



Marcus Lane Group

Legal Review Report

KNOX CITY COUNCIL

201 Ferndale Rd, Sassafras and adjoining properties

March 2021





CONTENTS

LEGAL REVIEW REPORT	2
1 INTRODUCTION	2
Part A - Scope of review	3
Part B - Review process	3
2 OVERVIEW	4
Part A – Any enforcement actions available? If not, why not?	4
Part B – Council’s enforcement conduct and improvement opportunities	5
3 REVIEW PROCESS	5
Part A - Submissions & other information received	5
Part B – Allegations made	6
4 LEGAL REVIEW	6
Part A - 201 Ferndale Rd, Sassafras	8
Part B - 123 Old Coach Road, Sassafras	27
5 CUSTOMER FEEDBACK ON COUNCIL’S HANDLING OF COMPLAINTS	27
6 CONDUCT AND IMPROVEMENT OPPORTUNITIES	29
2011 Council conduct and records	29
2020 Council conduct and records	30
Improvement opportunities	31
7 FINAL RECOMMENDATIONS	31
General suggested process improvements	31
Recommended actions to finalise investigation for the Land and adjoining land	32

LEGAL REVIEW REPORT

1 INTRODUCTION

1. Marcus Lane Group is an experienced team of planning and environment lawyers, engaged to undertake an independent review into Knox City Council's handling of enforcement related complaints and enforcement actions taken, or not taken, for the property at 201 Ferndale Road, Sassafras (**Land**) and adjoining properties.
2. The review (as documented in this Report) was commissioned in response to the resolution made concerning Notice of Motion No 105, Item 12.2 adopted by Council at its Ordinary Meeting of Council on 27 July 2020 (**Resolution**)¹.

12.2 Notice of Motion No, 105 – 201 Ferndale Road Sassafras

RESOLUTION

MOVED: Councillor Mortimore

SECONDED: Councillor Lockwood

That:

1. An independent review be conducted into Council's handling of enforcement related complaints and enforcement actions taken, or not taken, for the property at 201 Ferndale Road, Sassafras, and adjacent properties;
2. This review should include, but not be limited to:
 - a) the taking of written and oral submissions from interested parties,
 - b) the review any relevant aerial photographs, and
 - c) any other evidence that may be offered;
3. As part of the review process, any new evidence obtained will be reviewed and recommendations for action issued to Authorised Officers of Council, noting the Statute of Limitations and requirements of relevant legislation;
4. This review should determine, as far as possible, whether any enforcement action taken, or not taken, and if so, why (or why not);
5. This review should determine if enforcement action taken to any adjacent property was undertaken reasonably and objectively;
6. This review should draw findings and recommendations as relevant to the handling of enforcement complaints and actions relevant to 201 Ferndale Road, Sassafras and adjoining properties in the form of a report, which should also include any opportunities for improvement for ongoing enforcement activities if identified;
7. This review be conducted by a person with sufficient knowledge of planning/building enforcement who has no connection to Council or any landowner at or adjacent to 201 Ferndale Road, Sassafras or with anyone who has taken a public position regarding this issue;
8. The review be undertaken with adherence to the relevant COVID-19 pandemic Government restrictions and requirements;
9. This enforcement review be reported back to the CEO and Council no later than February 2021.

CARRIED

¹ For ease of reference, included herewith

Part A - Scope of review

3. Council resolved the process of the review should include (but not be limited to):
 - 3.1 the taking of written and oral submissions from interested parties;
 - 3.2 the review of any relevant aerial photographs;
 - 3.3 any other evidence that may be offered.
4. In terms of the focus of the substance of the review, Council's Resolution can be summarised as calling for a report on a review with two key goals.
5. The first goal is that Council seeks a determination, as far as possibly able to be made on available evidence, as to whether any enforcement action ought to be taken by Council, or not taken (and if so, why or why not) in relation to the Land and adjoining Land.
6. Council's Resolution secondly seeks a report with a goal of making findings and recommendations about the handling of enforcement complaints and actions relevant to the Land and adjoining property by Council, including indicating opportunities for improvement of ongoing enforcement activities if identified.
7. This Report documents the review and our findings relative to the Resolution as summarised above.

Part B - Review process

8. The review process has been undertaken in the following manner:

Preliminary

- 8.1 undertake a desk top review of relevant Council files and documents;

Stage 1

- 8.2 call for written submissions in a survey, providing residents and property owners, with the opportunity to make submissions on any planning, building, enforcement or any other matters relating to the Land and adjoining properties;

Stage 2

- 8.3 undertake a site visit;
- 8.4 questioning of relevant Council employees;

Review and reporting phase

- 8.5 undertake a review of complaints received and action taken by Council (in the fields of planning, building and enforcement);
- 8.6 a review of information, complaints and evidence received from residents in response to our call for written and oral submissions;
- 8.7 an analysis of the legal status of evidence gathered in terms of any identifiable non-compliances of the Knox Planning Scheme that would warrant formal legal action;
- 8.8 preparation of this report documenting our findings about Council's approach in the planning enforcement matters relating to the Land, and adjoining properties. This report also addresses the timeliness, thoroughness and reasonableness of Council's actions;

- 8.9 making recommendations generally for internal process improvements as concern the handling of enforcement complaints and actions; and
- 8.10 provision of a detailed chronology and electronic book of documents including relevant documents, aerials and correspondence comprising a single point of record for Council's convenience and future use as concerns the Land and adjoining properties.

2 OVERVIEW

Part A – Any enforcement actions available? If not, why not?

- 9. At the core of Council's resolution is a call for an independent, detailed technical legal analysis of all available evidence (including new evidence as gathered from interested parties) concerning allegations of non-compliances with the Knox Planning Scheme and/or any other actions capable of being enforced under the *Planning and Environment Act, 1987*.
- 10. Our report outlines in detail the work we have undertaken to provide the response Council seeks in this regard.
- 11. We conclude that, on the basis of the evidence available to us as described and documented in this Report, there is no actionable enforcement issues for Council to pursue in any forum.
- 12. Council's resolutions (particularly part 3) notes that there are time limitations on Council's ability to take legal action in relation to any identifiable planning non-compliances.
- 13. The prosecution of an offence as gives rise to the initiation of a complaint and summons by a Responsible Authority in the Magistrates' Court pursuant to section 120 of the *Planning and Environment Act 1987* must be commenced no later than 12 months from the commission of the offence.
- 14. No action could be taken at the Magistrates' Court regardless of the substance of the evidence for the simple reason that there are no credible planning non-compliances that relate to a time period over the last 12 months. Most allegations relate to activity that may have taken place several years ago (with the only evidence being aerial photography, showing a 'before' and 'after' scenario).
- 15. Based on the investigation we have undertaken, the 12 month timeframe lapsed in respect of each possible allegation of planning non-compliance some time ago.
- 16. No persuasive evidence (that is, no evidence that meets the relevant evidentiary burden for planning enforcement purposes of 'beyond reasonable doubt') exists based on our analysis to give rise to the prospect of a prosecution concerning any use, buildings or works (including earthworks or tree removal) at the Land or at adjoining land within the relevant time period.
- 17. It is also open to Responsible Authorities to take other forms of enforcement action in response to evidence of planning non-compliance.
- 18. Beyond the time period of 12 months from the commission of an offence under the *Planning and Environment Act, 1987*, it is open to Responsible Authorities to make application to the Victorian Civil and Administrative Tribunal (**VCAT**) for an enforcement order. If so ordered by VCAT, an enforcement order made by VCAT can require a person to do specified things in relation to the use and development of land within a specified time.
- 19. It is to be noted that, unlike in the case of a Magistrates' Court prosecution (where proof of a planning non-compliance to the requisite evidentiary standard will result in a guilty verdict), the making of an enforcement order by VCAT is wholly discretionary. Even if a planning breach is proven to have occurred by an Applicant for enforcement order, it is necessary for the Applicant to also persuade VCAT that it is appropriate in the circumstances of a given matter for an enforcement order to be made.

20. Relevant circumstances will include the relative harm occasioned by the breach (if any) and the passage of time since the breach took place to the time when the Applicant commenced the enforcement order application.
21. As comprehensively described in Chapter 4 of this Report, the available evidence gathered throughout our investigation is, in all instances, insufficient to meet the above requirements. To be clear, we have not found there to be sufficient grounds to demonstrate to VCAT either that there has been a planning non-compliance (supported by evidence to the requisite standard of proof) and as well that there exists proof of harm occasioned by the non-compliances (in this instance amounting to the discretionary factors needed to persuade VCAT to grant an enforcement order).
22. In every instance where we have identified that certain works may have amounted to a planning non-compliance, there is sufficient doubt about how, when, by whom and for what reason works were undertaken such that, in our view, no enforcement order application would succeed in persuading VCAT to make any order for rectification.
23. We do note that while we have observed allegations of action that may be unlawful under other statutory regimes during the course of our preparation of this report (an example being allegations of building non-compliances) this report only reports on areas of possible planning non-compliance.

Part B – Council’s enforcement conduct and improvement opportunities

24. The Resolution calls for a review which also draws findings and makes recommendations as relevant to the handling of enforcement complaints and actions relevant to the Land and adjoining property, including indicating opportunities for improvement of ongoing enforcement activities if identified.
25. We have carefully considered the approach taken by Council to the receipt of complaints and to actions taken in response. Our lens has been most closely focussed on the performance of Council’s duties under the *Planning and Environment Act, 1987*² and the expectations on Council as an applicant for enforcement relief at VCAT in terms of producing evidence of a requisite standard to make out allegations of planning non-compliance.
26. There are other ways in which the tasks we undertake as described at chapters 5 and 6 of this Report could be viewed, such as relative to customer satisfaction expectations. However, we are mindful that the Resolution specifically called for the engagement of someone independent of Council to conduct the review, and in particular a person with knowledge of planning/enforcement.

3 REVIEW PROCESS

Part A - Submissions & other information received

27. Two written submissions were made in response to the call for responses and one request to make oral submissions was received by Marcus Lane Group.
28. Written submissions were received from two separate respondents. For the purpose of the report, we will refer to the people as A and B in order to keep their identity confidential. Oral submissions were also heard from B.
29. A copy of the survey responses can be found at **attachment 2**.
30. The supporting evidence submitted separately to the survey responses, together with relevant Council documents and files provided has been summarised in **attachment 3**.
31. We do note that the survey responses make allegations regarding the handling of planning application P/2019/6025 (by both Council and VCAT) which recently approved a restaurant use on the Land. These matters do not form part of the scope of the task that we have been engaged to do for Council.

² Most particularly as set out at section 14 but elsewhere as described in the Act

32. We have been supplied with what appears to be a complete and well organised copy of the relevant planning application file concerning P/2019/6025 from Council's planning officers.
33. We have analysed this file for the purposes of locating any enforcement related complaints only. We have not sought to review any aspect of the processing of the permit application or the planning merits or reasonableness of the decision made by Council or Council's conduct in the Application for Review at VCAT that resulted in the final determination of this permit application as this falls outside the scope of review.

Part B – Allegations made

34. The nature of the complaints can be summarised as follows:

A's allegations

35. Alleging/questioning if the following were carried out at the Land without a planning permit:

- 35.1 car park;
- 35.2 gantry wall;
- 35.3 greenhouses;
- 35.4 dams;
- 35.5 vegetation removal; and
- 35.6 works contrary to Section 173 Agreement.

B's allegations

36. Alleging the following were carried out at the Land without planning permits:

- 36.1 car park;
- 36.2 retaining walls and earthworks;
- 36.3 greenhouses;
- 36.4 dams;
- 36.5 vegetation removal;
- 36.6 outbuildings and sheds;
- 36.7 works to dwelling (prior to VCAT appeal associated with application P2019 6025); and
- 36.8 works contrary to Section 173 Agreement.

37. Providing evidence with respect to an adjoining property (123 Old Coach Road) for the:

- 37.1 replacement of a retaining wall; and
- 37.2 construction of a fence outside of property boundary (on Council land).

4 LEGAL REVIEW

38. In the following part of this Report, based on the information reviewed by us, we:

- 38.1 describe;
- 38.2 analyse (including by reference to external source information); and
- 38.3 where possible based on available evidence, state conclusions,
- about the various asserted instances of breach of provisions of the Knox Planning Scheme (**Scheme**) concerning:
- the Land; and
 - adjoining land.
39. For this purpose, we draw upon the actual evidence provided by A and B and as shown by the Council records provided. For Council's ease of reference:
- 39.1 a summary of the supporting evidence is at **attachment 3**; and
- 39.2 the survey responses of A and B is found at **attachment 2**.
- These two documents inform and cross-reference each other, so both attachments ought to be read together.
40. As stated above, we have had regard to external source information (as directed by the Resolution).
41. In particular, we have referred to Nearmap imagery which provides aerial photographs of the Land dating from 2009 onwards. Google Earth also provides additional aerial imagery dating from April 2005. We note that the quality of the aerial images varies, with some dates proving more useful in their detailing than others, generally dependant on the time and angle the photographs have been taken and overall quality of imagery³.
42. We have separately reviewed the Scheme in both its current and historical forms.
43. As to be expected given the extensive length of time over which the allegations of breach of the Scheme have been made, there have been numerous Scheme amendments implementing changes to the zones, overlays and particular provisions throughout the broad span of time that the above listed allegations are best known to have occurred.
44. To understand what controls (by which we mean both permit requirements and, as is relevant to determine if a breach has occurred, permit exemptions) were applicable at each, we refer to the summary of the relevant Scheme provisions provided at **attachment 4**.
45. Our review has been limited to the allegations as identified in the oral submission, survey results and the supporting evidence provided. We have not commissioned any independent expert opinion (survey information, hydrological expertise or arboricultural expertise) but where relevant we identify where this expertise could assist to further inform the nature of the works as may have been undertaken at the Land, based on our review of aerial photography relevant to time periods highlighted by survey response information and Council complaint records. We draw attention to the following matters:
- 45.1 we expect it will be well understood that such independent expert opinion may be costly;
- 45.2 in this regard, we have recently had occasion on behalf of another local government authority to commission expert reports from these experts in the context of a controversial

³ In attempt to understand what has occurred at the site prior to these dates, we have requested historical aerial imagery from Council. As at the date of this Report, this information has not been supplied.

enforcement matter and the costs of these reports has so far amounted to over \$50,000 (prior to the giving of any expert evidence at VCAT);

- 45.3 the efficacy of such expert opinion greatly diminishes with the passage of time between the undertaking of a planning non-compliance and the commissioning of expert opinion, by reason of the loss of empirical evidence over time.
46. In each instance of allegation of non-compliance the subject of our detailed investigation, we have concluded that there is either:
- 46.1 insufficient proof of any planning non-compliance;
- 46.2 no actionable non-compliance.
47. We have dealt with our findings over two separate chapters relating to the Land and surrounding land, in line with the Resolution:
- 47.1 Part A – the first, and the most lengthy, analysis of information gathered through our review concerns the Land;
- 47.2 Part B – the second chapter concerns our analysis of information gathered through our review concerning an adjoining property at 123 Old Coach Road, Sassafras.

Part A - 201 Ferndale Rd, Sassafras

48. The following part of this report contains our detailed description, analysis and conclusions in relation to the alleged planning non-compliances, arranged under topic headings related to the subject matter of the allegations made by A and B as set out above.

Car park and retaining walls

What complaints and evidence has been received?

49. Both A and B submit in their survey responses that a car park and retaining/gabion walls were constructed without planning permission.
50. Photographic evidence of a gabion wall said to be 3m in height was provided by A. The precise location of the wall is not specified say by depiction of the photo location relative to a site plan or aerial photograph.
51. Evidence from B is provided in the form of email correspondence, first to Councillors dated 15 March 2020, and later to Council's planning investigation officer generally dated between 15-28 June 2020 onward. These are further described at **attachment 3**.
52. In oral submissions, B confirmed the content of the above email evidence, relaying that it was inspected by the planning enforcement officer and:
- 52.1 was said to have been constructed in accordance with a road opening permit issued in 2012 and that no further action was required at the time inspected (as shown in email dated 16 June 2020);
- 52.2 the road opening permit could not be publicly viewed (as shown in email dated 19 June 2020); and
- 52.3 the Building Department came out to the Land and confirmed the said works needed a building permit (we assume this to be the advice sought as referenced in email dated 22 June 2020).
53. In oral submissions, B also suggested that the car park was constructed outside of the property boundary, however no supporting evidence has been provided with respect to this allegation.

54. Council's planning enforcement records also show record of a complaint made from B on 16 June 2020 and notes that an inspection was carried out on same day and determined, in summary:
- 54.1.1 Works were carried out approximately 7 years ago in accordance with road opening permit obtained on 27 November 2012.
- 54.1.2 The access is no longer in use and padlocked and that it is not a car park or intended to be used as a car park for the purpose of a restaurant, therefore no action will be taken.
55. The planning enforcement records do not make mention of retaining walls/wire rock cages, however in email evidence provided by B, a response from the planning enforcement officer dated 25 June 2020 mentions:
- .. the wire rock cages containing rocks situated around the area on the ground with a height of less than one metre do not require building permits. However, in further discussions with Council's Municipal Building Surveyor it has been established that a building permit is required for the walls exceeding 1 metre in height and I apologies for the confusion caused. The owner will be contacted by Council's Building Department in due course....
56. Council's planning enforcement records also show a complaint was registered (not detailed by whom) on 4 November 2011.
57. It suggests that the land was inspected but illegal works could not be located. It could be assumed that this complaint may have related to these same works, however this is inconclusive from the detail in the records.
58. In oral submission B suggests that Council was advised of suspected works occurring and a presence of machinery on the Land ten years ago. This generally coincides with the date of the above said complaint.
- What were the relevant Scheme provisions?
59. Aerial imagery independently reviewed would indicate that the road opening works was acted on between late 2011 to 2012.
60. At the time the road opening permit was issued in November of 2012, the relevant Scheme provisions were as follows:
- 60.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
- 60.1.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
- 60.1.3 Wildfire Management Overlay (**BMO**);
- 60.1.4 Vegetation Protection Overlay, Schedule 1 (**VPO1**).
61. The Scheme provisions were much the same in late 2011, so the actual date works commenced will result in the same assessment and outcome.
- Was a planning permit required?
62. The relevant permit requirements are outlined at **attachment 4**.
63. The RCZ1 specified that the use of the land for a 'car park' is a Section 2 (permit required) use at Clause 35.06-1. However, a car park land use (defined as land used to park motor vehicles) insinuates a public car park, rather than an area to park vehicles associated with the existing dwelling for example. Council's planning enforcement officer confirms that the land was never used as a car park and aerial imagery (no parked vehicles shown) would suggest this is correct.

64. Rather than the use, it is the potential earthworks/retaining walls (buildings and works) that require consideration here. The matter of any associated vegetation removal will be addressed separately under the relevant heading.
65. The provisions of the RCZ, SLO4 and WMO all had permit requirements pertaining to buildings and works. The permit requirements of relevance are:
- 65.1 Pursuant to clause 35.06-5 of the RCZ;
- A building or works associated with a Section 2 use;
- Earthworks as specified in schedule 1 of the zone, which include:
- Earthworks which change the rate of flow or the discharge point of water across a property boundary; or
- Earthworks which increase the discharge of saline groundwater.
- 65.2 Pursuant to Clause 42.03-2 of the SLO4;
- To construct a building or construct or carry out works, however not for the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay.
66. Our site inspection confirmed that there is a levelled area adjacent to the vehicle crossing (albeit a chain extends across the opening), with wire rock walls around its western periphery.
67. The first issue that arises in the context of making any conclusive findings as to whether or not a planning permit was required is determining if, when and what buildings and works took place.
68. There is definitive evidence that a road opening permit (Permit 2238/cross) was issued in November 2012 by Council's Assets department, but there is no other available evidence that relevantly pinpoints the time that the alleged works were undertaken.
69. It is noted that a vehicle crossover (other than to create access to a VicRoads declared road in Road Zone Category 1, in which Ferndale Road is not) does not require a planning permit.
70. Aerial imagery has been used to cross-reference the timing of the works. This confirms that an informal crossing was created near to the time the road opening permit was issued.
71. Aerial imagery also suggests further activity comprising either (or both) the scraping of an area of land within the property boundary occurred, or ground covers/vegetation were cleared.
72. This evidence set does not, however, confirm with sufficient certainty that all the alleged unlawful earthworks were constructed as per the Scheme definition of:
- Land forming, laser grading, levee banks, raised access roads and tracks, building pads, storage embankments, channel banks and drain banks and associated structures.
73. As an example to bear out how the aerial photography leaves reasonable doubt, at the time that the road opening permit for the vehicle crossing was acted upon, the adjacent land inside the property boundary may have already been levelled and the vehicle crossing may have been sought to access this 'pad'.
74. In an attempt to better understand the prior topography, the plans attached to the Section 173 Agreement registered on Title in 2004 were analysed by us. No contours are shown on the plan in the vicinity of the Ferndale Road boundary, however there is a plan notation indicating that a nursery and greenhouse were located (or to be located) in this general location. Relative to this evidence source, we believe there is a reasonable probability that some degree of earthworks had already been undertaken to manage the natural slope to accommodate these building and a provide some accessible space surrounding them.

75. Aerial imagery in 2009 shows outbuildings in this area (directly west of the crossover and cleared and levelled space) with a grassed area to its north that appears to be levelled.
76. The same photographs also show a possible retaining wall type structure may have existed to create this graded space. While the level to which these photographs provide evidence falls short of providing absolute confirmation that the extent of earthworks and/or height of retaining walls were the same as what now exists, it does provide a reasonable basis for a conclusion that some degree of works had already been carried out.
77. Turning now to the rock wire retaining walls (as an associated structure to the earthworks), our investigation leads us to a similar conclusion (namely that there is insufficient proof to the requisite standard – beyond reasonable doubt – that works were undertaken unlawfully.
78. It is not possible to discern, based on the available information, whether the rock wire retaining wall was constructed in association with potential earthworks (when the vehicle crossing / road opening permit was acted upon), or whether the rock wire retaining wall simply amounted to the reconstruction or replacement of an earlier retaining wall that already existed?
79. To cloud the prospect of reaching a definitive conclusion about whether the rock retaining wall was erected unlawfully even further, we note that the structure may have been constructed in accordance with the Scheme exemptions at Clause 62.02-2 which specify buildings and works not requiring a permit unless specifically required by the planning scheme, and includes:
- Any works necessary to prevent soil erosion, or to ensure soil conservation or reclamation.
Repairs and routine maintenance to an existing building or works.
80. Even if it is assumed that the new earthworks and higher retaining walls were in fact constructed that at the time the vehicle crossing was acted upon, a planning permit was required unless such works could be proven to be in association with an agricultural activity. This is a consequence of the permit trigger for buildings and works would be required under the SLO4.
81. A planning permit may have also been required under the RCZ1, however whether or not an exemption was available depends on information that has not been provided to us (and information that we do not suspect is able to be adduced from any publicly available source). In this regard, we note that what is needed to reach a definitive conclusion about whether the works required planning permission turns on having evidence about “what” the works were associated with (or for what purpose they were constructed). There is no available evidence to assist with a determination about whether the works were associated with the dwelling or agricultural uses (in which a planning permit would be required), or alternatively for the purpose of fire protection/access (in which case, no planning permit was required).
82. Ascertaining whether such works changed the rate of flow or the discharge point of water across a property boundary or increased the discharge of saline groundwater (the other planning permit requirement for earthworks in the RCZ1) generally would necessitate a more complex assessment, such as a hydrology report which itself would need to be informed by lidar survey information (or at least a photogrammetry survey assessment). The passage of time in this instance is a factor which presents genuine challenges. We are unable to say whether the experts who perform this work would be comfortable reaching any concluded expert views to inform conclusions about whether planning permission was required in this instance on the basis of the information sources available to inspect (noting the difficulty in particular with determining the “before” scenario in this instance).
83. Council’s records reveal that as inspection was carried out by the planning enforcement officer in late 2011 in response to a complaint of illegal earthworks being carried out, but such works were not visibly identified by the officer at the time.
84. Ultimately, we think it is plausible that earthworks were carried out and a new associated retaining wall constructed in 2012 at the time that the road opening permit was acted upon, on which basis the consequence was that the works triggered the need for a planning permit.
85. However, in order to mount any enforcement action, evidentiary proof beyond reasonable doubt (and in particular, proof that no exemption in the Scheme applied) is required. In our assessment, there is

insufficient evidence available (and we hold genuine concerns about whether expert opinions could be reached as necessary given the difficulty in accessing information about the conditions of the land as existed more than 10 years ago). On this basis, we advise that there is no actionable enforcement breach related to this complaint.

86. With regard to the suggestion that the car park area has been constructed outside of the boundaries of the Land, we have found no evidence to validate that this has occurred. We have reviewed its location in context of the Title boundaries as shown on both aerial imagery and the Plan of Subdivision and found that it appears to fall within the boundaries of the Land (albeit not the vehicle crossing as would be expected).
87. As a final observation, the part of the Land to which the above discussion relates does not form part of the car parking area or point of access associated with the more recently approved restaurant use. The Bushfire Management Plan does not specify that this vehicle crossing will be used for the purpose of fire prevention or waste collection, and it is therefore assumed to remain unused.

Greenhouses

What complaints and evidence has been received?

88. Both A and B submit in their survey responses that greenhouse/hothouse structures were constructed without planning permission.
89. A does not specify construction dates, however A did include aerial photographic evidence demonstrating that the greenhouse/hothouse structures were not present in 2006, with three structures apparent by 2018.
90. B provides evidence in the form of emails to Councillors first dated 15 March 2020 raising concern with the structures, and includes a latter responses from Council officers. In both email evidence and oral submissions, B suggests that it includes a hothouse structure of some 400sqm in area.
91. Evidence provided by Council does not show record of any current or prior planning enforcement files or registered complaints relating to the greenhouses.
92. That said, email correspondence provided by both Council and B relating to this matter includes an observation:
- ... the greenhouses on the site do appear to have been constructed without a planning permit – however Planning Permit P/2015/6723 was issued for the Use of the land for Agriculture in December 2015, appears to have formalised approval for those structures.
93. The abovesaid planning permit and any plans endorsed pursuant to that permit (including as amended from time to time) has not been produced to us by Council.
94. Aerial imagery available and separately reviewed would indicate that the greenhouses were constructed sometime between 2006-2009. Given the lack of evidence to determine the exact date constructed, we have limited the Scheme review to the known date of when the permit is said to have formalised these structures.

What were the relevant Scheme provisions?

95. At the time the permit for agriculture was issued in December of 2015, the relevant Scheme provisions were as follows:
- 95.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
 - 95.1.2 Environmental Significant Overlay, Schedule 2 (**ESO2**);
 - 95.1.3 Significant Landscape Overlay, Schedule 4 (**SLO4**); and

95.1.4 Wildfire Management Overlay (**BMO**).Was a planning permit required?

96. A full summary of the relevant permit requirements of the applicable zone and overlays at the time the permit was issued is at **attachment 4**.
97. At the time the permit for agriculture was issued in 2015, we are of the opinion that a planning permit would have been required pursuant to the RCZ1 to construct a building associated with a Section 2 use, and most likely pursuant to the ESO2 and SLO4 (though subject to further tests).
98. Without conducting a review of the permit and endorsed plans (P/2015/6723), we cannot definitively determine whether the December 2015 permit retrospectively regularised any then unlawful status of the greenhouse structures.
99. In the event that the said permit did not retrospectively regularise these structures, more specific dates of when construction occurred (rather than the very broad window of somewhere between 2006-2009) should first be established to determine with any certainty whether a planning permit was required at the time of construction. We note there has been numerous Scheme amendments which have changed the relevant permit requirements between 2006 and 2015.

DamsWhat complaints and evidence has been received?

100. Both A and B submit in their survey responses that dams were constructed without planning permits. Both suggest that the tributaries of the Dobsons Creek and the natural water course have been altered by the dams.
101. Dates of construction are not specified and neither provide evidence in the form of photographs or aerial imagery.
102. Evidence from B is provided in the form of an email to Councillors first dated 17 February 2020 raising concern with the dams, and includes latter responses from Council officers. In oral submissions, B suggests that a dam has been built that holds some 5 million litres.
103. Evidence provided by Council does not show record of any current or prior planning enforcement files or registered complaints relating to the dam construction. Email correspondence (same as produced by B, dated 12 April 2020) was provided and includes a response from Planning officers suggesting the dams appeared to have been constructed as follows:

Dam 1: prior to 2001

Dam 2 and 3: between 2005-2007

Dam 4: 2013

What were the relevant Scheme provisions?

104. Due to the long span of time over which dams are said to have been constructed, there are a number of differing zoning and overlay controls that applied to the land. It could be that dams pre-date the new format Scheme gazetted on 18 November 1999⁴. For present purposes we have confined our summary of the zone and overlays affecting the Land to only those set out in the new format Scheme, which are outlined as relevant to the said dates as follows:

104.1 Dam 1 prior to 2001:

104.1.1 Environmental Rural Zone, Schedule 1 (**ERZ1**); and

⁴ This could only be further analysed with reference to any aerial photography of the Land predating November 1999. This is not publicly available.

- 104.1.2 Vegetation Protection Overlay, Schedule 1 (**VPO1**).
- 104.2 Dams 2 and 3 in 2005-2007:
 - 104.2.1 Rural Conservation Zone, Schedule 1 (**RCZ1**) – (VC23 19.04.2004);
 - 104.2.2 Vegetation Protection Overlay, Schedule 1 (**VPO1**);
 - 104.2.3 Significant Landscape Overlay, Schedule 7 (**SLO7**) -interim control (C35 19.10.2004); and
 - 104.2.4 Significant Landscape Overlay, Schedule 4 (**SLO4**) – permanent control (C40 18.11.2006).
- 104.3 Dam 4 in 2013:
 - 104.3.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
 - 104.3.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
 - 104.3.3 Wildfire Management Overlay (**BMO**);
 - 104.3.4 Vegetation Protection Overlay, Schedule 1 (**VPO1**) up until 11.04.2013;
 - 104.3.5 Environmental Significance Overlay, Schedule 4 (**ESO4**) from 11.04.2013 onward;

Was a planning permit required?

