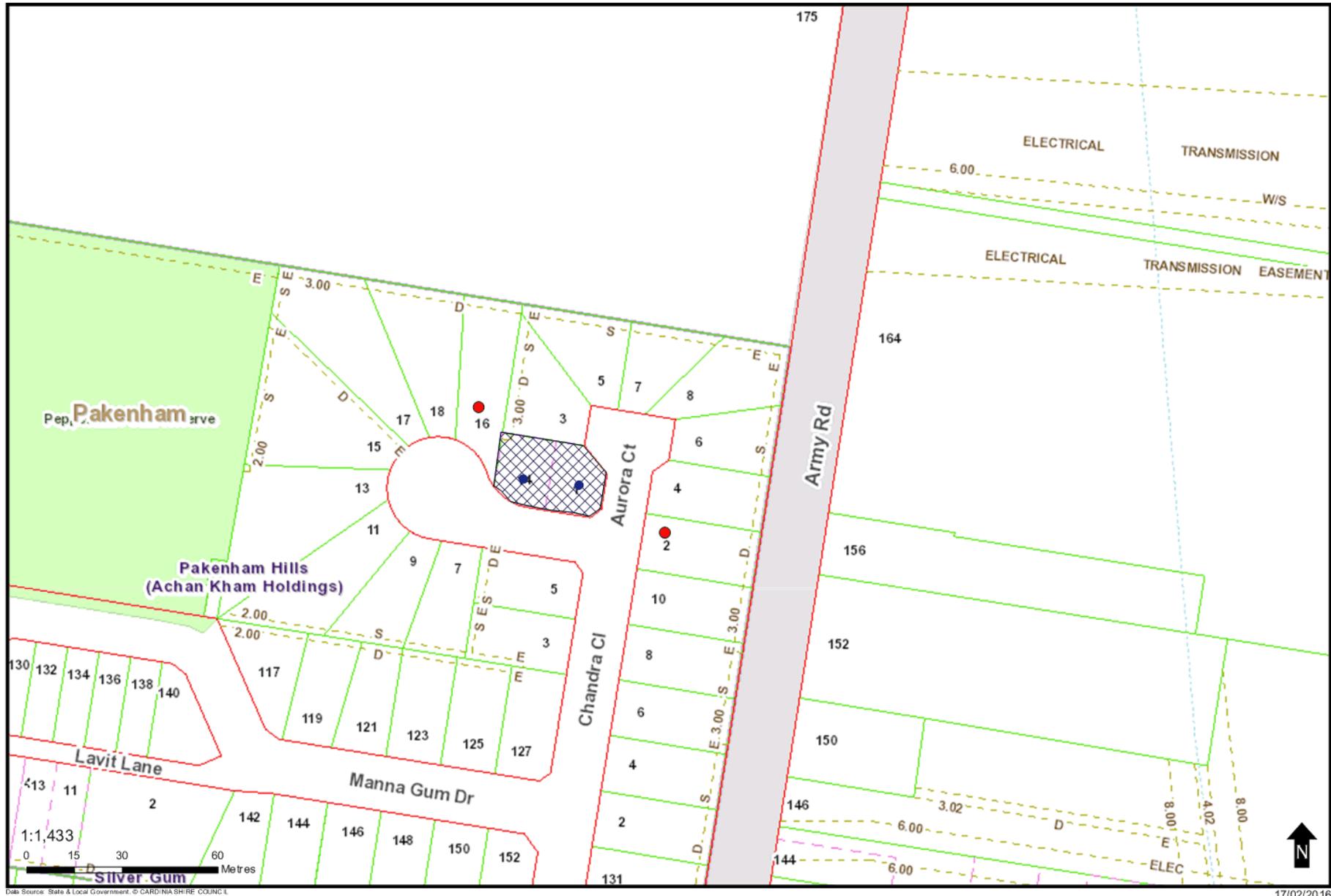
It is considered that the owners of land benefited by the restriction are likely to suffer detriment of any kind (including perceived detriment) arising from change to the character of the neighbourhood; as a consequence of the removal of the restriction, as such should not be supported.

#### *Objectors concerns*

In total two residents objected to the proposed subdivision. The concerns of the residents have been suitably addressed above and throughout the report which Council recognises and supports their concerns in relation to the proposal in addition to areas of noncompliance with the Cardinia Planning Scheme.

