

3 VARIATION OF COVENANT PS702072L AT 15 CHANDRA CLOSE PAKENHAM

FILE REFERENCE INT1634773

RESPONSIBLE GENERAL MANAGER Phil Walton

AUTHOR Vageesha Wellalage

RECOMMENDATION

That a Refusal to Grant Planning Permit T150687 be issued for Variation to covenant under Clause 52.02 at 15 Chandra Close, Pakenham Victoria 3810 on the following grounds:

- The proposed variation would create an unreasonable detrimental impact on the adjoining properties.

Attachments

1 Locality plan 1 Page

EXECUTIVE SUMMARY

APPLICATION NO.: T150687

APPLICANT: Katrina Ramirez

LAND: 15 Chandra Close, Pakenham Victoria 3810

PROPOSAL: Variation to covenant under Clause 52.02

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 one (1) objection to date.

KEY PLANNING CONSIDERATIONS: Impact of the proposed variation of covenant on the adjoining properties

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 Vacant
- East Access Road (Chandra Close)
- West Peppermint Gum Reserve

PROPOSAL:

Approval is sought for the variation of covenant PS702072L.

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

“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 19, 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

The land is subject to the following overlays:

- Development Contributions Plan Overlay Schedule 1

PLANNING PERMIT TRIGGERS

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

- 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 1 objection to date.

The key issues that were raised in the objection are:

- Building scale and neighbourhood character of future dwellings
- Increase in traffic

REFERRALS

- No referrals were required.

DISCUSSION

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 applies to restrictive covenants created on or after 25 June 1991. This section states that a planning permit cannot be granted to remove or vary a registered restrictive covenant unless the responsible authority is satisfied that any benefiting landowner will be unlikely to suffer material detriment, including financial loss or loss of amenity.

The proposal seeks to vary the restrictive covenant that does not allow more than one dwelling on the land. One objection has been received in relation to the application from owners who are benefited of the restrictive covenant, PS702072L, and therefore the provisions of Section 60 (2) of the Planning and Environment Act 1987 apply. In light of the objection that have been received from the owners who are benefited by the restrictive covenant, it is considered that Council is not able to be satisfied that the owner of the land benefited by the restriction will be unlikely to suffer material 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 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

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 non-compliance with the Cardinia Planning Scheme.

Conclusion

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 beneficiaries of the covenant. Council recommends that the application be refused for reasons discussed throughout the report.