Dam 1

- 105. A full summary of the relevant permit requirements of the applicable zone and overlays post-dating the introduction of the new format Scheme (but prior to 2001) is available at **attachment 4**.
- 106. With reference to this information, the only relevant provision was the ERZ1, which pursuant to Clause 35.02-3 and as specified by the Schedule, required a planning permit for a dam which was any of the following:
 - of a capacity greater than that specified in the schedule to this zone (schedule 1 specifies a dam with a capacity above 3,000 cubic metres requires a permit);
 - in a permanent waterway; or
 - diverts water from a permanent waterway.
- 107. We note that separate earthworks requirements were specified in the Schedule, however as a “dam” was separately provided with its own set of permit requirements, it is considered a separate class of works that sits outside of the general blanket of earthworks requirements. The Tribunal decision of *Smith & Hinckson v Murrinidindi SC [2000] VCAT 2078 (31 October 2000)* confirms this approach.
- 108. The terms “waterway” and “permanent waterway” were not defined in the Scheme or *Planning and Environment Act 1987*. The definition is likely to have been derived from the *Water Act 1989* which currently defines both terms, however then only defined the more broader “waterway” term as:
 - (a) a river, creek, stream or watercourse; or
 - (b) a natural channel in which water regularly flows, whether or not the flow is continuous; or

(c) ...⁵

109. In this case, aerial evidence is able to provide proof that a dam was constructed to retain a body of water; one which is different to what would be expected in a natural formation, such as rivers or tributaries. However, the relevant test in this instance to gauge whether the dam was lawful or unlawful is in fact whether the dam had a capacity greater than 3,000 cubic metres, and whether the dam had effect upon permanent waterways (location or diversion).
110. In the oral submissions of B, a dam with a capacity of 5 million litres (which would convert to 5,000 cubic metres) was suggested to exist, however in the absence of specific detailing it cannot be assumed that Dam 1 was in fact the dam referred to (we observe that Dams 2 and 3 appear of a much larger capacity in aerial imagery). Quantifying the capacity of a dam would also remain a matter of doubt without substantive evidence.
111. Mapshare data suggests that tributaries from the Dobsons Creek flow through the land and cease to the south-east of the land shortly beyond. The Plan of Subdivision shown on Title and as approved in accordance with the subdivision approval in 2004 (P/2002/6484) shows a drainage easement was applied, which is generally in the same location, albeit with some minor locational variances to those indicated on Mapshare. We also note that the endorsed plan attached to the Section 173 Agreement applied to the Land shows Dam 1, suggesting its presence was certainly known.
112. In the absence of any other information⁶, it is reasonable to assume that the easement was intended to formalise the actual location of the waterway and most accurately depicts its location. From our inspection, undertaken without any expert surveyor assistance, it is difficult to determine if the natural waterway on the Land is or is not generally in the location of the easement.
113. Dam 1 is the southernmost one of the four located on the site. The first available aerial imagery dated 2005 confirms that it was already constructed (as confirmed by its depiction on the above mentioned plan considered in 2004). When overlaying the Plan of Subdivision onto an aerial photograph of the site, the dam is shown to be located directly north of the drainage easement. When overlaying the Mapshare cadastral plan over an aerial photograph, the dam would appear to be located on the waterway. However, the accuracy of this review cannot be relied upon and a more detailed survey plan or the like would be needed to precisely locate such site features. Even if not located on the waterway, whether it does or does not divert water from the waterway cannot be determined without further information.
114. The only relevant permit exemption would be if the associated works were considered necessary to prevent soil erosion, or to ensure soil conservation or reclamation, in accordance with Clause 62.02 of the Scheme.
115. It is unclear if the above exemption was met. We unfortunately do not have access to sufficient evidentiary material to be able to form a definitive view about whether this dam required a planning permit or not.
116. As a separate matter to planning, it would appear that a licence to take or use water from a waterway, or for in-stream use of a waterway would have been required under the *Water Act 1989*, if the location/diversion waterway triggers of the zone applied. It is unclear if a licence was required and/or separately obtained.

Dams 2 and 3

117. The provisions of the RCZ1 had permit requirements pertaining to earthworks. Unlike the earlier ERZ1 control, dams were no longer separately listed with specific permit requirements. The 5 million litre capacity referred to in oral evidence provided by B consequently became redundant where dam construction occurred post 2004. The permit requirements of relevance included:

117.1 Pursuant to clause 35.06-5 of the RCZ;

⁵ Further alternative definitions are not relevant in this instance

⁶ Such as the subdivision permit application material, or possibly material held by Melbourne Water

Earthworks as specified the schedule (1) to the zone, which are:

- Earthworks which change the rate of flow or the discharge point of water across a property boundary; or
- Earthworks which increase the discharge of saline groundwater.

118. The SLO saw three variations of the controls since its first application in 2004 (all three having different permit requirements).
119. Google Earth imagery confirms that Dams 2 and 3 (located in the vicinity of the current greenhouses) were constructed from around April 2005 and were completed by March 2006. This would indicate that the interim SLO7 was the relevant overlay control at the time (applied between 19.10.2004 to 19.11.2006) which **did not** require a permit to construct a building or construct or carry out works.
120. It is anticipated that the dams may have had some effect upon the above permit triggers of the RCZ1. However, the only way to understand this with absolute certainty is through the preparation of a hydrology report.
121. The only relevant permit exemption would be if the associated works were considered necessary to prevent soil erosion, or to ensure soil conservation or reclamation, pursuant to Clause 62.02 of the Scheme.
122. It would not appear that the dams are located on a waterway. It is unclear if they divert from the waterway and whether as such a licence was required to take or use water from a waterway under the *Water Act 1989*. It is unclear if above exemption at Clause 62.-02 was met.

Dam 4

123. Dam 4 is said to appear to have been constructed in 2013, however we note that aerial imagery suggests that it may have already been in existence since 2009 at varying capacities. There were, nonetheless apparent works to enlarge and/or fill it at around mid 2013 and the controls did not see significant variations.
124. In 2013, the permit considerations as they relate to the RCZ1 remained unchanged, however the permit requirements of the SLO4 had changed, and the ESO2 was implemented (and VPO1 removed) as of 11.04.2013 by Amendment C49.
125. The SLO4 then required a planning permit to construct a building or construct or carry out works, as did the ESO2. The ESO2 did exempt buildings and works that formed part of a management plan approved by the Responsible Authority to enhance the site's biologically significant attributes. The Environmental Management Plan attached to the Section 173 Agreement does not appear to make any specific mention of dams.
126. There are two other exemptions to the said permit triggers.
127. The first exemption is at clause 62.02-1 (as introduced by VC40 on 30.08.2006), which specifies that any requirement in the scheme relating to the construction of a building or the construction or carrying out of works does not apply to:
- Buildings and works associated with a dam if a licence is required to construct the dam or to take and use water from the dam under the *Water Act 1989*.
128. The other exemption is at clause 62.02-2, which specifies that any works necessary to prevent soil erosion, or to ensure soil conservation or reclamation does not require a permit, unless specifically required by the planning scheme.
129. When overlaying the Plan of Subdivision onto an aerial photograph of the site, the dam is shown to be located directly north of the drainage easement.

130. When overlaying the Mapshare cadastral plan over an aerial photograph, the dam would appear to be located on the waterway.
131. While we have undertaken this task to provide the highest and best conclusions available to us about whether Dam 4 is lawful or not, it is to be noted that the accuracy of this review cannot be relied upon without expert opinion to support the analysis.
132. It is also to be noted that the question of whether the dam takes from the waterway remains as a relevant matter to be determined.
133. If it were deemed that the dam required a licence under the *Water Act*, a planning permit would not be required. If not, a planning permit would be required, unless it could be demonstrated that the above exemption at Clause 62.-02-2 was met.
134. Again, noting the above analysis references insufficient evidence, we conclude that it is not possible to conclude, to the requisite evidentiary standard (beyond reasonable doubt) that Dam 4 was constructed without a planning permit in circumstances when a permit was required (i.e. that Dam 4 is unlawful).

Vegetation removal

What complaints and evidence has been received?

135. Both A and B submit in their survey responses that vegetation removal has occurred without planning permits.
136. Evidence provided by A does not specify dates, though indicates that it may have occurred at the time the greenhouses were constructed, and in association with the vehicle crossing works. Aerial imagery was provided showing the specific area where the greenhouses were constructed as of 2018, and prior to their construction in 2006. A photograph of the type of native vegetation suggested to be found in the location of the road opening/car park has also provided.
137. B does not provide evidence relating to specific vegetation removal, although is noted more generally in survey results and email correspondence within supporting evidence. In oral submissions, B suggests that some 5 hectares of vegetation removal has occurred, however no specific locations or dates were provided.
138. Evidence provided by Council does not show record of any current or prior planning enforcement files or registered complaints relating to vegetation removal. No planning permits have been made known.
139. Given the evidence points to vegetation removal associated with road opening and greenhouses, the controls at these times have been reviewed.

What were the relevant Scheme provisions?

140. During the approximate time the greenhouses were constructed⁷ the relevant Scheme provisions were as follows:
- 140.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
 - 140.1.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
 - 140.1.3 Environmental Significance Overlay, Schedule 2 (**ESO2**)
 - 140.1.4 Bushfire Management Overlay (**BMO**);
 - 140.1.5 Clause 52.17 Native vegetation removal; and

⁷ Noting there is some doubt as to the precise construction date of the greenhouse structures

140.1.6 Clause 52.48 Bushfire Protection Exemptions

141. At the time the road opening permit was issued in November of 2012, the relevant Scheme provisions were as follows:

- 141.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
- 141.1.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
- 141.1.3 Vegetation Protection Overlay, Schedule 1 (**VPO1**);
- 141.1.4 Bushfire Management Overlay (**BMO**);
- 141.1.5 Clause 52.17 Native vegetation removal; and
- 141.1.6 Clause 52.48 Bushfire Protection Exemptions

Was a planning permit required?

Alleged vegetation removal – where associated with greenhouse construction

142. A full summary of the relevant permit requirements for vegetation removal at the time the **greenhouses** were said to have been issued a retrospective permit is at **attachment 4** and suggests that provisions of the SLO4 and ESO2 both had permit requirements pertaining to vegetation removal, as did the particular provisions at Clause 52.17.

143. The planning permit requirements of relevance are:

143.1 pursuant to clause 42.03-2 of the SLO4;

to remove, destroy or lop any vegetation specified in a schedule to the overlay (other than where the table specifically states that a permit is not required). The schedule only requires a permit is required to remove, destroy or lop a tree if it has a height of 5 metres or more or a trunk girth greater than 0.5 metre when measured at a height of 0.5 metres above adjacent ground level (on sloping ground to be taken on the uphill side of the tree base) or immediately above the ground for multi-stemmed trees. There are a number of additional exemptions applied;

143.2 pursuant to Clause 42.01-2 of the ESO2;

to remove, destroy or lop any vegetation, including dead vegetation (other than where the table or schedule specifically states that a permit is not required). The schedule specifically states that a permit is not required for vegetation that is not indigenous to Knox and specifies other further exemptions;

143.3 pursuant to Clause 52.17;

to remove, destroy or lop any native vegetation (other than where the table specifically states that a permit is not required, or to an area specified in the schedule). The schedule also specifies a list of native vegetation that does not require a permit to remove, destroy or lop in the area covered by the Knox Planning Scheme.

144. The full list of exemptions under the SLO4, ESO2 and Clause 52.17 as detailed in **attachment 4** is expansive. Just some of the exemptions applied for where a permit is not required to remove, destroy or lop vegetation includes:

- is or any of the listed species in the table to the zone and schedule to the SLO4 (34 species listed in Schedule 4 to SLO) or ESO2 (such as if not indigenous within Knox) or pursuant to the Schedule to Clause 52.17 (any of the 25 listed native species specified to the area covered by the Knox Planning Scheme);
- is bracken or a noxious weed;

- is necessary for fire fighting measures, periodic fuel reduction burning, or the making of fire breaks up to 6 metres wide;
 - is ground fuel within 30 metres of a building;
 - is to enable the removal of pest animal burrows;
 - presents an immediate risk of personal injury or damage to property;
 - has been grown as a result of direct seeding for Cop raising or Extensive animal husbandry.
145. The aerial evidence submitted by A shows the area surrounding the greenhouses before construction (exhibit A) and post construction (exhibit B).
146. It appears that the greenhouses were constructed in a relatively cleared area, save for grass/ground covers and possible shrubbery.
147. It is unclear if any vegetation or larger trees were removed in the area to the north-west of the greenhouse structures.
148. Exhibit A has shadows associated with canopy trees, not enabling any clearly identifiable differences in the vegetation then shown in exhibit B.
149. A separate review of aerial photography at different dates was undertaken by us in an attempt to verify or contradict the photographs supplied. However, this task was unable to assist in identifying clear and incontrovertible evidence of vegetation removal. Our aerial photography review did highlight, however, that vegetation coverage can appear different due to the varying quality and angles of images.
150. Any type of ground cover/shrubs lost at the time the greenhouses were constructed is unknown. Patches or trees possibly removed face the same issue, in that the type or species cannot be identified. We refer to the numerous exemptions in each applicable provision as it relates to weed species, native vegetation species, and circumstances where a permit is not required to remove, destroy or lop vegetation.
151. Determining if and what type of vegetation was removed proves problematic where the only source of evidence is aerial photographs. If other photographs (ground level) or other information (arboricultural survey) was available to make such assessment, and in particular where such evidence provided specific details about the type of vegetation lost (and the time to within a 3 – 6 month window), better conclusions could be drawn.
152. However, on the basis of the available evidence (aerial photography) and with reference to the extensive exemptions which may have been reasonably relied upon, it cannot be said with the requisite degree of certainty (beyond reasonable doubt) that a permit was required for vegetation removal as is alleged.

Alleged vegetation removal - where associated with vehicle crossing

153. The permit requirements at this time were similar to those above, however the VPO1 was in effect rather than the ESO2, and the Schedule to Clause 52.17 did not list native vegetation that was specific to the area covered by the Knox Planning Scheme. The bushfire protection exemptions at Clause 52.48 also had more relevance here.
154. Aerial evidence does demonstrate that some vegetation was lost, more specifically in the form of ground cover, however no obvious tree removal is evident.
155. If it is assumed that only ground cover/shrubs were removed, only those which were native would require consideration. Both Clause 52.17 and the VPO1 include exemptions applying where a permit is not required to remove native vegetation as listed in the attachment. Clause 52.48 provides for further exemptions for the removal, destruction or lopping of any vegetation to create defensible space.

156. Evidence provided by A includes photos of the types of nearby native vegetation found, which are suggested to be consistent with EVC 29 Damp Forest and includes a presence of *Acacia stictopylla*.
157. Whilst such evidence is positively useful in demonstrating the type of vegetation quality that currently exists, it cannot be concluded without substantive evidence (such as photographs taken at the time of removal in 2012) that the same type or quality of vegetation existed in this precise location at this date.
158. We think it can be reasonably assumed that the Land was not intact (i.e remnant native). The alteration to the condition of the Land is clearly indicated by the presence of greenhouse structures immediately to its west (which in turn indicate past levelling/disturbance may have had already occurred in the years prior).
159. Leaving this to one side, there are numerous exemptions pertaining to native vegetation removal, including for the purpose of vehicle access from public roads, fire protection to create a fuel break of a fire fighting access tack up to 6m wide, the removal of ground fuel around buildings, and to create definable space around buildings and fencelines; many of which may have been reasonably relied upon at the time any vegetation removal occurred (if it did in fact require a planning permit).
160. Considering all of the above, it cannot be said with any certainty that a permit was required for vegetation removal that has occurred. It is our conclusion that there is insufficient evidence to establish that vegetation was removed unlawfully, contrary to the requirements of the Scheme, at the time of the construction of the vehicle crossing.
161. We also note that the Environmental Management Plan approved as part of the Section 173 Agreement requires the owner to maintain the lot in accordance with the plan, which specifies the broader aims, effects and control measures for land care and conservation, including the removal of weeds and exotic vegetation, revegetation with local provenance plants and bushfire control measures.
162. It is unclear if any vegetation removal or replanting has occurred in accordance with (or contrary to) this plan.

Outbuildings / sheds

What complaints and evidence has been received?

163. In oral submissions, B submits that outbuildings and sheds have been constructed without planning permits. No details of the location or dates were specified.
164. Evidence provided by Council does not show record of any current or prior planning enforcement files or registered complaints relating outbuildings or sheds.
165. In the absence of any supporting evidence to substantiate this allegation, aerial imagery and the plans attached to the Section 173 Agreement registered on Title in 2004 were analysed by us. It revealed that:
- 165.1 the endorsed plans attached to the Section 173 Agreement registered in 2004 (associated with subdivision permit P/2002/6484) had a plan notation stating that a “nursery, greenhouse and nursery growing area” were located (or to be located) to the north of the main dwelling then approved;
- 165.2 Google Earth imagery available from 2006 confirms these buildings existed in the said location. Later aerials suggest that no additional outbuildings were constructed in this location since, however the removal of what appears to be a greenhouse or crop cover occurred in or around 2010;
- 165.3 the endorsed plans attached to the Section 173 Agreement registered in 2004 (associated with permit P/2002/6484) has a plan notation suggesting “old sheds” were located at the southern end of the property, generally to the east of Dam 1;

- 165.4 Google Earth provides an aerial image dated 2006 though does not clearly show the outbuildings that may have existed (as referred to in subdivision approval in 2004);
- 165.5 NearMaps aeriels dating from 2009 does show the presence of three outbuildings, which are located similarly to that shown on the endorsed plan referred to above, to the south-east of Dam 1; and
- 165.6 the aerial images also suggest that two of the outbuildings appear to have been extended or replaced between October 2012 and January 2014.
166. There is no evidence available to confirm whether outbuildings were constructed prior to the issue of the subdivision permit in 2004. We are led to then assume that outbuildings had been in existence for many years, or that this application formalised their presence.
167. We will therefore confine the review of the Planning Scheme provisions to the relevant dates between late 2012 and 2014 when outbuildings appear to change from their prior existing form.

What were the relevant Scheme provisions?

168. At the time the outbuildings are known to have been constructed or replaced (best indicated as somewhere between late 2012 and January 2014), the relevant Scheme provisions were as follows:
- 168.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
 - 168.1.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
 - 168.1.3 Vegetation Protection Overlay, Schedule 1 (**VPO1**);
 - 168.1.4 Environmental Significance Overlay, Schedule 2 (**ESO2**); and
 - 168.1.5 Wildfire Management Overlay (**WMO**).

Was a planning permit required?

169. Aerial evidence reviewed by us would suggest that there were two distinct changes to the three outbuildings at the southern end of the site from what had previously existed, which included:
- 169.1 The southernmost outbuilding is either replaced or extended between October and December 2012 (no aerial evidence shows its removal, only an extended footprint appearing); and
 - 169.2 The northernmost outbuilding is removed and replaced with two sheds somewhere between May 2013 and January 2014.
170. No change is apparent to the middle outbuilding.
171. There were a number of Scheme amendments which affected the relevant controls at the above known dates, therefore we will look at the southernmost and northernmost outbuildings separately.
172. At the time the southernmost outbuilding was constructed the RCZ and SLO4 were the only controls relevant which required a planning permit for buildings and works. Both also included exemptions which stated that a permit was not required for:
- 172.1 pursuant to Clause 35.06-5 of the RCZ1:
 - an out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres;

an alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. The building must not be used to keep, board, breed or train animals;

172.2 pursuant to Clause 42.03-2 of the SLO4:

to the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay.

173. At the time that the northernmost sheds were constructed, the applicable provisions of the RCZ1, SLO4 and ESO2 all had permit requirements pertaining to buildings and works. The exemptions in which a planning permit was not required remained same as above, however as of September 2013, the size of the outbuildings exempt under the RCZ1 was increased from 50sqm to 100sqm.

174. Regardless of this, the ESO2 as applied to the Land in April 2013 required a planning permit for all buildings and works, with the only relevant exemption being:

To undertake development or works that form part of a management plan approved by the responsible authority to enhance the site's biologically significant attributes.

175. Other exemptions to consider as provided at Clause 62.02-2 of the Scheme specifies that any requirement in this scheme relating to the construction of a building or the construction or carrying out of works, other than a requirement in the Public Conservation and Resource Zone, does not apply to:

Repairs and routine maintenance to an existing building or works.

Buildings and works associated with cat cages and runs, bird cages, dog houses, and other domestic animal enclosures associated with the use of the land as a dwelling

176. We think it is plausible that a permit could have been required under the SLO4, which only gave exemptions for buildings and works associated with agriculture. The other provisions may have required a permit, however include a number of exemptions that could have been more reasonably relied upon, such as the outbuilding (pending size) exempt under the RCZ1, or buildings and works that formed part of an approved management plan under the ESO2.

177. This brings us to the next point, which is that the endorsed plans attached to the Section 173 Agreement (registered on title in 2004) effectively approves outbuildings in this location, but does not detail their exact location and footprint. It is unclear if the full set of endorsed plans associated with the subdivision permit P/2002/6484 provides such detail in the absence of this file. It is possible that the sheds were reconstructed as per the exemptions of "repairs and routine maintenance", however there appears that some change to their sizes occurred.

178. If the exemptions which applied to buildings and works associated with agriculture were relied upon, it is quite possible the outbuildings (if associated with agriculture) did not require a permit at all, however we note that a permit for agriculture was not issued till December 2015 (after they were constructed). We can assume an agricultural use was being conducted on the land prior the issue of a permit given the greenhouse structures had already been built prior.

179. It is difficult to say with certainty whether that the outbuildings did or did not benefit from an exemption. Without conducting a review of the relevant files and endorsed plans (P/2015/6723 and P2002/6484), we cannot definitively determine whether the subdivision permit provides the necessary approvals for their current form, or if they were constructed with an unlawful status and were retrospectively regularised by the later agriculture permit.

Dwelling works

What complaints and evidence has been received?

180. Evidence provided from B and from information supplied to us by Council includes emails dated between 8 - 28 April 2020 raising concern with illegal building works being carried out prior to the Application for Review P1604/2019 being heard at VCAT.
181. The emails included responses from Council officers (21 April 2020) state "works within dwelling were inspected and found to be internal renovations."
182. In an email dated 28 April 2020, B suggests that photographic evidence was provided to a Councillor and to the planning officer handing the planning application prior to the VCAT hearing.
183. If this photographic evidence is still held by Council, it was not supplied to us as part of information provided during our investigation. It is notable that the photograph was not provided by B.
184. Council planning enforcement records acknowledge that one complaint received on 22 August 2019 from an objector concerned that lots of activity was occurring at the site (truck loads of wood delivery) prior to the issue of a permit (or for that matter the hearing of Application for Review P1604/2019 by the Tribunal).
185. The planning enforcement officer on same day noted that no inspection was required as complaint referred to deliveries rather than works.
186. Council planning enforcement records also acknowledge a further complaint received from B on 11 and 12 February 2020 advising that works were in progress. The planning enforcement officer notes suggest the interiors of all buildings were inspected on 12 February and found the original dwelling at front of land had been internally renovated (no other found works suggesting illegal works carried out) and that B was contacted and advised of outcome.

What were the relevant Scheme provisions?

187. The relevant, and most current Scheme provisions are:
- 187.1.1 Rural Conservation Zone, Schedule 1 (**RCZ1**);
 - 187.1.2 Significant Landscape Overlay, Schedule 4 (**SLO4**);
 - 187.1.3 Bushfire Management Overlay (**BMO**);
 - 187.1.4 Environmental Significance Overlay, Schedule 2 (**ESO2**)

Was a permit required?

188. Clause 62.02-2 specifies that following do not requiring a permit unless specifically required by the planning scheme:
- the internal rearrangement of a building or works provided the gross floor area of the building, or the size of the works, is not increased and the number of dwellings is not increased; and
 - repairs and routine maintenance to an existing building or works.
189. There are no provisions which specifically require a permit for these works no other evidence provided to suggest that works, other than those confirmed by planning enforcement officer upon inspection to have occurred internally to the existing dwelling at the front of the site, had occurred.
190. It is our opinion that a planning permit was not required. We concur with the view expressed by Council's planning enforcement officer.

Implication upon the Section 173 Agreement

191. Both A and B have referred to breaches of the Section 173 Agreement contained in instrument AD227015V which was registered on title on 9 November 2004. No supporting evidence relevant to any breach was provided.
192. In the oral submissions of B, specific reference was made to breaches associated with alterations to the original heritage driveway (through widening/hard stand car park areas) and the protection of the creek and platypus, including impacts associated with the greenhouses. Mention was also made of the effluent envelope and its capacity as relevant to the approved restaurant use patron numbers.
193. P/2002/6484 enabled a two lot subdivision (creating Lots 1 and 2 as now exists and a building envelope for the second dwelling). As a requirement of the Planning Permit, the Section 173 was registered on title.

Breaches relating to original driveway

194. The relevant clause relating to the said breach associated with the original heritage driveway is:
- The owner of Lot 2 must protect and must not remove, damage, alter or destroy the following heritage items on Lot 2 except with the written consent of the Responsible Authority;
- the original driveway: adjacent oak tree rows and stone retaining wall;
195. The endorsed plans attached to the Section 173 Agreement do not specifically identify which is the original heritage driveway, but instead nominates roadways that are, or are not be used for the purpose of constructing the second dwelling that was approved under Permit P/2004/6484.
196. The association made in the Agreement between the “original driveway” and “adjacent stone retaining walls” would suggest that the accessway between Ferndale Road and the second dwelling is, or forms part of the original driveway.
197. In the absence of any supporting evidence or the abovesaid planning permit application file, we have turned to our own review of aerial imagery. Images first available in 2006 show the presence of the main accessways generally as per the alignment identified on the endorsed plan attached to the Agreement.
198. The imagery suggests that an area of land to the west of the main driveway (in the vicinity of the second dwelling) has been widened to allow for vehicle parking since the Agreement was applied in 2004. The main driveway itself does not appear to have been removed, damaged, or destroyed (although this remains an assumption when relying on aerial evidence alone), however it is whether the separate creation of this widened area to accommodate vehicle parking directly adjacent to the main drain driveway constitutes “altering” in the spirit of the Agreement.
199. It could be argued that the creation of this adjacent hardstand area has effectively widened and therefore “altered” the original driveway in appearance, or that it conversely is an independent hardstand area which is identifiably “separate” to the original driveway, and that the original driveway as it existed was therefore not altered.
200. A review of the planning application file is considered necessary to fully appreciate the intention of this requirement as applied by Council at the time the permit was issued. It is further necessary to establish whether any consent has in fact been given by the Responsible Authority to carry out any alterations or the like to the original driveway.

Breaches relating to creek and impacts of greenhouses

201. With respect to breaches pertaining to the protection of the creek and platypus, we refer to the clause of the Agreement which requires:
- The Owner will develop and maintain the lots in accordance with the Environmental Management Plan.

202. The Environmental Management Plan (**EMP**) is attached to the Agreement at Annexure 1. It specifies aims, effects and control measure for the following aspects:
- Construction of a dwelling
 - Land care and conservation
 - Heritage conservation
 - Continuous management and maintenance of the property
 - Bushfire controls
203. The control measures generally provide high-level management recommendations relevant to each of these topics, which are often expressed as “should” in reference to an overall manage approach, rather than as any one specific item that “must” be implemented.
204. Mention of the watercourse is made in the introduction of the EMP where it states:
- The property is heavily vegetated with open forests of indigenous vegetation; however exotic vegetation is present from the original homestead gardens, as are noxious weeds including blackberry infestation along the natural watercourse running through the property.
205. It is more specifically referred to in the control measures relating to the ‘construction of a dwelling’ and ‘Land care and conservation’ as follows:
- Runoff resulting from any levelling for the house site and building will be reduced by ensuring on adequate drainage is contained within the construction zone via entrapment of runoff waters/and waste construction material within the landscape containment area EMP Plan. This containment zone will adequately drain any stormwater runoff to ensure there is no risk of erosion or watercourse contamination, each area will have a wetland cell or slit trap EMP Plan. Contamination of the soil and watercourses through the use of chemicals will also be contained within the construction envelope, man-made materials and wastes can be reduced by using only biologically friendly substances and the use of an effluent envelope positioned after completing a Land Capability Assessment under the Septic Tank Code of Practice.
- In order to reduce the amount of herbicides used, natural weed control will be carried out, thus eliminating the risk of soil and watercourse contamination. In order to avoid the chance of erosion, weed control should be followed by revegetation with species indigenous to the area.
206. As seen, the EMP does not have specific requirements relating to the creek, but includes more general measures to reduce or avoid impacts. A specific concern was raised with the location of the greenhouses and its spilling of nutrients into the creek. We note that our aerial review as overlaid onto the Plan of Subdivision would suggest that the greenhouses are located clear of the drainage easement applied to the Land. We cannot with any certainty, however, confirm whether their distances from the creek or the operations carried out would or would not result in direct impacts upon the watercourse.
207. Without conducting a review of the permit and endorsed plans (P/2015/6723), we cannot definitively determine whether the December 2015 permit (assuming they retrospectively regularised the greenhouse structures) applied any conditional requirements to ensure that the watercourse was adequately protected.
208. Regardless, we have not identified any evidentiary basis for an argument that the owner of the Land is in breach of a specific obligation of the EMP to mount any enforceable action.
- Breaches relating to effluent envelope*
209. Concerns were raised with the potential for the effluent envelope and disposal area designated on the endorsed plan to cater for the future capacity the approved restaurant use.
210. This is an apprehended breach, in that the restaurant use has not commenced and no breach has therefore yet occurred. While beyond the scope of the review, we do observe that in the delegation report relating to the permit application file for the restaurant use (P/2019/6025), mention is made:

Council's Health Department identified that the applicant will also need to enter into a South East Water Trade Waste Agreement to manage how the restaurant will deal with connection to sewerage or holding wastewater, which will ensure that the surrounding natural environment, including nearby waterways are not polluted by the land use of a restaurant.