#### **CONCLUSION**

The proposed subdivision of the land is unresponsive to the surrounding neighbourhood character, existing subdivision pattern and does not meet the relevant objectives and standards of Cardinia Planning Scheme. Furthermore the variation of the covenant to allow a dwelling to be constructed within proposed lot two is inappropriate and would cause material detriment to the adjoining and surrounding residents who are beneficiaries of the covenant. Council recommends that the application be refused for reasons discussed throughout the report.



Data Source: State & Local Government, © CARDINIA SHIRE COUNCIL

17/02/2016

<b>PLAN OF SUBDIVISION</b>		<b>EDITION</b>	<b>PS 745234T</b>	
<p style="text-align: center;"><b>LOCATION OF LAND</b></p> <p>PARISH: NAR NAR GOON</p> <p>TOWNSHIP:</p> <p>SECTION:</p> <p>CROWN ALLOTMENT:</p> <p>CROWN PORTION: 6 (PART)</p> <p>TITLE REFERENCES: VOL 11583 FOL 389</p> <p>LAST PLAN REFERENCE/S: LOT 15 PS 702072L</p> <p>POSTAL ADDRESS: 14 CHANDRA CLOSE (At time of subdivision) PAKENHAM 3810</p> <p>MGA CO-ORDINATES E 368 169 ZONE: (of approx centre of land N 5 787 041 GDA 94 in plan) ZONE: 55</p>		<p>Council Name:</p>		
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
IDENTIFIER	COUNCIL/BODY/PERSON	<p>DEPTH LIMITATION: Does not apply.</p> <p>THIS IS A SPEAR PLAN</p> <p><b>IMPORTANT NOTICE</b> This plan must be used only for the purpose for which it was intended. Any uncertainty in this plan must be clarified with the author.</p> <p><b>WARNING</b> <b>PRELIMINARY PLAN ONLY</b> THIS IS A PHOTO COPY OF AN UNREGISTERED PLAN. This plan was prepared to be sealed by the Local Authority and to be registered by the Registrar of Titles. As alterations beyond the control of the surveyor may be required by the Local Authorities or the Registrar of Titles or other persons when the original is finally presented for registration, M. J. Reddie Surveys Pty Ltd can accept no liability for any loss or damage howsoever arising, to any person or corporation who may rely on this plan for any purpose. The original of this plan remains the property of M. J. Reddie Surveys Pty Ltd and copies of such plan made prior to registration must not be produced without this note which is an integral part of this plan prior to registration.</p> <div style="border: 1px solid black; padding: 5px; width: fit-content;"> <p><b>WARNING</b> <b>TOWN PLANNING PLAN ONLY</b> <b>NOT FOR DETAILED DESIGN</b> <b>SEE IMPORTANT NOTICES</b></p> </div> <p><b>IMPORTANT NOTICE</b> This plan has been prepared for town planning purposes only and must not be used for any other purpose.</p>		
<b>NOTATIONS</b>		<p><b>IMPORTANT NOTICE</b> This plan has been prepared for town planning purposes only and must not be used for any other purpose.</p>		
<p><b>SURVEY:</b> This plan is/is not based on survey.</p> <p><b>STAGING:</b> This is/is not a staged subdivision</p> <p>Planning Permit No.</p> <p>This survey has been connected to permanent marks No (s).</p> <p>In Proclaimed Survey Area No.</p>				
<b>EASEMENT INFORMATION</b>				
LEGEND A-Appurtenant Easement E-Encumbering Easement R-Encumbering Easement (Road)				
Section 12(2) of the Subdivision Act 1988 applies to the whole of this plan				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/in Favour Of
E-1	Drainage	See Plan	PS 702072L	Cardinia Shire Council
E-1	Sewerage	See Plan	PS 702072L	South East Water Corporation
E-2	Sewerage	1.20	This plan	Lot 2 this plan
<p><b>M. J. Reddie Surveys Pty Ltd</b> ABN 49 005 965 257 1 Horner Street, Beaconsfield. 3807 P.O. Box 268, Berwick. 3806 Phone (03) 9707 4117 Fax (03) 9707 4428</p>		REF: 15-09-109	FILE: 2021	ORIGINAL SHEET SIZE: A3
		MICHAEL J. REDDIE / VERSION 2		SHEET 1 OF 2