Other potential breaches

211. The other clauses of the Agreement not yet mentioned include:
- Except with the written consent of the Council the Owner or Owners for the time being of Lot 2 will not:
- construct a dwelling and or vehicle or machinery accommodation outside the building envelope for Lot 2 shown on the Endorsed Plan;
 - construct an effluent treatment system outside the effluent envelope for Lot 2 shown on the Endorsed Plan; and
 - construct vehicular access to Lot 2 outside the proposed carriage-way easement shown on the endorsed plan.
212. The most definitive action that is not in accordance with the requirement of the agreement is the creation of the second vehicular access outside of the nominated carriageway easement designated to service Lot 2.
213. The crossover is located in Lot 2, however it is assumed to service the entire site, albeit that the purpose of the crossover (now disused) remains unknown.
214. It is arguable that the issue by Council of the crossing permit effectively provided the owner with the necessary "consent" to provide access in a location other than where the agreement stipulates.
215. Council's issue of the crossing permit is not the only thing that represents a genuine challenge to an argument that the covenants of the Section 173 agreement have been breached.
216. We have undertaken a comprehensive analysis of the aerial photography available for the Land, over a number of years.
217. The requirement to contain the dwelling and or vehicle machinery accommodated within the building envelope for Lot 2 is an interesting obligation, in that it specifically refers to "accommodation".
218. With respect to the area adjacent to the crossover in question, there has been no evidence of any vehicles or machinery having been stored neither openly nor within buildings or structures. We have observed however, that areas to the south of the dwelling (in addition to the above-mentioned hard stand area to the west of the original driveway) have accommodated informally (uncovered) parked vehicles.
219. We are of the opinion that the reference to vehicle or machinery "accommodation" intends to confine buildings constructed for these specific purposes within the building envelope, rather than limit any such machinery or vehicles from being parked in any other location within the entire Lot.
220. It is unknown what the outbuildings to the north and south of the main dwelling contain. However at the time the Agreement was made, these outbuildings were already shown to exist so it is reasonably assumed that there was no intention to limit any outbuildings from being located on the Land, but more so place new car and machinery storage associated with the new dwelling within the confines of the envelope.
221. On the same note, the constructed greenhouses and dams (while not shown on the on the endorsed plans, with exception of Dam 1), present no apparent breach of the agreement in that neither of these are types of buildings or works are specified to be confined within the designated envelope.
222. With respect to the EMP that runs with the agreement, we make the following observations:

- 222.1 the document is quite dated having been prepared approximately 15 years ago when the land controls were different, as were the site conditions;
 - 222.2 the Section 173 Agreement provides no ability for the EMP to be amended from time to time. The Land has seen substantial change since the EMP was prepared and now includes uses for agriculture (together with an approved use for restaurant). These are not reflected in the EMP, nor can the EMP be updated to provide controls measures relevant to these uses;
 - 222.3 there is risk that the EMP provides Land owners with a false sense of security of what actions can be carried out within a planning permit. For example, the requirements as they relate to fire burning or vegetation removal may not align to the current controls in place, or as amended since its application 2004. This could lead to unintentional breaches of the Planning Scheme; and
 - 222.4 the broad nature of its requirements (with many using terminology such as "should" rather than "must") makes action taken or not taken in accordance with the EMP difficult to enforce.
223. Recommendations in response to these observations are provided below.

Part B - 123 Old Coach Road, Sassafras

- 224. Of the properties adjoining the Land, we only received material relating to one property known as 123 Old Coach Road, Sassafras (**Old Coach Land**).
- 225. In this regard, B in material supplied by email raised two matter relating to the Old Coach Land, being;
 - 225.1 the construction of a replacement retaining wall; and
 - 225.2 the construction of a fence on Council land.
- 226. Council's Planning Investigation officer attended the Old Coach Land in response to a complaint made regarding the construction of the retaining wall.
- 227. As it sought to replace an existing retaining wall, it was considered exempt from requiring a planning permit (although required a building permit).
- 228. We agree with this finding and do not consider a full Scheme review necessary in this instance. The basis for our conclusion is the unambiguity of Clause 62.02-2 which specifically states that a permit is not required for repairs and routine maintenance.
- 229. With respect to the front fence constructed outside of the property boundary, without access to detailed survey information or other information from Council, we have not been provided with any evidence that the fence has not been constructed in a lawful location.

5 CUSTOMER FEEDBACK ON COUNCIL'S HANDLING OF COMPLAINTS

- 230. The survey invited residents to provide feedback regarding Council's overall handling of their complaints.
- 231. B had, prior to the survey made complaints to Council, expressed dissatisfaction with Council's acknowledgement of complaints made and level of communication regarding such complaints.
- 232. This same sentiment is expressed in the supporting evidence provided.

233. B's oral submissions were strongly critical of:
- 233.1 the overall approach taken by Council to various decisions taken under the *Planning and Environment Act, 1987* in relation to the Land over the last decade from a perspective that the actions do not reflect on adherence to the Scheme and planning policy for The Basin;
 - 233.2 decision making by Council officers made under delegation;
 - 233.3 no thorough process of local community consultation in relation to decisions and actions by Council under the *Planning and Environment Act, 1987*;
 - 233.4 timeliness of response to questions asked (and completeness of responses offered to B upon request for information and answers);
 - 233.5 inconsistency in approach to planning enforcement actions taken in respect to the Land (on the one hand) and B's property (on the other). Specifically, B feels Council's approach has been one of no tolerance for planning breach as has concerned works at B's own property but a significant level of leeway in respect of compliance with the Scheme and other planning instruments as concerns the Land;
 - 233.6 the manner and tone of communications between B and Council's enforcement officer and senior planning staff (B described feeling harassed by Council's enforcement officer);
 - 233.7 the honesty of communications (and a disconnect between oral statements and subsequent actions taken) by Council's enforcement officer and, similarly, by a Councillor.
234. Allegations made in oral submissions by B as summarised above were not substantiated by written records or contemporaneous file notes. Documentation was not requested from B, given these matters largely fell substantially outside the scope of the examination to be undertaken through the legal review.
235. B expressed considerable frustration with the scope of the legal review, observing that in their opinion the scope of the legal review had been crafted to avoid examination of some of B's most serious concerns relating to Council actions concerning the Land and decision-making under the *Planning and Environment Act, 1987* over the last decade. It is clear B feels any independent review of Council's actions should have included:
- 235.1 the processing of permit application P/2019/6025 including the level of consultation undertaken by Council of the local community's attitudes towards the proposal;
 - 235.2 the VCAT proceeding in respect of the application for review brought in respect of permit application P/2019/6025 including how the consent of the CFA was obtained (including suggestions of apprehended bias);
 - 235.3 the merits of the bushfire management plan produced in relation to permit application P/2019/6025 and the impacts of the recommendations and requirements of the plan;
 - 235.4 the merits of the effluent disposal plan produced in relation to the permit application P/2019/6025;
 - 235.5 Councillor conduct (including but not limited to Councillor conduct related to permit application P/2019/6025 and subsequent media publications); and
 - 235.6 the conduct of senior planning staff.
236. The survey results from A did not provide negative (or constructive) feedback in this regard.
237. Our recommendations in relation to the matters raised in this context that fall within the scope of the legal review are detailed in the following chapter of our Report. Those matters that fall outside the

scope of the report (noting there are many such matters) we have described for Council's benefit but we make no further comment.

6 CONDUCT AND IMPROVEMENT OPPORTUNITIES

238. The Resolution calls for the review to “draw findings and recommendations as relevant to the handling of enforcement complaints and actions relevant to 201 Ferndale Road, Sassafras and adjoining properties in the form of a report, which should also include any opportunities for improvement for ongoing enforcement activities if identified”.
239. This next chapter of our Report seeks to specifically address the manner of the handling of enforcement complaints and actions in response, prior to setting out a series of possible recommendations to assist to streamline and improve record keeping in respect to this aspect of Council's duties and functions.

2011 Council conduct and records

240. A review of Council records indicates that the first registered complaint dates back to November 2011 alleging that earthworks were occurring on the Land.
241. From the material we have been supplied (noting we suspect there may have been further documents created at earlier times – including at or around November 2011 – but these have been lost over the passage of time), no enforcement or remedial action was taken following investigation into the complaints by Council officers.
242. The level of detail of the specific manner and approach to the investigation is low, albeit the information is consistent with expectations of local government record keeping at an historical point in time that is now a decade ago, prior to broad-scale adoption of digital record keeping. We are able to draw on our experience of local government planning and local law enforcement-complaint related record keeping from other municipalities in making these observations.
243. We do understand from the material we have been supplied that the reason no enforcement action was taken at the relevant time by Council is that Council officers were unable to locate any evidence of unlawful earthworks.
244. The nature of the complaint made certainly also presents difficulties in this instance. An absence of specific details to guide any subsequent inspection is apparent (albeit there may have also been other conversations that transpired which are not reflected in the official Council records).
245. We surmise that the complaint was made possibly prompted by observing the crossover works that may have been in the process of being carried out lawfully pursuant to the permit. However the records are not sufficiently detailed as to make it possible to ascertain or verify the specifics of the complaint relative to lawful activities carried out at about the same time from the records that have been kept (as provided to us).
246. B suggests from the survey responses and oral submissions that B was personally responsible for making complaints to Council in the order of 10-12 years ago.
247. In the absence of any other record, it could be assumed that the November 2011 complaint referred to in Council's records was in fact that made by B.
248. The material we have viewed (as detailed in attachment 3) otherwise show no definite evidence of complaints being made at any earlier time.
249. It is also possible that complaints were made to Council at an earlier time, although the complainant's concerns were directed to an area of Council (say Assets) who did not pass the complaints on to the planning enforcement team.

250. On our review, the quality and extent of records kept of complaints and investigations kept in 2011 is not sufficient to be able to be utilised to achieve optimal outcomes in the discharge of Council's enforcement functions under the *Planning and Environment Act, 1987*.

2020 Council conduct and records

251. Whether or not as a function of process improvements that have been carried out over the last decade, we can say that records of complaints made last year are more complete.
252. These complaints are dated from around the time of the more recent approval of a restaurant use on the Land, and relate to allegations about buildings, works and vegetation removal carried out more than 8 years ago.
253. It is clear that the complaints have been acknowledged, and that complainants have been asked to provide any further information or evidence available to assist in determining if a breach of the Scheme has occurred (all prior to our engagement).
254. Council has so far relayed their findings following investigation of three complaints received for the Land relating to the greenhouses, the crossover works and internal dwellings works, along with one relating to the replacement retaining wall at 123 Old Coach Road. Where complaints were directly made to the planning enforcement officer, we have observed through Council's records clear and appropriate action taken by way of site inspections, file notes and communication to relay findings back to the complainant.
255. Of exception is where conclusions and findings were made with respect to the vehicle crossing investigations somewhat prematurely. This may have occurred due to an assumption that the assets department who issued the road opening permit at the time, had already carried out the necessary checks and referrals to relevant departments within Council to ensure that all necessary approvals were obtained. Due to the general lack of notes on the enforcement file, we cannot conclusively say whether a review the assets file was inspected, or how it was determined that a planning permit was not required.
256. In our view, the steps taken by Council officers to seek to investigate the 2020 complaints are reasonable and timely. In setting expectations about reasonableness and timeliness for responses as a baseline to inform our conclusions, we have taken into account a variety of factors including:
- 256.1 the 2020 complaints have only been raised relatively recently, and were not accompanied by a substantial or clear body of supporting material;
 - 256.2 there is a genuine difficulty in pin-pointing the timing of buildings, works and vegetation removal the subject-matter of the complaints;
 - 256.3 for practical reasons, it is extremely challenging for any investigator of historical allegations to obtain evidence (including importantly through conducting interviews with people who assist) to meaningfully investigate vague historical allegations. This is all the more so over the course of 2020, with restrictions imposed on usual enforcement investigation methods by Covid-19 related restrictions;
 - 256.4 there is no clear evidence of direct or ongoing adverse community amenity from the matters complained of (over and above a desire to see the Scheme permit requirements upheld);
 - 256.5 the use of the land has changed over time, and lawful land use is not regulated by Council (meaning fewer records are capable of being accessed through the planning officer's files); and
 - 256.6 as demonstrated in this report, the Scheme has changed on a number of occasions over the relevant time period, meaning the key question "was a permit required" is a difficult one to answer without a definitive date.

Improvement opportunities

257. The material provided by Council indicates that enforcement related complaints are registered on a centralised customer record system (**CRS**), record management system (**KX**) or otherwise the main planning processing system (**Pathways**).
258. There are some identifiable shortcomings with the current filing system, which could in turn lead to deficiencies with the level of customer service and the accuracy and proficiency of dealing with enforcement related matters and/or planning applications.
259. Of particular note, the following were not observed to have been recorded on the available systems:
- 259.1 emails associated with enforcement related matters (whether internal or external);
 - 259.2 photographs taken at the time of property inspection (where a complaint is made); and
 - 259.3 details of officer determinations (including internal discussions, if any) which assist to demonstrate how officers concluded why a planning permit was, or was not, considered to be required.
260. Best practice planning enforcement within local government necessitates sufficient resourcing. From our discussions with Council, we understand that there are two officers within Council charged with investigation of planning related complaints and that these officers spend the vast majority of their time "in the field" given high work volumes. From our experience gained working with other local government authorities in the planning enforcement space (including municipalities with large physical footprints and a similarly sized resident base), staff numbers in planning enforcement at Council strike us as at the lower end of what is normally the case. Most of the observations about improvement opportunities as made in this Report require an investment of resources, whether through infrastructure or additional human resources.
261. Phone calls appear to be well documented, however it is not clear if all phone calls are registered (such as when received directly by an officer rather than registered through customer service and subsequently allocated to an officer to action). We understand from our interviews with Council enforcement staff that more discussions have in fact taken place by telephone and in person between complainants and Council officers (and between the operator of the Land and Council officers) than is reflected in Council's record keeping.
262. Records of phone calls and complaints seen in this review appear to be recorded directly into a central records system, rather than form of generated letters and/or memos. The records do not include copies of photographs said to have been taken or more long form reflections of analysis (such as a report). Email communication is frequently used, as is appropriate.
263. However, it may be that some email communications is not being registered in Council's the records management system. In part, one explanation for this may be that complaints have been directed to various people within Council and this renders it complex for officers to respond as well as to track responses in Council's record keeping systems. Complaints have been directed to various Council officers, Councillors and senior executive officers including the CEO. This style of complaint-making can lead to inevitable confusion internally to Council around the appropriate practices to follow to record the details of the actions taken in response and how they ought to be recorded.

7 FINAL RECOMMENDATIONS

General suggested process improvements

264. To ensure the process handling of enforcement complaints is efficient, accurate and timely it is recommended that:
- 264.1 if not already implemented, the registering of complaints be in the form of an enforcement file on the Pathways system (or whichever system most used and accessible to the

- origination). It should allow for past or current enforcement related complaints to be easily identifiable by other officers across the organisation, particularly in the processing of applications such as planning permits;
- 264.2 enforcement files created could incorporate an auto-generated check-list style document which prompts an agreed level of detailing to be recorded. In particular, it might detail what was observed on site and how it was concluded that a planning permit was, or was not required. Other useful prompts include highlighting which other departments or officers may require referral of the matter prior to concluding any findings, and an applied due date to action each step of the check-list (in accordance with the Council's policies in place);
- 264.3 where complaints received provide inadequate detail to assist Council to conduct an investigation as part of a response, Council could consider directing complainants to a pro-forma complaints reporting guide, that provides prompts to fill in details that assist with investigation (and that readily allows documentary evidence to be uploaded to Council);
- 264.4 bearing in mind the need to respect privacy, all emails pertaining to enforcement related complaints should be formally registered against a single property file. While complaints that have been made by email may not be sufficient in detail or for other reasons may not warrant commencement of any immediate action, such emails should be recorded (because they could form evidence to be used to the benefit of enforcement action that may subsequently be commenced);
- 264.5 all photographs of site inspections relating to enforcement complaints should be uploaded into Council's record keeping system and clearly notated (time, date, location and details of what has been observed). Ideally we consider the photographs are best kept against the property file. They not only evidence that a complaint was suitably investigated, but assist in documenting the site condition for any future enforcement matter;
- 264.6 in the case of the enforcement matters relating to the Land, an enforcement file should be created which includes all evidence received by Council to date, and any evidence provided through this process identifying all matters to be investigated. The file should remain current until progressed in accordance with the recommendations set out later in this report;
- 264.7 where an enforcement complaint is made to any persons in the organisation who is not equipped with the required information to respond, it be formally registered against the property file and reallocated to the appropriate officer with an applied due date to action (in accordance with the Council's policies in place);
- 264.8 the investigation of enforcement matters be thoroughly reviewed against the Scheme provisions relevant to the date on which the activity complained of occurred. Any restrictions on title that have not been reviewed should be declared in reporting of any findings. Such complex matters involving historical Scheme provisions should be handled in consultation with other officers (such as Senior Planning Officers and Strategic Planners) to ensure the planning enforcement officer is supported with the necessary tools and information to make the required assessments; and
- 264.9 ensure sufficient information is made available to advise the community how to submit enforcement related complaints to ensure they are directed to and received by the relevant department and officers.

Recommended actions to finalise investigation for the Land and adjoining land

265. As detailed in our report above, there is no basis on the material we have viewed to commence any enforcement action in respect of activities that have taken place at the Land.
266. Over the course of our detailed analysis, we have identified is some missing information that would, if it were made available, shed greater light on whether planning non-compliances have taken place. With this material to hand, Council would be able to reach a final and conclusive view as to whether

any planning non-compliances have occurred at the Land. We caution that a number of the missing pieces of information identified by us would necessitate Council incurring further expenditure (in some instances, quite significant further expenditure). We caution that even outlaying this expenditure may ultimately not result in evidence of planning non-compliance (so much as evidence of the absence of any non-compliance). It will be a matter for Council whether this expenditure is warranted in the circumstances, noting that the time has passed to commence any planning prosecution proceedings and there is no readily identifiable serious harm to community or environmental amenity that we have observed from information supplied to us.⁸

267. Specifically, we recommend that Council:
- 267.1 liaise directly with Melbourne Water to determine whether a licence for any of the dams has been issued (or whether they consider any of the any of the dams require licence based on the information known to date). Melbourne Water will also be able to indicate to Council if there is any environmental harm related to the dams (noting the discretionary element to enforcement order application success at VCAT);
 - 267.2 based on the outcomes of discussions with Melbourne Water, further review may be needed. It would be at this point that Council would need to consider engaging technical experts to assist in determining what earthworks took place that may have required a permit. This work would conservatively involve expenses of in the order of \$50,000 by way of independent hydrologists and the like. To this end, while it is a matter for Council, we would expect that such expense would only be incurred if it were to transpire that there is serious environmental harm occurring on an ongoing basis as a result of the works;
 - 267.3 conduct a review of the approved Environmental Management Plan and any requirements of the Section 173 Agreement. In light of the earlier observations made with respect to the EMP, it is recommended that a revised EMP (which is current to the site conditions and conservation values and that addresses the said shortcomings identified). Given there is no requirement for this to take place (say, through a sunset clause in the Section 173 Agreement or from any control in the Scheme), cooperation from the owner of the Land (and extensive consultation with the owner of the Land) will be necessary. We expect (again by reason of the absence of any requirement for a review of the EMP by the owner of the Land), Council will need to contribute some funds to ensure that this process takes place. Ultimately, it will also require the cancellation of the current Section 173 agreement and the entering into a new Section 173 agreement between the owner of the Land and Council. That said, we think such a step is a proactive one that will aid in the achievement of increased community confidence in the thoroughness of Council's investigations of complaints concerning the Land;
 - 267.4 review all historical planning permit applications pertaining to the Land to determine what has/has not been shown on any endorsed plan with respect to any buildings raised throughout this review;
 - 267.5 review the assets records relating to the crossover permit to determine why the application for the access was made (if detailed) and whether the said access was constructed in accordance with the requirements of the permit;
 - 267.6 review the planning application file associated with the subdivisions permit to determine whether any consents have been issued over to time seeing any variations to the requirements of the agreement;
 - 267.7 the above reviews may also put beyond doubt that the approval constituted a consent from the Responsible Authority to provide access to lot 2 outside of the nominated location, or weather alterations to the original driveway were consented to as required by the Section 173 Agreement;
268. As detailed in our report above, there is no basis on the material we have viewed to commence any enforcement action in respect of activities that have taken place at the Old Coach Land.

⁸ Including through the submissions from A and B

269. Over the course of our analysis, we have disclosed that it is not possible from the information we have viewed (or from our own site inspection) to state definitively whether the fence has been erected in the nominated location per the endorsed plan. We commend Council to investigate this aspect, to then be able to reach a final and conclusive view as to whether any planning non-compliances have occurred at the Old Coach Land.

- End of report -

ATTACHMENT 1



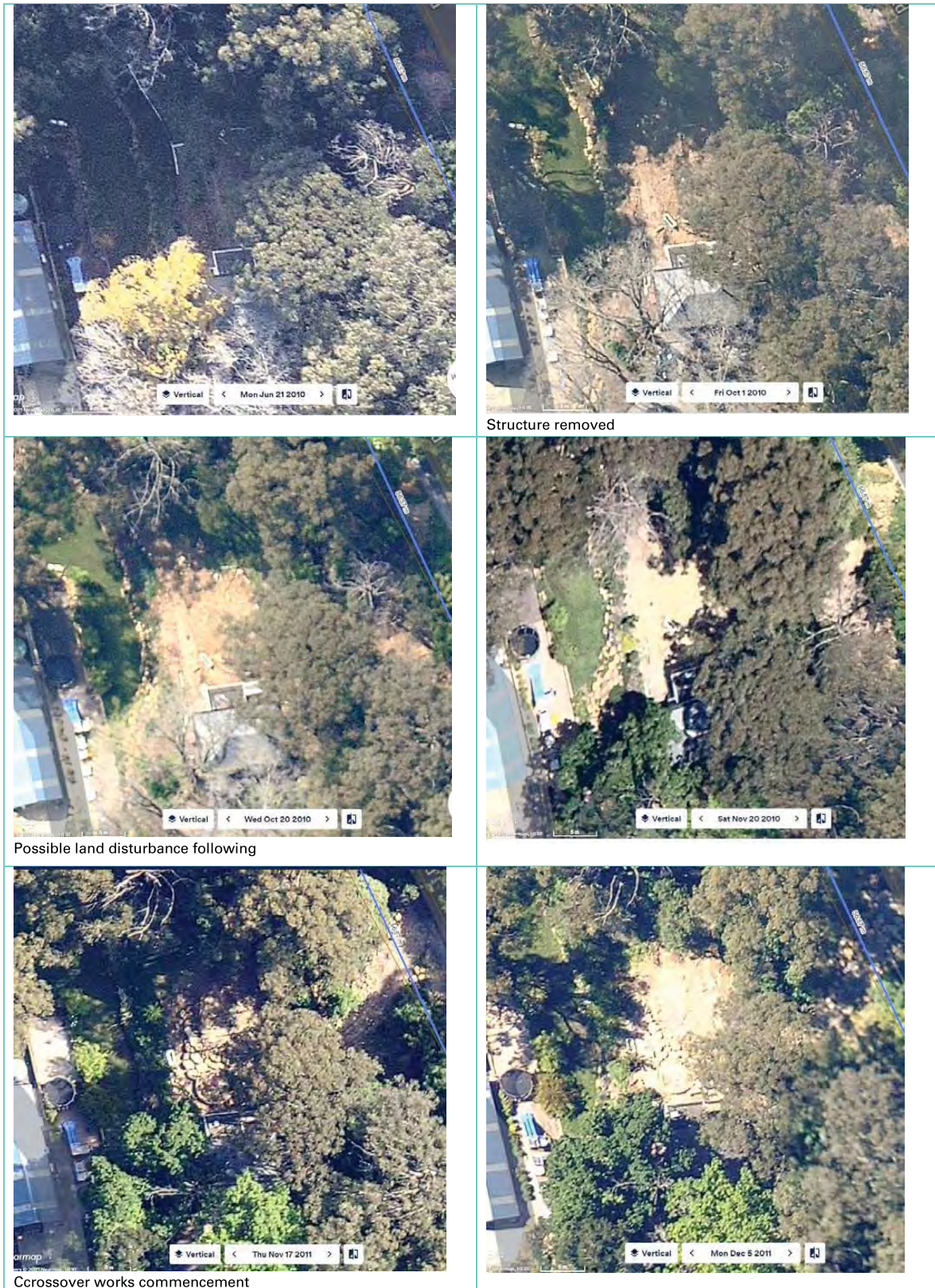
REVIEW OF AERIALS AND EVIDENCE

201 FERNDALE ROAD

VEHICLE CROSSING WORKS/RETAINING WALLS

<p>Area in front of building likely to have been already levelled and benched into westerward slope. Retaining wall may have already been present</p>	<p>Possible reatining wall</p>

ATTACHMENT 1



ATTACHMENT 1



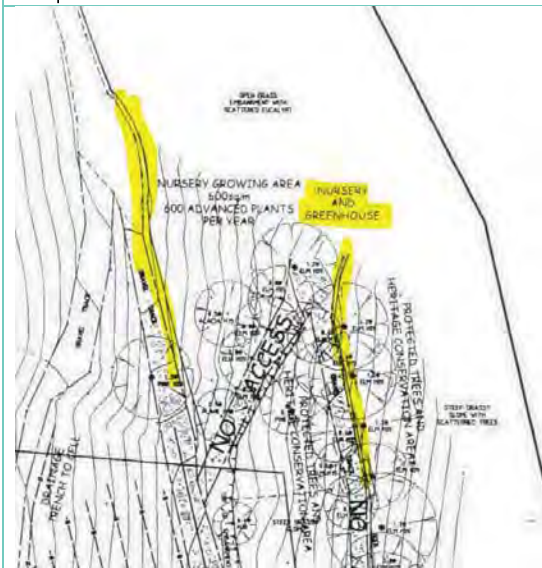
ATTACHMENT 1



Comparison to 2009






2019 – retaining wall possibly in same location



Nursery/greenhouse noted on endorsed plans for 2 lot subdivision in P2004/6484. Indicative retaining walls highlighted

ATTACHMENT 1



 <p>EXHIBIT D</p> <p>3m gabion wall referred to by A – location not identified</p>	 <p>Current google streetview image</p>  <p>2019 streetview image – roof of adjacent building showing level difference between street and building. Indicates there were likely prior earthworks to accommodate this building</p>
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ATTACHMENT 1



GREENHOUSES

 <p>Image © 2021 Sinclair Knight Merz & Fugro Imagery Date: 2/13/2006 37°51'35.25" S 145°19'57.66" E</p> <p>Google earth – 13 Feb 2006</p>	 <p>Image © 2021 Sinclair Knight Merz & Fugro Imagery Date: 1/1/2009 37°51'39.10" S 145°20'01.08" E</p> <p>Google earth – 1 January 2009</p>
 <p>Vertical Mon Oct 12 2009</p>	 <p>Vertical Wed Apr 6 2011</p>
 <p>Vertical Sun Dec 23 2018</p>	 <p>Vertical Fri Jan 22 2021</p>

Remained same (crop cover shown to south-east)

ATTACHMENT 1



 <p>EXHIBIT A</p>	 <p>EXHIBIT B</p>
<p>Evidence provided by A - 2006</p>	<p>2018</p>

ATTACHMENT 1



DAMS



Google earth – 29 April 2005. Dam 1 present. Dams 2 and 3 locations highlighted



Google earth – March 2006. Dams 2 and 3 present



cal < Mon Oct 12 2009 >

Dam 4 appears to be already present

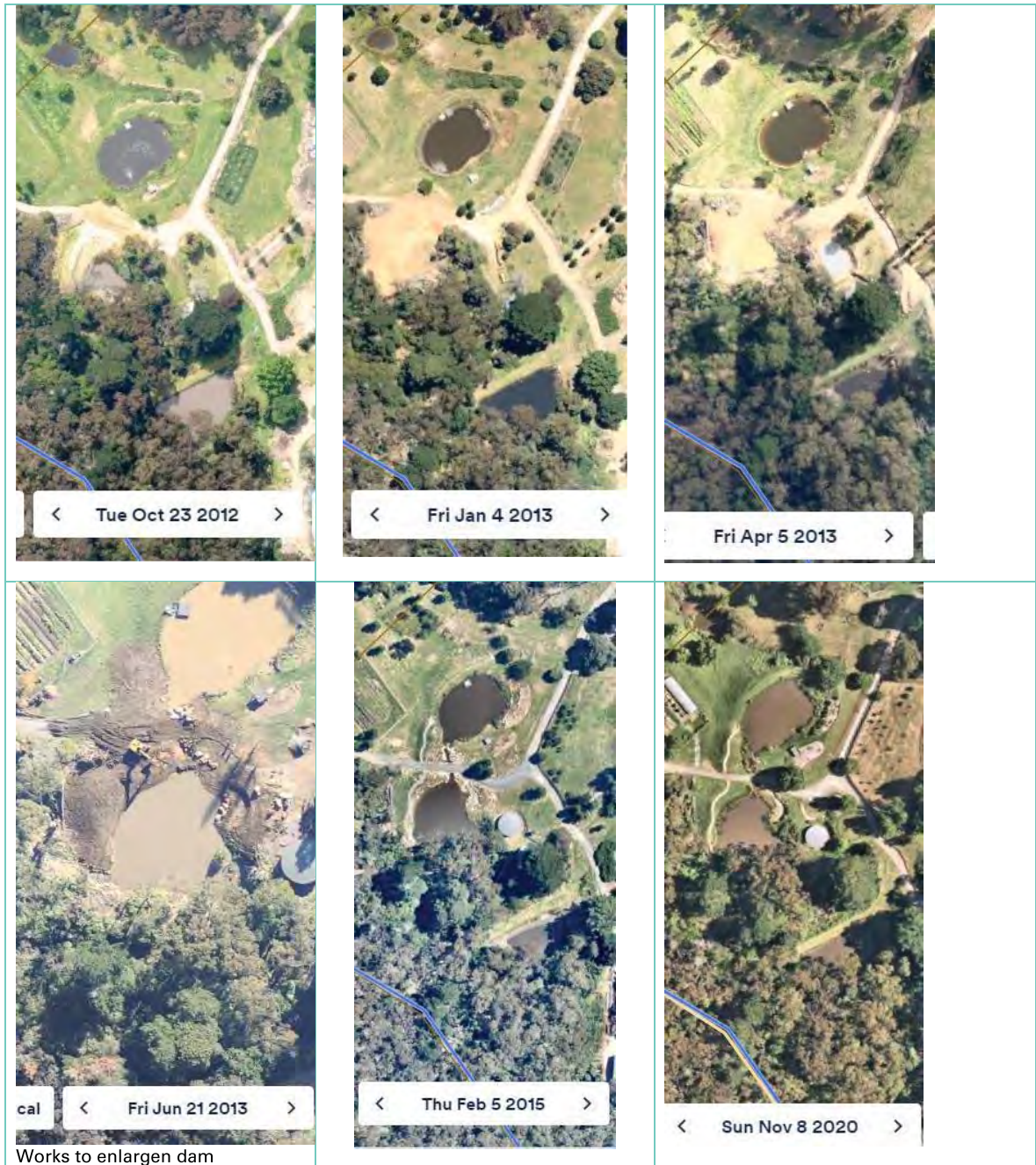


al < Mon Jun 21 2010 >



l < Mon Mar 12 2012 >

ATTACHMENT 1





ATTACHMENT 1



MapshareVic image - waterway location



Plan of Subdivision endorsed under Section 173 Agreement in 2004 (found in planning application material for restaurant use). Drainage easement shown. Dam 1 shown on endorsed plan.

Comparison of Title plan easement and Mapshare plan showing waterway.



ATTACHMENT 1



That


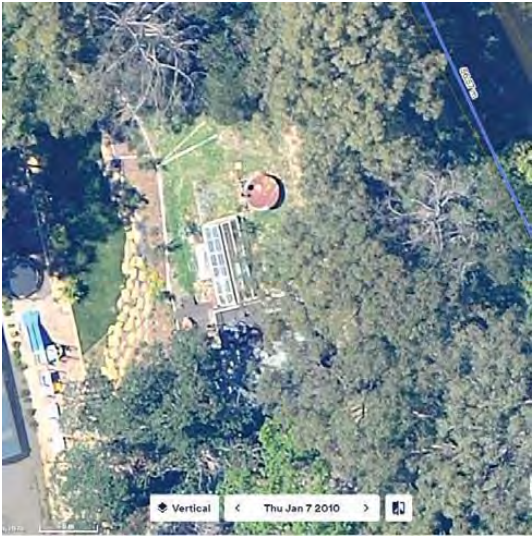


ATTACHMENT 1





VEGETATION REMOVAL

In location of vehicle crossing:

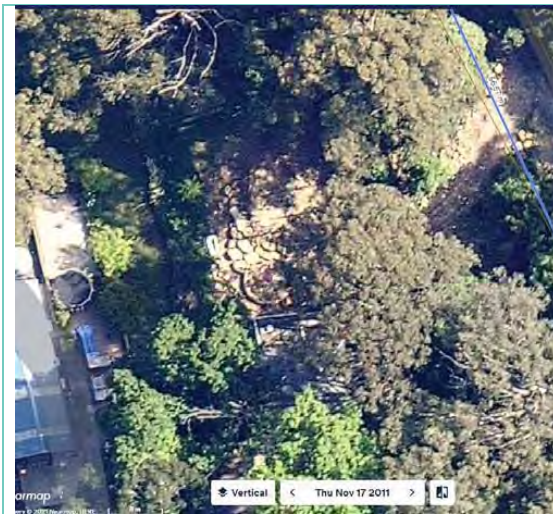


Existing vegetation

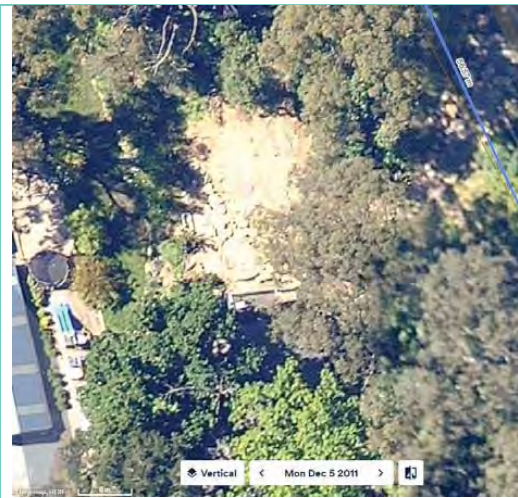


Disturbance to grass area

ATTACHMENT 1



Disturbance from vehicle crossing



Current streetview image



Provided by A – suggested to show types of native vegetation in vicinity of crossing

ATTACHMENT 1



In location of greenhouses:



EXHIBIT A



EXHIBIT B

Provided by A – Exhibit A – 2006 (is quite shadowed). Exhibit B - 2018

ATTACHMENT 1



ATTACHMENT 1



ATTACHMENT 1



Comparison to other google earth image taken 22 March 2006



Comparison between google earth and nearmaps - December 2018

The above aeriels demonstrates how vegetation coverage can appear different at various dates depending on time, angle and associated shadows.

ATTACHMENT 1



<p>OUTBUILDINGS/SHEDS</p>	
<p>At southern end of site</p>	
<p>Endorsed plan forming part of permit P/2002/6484 as attached to 173 Agreement registered in 2004 indicates old sheds located to east of Dam 1. Area further south not detailed on plan. Sheds not visibly apparent in aerials until 2009. Larger or replacement sheds appear in 2014. Permit associated with Agriculture was issued in 2015. Possibly forming part of this as a retrospective approval, however unclear without viewing application file.</p>	
<p>Google Earth 2006 – cannot see sheds – images until 2012 are too unclear to see structures as shown in 2009 on NearMaps</p>	

ATTACHMENT 1



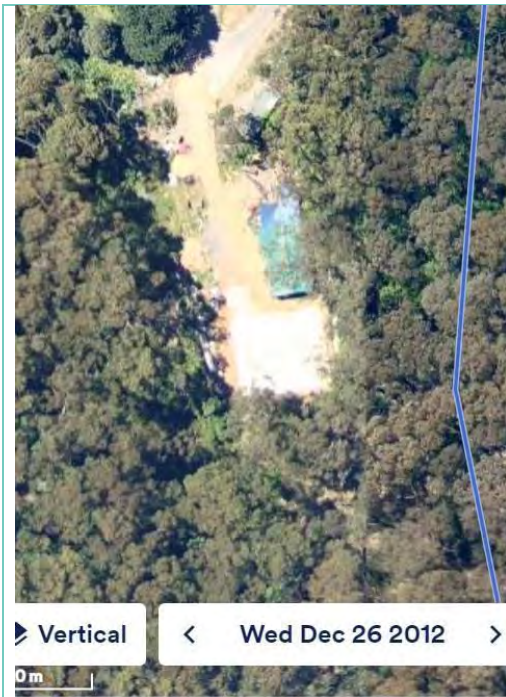
Outbuildings at southern end of Land are apparent



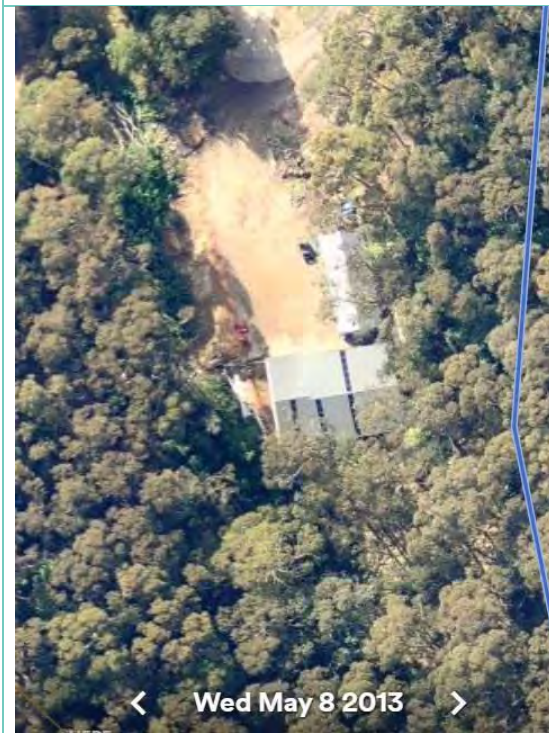
Disturbance to grass area



ATTACHMENT 1

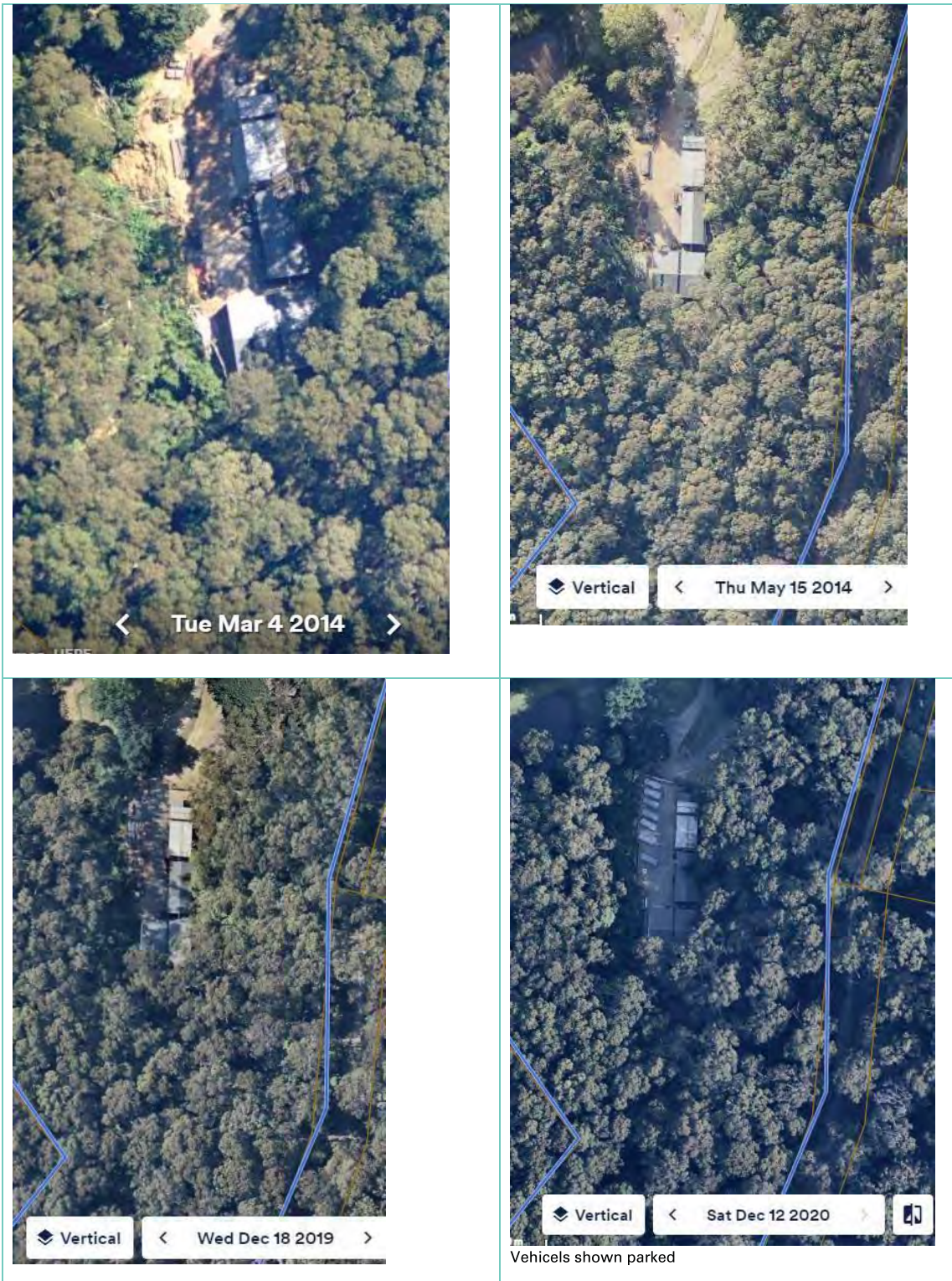


Southern most shed construction commenced



Google Earth – 31 Jan 2014 - Appears outbuildings being built/ replaced

ATTACHMENT 1



ATTACHMENT 1

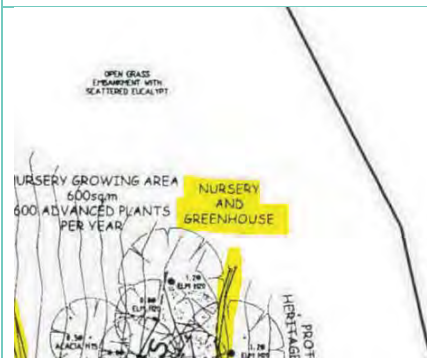


Site inspection photo of said sheds



Site inspection photo - vehicles stored as seen in aerial

Outbuildings/sheds to north of dwelling



Indicates these structures existed or were approved as part of subdivision application



Goog Earth - 13 Feb 2006 - outbuildings evident



Remains same

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Remains same until 2010 when a structure is removed



No change to outbuildings since (showing 2019)

ATTACHMENT 1



SECTION 173 AGREEMENT

The Section 173 Agreement was provided in the Planning Application material for the restaurant use.

The relevant clauses are shown in the excerpt below.

7.1 The Owner covenants and agrees with the Council that:

7.1.1 The Owner will develop and maintain the lots in accordance with the Environmental Management Plan.

7.1.2 Except with the written consent of the Council the Owner or Owners for the time being of Lot 2 will not:

- i. construct a dwelling and or vehicle or machinery accommodation outside the building envelope for Lot 2 shown on the Endorsed Plan;
- ii. construct an effluent treatment system outside the effluent envelope for Lot 2 shown on the Endorsed Plan;
- iii. construct vehicular access to Lot 2 outside the proposed carriage-way easement shown on the endorsed plan;

7.1.3 The owner of Lot 2 must protect and must not remove, damage, alter or destroy the following heritage items on Lot 2 except with the written consent of the Responsible Authority:

- (a) the original driveway; adjacent oak tree rows and stone retaining wall;
- (b) the red brick stairway leading downhill from the driveway; and

Specific breaches raised in the oral submission of B:

- Alteration of the original driveway in the creation of widened bays/car parking areas.
- Breaches in failing to protect the creek and platypus, and in specifically allowing greenhouses to spill nutrients into creek

Where is the original driveway?

ATTACHMENT 1



The endorsed plans do not identify the 'original driveway' or retaining walls etc. It identifies driveways that are nominated for 'access during construction', and ones further east nominated for 'no access'. It is unclear if some or all of these roads are the original roads to be protected.

Alterations evident to original driveway



ATTACHMENT 1



- In the absence of a reviewing the planning application file for Permit P2002/6484 (subdivision application), it is unclear which and where precisely the protected heritage driveway, oak tree and retaining walls are. We assume the main driveway.
- An area to the side of the main driveway was created by 2011. Whether this constituted “remove, damage, alter or destroy” could be interpreted in two ways.

Breaches of creek protection

- The location of the creek watercourse is assumed be follow the alignment of the drainage easement and watercourse lines shown in earlier imagery relating to dams. This breach is likely referring to the requirement of the agreement to develop and maintain the lots in accordance with the Environmental Management Plan. The EMP is attached to the Agreement in Annexure 1. It does not appear that it can be amended from time to time as such, or be amended with consent. The EMP is quite broad, but does refer to old controls and the residential land use that was existing (indicates the land not suitable for agriculture due to topography). Vegetation planting and rehabilitation/weed eradication and control measure and bushfire measures are suggested.
- The EMP makes specific reference to the watercourse in the following:

In the ‘introduction’:

- *The land is located adjacent to the Dandenong Ranges National Park. The property is heavily vegetated with open forests of indigenous vegetation; however exotic vegetation is present from the original homestead gardens, as are noxious weeds including blackberry infestation along the natural watercourse running through the property. Due to the slope of the land and the heavy vegetation, the property is in a high risk category for bushfire.*

In the following listed ‘control measures’:

- *Construction of a dwelling: Runoff resulting from any levelling for the house site and building will be reduced by ensuring on adequate drainage is contained within the construction zone via entrapment of runoff waters/and waste construction material within the landscape containment area EMP Plan. This containment zone will adequately drain any stormwater runoff to ensure there is no risk of erosion or watercourse contamination, each area will have a wetland cell or slit trap EMP Plan. Contamination of the soil and watercourses through the use of chemicals will also be contained within the construction envelope, man-made materials and wastes can be reduced by using only biologically friendly substances and the use of an effluent envelope positioned after completing a Land Capability Assessment under the Septic Tank Code of Practice.*
- *Land care and conservation: In order to reduce the amount of herbicides used, natural weed control will be carried out, thus eliminating the risk of soil and watercourse contamination. In order to avoid the chance of erosion, weed control should be followed by revegetation with species indigenous to the area.*
- It is not apparent that the greenhouses are in clear contravention of this requirement. It is possible that the Planning Permit issued for Agriculture (assumed to have formalised the greenhouses) may have applied permit conditions to ensure these aspirations are achieved.

More general breaches separately identified:

- The second crossover constructed would breach the requirement of 7.1.2(iii) unless demonstrated that the approval constituted the required consent.

ATTACHMENT 1



- There are vehicles parked in the location identified above (adjacent to the driveway) and more recently vehicles are shown to be stored at the southern end of the site adjacent to the sheds. The requirement of Clause 7.1.2(i) refers to vehicle or machinery accommodation not being constructed outside of the building envelope for Lot 2.
- There is evident that the parking of vehicles outside of the envelope is occurring, however assumed that the intent of requirement is more so to restrict buildings (accommodation) constructed for this purpose.
- The purpose of the sheds is unknown. They would appear to be used for some sort of storage, but a site inspection did not reveal full content, and whether machinery was being stored.



A more detailed extract of the Agreement and the requirements of the EMP are provided below:

ATTACHMENT 1




Date / / // /2004

SECTION 173 AGREEMENT

W.K.P. PTY. LTD.
(ACN 004 574 092)

and

KNOX CITY COUNCIL



0A0227025V-2-1

GOLDSMITHS
Barristers & Solicitors
13 Errol Street
North Melbourne Vic 3051
D.K. 38502
Ph. (03) 9322 2777
Fax. (03) 9329 1543
E.M. DISC. TP W. 17437 (27.07.04)


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Sheet 20 of 123


AD227025V

09/11/2004 195 173



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6. SUCCESSOR IN TITLE

Without limiting the effect or operation of this Agreement, the Owner will until such time as memorandum of this Agreement is registered on the Title, ensure that the Owner's successors in title:

- 6.1 give effect to and do all acts and sign all documents which are necessary or required to give effect to this Agreement; and
- 6.2 execute, under seal, a deed agreeing to:
 - 6.2.1 assume all of the rights and obligations of the Owner under this Agreement; and
 - 6.2.2 be bound by the terms of this Agreement as if the successor's name appeared in each clause in which the name of the Owner appears and in addition to the name of the Owner.

7. COVENANTS OF OWNER

- 7.1 The Owner covenants and agrees with the Council that:
 - 7.1.1 The Owner will develop and maintain the lots in accordance with the Environmental Management Plan.
 - 7.1.2 Except with the written consent of the Council the Owner or Owners for the time being of Lot 2 will not:
 - i. construct a dwelling and or vehicle or machinery accommodation outside the building envelope for Lot 2 shown on the Endorsed Plan;
 - ii. construct an effluent treatment system outside the effluent envelope for Lot 2 shown on the Endorsed Plan;
 - iii. construct vehicular access to Lot 2 outside the proposed carriage-way easement shown on the endorsed plan;
 - 7.1.3 The owner of Lot 2 must protect and must not remove, damage, alter or destroy the following heritage items on Lot 2 except with the written consent of the Responsible Authority:
 - (a) the original driveway; adjacent oak tree rows and stone retaining wall;
 - (b) the red brick stairway leading downhill from the driveway; and
 - (c) the stone seat constructed into the stone retaining wall.
- 7.2 The Owner shall pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of and incidental to:
 - 7.2.1 This Agreement and any amendment of this Agreement; and

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Sheet 24 of 123

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ENVIRONMENTAL MANAGEMENT PLAN

FOR

LOT 2 ON PLAN
OF PROPOSED SUBDIVISION
201 FERNDALE ROAD, SASSAFRAS

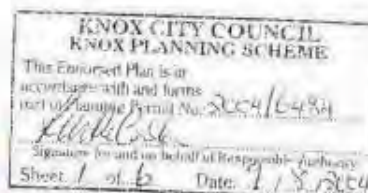
PREPARED BY REEDS CONSULTING PTY LTD
AND
AUSTRALIAN HORTICULTURAL CONSULTANTS

FOR

MR HENRY GREENFIELD
PROPERTY OWNER

JULY 2004

AD227025V



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Sheet 28 of 123

Report - 8 pages

ATTACHMENT 1



1 INTRODUCTION

Documents accompanying this report are:

1. Locality Plan (20034/LP Version A);
2. Plan of Subdivision (PS526705C);
3. Plan of Features and Levels (20034/FL Version D); and
4. Environmental Management Plan (20034/EMP Version C)

1.1 Property Introduction:

As shown by Item 1 above the subject land is located on Ferndale Road, Sassafras at the foot of the Dandenong Ranges. The site is all of the land in Certificate of Title Vol 7576 Fol.085, being approximately 12.5 hectares. The property's use is residential only, currently containing a single dwelling with outbuildings – most of the property is covered with dense exotic and indigenous vegetation and is very steep, making it unsuitable for agricultural activities. Ferndale Road is well constructed and maintained to the existing dwelling on the property. Past this property the road deteriorates and is suitable for access with a 4WD only.

The surrounding area is predominantly residential. There are four allotments immediately to the west of the property along Old Coach Road. These four properties have areas of 1 acre (0.4 hectares) and have existing houses.

The subject property was formerly the site of the Ferndale Homestead that had renowned, extensive gardens and large areas of open cleared pastures. Since the loss of the homestead in bushfires in 1962, parts of the property have become overgrown with scrub and exotic vegetation. Cleared areas suitable for the construction of dwellings still exist on the property, as does a grass track suitable for upgrading to a driveway for any proposed dwelling. It is proposed that a two lot subdivision of the site be undertaken and one additional dwelling be constructed on the new lot.

Stone retaining walls and oak trees from the original homestead's gardens still exist on the property and are considered historically significant. Currently these walls and trees are overgrown with exotic vegetation. The walls require restoration and the weeds require eradication to "reveal the true charm of Ferndale's garden and stonework". Brick stairs from the original homestead are present and are also considered historically significant.


The land is located adjacent to the Dandenong Ranges National Park. The property is heavily vegetated with open forests of Indigenous vegetation, however exotic vegetation is present from the original homestead gardens, as are noxious weeds including blackberry infestation along the natural watercourse running through the property. Due to the slope of the land and the heavy vegetation, the property is in a high risk category for bushfire.

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Sheet 29 of 123



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The property is zoned Rural Conservation Zone 1 (RCZ1) and is covered by Vegetation Protection Overlay 1 (VPO1). The property is also covered by the Dandenong Foothills Planning Policy.

1.2 Project Key Tasks:

- Construction of a dwelling;
- Possible supply of basic services to the property;
- Land care and conservation including weed control, exotic vegetation removal and revegetation with local provenance plants, revegetation and preservation and watercourse preservation;
- Protection of site from builders waste.
- Site allocated building material storage.
- Heritage conservation including rock wall resurrection or restoration, protection of the stairs to the original homestead and control of ivy strangling historically significant oak trees;
- Continued management and maintenance of the property;
- Rehabilitation re-planting, habitat creation and maintenance plan including a control plan for non-indigenous and other invasive plants.
- Bushfire control.

1.3 Objectives of the Environmental Management Plan

The following document outlines the site-specific risks, both potential and actual, and the impacts, both positive and negative, that may be associated with the two lot subdivision and development of the property known as 201 Ferndale Road, Sassafras. This document outlines the procedures that may be followed to ensure that any actual risks or negative impacts are properly controlled and mitigated. Conversely, this document outlines the commitments that may be implemented to increase the occurrence of positive impacts on the property and to manage the potential risks associated with the property. The document outlines who is responsible for the management of the property, the consideration that provides a contingency plan in the event of a reasonably anticipated event or an emergency. It is anticipated that this Environmental Management Plan will be used by those who have an interest in the property at 201 Ferndale Road, Sassafras (including those employed on the property) and will enable the continued use, enjoyment and conservation of the land including the flora and fauna.

2. IMPLEMENTATION

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2.1 Environmental Aspects, Effects and Control Measures

The following table summarises the environmental effects of the project key tasks, both the actual and potential risks and the positive and negative impacts of each project key task on the environment.

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Sheet 30 of 123



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Project Key Task	Actual Risk	Potential Risk	Negative Impact	Positive Impact
Construction of an additional dwelling	Disturbance of the natural environment by altering drainage patterns due to clearing a site and levelling the land for the siting of the dwelling	Contamination of soil and water through use of chemicals, man-made materials and wastes associated with habitation, threat to indigenous vegetation, erosion	Disturbance of the natural environment by altering drainage patterns due to clearing a site and levelling the land for the siting of the dwelling	Habitation will mean that care and management of the property can be carried out
Land care and conservation	Disturbance of soil, threat to fauna	Contamination of soil and water through use of herbicides, threat to indigenous vegetation, disturbance of soil may lead to erosion. Erosion control containment will be taken		Reduction of exotic vegetation (weeds), increase amount of local provenance vegetation, erosion control, ongoing watercourse management
Heritage conservation		Loss or damage of historical features on the site		Historical preservation of culturally important site features
Continued management and maintenance		Contamination of soil and water through use of chemicals, man-made materials and wastes associated with habitation		All of the above
Bushfire control		Loss of human life, property, historically significant features, native flora and fauna		Protection of human life, property, historically significant features, conservation of native flora and fauna

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sub-surface wetlands will reduce contamination from area to area. These wetland cells will create more habitat and wet pockets that will assist in the re-vegetation program ref: EMP Plan.

2.1.2.2 Effects
 The major effects of land care and conservation are positive. Land care and revegetation program and ongoing management will reduce the amount of exotic vegetation on the property and increase the occurrence of indigenous vegetation. On the downside, as part of the exotic vegetation control, all control measures may be used which may have an impact on soil and watercourse preservation. Disturbance of the soil may also be an issue if exotic vegetation is removed and no replanting of local provenance vegetation is undertaken. Soil disturbance may lead to erosion in some cases, which may in turn threaten indigenous vegetation and lead to watercourse contamination.

2.1.2.3 Control Measures
 In order to reduce the amount of herbicides used, natural weed control will be carried out, thus eliminating the risk of soil and watercourse contamination. In order to avoid the chance of erosion, weed control should be followed by revegetation with species indigenous to the area.


2.1.3 Heritage conservation

2.1.3.1 Aims
 The aim of heritage conservation is to restore the features on the property that are historically significant. Such features include the stone wall and oak trees from the original homestead gardens and the brick stairs from the original homestead.

2.1.3.2 Effects
 The effects of heritage conservation are generally positive. The resurrection or restoration of the stone wall will enhance the historical appeal of the property. The eradication of the weeds (specifically ivy) from the old oak trees will enhance their appearance and lead to longevity. Negative impacts of heritage conservation will only be realised if the restoration of the historically significant features present on the property is performed incorrectly (that is not in keeping with the trends of the era in which the wall was built). This will ensure that the stonewall trees and stairs are returned to their former glory.


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 2.1.3.3 Control Measures
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Sheet 33 of 123


AD227025V
 09/11/2004 195 173


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AD227025V-15-8



2.1.4 Continued management and maintenance of the property

2.1.4.1 Aims

The aim of continued management and maintenance of the property is to ensure that all the hard work undertaken to control weeds, to have a revegetation program, to restore the historical features, create habitat plus protect the environment from the effects of habitation are continued in the future.

2.1.4.2 Effects

The effects of continued management and maintenance of the property would be the control of exotic vegetation and the continued planting program, the preservation of historically significant features, the control of waste, preservation and upgrade of local provenance flora and fauna, and soil and watercourse preservation.

2.1.4.3 Control Measures

In order to ensure ongoing management and maintenance of the property, the planning permit for the subdivision will contain conditions relating to the control of weeds, the protection of indigenous vegetation and that any planting of vegetation will be plants of local provenance within areas marked on the EMP plan. These conditions will be adhered to.

2.1.5 Bushfire control

2.1.5.1 Aims

The aims of bushfire control are to protect human life, property and historically significant features from fire; to minimise the adverse effects of fires, and to maintain fire regimes appropriate to the conservation of native flora and fauna.

2.1.5.2 Effects


The effect of bushfire control would be the protection of human life, property and historically significant features, and to conserve native flora and fauna.

2.1.5.3 Control Measures

In order to control bushfire, construction of any building must fall within the requirements of the Construction of Buildings in Designated Bushfire Prone Areas. The responsible authority must enforce this. To minimise fire risk, weeds should be eradicated and ecological slashing and burning should be carried out so that native flora and fauna species are not harmed. A fire protection plan for the property should be developed.

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3. CONCLUSION
 This environmental management plan has identified the risks and impacts associated with the subdivision of the property at 201 Ferndale Road, Sasstras, and the construction of a dwelling and associated outbuildings. This plan outlines how the project will effect the property's environment and how these effects can be managed or mitigated. By properly following the management plan as outlined, the subject property can be improved (even with the introduction of an additional dwelling) through exotic vegetation eradication, historical feature restoration and ongoing management to mitigate the disturbance of the environment from human activities.



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NOTATIONS
 1. SUBJECT LAND C/T VOL 7578 FOL 085
 LOT 307 (PART) & 313 (PART), LP, 12
 2. REFER TO TITLE FOR EASEMENT INSTR

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 LOCALITY PLANNING & DESIGN
 21 Bourke Street Carlton 3053
 Phone 03 9462 4270 Fax 03 9462 2746
 Email info@redscorp.com.au
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AD2270
 18/02/04 MS

**PROPOSED SUBDIVISION
 (LOCALITY PLAN)
 FERDALE ROAD
 THE BASIN**

REFERENCE: 20034
 VERSION: 1 SHEET 1 of 1
 DATE: 9/09/03 LPIA:00N

SCALE 1:5000
 0 100 200
 LENGTHS ARE IN METRES

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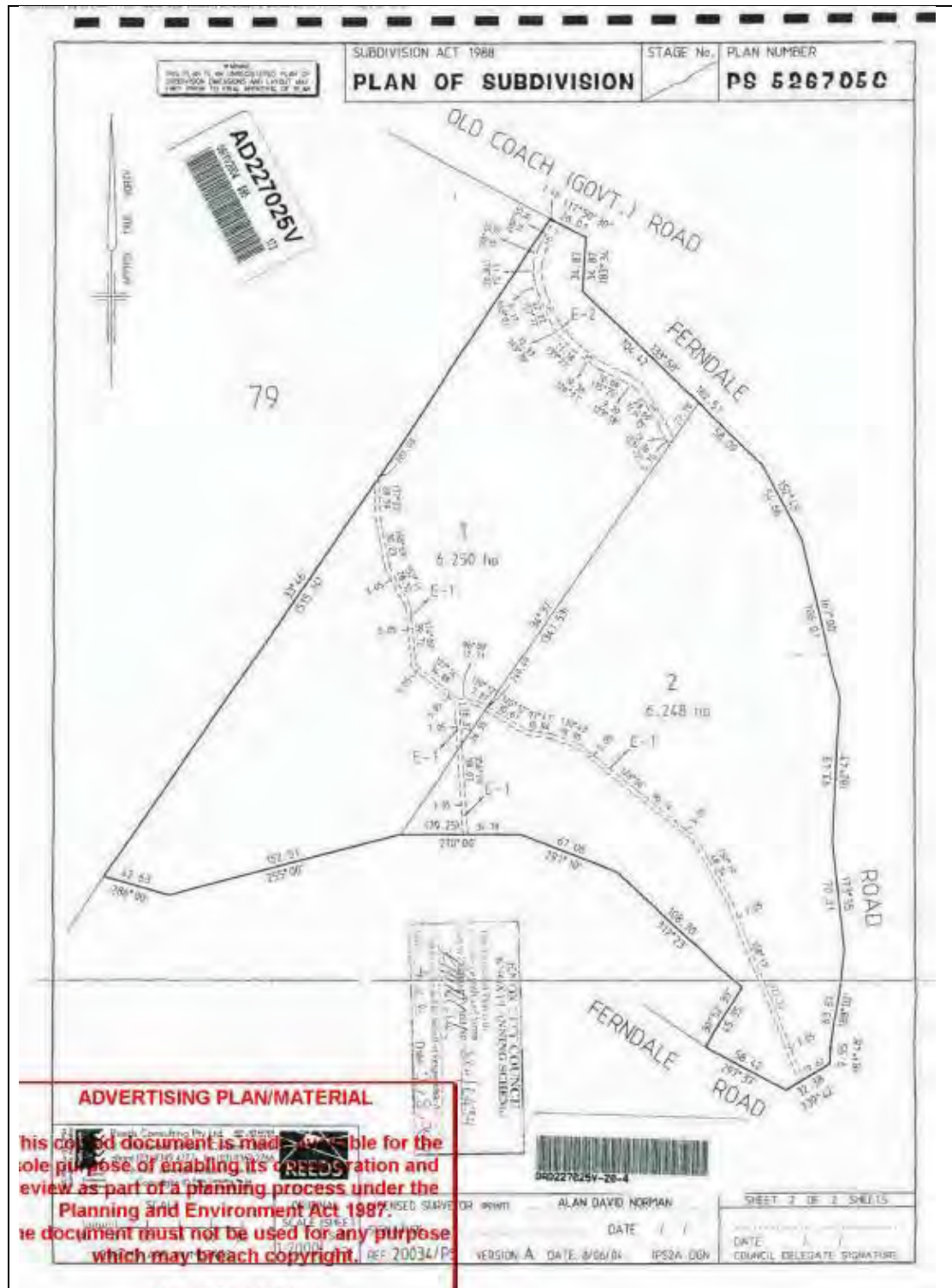
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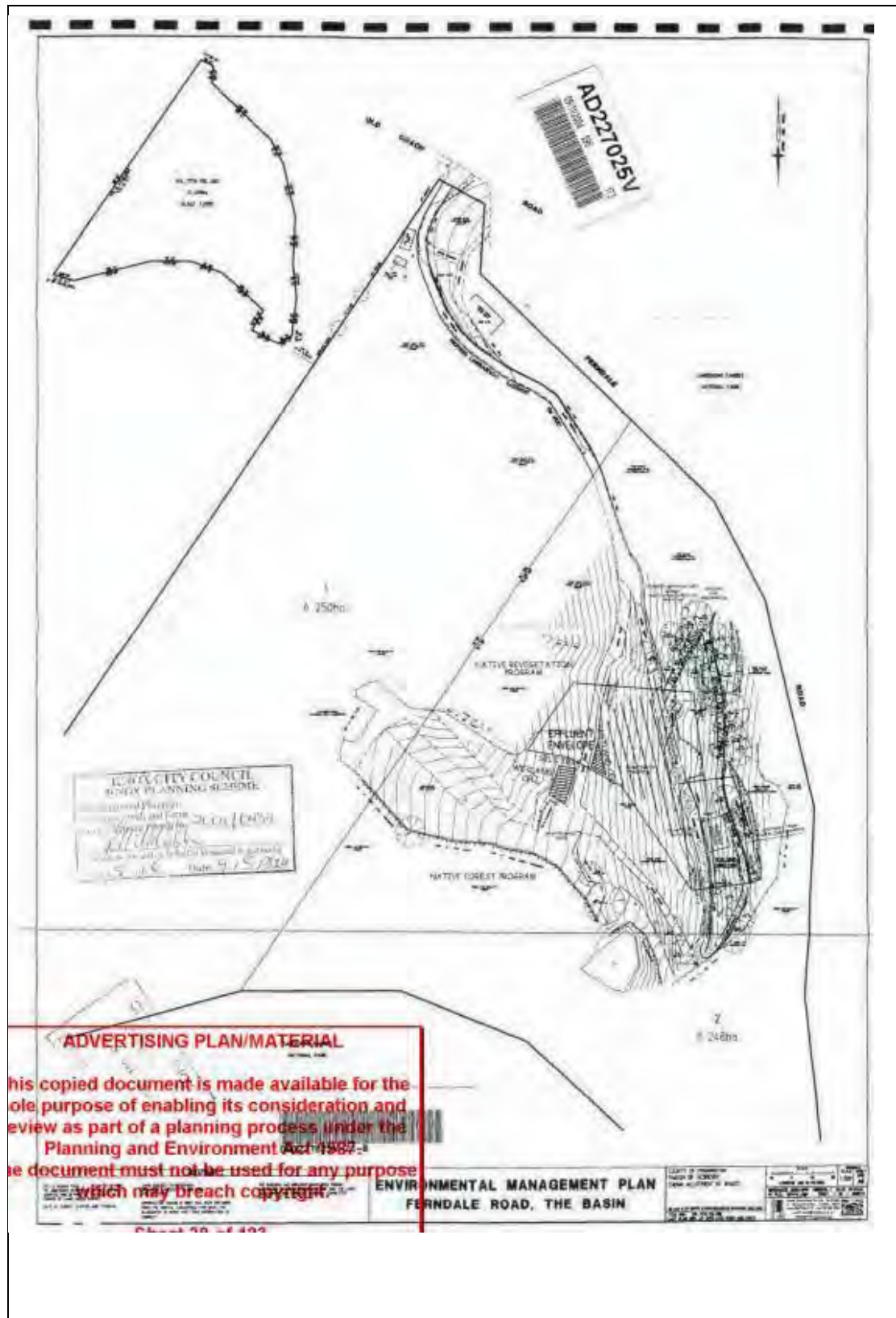
SUBDIVISION ACT 1988 PLAN OF SUBDIVISION		STAGE No.	LR USE ONLY EDITION	PLAN NUMBER PS 526705C															
LOCATION OF LAND PARISH: SCORSEBY TOWNSHIP: --- SECTION: --- CROWN ALLOTMENT: 87 (PART) CROWN PORTION: --- TITLE REFERENCES: VOL. 7579 FOL. 285 LAST PLAN REFERENCE: TYPARISH II, LOTS 1 AND 2 POSTAL ADDRESS: 301 IRINDALE ROAD, SASSAPRAS 3787 AMG CO-ORDINATES: E 353 250 ZONE: 22 N 3 306 240 (to approximate centre of area to which it applies)		COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME (CITY OF AND) REF. 1. THIS PLAN IS CERTIFIED UNDER SECTION 6 OF THE SUBDIVISION ACT 1988. 2. THIS PLAN IS CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988. DATE OF THE ORIGINAL CERTIFICATION UNDER SECTION 6: / / 3. THIS IS A STATEMENT OF COMPLIANCE ISSUED UNDER SECTION 27 OF THE SUBDIVISION ACT 1988. OPEN SPACE (a) A REQUIREMENT FOR PUBLIC OPEN SPACE UNDER SECTION 11 OF THE SUBDIVISION ACT 1988 HAS / HAS NOT BEEN MADE. (b) THE REQUIREMENT HAS BEEN SATISFIED. (c) THE REQUIREMENT IS TO BE SATISFIED IN STAGE.																	
VESTING OF ROADS OR RESERVES IDENTIFIER: COUNCIL / BODY / PERSON NONE NONE		COUNCIL DELEGATE COUNCIL SEAL DATE: / / RE-CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988 COUNCIL DELEGATE COUNCIL SEAL DATE: / /																	
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 THE LAND BEING SUBDIVIDED IS ENCLOSED WITHIN THIS CONTIGUOUS LINED SURVEY. THIS PLAN IS BASED ON SURVEY. THIS SURVEY HAS BEEN COMMITTED TO PERMANENT PAPER No. () IN DECLARED SURVEY AREA No. ()		RECEIVED <input type="checkbox"/> DATE: / / LR USE ONLY PLAN REGISTERED TIME DATE: / / ASSISTANT REGISTRAR OF TITLES DATE: / / COUNCIL DELEGATE SIGNATURE SHEET 1 OF 2 SHEETS ORIGINAL SHEET SIZE: A3																	
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E-2	CARRIAGEWAY	5	THIS PLAN	LOT 2 ON THIS PLAN															
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PLANNING PERMIT

Knox City Council
Towards A Better Tomorrow

Application No: P/2002/6484

File No:

Planning Scheme: Knox

Responsible Authority: Knox City Council

ADDRESS OF THE LAND


Land 201 Ferndale Rd, SASSAFRAS 3787

Land Title: LOT PT 313 LP 12973 CA 86/7PARISH OF SCORESBY

THE PERMIT ALLOWS

Two lot residential subdivision

in accordance with the endorsed Plan(s)



0R0227025V-23-5

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT

† AGREEMENTS

The owner must enter into an agreement under Section 173 of the Planning & Environment Act with the Responsible Authority to provide for:

1. The development and maintenance of the lots in accordance with an Environmental Management Plan approved by the responsible authority and the Department of Sustainability and Environment;
2. The construction of a dwelling and vehicle / machinery accommodation only within the building envelope shown for lot 2 on the endorsed plan, except with the written consent of the responsible authority;
3. The construction of an effluent treatment system only within the effluent envelope shown for lot 2 on the endorsed plan, except with the written consent of the responsible authority;
4. All vehicular access to lot 2 to be via the existing track identified on the endorsed plan by 'proposed carriageway easement', except with the written consent of the responsible authority; and,
5. The owner of lot 2 to protect and not remove, damage, alter or destroy the following specified heritage items on the land, except with the written consent of the responsible authority:
 - a. The original driveway, adjacent Oak tree rows and stone retaining wall;
 - b. The red brick stairway leading downhill from the driveway; and
 - c. The stone seat constructed into the stone retaining wall.

The Responsible Authority shall cause the agreement to be registered on title to the lots pursuant to Section 187 of the Planning & Environment Act.

ADVERTISING PLAN/MATERIAL is responsible for all costs associated with the preparation, lodging and ending of the agreement.


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Sheet 41 of 123

AD227025V

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Signature for the Responsible Authority 

ATTACHMENT 1



Knox City Council
Knox City Council
Knox City Council

PLANNING PERMIT

Application No: P/2002/6484
File No:
Planning Scheme: Knox
Responsible Authority: Knox City Council

2 Environmental Management Plan

The Environmental Management Plan shall be amended to the satisfaction of the Responsible Authority and shall form part of the agreement in Condition 1.

The owner shall undertake weed eradication in accordance with the Environmental Management Plan, prior to the issue of a statement of compliance for the plan of subdivision.

3 AUTHORITIES

(i) The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity, gas and telecommunication services to each lot shown on the endorsed plan in accordance with that authority's requirements and relevant legislation at the time.

(ii) All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.

(iii) The plan of subdivision submitted for certification under the Subdivision Act, 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.

4 ADMINISTRATION

Time for starting and completion.

This permit will expire if one of the following circumstances applies:

a) The subdivision is not started within two years of the date of this permit.

b) The subdivision is not completed within five years of the date of certification of the plan and in the case of a staged subdivision certification of the first stage plan.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards. Note: The starting of a subdivision is regarded by Section 68(3A) of the Planning & Environment Act of 1987 as the certification of a plan under Section 6 of the Subdivision Act, 1988 and where a subdivision is staged from certification of stage 1 completion is regarded as registration of the subdivision and where the subdivision is staged upon registration of the last stage.

ADVERTISING PLAN MATERIAL
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AD227025V
09/19/2004 \$95 173

Signature for the Responsible Authority: *[Signature]*

Sheet 42 of 123

ATTACHMENT 1



Knox City Council
Smith: Ann: Heston:

PLANNING PERMIT

Application No: P/2002/6484
File No:
Planning Scheme: Knox
Responsible Authority: Knox City Council

The applicant shall submit to the Council for certification under the provisions of the Subdivision Act, 1988 a plan for the subdivision of the land which complies with the endorsed plan, that Act and the Regulations made herein.



AD227025V

09/11/2004 \$95 173



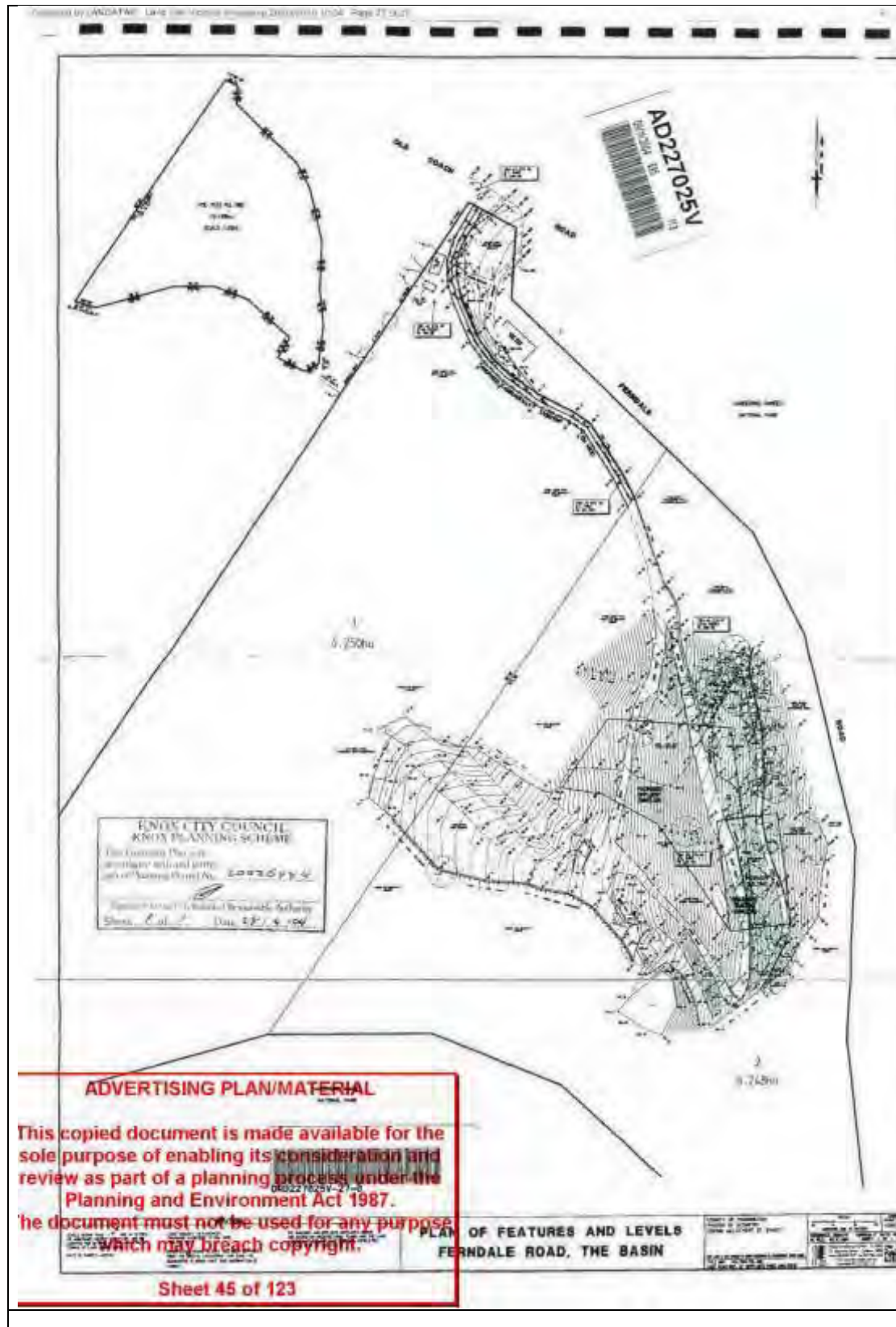
ADVERTISING PLAN/MATERIAL

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Sheet 43 of 123

Signature for the Responsible Authority

ATTACHMENT 1





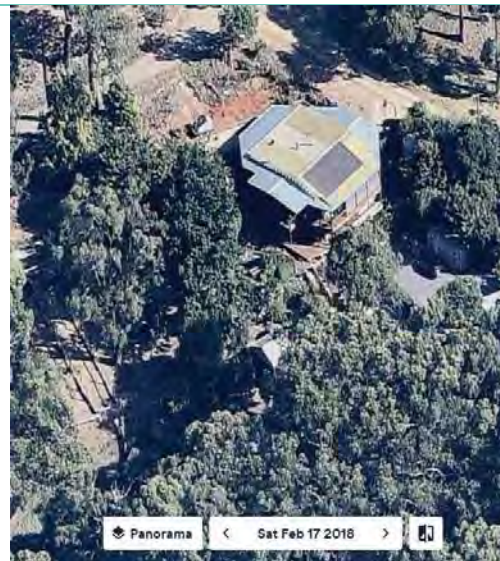
ATTACHMENT 1

123 OLD COACH ROAD, SASSAFRAS

FRONT FENCE (constructed on Council land)	

Works and vetation removal occurring – assumed to be in associated with fence approval referenced by B

ATTACHMENT 1



Appears retaining wall constructed



Fence constructed



ATTACHMENT 1



SUMMARY OF PLANNING CONTROL AMENDMENT DATES RELEVANT:

- NPS1 18.09.1999 **ERZ1 and VPO1** in place
- VC23 19.05.2004 **RCZ1** replaces **ERZ1**
- C35 19.10.2004 Interim **SLO7** applied (VPO1 remains)
- C40 18.11.2006 **SLO4** applied (interim **SLO7** removed)
- VC61 10.09.2009 introduces Clause 52.43 – interim measures for bushfire protection (later amended by VC65 on 22.01.2010 & more)
- C83 27.05.2010 **WMO** applied
- VC8 18.11.2011 **BMO** replaces **WMO**. Applies bushfire exemptions at Clause 52.48 (later amended VC109 – 31.07.14)
- VC89 05.03.2013 Removes interim 52.48.
- C49 11.04.2013 **ESO2** applied and **VPO1** removed
- VC103 05.09.2013 Reforms rural zones and amends Clause 57
- GC13 03.10.2017 BMO mapping updated (replace WMO reference)
- VC148 31.07.2018 Changes to the Victoria Planning Provisions and all Schemes
- VC176 05.08.2020 Amends Clause 52.12 (now Bushfire protection exemption) to align with 10/30 exemptions



ATTACHMENT 2

SURVEY RESPONSE FROM A

#1

COMPLETE

Collector: Web Link 1 (Web Link)
 Started: Tuesday, December 29, 2020 9:05:29 PM
 Last Modified: Tuesday, December 29, 2020 9:39:05 PM
 Time Spent: 00:33:36
 IP Address: 110.142.49.41

Page 3: Survey questions

Q1 201 Ferndale Road, Sassafras

What is the address/s of the property/properties where you have observed a land use or development (such as construction of building/s or other structures, earthworks or vegetation removal) that you believe has been carried out without a planning permit?

Q2

Which of the following have you observed that you believe was carried out without a planning permit:

Earthworks,
 Vegetation removal,
 Construction of a dam,
 Construction of a structure (not comprising a building or outbuilding)

Set out a description of each land use or development, the address of each land use or development and the approximate date the use or development commenced below:

Vegetation removal and earthworks along Ferndale rd to create a car park. Construction of a dam. Construction of greenhouses. Tree removals within vicinity of dam and greenhouses. Dates unknown of all actions.

Q3

What method/s of communication did you use to notify Council about the land use/s or development/s referred to the above?

Correspondence/s with Councillors,

Set out a description of the type of communication/s you made and the approximate date/s:

Rang former cr moremore regarding concerns of activities on site including dam construction , vegetation removal etc. approx. July 2020 Facebook post on my page "Greening Knox" 30/5/20

ATTACHMENT 2



Q4 What reason best describes why you did not notify Council of your enforcement related complaint?	Respondent skipped this question
Q5 Can you provide a copy of any written correspondence or other material you submitted to Council (such as photographs, records of times and dates in which enforcement related actions were observed)?	No, I did not submit any written correspondence and/or material to Council
Q6 Do you have a copy of any other material that will assist us with our enquiry?	No
Q7 Did Council contact you in response to your complaint?	Not applicable
Q8 Can you provide a copy of any correspondence you received from Council?	Not applicable
Page 5: Survey questions	
Q9 How satisfied are you with Council's acknowledgement of your enforcement related complaint?	None of the above
Q10 How satisfied are you with Council's communication with you regarding your enforcement related complaint?	None of the above
Q11 How satisfied are you with Council's findings of your enforcement related complaint?	None of the above
Q12 Do you have further comment regarding Council's overall investigation of your enforcement related complaint?	No

ATTACHMENT 2



Q13

Please list the title of all documents you will provide. Documents are to be separately emailed to submissions@marcuslanegroup.com.au by no later than 8 January 2021.

Respondent skipped this question

Q14

Do you have any other comments that will assist us with the review?

Yes,

Comments:-

This process is being rushed to comply with the call up items report back date. The timing of such an investigation, I believe is compromised by the fact that some parties may not be able to participate due to the holiday period. I wish to have a discussion with a legal review team member, however I can't do a zoom meeting, and request a telephone discussion.

Q15

Would you like to schedule a Zoom meeting to present an oral submission concerning matters you are not able to describe through this survey (or in document/s you will send by email) during the week commencing 11 January 2021?

Meeting not required



ATTACHMENT 2

SURVEY RESPONSE FROM B

#2

COMPLETE

Collector: Web Link 1 (Web Link)
Started: Wednesday, December 23, 2020 3:41:37 PM
Last Modified: Monday, January 04, 2021 4:52:53 PM
Time Spent: Over a week
IP Address: 110.142.108.96

Page 3: Survey questions

Q1

201 Ferndale Road, Sassafras

What is the address/s of the property/properties where you have observed a land use or development (such as construction of building/s or other structures, earthworks or vegetation removal) that you believe has been carried out without a planning permit?

Q2

- A land use,
Earthworks,
Vegetation removal,
Construction of an outbuilding,
Construction of a dam,
Construction of a structure (not comprising a building or outbuilding)

Which of the following have you observed that you believe was carried out without a planning permit:

Set out a description of each land use or development, the address of each land use or development and the approximate date the use or development commenced below:
I am unsure of what is legally being built and what is not. KCC have been extremely vague on detail when quizzed on activities that have occurred in recent years. Works that I suspect contravene regulations ILLEGAL WORKS TO DRIVEWAY DUE TO 173 PROTECTIVE OVERLAY REMOVAL OF TREES AND NATIVE VEGETATION CARPARK AND RETAINING WALLS NO PLANNING PERMIT OR BUILDING PERMIT BUILDING OF COMERCIAL HOTHOUSES AND CLEARING OF VEGETATION ON RUNOFF TO CREEK REDIRECTION OF TRIBUTERIES OF DOBSONS CREEK EXCEVATION AND CONSTRUCTION OF DAM(S)

ATTACHMENT 2



Q3

What method/s of communication did you use to notify Council about the land use/s or development/s referred to the above?

Phone call/s,

Email/s,

Correspondence/s with Councillors,

Set out a description of the type of communication/s you made and the approximate date/s::

ORIGINALLY (10-12 YRS AGO PHONE CALLS) FROM MID 2019 TO NOW EMAILS AND THE OCASIONAL PHONE CALL

Page 4

Q4

What reason best describes why you did not notify Council of your enforcement related complaint?

Respondent skipped this question

Q5

Can you provide a copy of any written correspondence or other material you submitted to Council (such as photographs, records of times and dates in which enforcement related actions were observed)?

Yes

Q6

Do you have a copy of any other material that will assist us with our enquiry?

Yes

ATTACHMENT 2



Q7

Did Council contact you in response to your complaint?

No,

Please set out details of the response Council made to your complaint, including the manner of response and approximate date/s below:-

EMAILS AND TELEPHONE CALLS TO PLANNING AND WARD COUNCILOR UNANSWERED DURING THE PLANNING PROCESS OUTSIDE OF REQUIRED WRITTEN NOTIFICATION OF APPLICATION AND THE GRANTING OF A PLANNING PERMIT (JACK RICHARDSON PAUL DICKIE JOHN MORTIMER) TELEPHONE CALL TO DOUG WINTLE TO EXPRESS MY CONCERNS AND REQUEST HE GO TO SITE TO OBSERVE ILLEGAL WORKS HIS REPLY WHAT DO YOU WANT ME TO DO ABOUT IT,HE DID EVENTUALLY GO TO SITE AND REPORTED (EMAIL AND TELEPHONE CALL) ALL GOOD THE WORKS WERE MERELY COSMETIC (2019) I EMAILED THE WARD COUNCILLOR PHOTOS AND QUESTIONS FOLLOWED UP BY A PHONE CALL PRIOR TO FEB 20 NO REPLY WAS FORTHCOMING HE WAS PART OF COUNCIL ENVIROMENTAL COMITEE AT THAT TIME AS NO RESPONSES WERE FORTHCOMING I COPIED ALL COUNCILLORS AND THE CEO IN MY COMMUNICATIONS FOLLOWING THIS PAUL DICKIE RESPONDED FOR THE CEO VIA EMAIL ACKNOWLEDGING THE ILLEGAL WORKS HAD TAKEN PLACE BUT WERE THE FAULT OF THE LOCAL COMMUNITY AS WE DID NOT REPORT THEM IN A TIMELY MANNER TO WHICH THE QUESTION WAS HOW DID THIS LARGE SCALE ILLEGAL WORKS GO UNOTICED DURING PLANNING APPLICATION I HAVE 2 YEARS OF COMMUNICATIONS MOSTLY FROM ME TO THE COUNCIL VERY LITTLE FROM THEM

Q8

Can you provide a copy of any correspondence you received from Council?

Yes

Page 5: Survey questions

Q9

How satisfied are you with Council's acknowledgement of your enforcement related complaint?

Dissatisfied



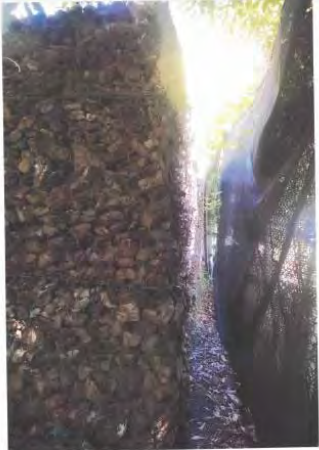
ATTACHMENT 2

<p>Q10</p> <p>How satisfied are you with Council's communication with you regarding your enforcement related complaint?</p>	<p>Very dissatisfied</p>
<p>Q11</p> <p>How satisfied are you with Council's findings of your enforcement related complaint?</p>	<p>Dissatisfied</p>
<p>Q12</p> <p>Do you have further comment regarding Council's overall investigation of your enforcement related complaint?</p>	<p>Yes</p>
<p>Q13</p> <p>Please list the title of all documents you will provide. Documents are to be separately emailed to submissions@marcuslanegroup.com.au by no later than 8 January 2021.</p>	<p>Respondent skipped this question</p>
<p>Q14</p> <p>Do you have any other comments that will assist us with the review?</p>	<p>Yes</p>
<p>Q15</p> <p>Would you like to schedule a Zoom meeting to present an oral submission concerning matters you are not able to describe through this survey (or in document/s you will send by email) during the week commencing 11 January 2021?</p>	<p>30 minute meeting required, Please specify if you have any preferred date or time availability: ANY TIME</p>

ATTACHMENT 3





SUMMARY OF SUPPORTING EVIDENCE - 201 FERNDALE ROAD

VEHICLE CROSSING/CAR PARK/RETAINING WALL	
Provided by A	<p>Evidence in the form of photographs provided with respect to a gabion wall said to be in the order of 3m high.</p> <p>No evidence specific to car park provided, however raises question as to whether planning permit was required for car parking along Ferndale Road and gantry wall.</p> <p>The location of the gantry wall on the site is not clarified, nor is the date of construction. It is assumed the wall is associated with the said car park construction given the absence of evidence to suggest it is a separate structure.</p> <div style="text-align: right;">  </div>
Provided by B	<p>Evidence in the form of email correspondence including:</p> <ul style="list-style-type: none"> - Email to Councillors dated 15 March 2020 raising construction of driveway and hard stand car park prior to application for permit (restaurant use). - Email to Council planning investigation officer dated 15 June 2020 referring to an attached photograph of car park (photograph included in evidence). - Email response from planning investigation officer dated 16 June 2020 advising site detailed in photograph was inspected and that said works were carried out approx. 7 years ago in accordance with road opening permit obtained on 27 November 2012. Refers to the said access being no longer in use and padlocked - is not a car park or intended to be used as a car park for the purpose of the restaurant, therefore no action will be taken. - Email to planning investigation officer dated 19 June 2020 querying if road opening permit was available for public viewing, with response to confirm it was not and may require application under Freedom of Information. - Email to planning investigation officer dated 22 June 2020 referring to independent advice sought regarding car park construction, suggesting carpark development should have been subject to planning/building and engineering approval as per schedule to zone. That development does not enable vehicle access for purpose of road opening permit has retaining walls in excess of 2200mm high and altered pre-existing ground level by in excess of 1000mm, hence walls are structural. Questioning why when inspected was considered above board. - Email response from Council planning investigation officer dated 25 June 2020 confirming that wire rock cages have been discussed with Council's Municipal Building Surveyor and established that those with a height of less than 1m do not require building permit, while those exceeding 1m do (owner to be contacted by Council's Building Department in due course). Advice relating to Council's statute of limitations with respect to legal proceedings and the potential to pursue an enforcement order are explained. - Email to Council officers and Councillors suggesting that an Council's planning investigation officer was confronted with an opinion from an outside expert regarding car park works (a copy of the said opinion was not included in evidence – possibly referring to verbal discussion had on 22 June 2020). - Various other emails to Council officers and Councillors up until 28 July 2020 refer to the car park works, however no specific evidence is included.
Provided by Council	<p>Council's CRS records acknowledge the following:</p> <p>Complaint from B on 8 August 2019:</p> <ul style="list-style-type: none"> - Regarding the criteria upon which plans for a carpark in National Park were approved (unclear if this refers to car park adjacent to road opening or associated with planning application for restaurant use or other). - Planning officer notes having discussed the application process thoroughly and delegation process. <p>Complaint from B on 16 June 2020:</p>



ATTACHMENT 3

	<ul style="list-style-type: none"> - Regarding construction of car park as generally detailed in email abovementioned and seeking advice regarding complaints lodged regarding works without permits. - Planning investigation officer notes site was inspected on same day and discussed with caretaker. Road opening permit (2238/cross) confirmed by assets records was issued on 27 November 2012. Notes that no car park use is evidenced, and crossover no longer used with chain across drive. Notes previous and works allegations have been replied to by another officer. <p>Complaint dated 4 November 2011:</p> <ul style="list-style-type: none"> - Regarding illegal earthworks off Ferndale Road, opposite 184 Ferndale Road. - Planning investigation officer notes that alleged earthworks were unable to be located. Email address of complainant failed in attempt to contact to further discuss. <p>It is not clear if this complaint related to the car park works, or other works.</p> <p>Council's CRS records show no other complaints or active/past enforcement files.</p> <p>No relevant planning permits appear to have been issued.</p>
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GREENHOUSE - SUPPORTING EVIDENCE	
Provided by A	<p>Evidence in the form of the following photographs:</p> <ul style="list-style-type: none"> - Exhibit A provides aerial photographs dated April 2006. - Exhibit B provides aerial photo dated January 2018 (greenhouses constructed). <p>Evidence raises question whether planning permit was required for greenhouse/polyhouse structures.</p> <div style="display: flex; align-items: center;">  <div style="margin-left: 10px;"> <p>EXHIBIT A</p> <hr/>  <p>EXHIBIT B</p> </div> </div>
Provided by B	<p>Evidence in the form of email correspondence including:</p> <ul style="list-style-type: none"> - Email to Councillors dated 15 March 2020 suggesting Council have been given photographic evidence that large scale building and clearing works have taken place without permits (assumed greenhouses - copies of the photographs not supplied nor dates provided to Council confirmed). - Email response from Council officer dated 21 April 2020 advising it is understood that the greenhouses site appear to have been constructed without a planning permit, however, structures appear to have been formalised through Planning Permit P/2015/6723 issued for the use of the land for Agriculture in December 2015. - Email to Council officers and Councillor dated 28 April 2020 makes reference to commercial horticulture buildings / 400sqm glasshouse (various other emails to Councillor officers and Councillors dated between 28 April 2020 to 28 July 2020 make reference to illegal dams however no specific evidence is included).
Provided by Council	<p>Copy of same email produced by B which includes Council officer response dated 21 April 2020 confirming greenhouse construction formalised through Planning Permit P/2015/6723.</p>






ATTACHMENT 3

	<p>A copy of Planning Permit P/2015/6723 and the endorsed plans was not produced.</p> <p>Council's CRS records show no complaints or active/past enforcement files.</p>
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DAMS - SUPPORTING EVIDENCE	
Provided by A	<p>No supporting evidence provided, however questions whether:</p> <ul style="list-style-type: none"> - Planning permit was required or obtained for additional dams to the east and south east of polyhouses. - Whether modification to Dobsons Creek Tributary occurred and whether Melbourne Water had matter referred for comment. <p>It is suggested that a Councillor was advised of concerns of activities on site including dam construction, vegetation removal etc in approximately July 2020.</p> <p>Reference is made to post included on the "Greening Knox" Facebook page dated 30 May 2020.</p> <p>The said post has been located and extracted from the webpage.</p>
	<p>COMMUNITY UNITES OVER ENVIRONMENTAL THREATS! A coalition of residents and community are concerned and disappointed over tree removals, earthworks to waterways and a permit to operate a "high class Japanese Restaurant" up a dead end gravel road, opposite the Dandenong Ranges National Park in The Basin. Apart from seemingly entirely inconsistent with its rural conservation zone, the work to the property in Old Coach Road has seen illegal tree removals and earthworks to waterways which flow to Dobsons Creek, where sediment and nutrients now threaten the local Platypus population. Knox Council ultimately issued retrospective permits for the disturbance and subsequently a permit under delegation to operate the restaurant which will be open day and night although all 11 properties in the immediate neighborhood objected. Wondering if this application was referred to the Knox City Council Environment Advisory Committee and what remedial actions have occurred to replace tree removals and protect the waterways to control sediment and nutrient run-off to our creeks? Pictured outside the property to discuss their concerns today are David Merry (resident), Rosemary Lavin (Animal Justice Party), Erica Peters (KES), Anthony Bigalow (FFDC) and concerned locals Jude Dwight and Yvonne Allred. KES Knox Environment Society First Friends of Dandenong Creek Friends of Koolunga Native Reserve Animal Justice Party AJP Victoria Australian Platypus Conservancy Knox City Council</p>
Provided by B	<p>Evidence in the form of email correspondence including:</p> <ul style="list-style-type: none"> - Email to Councillors dated 15 March 2020 suggesting dams have been constructed altering the natural water course of a protected habitat. - Further email to Councillor dated 8 April 2020 raising illegal building and damming off Dobsons Creek tributaries (dam half size of football field). - Email response from Council officer dated 21 April 2020 advising that: The construction of dams on the site appears to be more complex. From examination of aerial photographs it appears that there are four dams of various sizes on the site. One dam was in existence prior to 2001, two more appear to have been constructed between 2005 and 2007, whilst the final dam appears to have been built in 2013. I am not aware of any recent dam construction on the site – but of course if you have further details Council could investigate further. It is clear that a planning permit is required currently to construct a dam on the site – however that is not necessarily the case for the dams that have been built – in any case investigation and enforcement of potential illegal works is far more effective if matters are reported at the time of the works taking place, rather than many years later. Whilst it is quite appropriate for the matter to be referred to the relevant water authority, I do not see any reason why the concern should impact the assessment of Planning Application P/2019/6025 which has no impact on the dams. - Various other emails to Councillor officers and Councillors dated between 28 April 2020 to 28 July 2020 make reference to illegal dams, however no specific evidence is included.
Provided by Council	<p>Copy of same email produced by B which includes Council officer response dated 21 April 2020 confirming the dates that dams appear to have been constructed.</p> <p>Council's CRS records show no complaints or active/past enforcement files.</p> <p>No relevant planning permits appear to have been issued.</p> <p>However, the planning permit application material for the restaurant use included a copy of the Section 173 Agreement registered on Title in 204. One dam is shown on the endorsed plan associated with Planning Permit P/2002/6484 for the subdivision of the land. A copy of the said planning file for this permit was not produced.</p>

ATTACHMENT 3

VEGATION REMOVAL - SUPPORTING EVIDENCE	
<p>Provided by A</p> <p>Evidence in the form of the following photographs:</p> <ul style="list-style-type: none"> - Exhibit A provides aerial photographs dated April 2006. - Exhibit B provides aerial photo dated January 2018. - Exhibit C provides a photograph of vegetation. <p>Evidence questions:</p> <ul style="list-style-type: none"> - Whether a planning permit was required or obtained (with offsets) for native vegetation removal in vicinity of the structures as identifiable from the images (A and B) and associated with the car park/crossover. - Whether the property is subject to a Land Management Plan and if so, what are owner obligations with respect to environmental weeds. <p>It suggests that areas surrounding the constructed carpark contains native vegetation consistent with EVC 29 Damp Forest, and include the presence of the rare Victorian species <i>Acacia stictophylla</i>. It is unclear if Exhibit C represents the said vegetation.</p> <p>It is suggested that a Councillor was advised of concerns of activities on site including dam construction, vegetation removal etc in approximately July 2020.</p> <p>The "Greening Knox" Facebook page post on 30 May 2020 referred to (as shown above) notes illegal tree removal.</p>	 <p style="text-align: center; color: cyan;">EXHIBIT A</p>  <p style="text-align: center; color: cyan;">EXHIBIT B</p>  <p style="text-align: center; color: cyan;">EXHIBIT C</p>

ATTACHMENT 3



Provided by B	Evidence in the form of email correspondence to Councillor officers and Councillors dated between 15 March 2020 to 28 July 2020. General reference to illegal clearing is made, however without specific details of where or when (assumed to be in association with other mentioned buildings and works).
Provided by Council	Council's CRS records show no relevant complaints or active/past enforcement files. No recent planning permits appear to have been issued. We note that the planning permit issued for the use of the land for agriculture is assumed to have considered vegetation removal in the location of the greenhouses. We have not been provided a copy of this planning application file.



ATTACHMENT 3

OUTBUILDINGS AND SHEDS - SUPPORTING EVIDENCE	
Provided by A	N/A
Provided by B	No supporting evidence provided however the construction of outbuildings/shed was raised in oral submissions. The location of these structures was not specified.
Provided by Council	<p>Council's CRS records show no relevant complaints or active/past enforcement files.</p> <p>The planning permit application material provided for the restaurant use included a copy of the Section 173 Agreement registered on Title in 2004. The endorsed plans included in the Agreement (associated with Planning permit P/2002/6484) have plan annotations to suggest that sheds/outbuildings existed in various locations, including to the north the building envelope associated with the second (now main) dwelling (annotated nursery, greenhouse and nursery growing area) and to the south of the building envelope, generally to the east of Dam 1 (annotated as old sheds).</p>



ATTACHMENT 3

DWELLING WORKS - SUPPORTING EVIDENCE	
Provided by A	N/A
Provided by B	<p>Evidence in the form of email correspondence including:</p> <ul style="list-style-type: none"> - Email response from Council officer dated 21 April 2020 advising works within dwelling were inspected and found to be internal renovations. - Email to Council officers and Councillors dated 28 April 2020 suggesting photographic evidence was provided to a Councillor and the planning officer handing the planning application prior to the VCAT hearing (this photograph was not produced in the evidence). - Email response from Council planning investigation officer dated 5 June 2020 confirming discussion was had with B on 12 February 202 regarding illegal works and was inspected same day and determined no breach had occurred. Council officer then advised B of outcome by telephone.
Provided by Council	<p>Council's CRS records acknowledge the following:</p> <p>Complain from objector (to planning permit application for restaurant use) on 22 August 2019:</p> <ul style="list-style-type: none"> - Concerned that lots of activity was occurring at the site (truckloads of wood delivery) prior to the issue of a permit/Tribunal hearing. - Planning investigation officer notes on same day that no inspection was required as complaint referred to deliveries rather than works. <p>Complaint from B on 11 and 12 February 2020:</p> <ul style="list-style-type: none"> - Advising that works were in progress. - Planning investigation officer notes site was inspected on 12 February 2020 - the interiors of all buildings were inspected and found the original dwelling at front of land had been internally renovated (new plaster works, kitchen and bathroom, repainting and electrical works - all of which are exempt from planning approval). Notes that the dwelling proposed to be used as a restaurant had no new works carried out and no materials or other matter suggested illegal works occurring. Council officer contacted B and advised of outcome. <p>This complaint is of relevance to the planning application for the restaurant use, which has since been issued a permit.</p>







ATTACHMENT 3

173 AGREEMENT - SUPPORTING EVIDENCE	
Provided by A	Noted in Facebook page post (see above)
Provided by B	<p>Evidence in the form of email correspondence raising general breaches of the agreement.</p> <p>Oral submissions made specific reference to breaches associated with alterations to the original heritage driveway (through widening/hard stand car park areas) and the protection of the creek and platypus. Concerns regarding the ability for the effluent envelope to cater for the approved restaurant and anticipated patronage was also raised.</p>
Provided by Council	<p>Council records do not show record of complaints, nor confirmation of whether any written consents may have been issued to vary any requirement of the agreement.</p> <p>The planning permit application file associated with the restaurant use included a full copy of title and the said agreement.</p> <p>Specifically, it includes requirements that the owner of Lot 2 will not, except with the written consent of the Responsible Authority:</p> <ul style="list-style-type: none"> construct a dwelling and or vehicle or machinery accommodation outside the building envelope for Lot 2 shown on the Endorsed Plan; construct an effluent treatment system outside the effluent envelope for Lot 2 shown on the Endorsed Plan; and construct vehicular access to Lot 2 outside the proposed carriage-way easement shown on the endorsed plan. <p>And that the owner of Lot 2 must protect and must not remove, damage, alter or destroy the following heritage items on Lot 2 except with the written consent of the Responsible Authority;</p> <ul style="list-style-type: none"> the original driveway: adjacent oak tree rows and stone retaining wall; the red brick stairway leading downhill from the driveway; and the stone seat constructed into the stone retaining wall. <p>It also required the owner to develop and maintain the lots in accordance with the Environmental Management Plan. The plan provides for broader aims, effects and control measures relating to the overall management of the land and particularly during the construction of the second dwelling associated with the two lot subdivision.</p> <p>A copy of planning permit P/2002/6484 issued for the residential subdivision and which subsequently required the that the owner enter into this specific Section 173 Agreement was not provided by Council.</p>



ATTACHMENT 3

SUMMARY OF SUPPORTING EVIDENCE - 123 OLD COACH ROAD

CONSTRUCTION OF RETAINING WALL - SUPPORTING EVIDENCE	
Provided by A	N/A
Provided by B	<p>Evidence in the form of photographs below constructed retaining wall and removed sleepers.</p> <p>Evidence in the form of email correspondence including:</p> <ul style="list-style-type: none"> - Email to Council planning investigation officer dated 4 June 2020 raising investigation of timber retaining wall (with photos attached) said to have been constructed to replace/repair existing structure, hence no building permit was obtained. - Response from planning investigation officer dated 5 June 2020 confirming retaining wall examined considered exempt pursuant of Clause 62.02-2 of the Scheme, however building permit required (contact to made by Council’s Municipal Building Surveyor in due course). Investigated as a result of complaint received.
	 
	 
Provided by Council	<p>Council’s CRS records acknowledge:</p> <p>A complaint received on 6 June 2020:</p> <ul style="list-style-type: none"> - Suggesting a new retaining wall had been constructed – concerned constructed without permits. - Planning investigation officer site was inspected same day and reviewed from ROW on western boundary. Observed newly constructed timber retaining wall which exceeded 1m in height, Photographed wall and land. Council records reveal no building permit has been issued for retaining wall. Enquiries pending as to whether planning permit is required – to be discussed with owner. Building department have been notified and provided with photographs (we note photographs referred to not included in records received).



ATTACHMENT 3

FRONT FENCE - SUPPORTING EVIDENCE	
Provided by A	N/A
Provided by B	<p>Evidence in the form of letter from Council property officer identifying the construction of fence encroaching into road reserve along Ferndale Road, and requiring its relocation.</p> <p>Evidence in the form of email correspondence to Council officers/Councillors dated 12 January 2021 noting fence was changed to standard wire to bush fencing (with Council approval) and seeking to reach mutual agreement.</p>
Provided by Council	N/A

ATTACHMENT 4



SUMMARY OF SCHEME PROVISIONS

VEHICLE CROSSING - EARTHWORKS AND RETAINING WALLS

Scheme provisions	Relevant permit requirements
Between late 2011 to late 2012 Amendment VC83 – 18.11.2011 Amendment C124 - 8.11.2012 (No change of relevance – VC87 on 8.08.2012 corrects clerical errors)	A permit is required pursuant to Clause 35.06-5 of the RCZ to carry out any of the following: <ul style="list-style-type: none"> • <u>A building or works associated with a use in Section 2 of Clause 35.06-1. This does not apply to:</u> <ul style="list-style-type: none"> - An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. - An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. - An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. The building must not be used to keep, board, breed or train animals. - A rainwater tank. • Earthworks specified in a schedule to this zone, if on land specified in a schedule • A building which is within any of the following setbacks: <ul style="list-style-type: none"> - 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. - 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. - 20 metres from any other road. - 5 metres from any other boundary - 100 metres from a dwelling not in the same ownership. 100 metres from a waterway, wetlands or designated flood plain Pursuant to the table at Clause 35.06-1, a dwelling, a car park and agriculture (other than animal keeping, apiculture, intensive animal husbandry and timber production) are Section 2 uses. <p>Schedule 1 specifies that a permit is required for the following earthworks on all land:</p> <ul style="list-style-type: none"> • <u>Earthworks which change the rate of flow or the discharge point of water across a property boundary; or</u> • <u>Earthworks which increase the discharge of saline groundwater.</u>
Significant Landscape Overlay, Schedule 4 (SLO4)	Pursuant to Clause 42.03 -2, a permit is required to: <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply: <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required, or; - To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions).

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	<p>Schedule 4 does not specify any buildings or works that do not require a planning permit, nor any particular agricultural activities that do require a permit.</p> <p>This implies that a permit is required to construct a building or construct or carry out works, however not for agricultural activities (other than a dam).</p>
<p>Vegetation Protection Overlay, Schedule 1 (VPO1)</p>	<p>Clause 42.02-2 of the VPO1 refers to permit requirements and exemptions relating to vegetation only (not buildings or works).</p>
<p>Bushfire Management Overlay (WMO on maps)</p>	<p>Pursuant to Clause 44.06-1 of the BMO, a permit is required to:</p> <ul style="list-style-type: none"> • <u>construct a building or construct or carry out works associated with the following uses:</u> <ul style="list-style-type: none"> - <u>Accommodation</u> (including a Dependent person’s unit) - Child care centre - Education centre - Hospital - Industry - Leisure and Recreation - Office - Place of assembly - Retail premises - Timber production • This does not apply to any of the following: <ul style="list-style-type: none"> - If a schedule to this overlay specifically states that a permit is not required. - A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-4. - An alteration or extension to an existing building used for a dwelling or a dependent person’s unit that is less than 50 percent of the floor area of the existing building. - An alteration or extension to an existing building used for accommodation (excluding a dwelling and a dependent person’s unit) that is less than 25 percent of the floor area of the existing building. - <u>A building or works with a floor area of less than 100 square metres ancillary to a dwelling not used for accommodation.</u>
<p>Other relevant provisions:</p>	<p>Clause 72– <i>General Terms</i> defined earthworks as:</p> <ul style="list-style-type: none"> • Land forming, laser grading, levee banks, raised access roads and tracks, building pads, storage embankments, channel banks and drain banks and associated structures. <p>Pursuant to 62.02-2 <i>Buildings and works not requiring a permit unless specifically required by the planning scheme</i>, any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to:</p> <ul style="list-style-type: none"> • Any works necessary to prevent soil erosion, or to ensure soil conservation or reclamation. • Repairs and routine maintenance to an existing building or works.

ATTACHMENT 4



GREENHOUSES

Scheme provisions	Relevant permit requirements
<p>At time "Agriculture" permit was issued in December 2015 Amendment VC121- 21.12.2015</p>	
<p>Rural Conservation Zone, Schedule 1 (RCZ1)</p>	<p>A permit is required pursuant to Clause 35.06-5 of the RCZ to carry out any of the following:</p> <ul style="list-style-type: none"> • A building or works associated with a use in Section 2 of Clause 35.06-1. This does not apply to: <ul style="list-style-type: none"> - An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. - An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. - An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. The building must not be used to keep, board, breed or train animals. - A rainwater tank. • A building which is within any of the following setbacks: <ul style="list-style-type: none"> - 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. - 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. - 20 metres from any other road. - 5 metres from any other boundary. - 100 metres from a dwelling not in the same ownership. - 100 metres from a waterway, wetlands or designated flood plain. <p>Schedule 1 does not specify a different floor area for outbuildings.</p> <p><u>Agriculture</u>, (other than animal keeping, apiculture, intensive animal husbandry and timber production) is a Section 2 use in Table 1 of Clause 35.06-1.</p>
<p>Significant Landscape Overlay, Schedule 4 (SLO4)</p>	<p>Pursuant to Clause 42.03-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply: <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - <u>To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay.</u> • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions). <p>Schedule 4 does not specify any buildings or works that do not require a planning permit, nor any particular agricultural activities that do require a permit.</p>
<p>Environmental Significance Overlay, Schedule 2 (ESO2)</p>	<p>Pursuant to Clause 42.01-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply if a schedule to this overlay specifically states that a permit is not required. • Construct a fence if specified in a schedule to this overlay. • Construct bicycle pathways and trails.

ATTACHMENT 4



	<ul style="list-style-type: none"> • Subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required. • Remove, destroy or lop any vegetation, including dead vegetation (other than for listed exemptions). <p>Schedule 2 as it relates to buildings and works specifies that a permit is <u>not required</u>:</p> <ul style="list-style-type: none"> • For the construction of a building or the construction or carrying out of works in association with: <ul style="list-style-type: none"> - Roadworks. - Dependent Persons Unit. - Domestic Swimming Pool or Spa and associated mechanical and safety equipment. - Pergola which increases a building’s footprint on the site. - Deck which increases a building’s footprint on the site. - Alterations to an existing building or carry out ancillary works. that does not either: <ul style="list-style-type: none"> - Result in excavation or filling within the tree protection root zone of vegetation that would require a permit for its removal, destruction or lopping under this clause. - Result in excavations or filling greater than one (1) metre in depth. • To carry out works necessary for normal maintenance of artificial stormwater treatment ponds (except where works and/or associated vegetation removal exceed one hectare in area, or where machinery access would result in damage to remnant indigenous vegetation). • <u>To undertake development or works that form part of a management plan approved by the responsible authority to enhance the site’s biologically significant attributes.</u>
<p>Bushfire Management Overlay (WMO)</p>	<p>Pursuant to Clause 44.06-1, a permit is required to:</p> <ul style="list-style-type: none"> • Construct a building or construct or carry out works associated with the following uses: <ul style="list-style-type: none"> - Accommodation (including a Dependent person’s unit) - Timber production. <p>(and other uses not of relevance)</p> <p>This does not apply and of the following:</p> <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-3. - An alteration or extension to an existing building used for a dwelling or a dependent person’s unit that is less than 50 percent of the gross floor area of the existing building. - An alteration or extension to an existing building (excluding a dwelling and a dependent person’s unit) that is less than 10 percent of the gross floor area of the existing building. - A building or works ancillary to a dwelling if the following requirements are met: <ul style="list-style-type: none"> <input type="checkbox"/> The combined floor area of all buildings ancillary to the dwelling does not exceed 150 square metres. <input type="checkbox"/> The building or works are located more than 10 metres from any existing building used for Accommodation. - A building or works associated with Timber production provided the buildings or works are not within 150 metres of Accommodation or land zoned for residential or rural residential purposes.
<p>Other relevant provisions:</p>	<p>Clause 62.02-2 specifies that any requirement in this scheme relating to the construction of a building or the construction or carrying out of works, other than a requirement in the Public Conservation and Resource Zone, does not apply to:</p> <ul style="list-style-type: none"> - A crop support or protection structure associated with horticulture, including a trellis, cloche, net and shade cloth. It does not include a structure with a solid roof or solid wall such as a glass house or igloo.

ATTACHMENT 4



DAMS

DAM 1

Scheme provisions	Relevant permit requirements
DAM 1 constructed prior to 2001 NPS1 18.11.1999	
Environmental Rural Zone, Schedule 1 (ERZ1)	<p>A permit is required pursuant to Clause 35.02-3 of the ERZ to carry out any of the following:</p> <ul style="list-style-type: none"> A building or works associated with a use in Section 2 of Clause 35.02-1. Earthworks specified in a schedule to this zone, if on land specified in a schedule. Earthworks include landforming, laser grading, levee banks, lanes, tracks, aqueducts, surface and subsurface drains and any associated structures. A building which is within any of the following setbacks: <ul style="list-style-type: none"> 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. 20 metres from any other road. 5 metres from any other boundary. 100 metres from a dwelling not in the same ownership. 100 metres from a waterway, wetlands or designated flood plain. <u>A dam which is any of the following:</u> <ul style="list-style-type: none"> <u>A capacity greater than that specified in the schedule to this zone.</u> <u>In a permanent waterway.</u> <u>Diverts water from a permanent waterway.</u> <p>Schedule 1 specifies:</p> <ul style="list-style-type: none"> Permit requirements for earthworks on all land: <ul style="list-style-type: none"> A permit is required to construct or carry out earthworks which change the rate of flow or the discharge point of water across a property boundary. A permit is required to construct or carry out earthworks which increase the discharge of saline groundwater. <u>Capacity above which a permit is required to construct a dam on all land:</u> <ul style="list-style-type: none"> <u>3,000 cubic metre capacity.</u>
Vegetation Protection Overlay (VPO1)	Clause 42.02-2 of the VPO1 refers to permit requirements and exemptions relating to vegetation only (not dams or earthworks).
Other relevant provisions:	Clause 72- <i>General Terms</i> did not define 'earthworks' or a 'dam'.

DAMS 2 and 3

Scheme provisions	Relevant permit requirements
DAMS 2 and 3 constructed between 2005-2007 Amendment VC23 19.05.2004 (RCZ1 replaces ERZ1) Amendment C35 - 19.10.2004 (interim SLO7 applied) Amendment C40 - 09.11.2006 (SLO4 replaces interim SLO7- shows Clause 62 exemption relating to dams introduced by VC40) Amendment C65 – 06.12.2007 (Correct errors through the approval of Amendment C40, including buildings and works triggers of SLO4)	
Rural Conservation Zone, Schedule 1 (RCZ1) Note, the permit requirement for buildings and works at Clause 35.06-4 were moved to Clause 36.06-5 through Amendment VC43 – 31.10.2006, however remained the same.	<p>A permit is required pursuant to Clause 35.06-4 of the RCZ (and later at Clause 35.06-5 following amendment CV43 – 31.10.2006) to carry out any of the following:</p> <ul style="list-style-type: none"> A building or works associated with a use in Section 2 of Clause 35.06-1. This does not apply to: <ul style="list-style-type: none"> An alteration or extension to an existing dwelling with a floor area of no more than the area specified in a schedule to this zone or, if no area is specified, 50 square metres.

ATTACHMENT 4



	<ul style="list-style-type: none"> - An alteration or extension to an existing building used for agriculture with a floor area of no more than the area specified in a schedule to this zone or, if no area is specified, 50 square metres. The building must not be used to keep, board, breed or train animals. • <u>Earthworks specified in a schedule to this zone, if on land specified in a schedule.</u> • A building which is within any of the following setbacks <ul style="list-style-type: none"> - 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. - 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. - 20 metres from any other road. - 5 metres from any other boundary. - 100 metres from a dwelling not in the same ownership. - 100 metres from a waterway, wetlands or designated flood plain. <p>Agriculture, (other than animal keeping, apiculture, intensive animal husbandry and timber production) is a Section 2 use in Table 1 of Clause 35.06-1.</p> <p>Schedule 1 specifies the following permit requirements for earthworks on all land:</p> <ul style="list-style-type: none"> • <u>Earthworks which change the rate of flow or the discharge point of water across a property boundary.</u> • <u>Earthworks which increase the discharge of saline groundwater.</u>
<p>Vegetation Protection Overlay (VPO1)</p>	<p>Clause 42.02-2 of the VPO1 refers to permit requirements and exemptions relating to vegetation only (not dams or earthworks).</p>
<p>Significant Landscape Overlay, Schedule 7 (SLO7 Interim control) Relevant from when applied by Amendment C35 - 19.10.2004 Removed by Amendment C40 - 09.11.2006</p>	<p>A permit is required pursuant to Clause 42.03-2 of the SLO to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works. This does not apply:</u> <ul style="list-style-type: none"> - If a schedule to this overlay specifically states that a permit is not required. - To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay. • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions). <p>Schedule 7 of the interim control specifies that:</p> <ul style="list-style-type: none"> • <u>A permit is not required to construct a building or construct or carry out works.</u> <p>This would also imply that <u>a dam does not require a permit to construct.</u></p>
<p>Significant Landscape Overlay, Schedule 4 (SLO4) Relevant from when applied by Amendment C40 - 09.11.2006 (SLO4 replaces interim SLO7)</p>	<p>Pursuant to Clause 42.03-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply: <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - To the conduct of agricultural activities including ploughing and fencing (<u>but not the construction of dams</u>) unless a specific requirement for that activity is specified in a schedule to this overlay • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions).
<p>Schedule 4 at Amendment C40 - 09.11.2006</p>	<p>Schedule 4 at this date specifies that <u>a permit is not required to construct a building or construct or carry out works, including paving, cabling and installation of services, if they do not occur within the tree protection area for existing trees, defined by an aborist, and are to the satisfaction of the responsible authority.</u></p>

ATTACHMENT 4



<p>Schedule 4 at Amendment C65 – 06.12.2007 (corrects Schedule 4 as applied by Amendment C40)</p>	<p>Schedule 4 at this date <u>did not specify any buildings or works that do not require a planning permit, nor any particular agricultural activities that do require a permit.</u></p> <p><u>This implies that a permit is required to construct a dam, under the blanket requirement for a permit to construct a building or construct or carry out works.</u></p>
<p>Other relevant provisions:</p>	<p>Clause 72– <i>General Terms</i> defines earthworks as: Land forming, laser grading, levee banks, raised access roads and tracks, building pads, storage embankments, channel banks and drain banks and associated structures.</p> <p>Pursuant to clause 62.02-1 (as introduced by VC40 on 30.08.2006), any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to:</p> <ul style="list-style-type: none"> • Buildings and works associated with a dam if a licence is required to construct the dam or to take and use water from the dam under the Water Act 1989.

DAM 4

Scheme provisions	Relevant permit requirements
<p>DAM 4 – constructed/expanded between 2012- 2013 Amendment VC83 18.11.2011 Amendment C49 11.04.2013</p>	
<p>Rural Conservation Zone, Schedule 1 (RCZ1)</p>	<p>A permit is required pursuant to Clause 35.06-5 of the RCZ to carry out any of the following:</p> <ul style="list-style-type: none"> • A building or works associated with a use in Section 2 of Clause 35.06-1. This does not apply to: <ul style="list-style-type: none"> - An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. - An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. - An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square, metres. The building must not be used to keep, board, breed or train animals, - A rainwater tank. • <u>Earthworks specified in a schedule to this zone, if on land specified in a schedule.</u> • A building which is within any of the following setbacks <ul style="list-style-type: none"> - 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. - 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. - 20 metres from any other road. - 5 metres from any other boundary. - 100 metres from a dwelling not in the same ownership. - 100 metres from a waterway, wetlands or designated flood plain. <p>A dwelling and agriculture, (other than animal keeping, apiculture, intensive animal husbandry and timber production) are Section 2 uses in Table 1 of Clause 35.06-1.</p> <p>Schedule 1 specifies the following permit requirements for earthworks on all <u>land</u>:</p> <ul style="list-style-type: none"> • <u>Earthworks which change the rate of flow or the discharge point of water across a property boundary.</u> • <u>Earthworks which increase the discharge of saline groundwater.</u>

ATTACHMENT 4



Vegetation Protection Overlay (VPO1) Relevant until removed by Amendment C49 - 11.04.2013	Clause 42.02-2 of the VPO1 refers to permit requirements and exemptions relating to vegetation only (not dams or earthworks).
Significant Landscape Overlay, Schedule 4 (SLO4)	<p>Pursuant to Clause 42.03-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply: <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - To the conduct of agricultural activities including ploughing and fencing (<u>but not the construction of dams</u>) unless a specific requirement for that activity is specified in a schedule to this overlay • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions). <p>Schedule 4 does not specify any buildings or works that do not require a planning permit, nor any particular agricultural activities that do require a permit.</p> <p>This implies that <u>a permit is required to construct a dam</u>, under the blanket requirement for a permit to construct a building or construct or carry out works.</p>
Environmental Significance Overlay, Schedule 2 (ESO2) Applied by Amendment C49 - 11.04.2013	<p>Pursuant to Clause 42.01-2, a permit is required to:</p> <ul style="list-style-type: none"> - <u>Construct a building or construct or carry out works.</u> This does not apply if a schedule to this overlay specifically states that a permit is not required. - Construct a fence if specified in a schedule to this overlay. - Construct bicycle pathways and trails. - Subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required. - Remove, destroy or lop any vegetation, including dead vegetation (other than for listed exemptions). <p>Schedule 2 as it relates to buildings and works specifies that a permit is <u>not required</u>:</p> <ul style="list-style-type: none"> - For the construction of a building or the construction or carrying out of works in association with: <ul style="list-style-type: none"> - Roadworks. - Dependent Persons Unit. - Domestic Swimming Pool or Spa and associated mechanical and safety equipment. - Pergola which increases a building's footprint on the site. - Deck which increases a building's footprint on the site. - Alterations to an existing building or carry out ancillary works. that does not: <ul style="list-style-type: none"> - Result in excavation or filling within the tree protection root zone of vegetation that would require a permit for its removal, destruction or lopping under this clause. - Result in excavations or filling greater than one (1) metre in depth. - To carry out works necessary for normal maintenance of artificial stormwater treatment ponds (except where works and/or associated vegetation removal exceed one hectare in area, or where machinery access would result in damage to remnant native vegetation). - <u>To undertake development or works that form part of a management plan approved by the responsible authority to enhance the site's biologically significant attributes.</u>
Bushfire Management Overlay (WMO)	<p>Pursuant to Clause 44.06-1, a permit is required to:</p> <ul style="list-style-type: none"> • Construct a building or construct or carry out works associated with the following uses: <ul style="list-style-type: none"> - Accommodation (including a Dependent person's unit) - Child care centre - Education centre

ATTACHMENT 4



	<ul style="list-style-type: none"> - Hospital - Industry - Leisure and Recreation - Office - Place of assembly - Retail premises - Timber production. <p>This does not apply and of the following:</p> <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-4. - An alteration or extension to an existing building used for a dwelling or a dependent person's unit that is less than 50 percent of the floor area of the existing building. - An alteration or extension to an existing building used for accommodation (excluding a dwelling and a dependent person's unit) that is less than 25 percent of the floor area of the existing building. - A building or works with a floor area of less than 100 square metres ancillary to a dwelling not used for accommodation.
<p>Other relevant provisions:</p>	<p>Clause 72 – <i>General Terms</i> at the time defined earthworks as:</p> <ul style="list-style-type: none"> • Land forming, laser grading, levee banks, raised access roads and tracks, building pads, storage embankments, channel banks and drain banks and associated structures. <p>62.02-1 <i>Buildings and works not requiring a permit</i> specifies that any requirement in this scheme relating to the construction of a building or the construction or carrying out of works does not apply to:</p> <ul style="list-style-type: none"> • Buildings and works associated with a dam if a licence is required to construct the dam or to take and use water from the dam under the Water Act 1989.

ATTACHMENT 4



VEGETATION REMOVAL - GREENHOUSES

Scheme provisions	Relevant permit requirements								
<p>Relevant to vegetation removal associated with GREENHOUSES at time "Agriculture" permit was issued in December 2015 Amendment VC121 – 21.12.2015</p>									
<p>Rural Conservation Zone, Schedule 1 (RCZ1)</p>	<p>Clause 35.06 specifies permit requirements relating to the use of land for a dwelling, subdivision and buildings and works only (not to remove, destroy or lop vegetation).</p>								
<p>Significant Landscape Overlay, Schedule 4 (SLO4)</p>	<p>Pursuant to Clause 42.03-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Remove, destroy or lop any vegetation specified in a schedule to this overlay. This does not apply:</u> <ul style="list-style-type: none"> - If the table to Clause 42.03-3 specifically states that a permit is not required. - To the removal, destruction or lopping of native vegetation in accordance with a native vegetation precinct plan specified in the schedule to Clause 52.16. <p>At Clause 42.03-3 is a table the following table of exemptions:</p> <div style="background-color: black; color: white; padding: 5px; margin: 10px 0;"> <p>No permit is required to remove, destroy or lop vegetation to the minimum extent necessary if any of the following apply:</p> </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tbody> <tr> <td style="width: 20%;">Bracken</td> <td> <ul style="list-style-type: none"> • The vegetation is bracken (<i>Pteridium esculentum</i>) which has naturally established or regenerated on land lawfully cleared of naturally established vegetation. This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster. </td> </tr> <tr> <td>Crown land</td> <td> <ul style="list-style-type: none"> • The vegetation is to be removed, destroyed or lopped on Crown land and by a person acting under and in accordance with an authorisation order made under sections 82 or 84 of the <i>Traditional Owner Settlement Act 2010</i>. </td> </tr> <tr> <td>Emergency works</td> <td> <ul style="list-style-type: none"> • The vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. • The vegetation is to be removed, destroyed or lopped by a public authority or municipal council to create an emergency access or to enable emergency works. </td> </tr> <tr> <td>Fire protection</td> <td> <ul style="list-style-type: none"> • The vegetation is to be removed, destroyed or lopped for the making of a fuelbreak by or on behalf of a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>). The maximum width of a fuelbreak must not exceed 40 metres. • The vegetation is to be removed, destroyed or lopped for fire fighting measures, fuel reduction burning, or the making of a fuel break up to 6 metres wide. • The vegetation is ground fuel within 30 metres of a building. • The vegetation is to be removed, destroyed or lopped in accordance with a fire prevention notice under: <ul style="list-style-type: none"> • Section 65 of the <i>Forests Act 1958</i>. • Section 41 of the <i>Country Fire Authority Act 1958</i>. • Section 8 of the <i>Local Government Act 1989</i>. • The vegetation is to be removed, destroyed or lopped to keep the whole or any part of any vegetation clear of an electric line in accordance with a code of practice prepared under Part 8 of the <i>Electricity Safety Act 1998</i>. • The vegetation is to be removed, destroyed or lopped in accordance with any code of practice prepared in accordance with Part 8 of the <i>Electricity Safety Act 1998</i> in order to minimise the risk of bushfire ignition in the proximity of electricity lines. </td> </tr> </tbody> </table>	Bracken	<ul style="list-style-type: none"> • The vegetation is bracken (<i>Pteridium esculentum</i>) which has naturally established or regenerated on land lawfully cleared of naturally established vegetation. 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ATTACHMENT 4



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Geothermal energy exploration and extraction	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the <i>Geothermal Energy Resources Act 2005</i>.
Greenhouse gas sequestration exploration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the <i>Greenhouse Gas Geological Sequestration Act 2008</i>.
Greenhouse gas sequestration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the <i>Greenhouse Gas Geological Sequestration Act 2008</i>.
Land management notices	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the <i>Catchment and Land Protection Act 1994</i>.
Land use conditions	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the <i>Catchment and Land Protection Act 1994</i>.
Mineral Exploration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral exploration.
Mineral extraction	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral extraction in accordance with a work plan approved under the <i>Mineral Resources (Sustainable Development) Act 1990</i> and authorised by a work authority granted under that Act.
Noxious weeds	<ul style="list-style-type: none"> The vegetation is a noxious weed the subject of a declaration under section 58 or section 58A of the <i>Catchment and Land Protection Act 1994</i>. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>).
Pest animal burrows	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows. In the case of native vegetation the written agreement of an officer of the Department responsible for administering the <i>Flora and Fauna Guarantee Act 1988</i> is required before the vegetation can be removed, destroyed or lopped.
Planted vegetation	<ul style="list-style-type: none"> The vegetation has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry.
Railways	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>).
Regrowth	<ul style="list-style-type: none"> The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.
Road safety	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the <i>Road Management Act 2004</i>) in accordance with the written agreement of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>).

ATTACHMENT 4



	<p>Stone exploration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of the Stone exploration. <p>The maximum extent of vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of vegetation which does not include a tree. 15 trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply to vegetation to be removed, destroyed or lopped to enable costeaning and bulk sampling activities.</p> <hr/> <p>Stone extraction</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone extraction in accordance with a work plan approved under the <i>Mineral Resources (Sustainable Development) Act 1990</i> and authorised by a work authority granted under that Act. <hr/> <p>Surveying</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools. <hr/> <p>Schedule 4 specifies that <u>a permit is required to remove, destroy or lop a tree if it has a height of 5 metres or more or a trunk girth greater than 0.5 metre when measured at a height of 0.5 metres above adjacent ground level (on sloping ground to be taken on the uphill side of the tree base) or immediately above the ground for multi-stemmed trees. This does not apply to a tree that is:</u></p> <ul style="list-style-type: none"> Listed in Table 1 of this schedule. Dead. This exemption does not apply to standing dead tree with a trunk girth of 0.4 metre or more at a height of 1.3 metres above ground level. Monterey (Radiata) Pine (<i>Pinus radiata</i>). This exemption does not apply where the tree is part of a row of three (3) or more trees. A tree with its trunk within two metres of the main roof structure of an existing building used for accommodation (excluding a fence). A tree overhanging the roof of a building used for Accommodation, excluding outbuildings and works normal to a dwelling. This exemption only allows the removal, destruction or lopping of that part of the tree which is overhanging the building consistent with the Australian Standard® AS 4373 – 2007, ‘Pruning of amenity trees’. The minimum amount necessary to maintain a Minor utility installation in accordance with a current signed Memorandum of Understanding between Knox City Council and the relevant service provider. For maintenance pruning only and no more than 1/3 of the foliage of any branch is removed from any individual plant. This exemption does not apply to: <ul style="list-style-type: none"> Pruning or lopping of the trunk of a tree or shrub. Vegetation within a road or railway reserve <p>Table 1 of Schedule 4 lists the followings:</p> <p>Table 1 – Species exempt from permit under Part 3.0 above</p> <table border="1"> <thead> <tr> <th>Botanical name</th> <th>Common name</th> </tr> </thead> <tbody> <tr> <td><i>Acacia baileyana</i></td> <td>Cootamundra Wattle</td> </tr> <tr> <td><i>Acacia decurrens</i></td> <td>Early Black Wattle</td> </tr> <tr> <td><i>Acacia elata</i></td> <td>Cedar Wattle</td> </tr> <tr> <td><i>Acacia floribunda</i></td> <td>White Sallow Wattle</td> </tr> <tr> <td><i>Acacia longifolia</i> subsp. <i>longifolia</i></td> <td>Sallow Wattle</td> </tr> <tr> <td><i>Acer negundo</i></td> <td>Box Elder</td> </tr> <tr> <td><i>Acer pseudoplatanus</i></td> <td>Sycamore</td> </tr> <tr> <td><i>Arbutus unedo</i></td> <td>Strawberry Tree</td> </tr> <tr> <td><i>Chamaecytisus palmensis</i></td> <td>Tagasate; Tree Lucerne</td> </tr> <tr> <td><i>Coprosma repens</i></td> <td>Mirror Bush</td> </tr> </tbody> </table>	Botanical name	Common name	<i>Acacia baileyana</i>	Cootamundra Wattle	<i>Acacia decurrens</i>	Early Black Wattle	<i>Acacia elata</i>	Cedar Wattle	<i>Acacia floribunda</i>	White Sallow Wattle	<i>Acacia longifolia</i> subsp. <i>longifolia</i>	Sallow Wattle	<i>Acer negundo</i>	Box Elder	<i>Acer pseudoplatanus</i>	Sycamore	<i>Arbutus unedo</i>	Strawberry Tree	<i>Chamaecytisus palmensis</i>	Tagasate; Tree Lucerne	<i>Coprosma repens</i>	Mirror Bush
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	<p>Greenhouse gas sequestration</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the <i>Greenhouse Gas Geological Sequestration Act 2008</i>.
	<p>Land management notices</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the <i>Catchment and Land Protection Act 1994</i>.
	<p>Land use conditions</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the <i>Catchment and Land Protection Act 1994</i>.
	<p>Mineral Exploration</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral exploration.
	<p>Mineral extraction</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral extraction in accordance with a work plan approved under the <i>Mineral Resources (Sustainable Development) Act 1990</i> and authorised by a work authority granted under that Act.
	<p>Noxious weeds</p> <ul style="list-style-type: none"> ▪ The vegetation is a noxious weed the subject of a declaration under section 58 or section 58A of the <i>Catchment and Land Protection Act 1994</i>. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>).
	<p>Pest animal burrows</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows. ▪ In the case of native vegetation the written agreement of an officer of the Department responsible for administering the <i>Flora and Fauna Guarantee Act 1988</i> is required before the vegetation can be removed, destroyed or lopped.
	<p>Planted vegetation</p> <ul style="list-style-type: none"> ▪ The vegetation has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry.
	<p>Railways</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>).

ATTACHMENT 4



	<p>Regrowth</p> <ul style="list-style-type: none"> The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster. <hr/> <p>Road safety</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the <i>Road Management Act 2004</i>) in accordance with the written agreement of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>). <hr/> <p>Stone exploration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of the Stone exploration. <p>The maximum extent of vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of vegetation which does not include a tree. 15 trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply to vegetation to be removed, destroyed or lopped to enable costeering and bulk sampling activities.</p> <hr/> <p>Stone extraction</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone extraction in accordance with a work plan approved under the <i>Mineral Resources (Sustainable Development) Act 1990</i> and authorised by a work authority granted under that Act. <hr/> <p>Surveying</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools. <hr/> <p>Pursuant to Schedule 2 of the ESO a permit is <u>not required to remove, destroy or lop vegetation that is:</u></p> <ul style="list-style-type: none"> Not indigenous within Knox (e.g. Victorian species of <i>Boronia</i> or <i>Grevillea</i>). A tree with its trunk within two metres of the main roof structure of an existing building used for accommodation (excluding a fence). A tree overhanging the roof of a building used for Accommodation, excluding outbuildings and works normal to a dwelling. This exemption only allows the removal, destruction or lopping of that part of the tree which is overhanging the building consistent with the Australian Standard[®] AS 4373 – 2007, ‘Pruning of amenity trees’. Grass within a lawn, garden or other planted area and is to be mown or slashed for maintenance only. Grass within existing pasture and is to be cut or grazed. The minimum amount necessary to maintain a Minor utility installation in accordance with a current signed Memorandum of Understanding between Knox City Council and the relevant service provider. Required to be removed for normal maintenance of artificial stormwater treatment ponds (except where the vegetation removal and/or associated works exceed one hectare in area, or where machinery access would result in damage to indigenous vegetation). Seedlings or regrowth less than three years old and the land is being maintained for established pasture, crops or garden. Woody plants on an existing dam wall. For maintenance pruning only and no more than 1/3 of the foliage of any branch is removed from any individual plant. This exemption does not apply to: <ul style="list-style-type: none"> Pruning or lopping of the trunk of a tree or shrub. Vegetation within a road or railway reserve.
Bushfire Management Overlay (WMO)	The permit requirements at Clause 44.06-1 do not apply to vegetation removal.

ATTACHMENT 4



<p>Clause 52.17 Native vegetation</p>	<p>Pursuant to Clause 52.17-2, a permit is required to:</p> <ul style="list-style-type: none"> • remove, destroy or lop native vegetation, including dead native vegetation. <u>This does not apply:</u> <ul style="list-style-type: none"> - <u>If the table to Clause 52.17-7 specifically states that a permit is not required.</u> - <u>To the removal, destruction or lopping of native vegetation specified in the schedule to this clause.</u> - <u>To an area specified in the schedule to this clause.</u> <p>The table at Clause 52.17-7 provides for the following exemptions:</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p>No permit is required to remove, destroy or lop native vegetation to the minimum extent necessary if any of the following apply:</p> </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Crown Land</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • To manage Crown land. The works must be: <ul style="list-style-type: none"> • by or on behalf, or with the written permission of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>); and • on Crown land managed by or on behalf of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>). • The vegetation is to be removed, destroyed or lopped on Crown land and by a person acting under and in accordance with an authorisation order made under sections 82 or 84 of the <i>Traditional Owner Settlement Act 2010</i>. </td> </tr> <tr> <td style="padding: 5px;">Dead vegetation</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • The native vegetation is dead. <p>This exemption does not apply to standing dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level.</p> </td> </tr> <tr> <td style="padding: 5px;">Emergency works</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • The native vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. • By or on behalf of a public authority or municipal council to create an emergency access or to enable emergency works. </td> </tr> <tr> <td style="padding: 5px;">Existing and approved buildings</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • To enable the: <ul style="list-style-type: none"> • Construction of a building approved by a planning permit granted under this planning scheme or by building permit granted under <i>Building Act 1993</i>, before 15 September 2008. • Use and maintenance of a building constructed or approved by a planning permit granted under this planning scheme or by building permit granted under <i>Building Act 1993</i>, before 15 September 2008. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> • Enable the operation or maintenance of a fence. • Native vegetation located more than 10 metres from a building. </td> </tr> <tr> <td style="padding: 5px;">Existing buildings and works in the Farming Zone and Rural Activity Zone</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> • To enable the use or maintenance of a building or works used for Agricultural production, including a dam, utility service, bore, horticultural trellising and accessway, in the Farming Zone or the Rural Activity Zone. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> • The use or maintenance of a Dwelling. • The operation or maintenance of a fence. • Native vegetation located more than 10 metres from a building or works. </td> </tr> </table>	Crown Land	<ul style="list-style-type: none"> • To manage Crown land. 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ATTACHMENT 4



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The maximum width of a fuelbreak must not exceed 40 metres. The native vegetation is a tree overhanging the roof of a building used for Accommodation. This exemption only allows the removal, destruction or lopping of that part of the tree which is overhanging the building and which is necessary for fire protection. In accordance with a fire prevention notice under: <ul style="list-style-type: none"> Section 65 of the <i>Forests Act 1958</i>. Section 41 of the <i>Country Fire Authority Act 1958</i>. Section 8 of the <i>Local Government Act 1989</i>. To keep the whole or any part of any native vegetation clear of an electric line in accordance with a code of practice prepared under Part 8 of the <i>Electricity Safety Act 1998</i>. In accordance with any code of practice prepared in accordance with Part 8 of the <i>Electricity Safety Act 1998</i> in order to minimise the risk of bushfire ignition in the proximity of electricity lines. 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ATTACHMENT 4



	<p>Lopping and pruning for maintenance</p> <ul style="list-style-type: none"> Pruning or lopping for maintenance only and no more than 1/3 of the foliage is removed from any individual plant. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> Pruning or lopping of the trunk of a tree or shrub. Native vegetation within a road or railway reservation.
	<p>Mineral exploration</p> <ul style="list-style-type: none"> To enable the carrying out of Mineral exploration.
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	<p>New buildings and works in the Farming Zone and Rural Activity Zone</p> <ul style="list-style-type: none"> To enable the construction of a building or works used for Agricultural production, including a dam, utility service, bore and accessway, in the Farming Zone or the Rural Activity Zone. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of native vegetation which does not include a tree. 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply:</p> <ul style="list-style-type: none"> To the construction or operation of a pivot irrigation system or horticultural trellising.
	<p>New dwellings in the Farming Zone and Rural Activity Zone</p> <ul style="list-style-type: none"> To enable the construction of a Dwelling, in the Farming Zone or the Rural Activity Zone. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period is must not exceed any of the following:</p> <ul style="list-style-type: none"> 300 square metres of native vegetation which does not include a tree. 5 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 1 native tree if the tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply:</p> <ul style="list-style-type: none"> To the construction of a tennis court, horse ménage or swimming pool.
	<p>Personal use</p> <ul style="list-style-type: none"> Native vegetation removal by cutting only to obtain reasonable amounts of wood for personal use by the owner or occupier of the land. Personal use includes wood used for firewood, the construction of fences and buildings on the same land, and hobbies such as craft. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> Standing living and dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. Living native vegetation on contiguous land in the same ownership with an area less than 10 hectares.
	<p>Pest animal burrows</p> <ul style="list-style-type: none"> To enable the removal of pest animal burrows in the Farming Zone or the Rural Activity Zone. <p>Unless in accordance with the written agreement of an officer of the Department responsible for administering the <i>Flora and Fauna Guarantee Act 1998</i>, the maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of native vegetation which does not include a tree. 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level.

ATTACHMENT 4



	<p>Planted vegetation</p> <ul style="list-style-type: none"> The native vegetation has been planted or grown as a result of direct seeding for Crop raising, Extensive animal husbandry, aesthetic or amenity purposes, including: agroforestry (the simultaneous and substantial production of forest and other agricultural products from the same land unit), shelter belts, woodlots, street trees, gardens or the like. <p>This exemption does not apply if public funding was provided to assist in planting or managing the native vegetation and the terms of the funding did not anticipate removal or harvesting of the vegetation.</p>
	<p>Railways</p> <ul style="list-style-type: none"> To maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>).
	<p>Regrowth</p> <ul style="list-style-type: none"> For regrowth which has naturally established or regenerated on land lawfully cleared of naturally established native vegetation and is: <ul style="list-style-type: none"> Less than 10 years old; or Bracken (<i>Pteridium esculentum</i>); or Less than ten years old at the time of a Property Vegetation Plan being signed by the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>), and is shown on that Plan as being 'certified regrowth', and is on land that is to be used or maintained for cultivation or pasture during the term of that Plan; or Within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p>This exemption does not apply to land on which native vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>
	<p>Road safety</p> <ul style="list-style-type: none"> To maintain the safe and efficient function of an existing road managed by a public authority or municipal council in accordance with the written agreement of the Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>).
	<p>Stone exploration</p> <ul style="list-style-type: none"> To enable the carrying out of the Stone exploration. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of native vegetation which does not include a tree. 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply to costeaning and bulk sampling activities.</p>
	<p>Stone extraction</p> <ul style="list-style-type: none"> To enable the carrying out of Stone extraction in accordance with a work plan approved under the <i>Mineral Resources (Sustainable Development) Act 1990</i> and authorised by a work authority granted under that Act.
	<p>Site area</p> <ul style="list-style-type: none"> The native vegetation is on land which, together with all contiguous land in one ownership, has an area of less than 0.4 hectare. This exemption does not apply to native vegetation within a road reservation.
	<p>Stock movements on roads</p> <ul style="list-style-type: none"> As a result of moving stock along a road. This exemption does not apply to grazing as a result of holding stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding.
	<p>Surveying</p> <ul style="list-style-type: none"> To establish sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools.

ATTACHMENT 4



	<p>Utility installations</p> <ul style="list-style-type: none"> ▪ To maintain a Minor utility installation. ▪ To maintain a Utility installation in accordance with a code(s) of practice approved by Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>), incorporated into this scheme and listed in the Schedule to this Clause. ▪ To enable the construction of a Utility installation in accordance with a code(s) of practice approved by Secretary of the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the <i>Conservation, Forest and Lands Act 1987</i>), incorporated into this scheme and listed in the Schedule to this Clause. <hr/> <p>Vehicle access from public roads</p> <ul style="list-style-type: none"> ▪ To enable the construction or maintenance of a vehicle access across a road reserve from a property boundary to a public road, subject to authorisation from the relevant public land manager. <p>This exemption only applies to properties which share a common boundary with the road reserve.</p> <p>The maximum total width of native vegetation permitted to be removed, destroyed or lopped under this exemption is 6 metres.</p> <p>This exemption does not apply where there is a practical opportunity to site the accessway to avoid the removal, destruction or lopping of native vegetation.</p> <hr/> <p>Weeds</p> <ul style="list-style-type: none"> ▪ To enable the removal or destruction of a weed listed in the schedule to this clause. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> • 1 hectare of native vegetation which does not include a tree. • 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level. <hr/> <p>The schedule at Clause 52.17 provides further exemptions for the:</p> <ul style="list-style-type: none"> • removal, destruction or lopping of native vegetation to an area specified in the schedule to this clause. <p>The following are listed as native vegetation which no permit is required to remove, destroy or lop for the area covered by the Knox Planning Scheme:</p>
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ATTACHMENT 4



Area	Description of native vegetation for which no permit is required to remove, destroy or lop
The area covered by the Knox Planning Scheme	<p><i>Acacia floribunda</i> - White Sallow-wattle <i>Acacia howittii</i> - Sticky Wattle <i>Acacia longifolia</i> subspecies <i>longifolia</i> - Sallow Wattle <i>Acacia longifolia</i> subspecies <i>sophorae</i> - Coast Wattle <i>Acacia pravissima</i> - Ovens Wattle <i>Acacia provincialis</i> - Wirilda <i>Acacia retinodes</i> - Wirilda <i>Acmena smithii</i> - Lilly Pilly <i>Callitris rhomboidea</i> - Port Jackson Pine <i>Chenopodium pumilio</i> - Clammy Goosefoot <i>Corymbia maculata</i> - Spotted Gum <i>Dichanthium sericeum</i> - Silky Blue-grass <i>Eucalyptus botryoides</i> - Bangalay or Southern Mahogany <i>Eucalyptus globulus</i> - Southern Blue Gum <i>Grevillea rosmarinifolia</i> - Rosemary Grevillea <i>Kennedia rubicunda</i> - Dusky Coral-pea <i>Leptospermum laevigatum</i> - Coast Tea-tree <i>Melaleuca amillarlis</i> - Bracelet Honey-myrtle <i>Melaleuca decussata</i> - Totem-poles <i>Myoporum insulare</i> - Common Boobialla <i>Paspalum distichum</i> - Water Couch <i>Passiflora cinnabarina</i> - Red Passion-flower <i>Pittosporum undulatum</i> - Sweet Pittosporum <i>Portulaca oleracea</i> - Pigweed <i>Syzygium smithii</i> - Lilly Pilly</p>
Clause 52.48 Bushfire Protection: Exemptions	<p>This clause provide exemptions relating to</p> <ul style="list-style-type: none"> • Exemptions to create defendable space around buildings used for accommodation; • Exemption for vegetation removal along a fenceline; • Exemption for buildings and works associated with a community fire refuge; • Exemption for buildings and works associated with a private bushfire shelter; and • Exemption to create defendable space for a dwelling approved under Clause 44.06 of this planning scheme. <p>None are applicable to greenhouses (not considered accommodation).</p>

VEGETATION REMOVAL - ROAD OPENING WORKS

Scheme provisions	Relevant permit requirements
<p>Relevant to vegetation removal associated with ROAD OPENING WORKS between late 2011- late 2012 Amendment VC83 - 18.11.2011 Amendment C124 - 8.11.2012 (no changes to relevant requirements)</p>	
Rural Conservation Zone, Schedule 1 (RCZ1)	Clause 35.06 specifies permit requirements relating to the use of land for a dwelling, subdivision and buildings and works only (not to remove, destroy or lop vegetation).

ATTACHMENT 4



Significant Landscape Overlay, Schedule 4 (SLO4)	<p>A permit is required pursuant to Clause 42.03-2 of the SLO to:</p> <ul style="list-style-type: none"> • <u>Remove, destroy or lop any vegetation specified in a schedule to this overlay. This does not apply:</u> <ul style="list-style-type: none"> - If the table to Clause 42.03-3 specifically states that a permit is not required. - To the removal, destruction or lopping of native vegetation in accordance with a native vegetation precinct plan specified in the schedule to Clause 52.16. <p>At Clause 42.03-3 is a table the following table of exemptions:</p> <div style="background-color: black; color: white; padding: 5px; margin: 10px 0;"> No permit is required to remove, destroy or lop vegetation to the minimum extent necessary if any of the following apply: </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 5px;">Regrowth</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p style="margin-left: 20px;">This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p> </td> </tr> <tr> <td style="padding: 5px;">Bracken</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is bracken (<i>Pteridium esculentum</i>) which has naturally established or regenerated on land lawfully cleared of naturally established vegetation. <p style="margin-left: 20px;">This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p> </td> </tr> <tr> <td style="padding: 5px;">Noxious weeds</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is a noxious weed the subject of a declaration under section 58 or section 58A of the Catchment and Land Protection Act 1994. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>). </td> </tr> <tr> <td style="padding: 5px;">Pest animal burrows</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows. <p style="margin-left: 20px;">In the case of native vegetation the written agreement of an officer of the Department responsible for administering the Flora and Fauna Guarantee Act 1988 is required before the vegetation can be removed, destroyed or lopped.</p> </td> </tr> <tr> <td style="padding: 5px;">Land use conditions</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the Catchment and Land Protection Act 1994. </td> </tr> <tr> <td style="padding: 5px;">Land management notices</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the Catchment and Land Protection Act 1994. </td> </tr> <tr> <td style="padding: 5px;">Planted vegetation</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry. </td> </tr> <tr> <td style="padding: 5px;">Emergency works</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. ▪ The vegetation is to be removed, destroyed or lopped by a public authority or municipal council to create an emergency access or to enable emergency works. </td> </tr> </table>	Regrowth	<ul style="list-style-type: none"> ▪ The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p style="margin-left: 20px;">This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>	Bracken	<ul style="list-style-type: none"> ▪ The vegetation is bracken (<i>Pteridium esculentum</i>) which has naturally established or regenerated on land lawfully cleared of naturally established vegetation. <p style="margin-left: 20px;">This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>	Noxious weeds	<ul style="list-style-type: none"> ▪ The vegetation is a noxious weed the subject of a declaration under section 58 or section 58A of the Catchment and Land Protection Act 1994. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>). 	Pest animal burrows	<ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows. <p style="margin-left: 20px;">In the case of native vegetation the written agreement of an officer of the Department responsible for administering the Flora and Fauna Guarantee Act 1988 is required before the vegetation can be removed, destroyed or lopped.</p>	Land use conditions	<ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the Catchment and Land Protection Act 1994. 	Land management notices	<ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the Catchment and Land Protection Act 1994. 	Planted vegetation	<ul style="list-style-type: none"> ▪ The vegetation has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry. 	Emergency works	<ul style="list-style-type: none"> ▪ The vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. ▪ The vegetation is to be removed, destroyed or lopped by a public authority or municipal council to create an emergency access or to enable emergency works.
Regrowth	<ul style="list-style-type: none"> ▪ The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p style="margin-left: 20px;">This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>																
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ATTACHMENT 4



	<p>Fire protection</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped for the making of a fuelbreak by or on behalf of a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). The maximum width of a fuelbreak must not exceed 40 metres. ▪ The vegetation is to be removed, destroyed or lopped for fire fighting measures, fuel reduction burning, or the making of a fuel break up to 6 metres wide. ▪ The vegetation is ground fuel within 30 metres of a building. ▪ The vegetation is to be removed, destroyed or lopped in accordance with a fire prevention notice under: <ul style="list-style-type: none"> • Section 65 of the Forests Act 1958. • Section 41 of the Country Fire Authority Act 1958. • Section 8 of the Local Government Act 1989. ▪ The vegetation is to be removed, destroyed or lopped to keep the whole or any part of any vegetation clear of an electric line in accordance with a code of practice prepared under Part 8 of the Electricity Safety Act 1998. ▪ The vegetation is to be removed, destroyed or lopped in accordance with any code of practice prepared in accordance with Part 8 of the Electricity Safety Act 1998 in order to minimise the risk of bushfire ignition in the proximity of electricity lines. ▪ The vegetation is to be removed, destroyed or lopped to reduce fuel loads on roadsides to minimise the risk to life and property from bushfire of an existing public road managed by the relevant responsible road authority (as defined by the Road Management Act 2004) in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Surveying</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools. <hr/> <p>Road safety</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the Road Management Act 2004) in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Railways</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Stone extraction</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act. <hr/> <p>Stone exploration</p> <ul style="list-style-type: none"> ▪ The vegetation is to be removed, destroyed or lopped to enable the carrying out of the Stone exploration. <p>The maximum extent of vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> • 1 hectare of vegetation which does not include a tree. • 15 trees if each tree has a trunk diameter of less than 40
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ATTACHMENT 4



	<p>centimetres at a height of 1.3 metres above ground level.</p> <ul style="list-style-type: none"> 5 trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply to vegetation to be removed, destroyed or lopped to enable costeaning and bulk sampling activities.</p>
Mineral extraction	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act.
Mineral Exploration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral exploration.
Geothermal energy exploration and extraction	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Geothermal Energy Resources Act 2005.
Greenhouse gas sequestration exploration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Greenhouse Gas Geological Sequestration Act 2008.
Greenhouse gas sequestration	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Greenhouse Gas Geological Sequestration Act 2008.
<p>Schedule 4 specifies that a permit is required <u>to remove, destroy or lop a tree if the circumference of the trunk is more than 0.5 metres or the height of the tree is 5 metres or more. This does not apply to species listed in Table 1 of this schedule or to pruning or lopping according to normal horticultural practice for improving a tree's health or structural stability.</u></p> <p>Trunk circumference is measured at a height of 0.5 metre above adjacent ground level (on sloping ground to be taken on the uphill side of the tree base), or immediately above the ground for multi-stemmed trees.</p> <p>Table 1 lists the following <u>environmental weeds</u>:</p>	

ATTACHMENT 4



Table 1 – Environmental weeds	
Common name	Scientific name
Quaking (or American) Aspen	<i>Populus tremuloides</i>
Apple	<i>Malus species</i>
Apricot	<i>Prunus species</i>
Box Elder	<i>Acer negundo</i>
Bracelet (or Giant) Honey-myrtle	<i>Melaleuca armillaris</i>
Cape Wattle	<i>Paraserianthes lophantha (=Albizia lophantha)</i>
Caucasian Ash	<i>Fraxinus oxycarpa</i>
Cedar Wattle	<i>Acacia elata</i>
Cherry Laurel	<i>Prunus laurocerasus</i>
Cherry Plum	<i>Prunus cerasifera</i>
Cootamundra Wattle	<i>Acacia baileyana</i>
Cotoneaster	<i>Cotoneaster species</i>
Darwin's Barberry	<i>Berberis darwinii</i>
Desert Ash	<i>Fraxinus angustifolia subsp. angustifolia</i>
Early Black Wattle	<i>Acacia decurrens</i>
Firethorns	<i>Pyracantha species</i>
Holly	<i>Ilex aquifolium</i>
Karamu	<i>Coprosma repens</i>
Loquat	<i>Eriobotrya japonica</i>
Laurustinus	<i>Viburnum tinus</i>
Maritime Pine	<i>Pinus pinaster</i>
Mirror Bush	<i>Coprosma repens</i>
Nectarine	<i>Prunus species</i>
Peach	<i>Prunus species</i>
Plum	<i>Prunus species</i>
Portugal Laurel	<i>Prunus lusitanica</i>
Privets	<i>Ligustrum species</i>
Sallow Wattle	<i>Acacia longifolia subsp. longifolia</i>
Strawberry Tree	<i>Arbutus unedo</i>
Sweet Pittosporum	<i>Pittosporum undulatum</i>
Sycamore Maple	<i>Acer pseudoplatanus</i>
Tagasaste, Tree Lucerne	<i>Chamaecytisus palmensis</i>
Willows	<i>Salix species</i>
Willow-leaf Hakea	<i>Hakea salicifolia</i>

Source: Lorimer, G. (2006), Witness Statement: [Knox Amendment C40 - Ecological Implications](#), Biosphere Pty Ltd

Vegetation Protection Overlay, Schedule 1

Pursuant to 42.02-2, a permit is required to:

- Remove, destroy or lop any vegetation specified in a schedule to this overlay. This does not apply:
 - If the table to Clause 42.02-3 specifically states that a permit is not required.
 - To the removal, destruction or lopping of native vegetation in accordance with a native vegetation precinct plan specified in the schedule to Clause 52.16.

At Clause 42.02-3 is a table the following table of exemptions:

No permit is required to remove, destroy or lop vegetation to the minimum extent necessary if any of the following apply:	
Regrowth	<ul style="list-style-type: none"> The vegetation is regrowth which has naturally established or regenerated on land lawfully cleared of naturally established vegetation and is within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p>This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>
Bracken	<ul style="list-style-type: none"> The vegetation is bracken (<i>Pteridium esculentum</i>) which has naturally established or regenerated on land lawfully cleared of naturally established vegetation.

ATTACHMENT 4



	<p>This exemption does not apply to land on which vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p>
Noxious weeds	<ul style="list-style-type: none"> The vegetation is a noxious weed the subject of a declaration under section 58 or section 58A of the Catchment and Land Protection Act 1994. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>).
Pest animal burrows	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows. <p>In the case of native vegetation the written agreement of an officer of the Department responsible for administering the Flora and Fauna Guarantee Act 1988 is required before the vegetation can be removed, destroyed or lopped.</p>
Land use conditions	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the Catchment and Land Protection Act 1994.
Land management notices	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the Catchment and Land Protection Act 1994.
Planted vegetation	<ul style="list-style-type: none"> The vegetation has been planted or grown as a result of direct seeding for Crop raising or Extensive animal husbandry.
Emergency works	<ul style="list-style-type: none"> The vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. The vegetation is to be removed, destroyed or lopped by a public authority or municipal council to create an emergency access or to enable emergency works.
Fire protection	<ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped for the making of a fuelbreak by or on behalf of a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). The maximum width of a fuelbreak must not exceed 40 metres. The vegetation is to be removed, destroyed or lopped for fire fighting measures, fuel reduction burning, or the making of a fuel break up to 6 metres wide. The vegetation is ground fuel within 30 metres of a building. The vegetation is to be removed, destroyed or lopped in accordance with a fire prevention notice under: <ul style="list-style-type: none"> Section 65 of the Forests Act 1958. Section 41 of the Country Fire Authority Act 1958. Section 8 of the Local Government Act 1989. The vegetation is to be removed, destroyed or lopped to keep the whole or any part of any vegetation clear of an electric line in accordance with a code of practice prepared under Part 8 of the Electricity Safety Act 1998. The vegetation is to be removed, destroyed or lopped in accordance with any code of practice prepared in accordance with Part 8 of the Electricity Safety Act 1998 in order to minimise the risk of bushfire ignition in the proximity of electricity lines. The vegetation is to be removed, destroyed or lopped to reduce fuel loads on roadsides to minimise the risk to life and property from bushfire of an existing public road managed by the relevant responsible road authority (as defined by the Road Management Act 2004) in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987).

ATTACHMENT 4



	<p>Surveying</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools. <hr/> <p>Road safety</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing public road managed by the relevant responsible road authority (as defined by the Road Management Act 2004) in accordance with the written agreement of the Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Railways</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Stone extraction</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act. <hr/> <p>Stone exploration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone exploration. <p>The maximum extent of vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of vegetation which does not include a tree. 15 trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply to vegetation to be removed, destroyed or lopped to enable costeaning and bulk sampling activities.</p> <hr/> <p>Mineral extraction</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act. <hr/> <p>Mineral Exploration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral exploration. <hr/> <p>Geothermal energy exploration and extraction</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Geothermal Energy Resources Act 2005. <hr/> <p>Greenhouse gas sequestration exploration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Greenhouse Gas Geological Sequestration Act 2008. <hr/> <p>Greenhouse gas sequestration</p> <ul style="list-style-type: none"> The vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Greenhouse Gas Geological Sequestration Act 2008. <p>Schedule 1 specifies that a permit is required to <u>remove, destroy or lop native vegetation.</u></p>
<p>Bushfire Management Overlay (WMO on maps)</p>	<p>The permit requirements at Clause 44.06-1 do not apply to vegetation removal.</p>

ATTACHMENT 4



<p>Clause 52.17 Native vegetation</p>	<p>Pursuant to Clause 52.17-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>remove, destroy or lop native vegetation, including dead native vegetation. This does not apply:</u> <ul style="list-style-type: none"> - If the table to Clause 52.17-6 specifically states that a permit is not required. - To the removal, destruction or lopping of native vegetation specified in the schedule to this clause. - To an area specified in the schedule to this clause. <p>The table at Clause 52.17-6 provides for the following exemptions:</p> <div style="background-color: black; color: white; padding: 5px; margin: 5px 0;"> <p>No permit is required to remove, destroy or lop native vegetation to the minimum extent necessary if any of the following apply:</p> </div> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="border-bottom: 1px solid black; padding: 5px;">Lopping and pruning for maintenance</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The native vegetation is to be pruned or lopped for maintenance only and no more than 1/3 of the foliage is removed from any individual plant. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> · Pruning or lopping of the trunk of a tree or shrub. · Native vegetation within a road or railway reservation. </td> </tr> <tr> <td style="border-bottom: 1px solid black; padding: 5px;">Grasses</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The native vegetation is a grass and is to be mown or slashed for maintenance only. <p>Under this exemption the grass must be:</p> <ul style="list-style-type: none"> · Located within a lawn, garden or other planted area; or · Maintained at a height of at least 100 millimetres above ground level. </td> </tr> <tr> <td style="padding: 5px;">Regrowth</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> ▪ The native vegetation is regrowth which has naturally </td> </tr> </table>	Lopping and pruning for maintenance	<ul style="list-style-type: none"> ▪ The native vegetation is to be pruned or lopped for maintenance only and no more than 1/3 of the foliage is removed from any individual plant. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> · Pruning or lopping of the trunk of a tree or shrub. · Native vegetation within a road or railway reservation. 	Grasses	<ul style="list-style-type: none"> ▪ The native vegetation is a grass and is to be mown or slashed for maintenance only. <p>Under this exemption the grass must be:</p> <ul style="list-style-type: none"> · Located within a lawn, garden or other planted area; or · Maintained at a height of at least 100 millimetres above ground level. 	Regrowth	<ul style="list-style-type: none"> ▪ The native vegetation is regrowth which has naturally
Lopping and pruning for maintenance	<ul style="list-style-type: none"> ▪ The native vegetation is to be pruned or lopped for maintenance only and no more than 1/3 of the foliage is removed from any individual plant. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> · Pruning or lopping of the trunk of a tree or shrub. · Native vegetation within a road or railway reservation. 						
Grasses	<ul style="list-style-type: none"> ▪ The native vegetation is a grass and is to be mown or slashed for maintenance only. <p>Under this exemption the grass must be:</p> <ul style="list-style-type: none"> · Located within a lawn, garden or other planted area; or · Maintained at a height of at least 100 millimetres above ground level. 						
Regrowth	<ul style="list-style-type: none"> ▪ The native vegetation is regrowth which has naturally 						

ATTACHMENT 4



	<p>established or regenerated on land lawfully cleared of naturally established native vegetation and is:</p> <ul style="list-style-type: none"> • Less than 10 years old; or • Bracken (<i>Pteridium esculentum</i>); or • Less than ten years old at the time of a Property Vegetation Plan being signed by the Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987), and is shown on that Plan as being 'certified regrowth', and is on land that is to be used or maintained for cultivation or pasture during the term of that Plan; or • Within the boundary of a timber production plantation, as indicated on a Plantation Development Notice or other documented record, and has established after the plantation. <p>This exemption does not apply to land on which native vegetation has been cleared or otherwise destroyed or damaged as a result of flood, fire or other natural disaster.</p> <hr/> <p>Dead vegetation</p> <ul style="list-style-type: none"> • The native vegetation is dead. This exemption does not apply to standing dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <hr/> <p>Site area</p> <ul style="list-style-type: none"> • The native vegetation is on land which, together with all contiguous land in one ownership, has an area of less than 0.4 hectare. This exemption does not apply to native vegetation within a road reservation. <hr/> <p>Weeds</p> <ul style="list-style-type: none"> • The native vegetation is to be removed, destroyed or lopped to enable the removal or destruction of a weed listed in the schedule to this clause. The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following: <ul style="list-style-type: none"> • 1 hectare of native vegetation which does not include a tree. • 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level. <hr/> <p>Pest animal burrows</p> <ul style="list-style-type: none"> • The native vegetation is to be removed, destroyed or lopped to enable the removal of pest animal burrows in the Farming Zone or the Rural Activity Zone. Unless in accordance with the written agreement of an officer of the Department responsible for administering the Flora and Fauna Guarantee Act 1998, the maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following: <ul style="list-style-type: none"> • 1 hectare of native vegetation which does not include a tree. • 15 native trees if each tree has a trunk diameter of less than 20 centimetres at a height of 1.3 metres above ground level. <hr/> <p>Land use conditions</p> <ul style="list-style-type: none"> • The native vegetation is to be removed, destroyed or lopped to comply with a land use condition served under the Catchment and Land Protection Act 1994.
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ATTACHMENT 4



Land management notices	<ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to comply with land management notice issued under the Catchment and Land Protection Act 1994.
Planted vegetation	<ul style="list-style-type: none"> The native vegetation has been planted or grown as a result of direct seeding for Crop raising, Extensive animal husbandry, aesthetic or amenity purposes, including: agroforestry (the simultaneous and substantial production of forest and other agricultural products from the same land unit), shelter belts, woodlots, street trees, gardens or the like. <p>This exemption does not apply if public funding was provided to assist in planting or managing the native vegetation and the terms of the funding did not anticipate removal or harvesting of the vegetation.</p>
Emergency works	<ul style="list-style-type: none"> The native vegetation presents an immediate risk of personal injury or damage to property and only that part of vegetation which presents the immediate risk is removed, destroyed or lopped. The native vegetation is to be removed, destroyed or lopped by a public authority or municipal council to create an emergency access or to enable emergency works.
Fire protection	<ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped for fire fighting measures, fuel reduction burning, or the making of a fuel break or fire fighting access track up to 6 metres wide. The native vegetation is to be removed, destroyed or lopped for the making of a fuelbreak by or on behalf of a public authority in accordance with a strategic fuelbreak plan approved by the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). The maximum width of a fuelbreak must not exceed 40 metres. The native vegetation is a tree overhanging the roof of a building used for Accommodation. This exemption only allows the removal, destruction or lopping of that part of the tree which is overhanging the building and which is necessary for fire protection. The native vegetation is to be removed, destroyed or lopped in accordance with a fire prevention notice under: <ul style="list-style-type: none"> Section 65 of the Forests Act 1958. Section 41 of the Country Fire Authority Act 1958. Section 8 of the Local Government Act 1989. The native vegetation is to be removed, destroyed or lopped to keep the whole or any part of any native vegetation clear of an electric line in accordance with a code of practice prepared under Part 8 of the Electricity Safety Act 1998. The native vegetation is to be removed, destroyed or lopped in accordance with any code of practice prepared in accordance with Part 8 of the Electricity Safety Act 1998 in order to minimise the risk of bushfire ignition in the proximity of electricity lines. The vegetation is to be removed, destroyed or lopped to reduce fuel loads on roadsides to minimise the risk to life and property from bushfire of an existing public road managed by the relevant responsible road authority (as defined by the Road Management Act 2004) in accordance with the written agreement of the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <p><i>Note: Further permit exemptions for bushfire protection can be found at Clause 52.48.</i></p>
Surveying	<ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped for establishing sight-lines for the measurement of land by surveyors in the exercise of their profession, and if using hand-held tools.

ATTACHMENT 4



	<p>Utility installations</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to maintain a Minor utility installation. The native vegetation is to be removed, destroyed or lopped to maintain a Utility installation in accordance with a code(s) of practice approved by Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987), incorporated into this scheme and listed in the Schedule to this Clause. The native vegetation is to be removed, destroyed or lopped to enable the construction of a Utility installation in accordance with a code(s) of practice approved by Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987), incorporated into this scheme and listed in the Schedule to this Clause. <hr/> <p>Road safety</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing road managed by a public authority or municipal council in accordance with the written agreement of the Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Railways</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to maintain the safe and efficient function of an existing railway or railway access road, in accordance with the written agreement of the Secretary of the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987). <hr/> <p>Existing and approved buildings</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the: <ul style="list-style-type: none"> Construction of a building approved by a planning permit granted under this planning scheme or by building permit granted under Building Act 1993, before 15 September 2008. Use and maintenance of a building constructed or approved by a planning permit granted under this planning scheme or by building permit granted under Building Act 1993, before 15 September 2008. This exemption does not apply to: <ul style="list-style-type: none"> Native vegetation to be removed, destroyed or lopped to enable the operation or maintenance of a fence. Native vegetation located more than 10 metres from a building. <hr/> <p>Existing buildings and works in the Farming Zone and Rural Activity Zone</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the use or maintenance of a building or works used for Agricultural production, including a dam, utility service, bore, horticultural trellising and accessway, in the Farming Zone or the Rural Activity Zone. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> Native vegetation to be removed, destroyed or lopped to enable the use or maintenance of a Dwelling. Native vegetation to be removed, destroyed or lopped to enable the operation or maintenance of a fence. Native vegetation located more than 10 metres from a building or works. <hr/> <p>New buildings and works in the Farming Zone and Rural Activity Zone</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the construction of a building or works used for Agricultural production, including a dam, utility service, bore and accessway, in the Farming Zone or the Rural Activity Zone. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following:</p> <ul style="list-style-type: none"> 1 hectare of native vegetation which does not include a tree. 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply:</p> <ul style="list-style-type: none"> To native vegetation to be removed, destroyed or lopped to enable the construction or operation of a pivot irrigation system or horticultural trellising. Where there is a practical opportunity to site the building or works to avoid the removal, destruction or lopping of native vegetation.
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ATTACHMENT 4



	<p>New dwellings in the Farming Zone and Rural Activity Zone</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the construction of a Dwelling, in the Farming Zone or the Rural Activity Zone. <p>The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period is must not exceed any of the following:</p> <ul style="list-style-type: none"> 300 square metres of native vegetation which does not include a tree. 5 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 1 native tree if the tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. <p>This exemption does not apply:</p> <ul style="list-style-type: none"> To native vegetation to be removed, destroyed or lopped to enable the construction of a tennis court, horse ménage or swimming pool. Where there is a practical opportunity to site the dwelling to avoid the removal, destruction or lopping of native vegetation.
	<p>Fences</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the: <ul style="list-style-type: none"> Construction of a fence on a boundary between properties in different ownership; or Operation or maintenance of an existing fence. <p>The combined maximum width of clearing permitted either side of the fence under this exemption is 4 metres.</p>
	<p>Vehicle access from public roads</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the construction or maintenance of a vehicle access across a road reserve from a property boundary to a public road, subject to authorisation from the relevant public land manager. <p>This exemption only applies to properties which share a common boundary with the road reserve.</p> <p>The maximum total width of native vegetation permitted to be removed, destroyed or lopped under this exemption is 6 metres.</p> <p>This exemption does not apply where there is a practical opportunity to site the accessway to avoid the removal, destruction or lopping of native vegetation.</p>
	<p>Personal use</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped by cutting only to obtain reasonable amounts of wood for personal use by the owner or occupier of the land. Personal use includes wood used for firewood, the construction of fences and buildings on the same land, and hobbies such as craft. <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> Standing living and dead trees with a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. Living native vegetation on contiguous land in the same ownership with an area less than 10 hectares.

ATTACHMENT 4



	<p>Grazing</p> <ul style="list-style-type: none"> The native vegetation is removed, destroyed or lopped as a result of grazing by domestic stock. This exemption allows the removal, destruction and lopping of native vegetation on unused roads specified under Section 400 of the Land Act 1958. <hr/> <p>Stock movements on roads</p> <ul style="list-style-type: none"> The native vegetation is removed, destroyed or lopped as a result of moving stock along a road. This exemption does not apply to the removal, destruction or lopping of native vegetation as a result of holding stock in a temporary fence (including an electric fence) on a roadside for the purpose of feeding. <hr/> <p>Harvesting for timber production – naturally established native vegetation</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of timber harvesting operations and associated activities which are: <ul style="list-style-type: none"> Undertaken on public land under a licence issued by the Secretary to the Department of Sustainability and Environment (as constituted under Part 2 of the Conservation, Forest and Lands Act 1987) under section 52 of the Forests Act 1958; or Authorised in accordance with Part 5 of the Sustainable Forests (Timber) Act 2004. <hr/> <p>Stone extraction</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of Stone extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act. <hr/> <p>Stone exploration</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of the Stone exploration. The maximum extent of native vegetation removed, destroyed or lopped under this exemption on contiguous land in the same ownership in a five year period must not exceed any of the following: <ul style="list-style-type: none"> 1 hectare of native vegetation which does not include a tree. 15 native trees if each tree has a trunk diameter of less than 40 centimetres at a height of 1.3 metres above ground level. 5 native trees if each tree has a trunk diameter of 40 centimetres or more at a height of 1.3 metres above ground level. This exemption does not apply to native vegetation to be removed, destroyed or lopped to enable costeaning and bulk sampling activities. <hr/> <p>Mineral extraction</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral extraction in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act. <hr/> <p>Mineral exploration</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of Mineral exploration. <hr/> <p>Geothermal energy exploration and extraction</p> <ul style="list-style-type: none"> The native vegetation is to be removed, destroyed or lopped to enable the carrying out of geothermal energy exploration or extraction in accordance with the Geothermal Energy Resources Act 2005. <hr/> <p>Greenhouse gas sequestration exploration</p> <ul style="list-style-type: none"> The native vegetation is being removed, destroyed or lopped to enable the carrying out of greenhouse gas sequestration exploration in accordance with the Greenhouse Gas Geological Sequestration Act 2008. <hr/> <p>Greenhouse gas sequestration</p> <ul style="list-style-type: none"> The native vegetation is being removed, destroyed or lopped to enable the carrying out of greenhouse gas sequestration in accordance with the Greenhouse Gas Geological Sequestration Act 2008.
<p>Clause 52.48 Bushfire Protection: Exemptions</p>	<p>Exemptions to create defendable space around buildings used for accommodation are provided at Clause 52.48-1 and state:</p> <ul style="list-style-type: none"> Any requirement of a planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation, or any requirement of this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to: <ul style="list-style-type: none"> The removal, destruction or lopping of any vegetation within 10 metres of an existing building used for accommodation that was:

ATTACHMENT 4



	<ul style="list-style-type: none"> o constructed before 10 September 2009; or o approved by a permit issued under this scheme before 10 September 2009; or o approved by a building permit issued under the Building Act 1993 before 10 September 2009. <p>This does not apply to land covered by the Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes <u>unless the land is included in a Bushfire Management Overlay or is specified in a schedule to this clause.</u></p> <ul style="list-style-type: none"> - <u>The removal, destruction or lopping of any vegetation, except trees, within 30 metres of an existing building used for accommodation that was:</u> <ul style="list-style-type: none"> o constructed before 10 September 2009; or o approved by a permit issued under this scheme before 10 September 2009; or o approved by a building permit issued under the Building Act 1993 before 10 September 2009. <p>This does not apply to land covered by the Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes <u>unless the land is specified in a schedule to this clause.</u></p> <ul style="list-style-type: none"> - <u>The removal, destruction or lopping of any vegetation, except trees, within 50 metres of an existing building used for accommodation where land is within the Bushfire Management Overlay and where the existing building was:</u> <ul style="list-style-type: none"> o constructed before 10 September 2009 or lawfully erected before 18 November 2011 without the need for a planning permit; or o approved by a permit issued under this scheme before 10 September 2009 and erected before 18 November 2011; or o approved by a building permit issued under the Building Act 1993 before 10 September 2009 and erected before 18 November 2011. <ul style="list-style-type: none"> • Any requirement of a planning permit, including any condition, which has the effect of prohibiting the removal, destruction or lopping of vegetation, or any requirement of this planning scheme to obtain a planning permit, or any provision of this planning scheme that prohibits the removal, destruction or lopping of vegetation or requires the removal, destruction or lopping of vegetation to be carried out in a particular manner, does not apply to: <ul style="list-style-type: none"> - <u>The removal, destruction or lopping of any vegetation for a combined maximum width of 4 metres either side of an existing fence on a boundary between properties in different ownership that was constructed before 10 September 2009.</u> <p>This does not apply to land covered by the Banyule, Bayside, Boroondara, Brimbank, Darebin, Glen Eira, Greater Dandenong, Hobsons Bay, Kingston, Knox, Maribyrnong, Maroondah, Melbourne, Monash, Moonee Valley, Moreland, Port of Melbourne, Port Phillip, Stonnington, Whitehorse and Yarra planning schemes <u>unless the land is included in a Bushfire Management Overlay.</u></p> <p>The BMO (then WMO) has applied to the land since Amendment C83 in 2010.</p>
Other relevant provisions:	<p>Clause 72– <i>General Terms</i> defines defensible space and native vegetation as:</p> <ul style="list-style-type: none"> • An area of land around a building where vegetation is modified and managed to reduce the effects of flame contact and radiant heat associated with bushfire. It comprises an inner zone and an outer zone. • Plants that are indigenous to Victoria, including trees, shrubs, herbs, and grasses.

ATTACHMENT 4



OUTBUILDINGS

Scheme provisions	Relevant permit requirements
<p>To south of site, constructed between 2012-2014 Amendment VC83 18.11.2011 Amendment C49 - 11.04.2013 Amendment VC105 – 21.12.2013 (shows changes to RCZ through amendment VC103 on 5.9.2-13)</p>	
<p>Rural Conservation Zone, Schedule 1 (RCZ1) Amendment VC103 on 5.09.2013 changed outbuilding permit exemptions from 50sqm to 100sqm</p>	<p>A permit is required pursuant to Clause 35.06-5 of the RCZ to carry out any of the following:</p> <ul style="list-style-type: none"> • A building or works associated with a use in Section 2 of Clause 35.06-1. This does not apply to: (as per C49 on 11.04.2013): <ul style="list-style-type: none"> - An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres. - <u>An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square metres.</u> - <u>An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 50 square metres. Any area specified must be more than 50 square, metres. The building must not be used to keep, board, breed or train animals.</u> - A rainwater tank. (s per VC105 on 21.12.2013 and as amended by C103 on 5.09.13): <ul style="list-style-type: none"> - An alteration or extension to an existing dwelling provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. - <u>An out-building associated with an existing dwelling provided the floor area of the out-building does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. .</u> - <u>An alteration or extension to an existing building used for agriculture provided the floor area of the alteration or extension does not exceed the area specified in a schedule to this zone or, if no area is specified, 100 square metres. Any area specified must be more than 100 square metres. The building must not be used to keep, board, breed or train animals.</u> - A rainwater tank. • A building which is within any of the following setbacks: <ul style="list-style-type: none"> - 100 metres from a Road Zone Category 1 or land in a Public Acquisition Overlay to be acquired for a road, Category 1. - 40 metres from a Road Zone Category 2 or land in a Public Acquisition Overlay to be acquired for a road, Category 2. - 20 metres from any other road. - 5 metres from any other boundary. - 100 metres from a dwelling not in the same ownership. - 100 metres from a waterway, wetlands or designated flood plain. <p>Schedule 1 does not specify a different floor area for outbuildings in both instances (prior to or following amendment to zone provisions).</p>
<p>Vegetation Protection Overlay (VPO1) Relevant until removed by Amendment C49 - 11.04.2013</p>	<p>Clause 42.02-2 of the VPO1 refers to permit requirements and exemptions relating to vegetation only (not buildings).</p>

ATTACHMENT 4



<p>Significant Landscape Overlay, Schedule 4 (SLO4)</p>	<p>Pursuant to Clause 42.03-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply: <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required. - To the conduct of agricultural activities including ploughing and fencing (but not the construction of dams) unless a specific requirement for that activity is specified in a schedule to this overlay • Construct a fence if specified in the schedule to this overlay. • Remove, destroy or lop any vegetation specified in a schedule to this overlay (other than for listed exemptions). <p>Schedule 4 does not specify any buildings or works that do not require a planning permit, nor any particular agricultural activities that do require a permit.</p> <p>This implies that a permit is required to construct to construct a building.</p>
<p>Environmental Significance Overlay, Schedule 2 (ESO2) Applied to Land by Amendment C49 on 11.04.2013</p>	<p>Pursuant to Clause 42.01-2, a permit is required to:</p> <ul style="list-style-type: none"> • <u>Construct a building or construct or carry out works.</u> This does not apply if a schedule to this overlay specifically states that a permit is not required. • Construct a fence if specified in a schedule to this overlay. • Construct bicycle pathways and trails. • Subdivide land. This does not apply if a schedule to this overlay specifically states that a permit is not required. • Remove, destroy or lop any vegetation, including dead vegetation (other than for listed exemptions). <p>Schedule 2 as it relates to buildings and works specifies that a permit is <u>not required</u>:</p> <ul style="list-style-type: none"> - For the construction of a building or the construction or carrying out of works in association with: <ul style="list-style-type: none"> - Roadworks. - Dependent Persons Unit. - Domestic Swimming Pool or Spa and associated mechanical and safety equipment. - Pergola which increases a building’s footprint on the site. - Deck which increases a building’s footprint on the site. - Alterations to an existing building or carry out ancillary works. that does not: <ul style="list-style-type: none"> - Result in excavation or filling within the tree protection zone of vegetation that would require a permit for its removal, destruction or lopping. - Result in excavations or filling greater than one (1) metre in depth. - To carry out works necessary for normal maintenance of artificial stormwater treatment ponds (except where works and/or associated vegetation removal exceed one hectare in area, or where machinery access would result in damage to remnant native vegetation). - <u>To undertake development or works that form part of a management plan approved by the responsible authority to enhance the site’s biologically significant attributes.</u>
<p>Bushfire Management Overlay (WMO)</p>	<p>Pursuant to Clause 44.06-1, a permit is required to:</p> <ul style="list-style-type: none"> • Construct a building or construct or carry out works associated with the following uses: <ul style="list-style-type: none"> - Accommodation (including a Dependent person’s unit) - Child care centre - Education centre - Hospital - Industry - Leisure and Recreation - Office - Place of assembly - Retail premises - Timber production. <p>This does not apply and of the following:</p> <ul style="list-style-type: none"> - If a schedule to the overlay specifically states that a permit is not required.

ATTACHMENT 4



	<ul style="list-style-type: none"> - A building or works consistent with an agreement under Section 173 of the Act prepared in accordance with a condition of permit issued under the requirements of Clause 44.06-4. - An alteration or extension to an existing building used for a dwelling or a dependent person's unit that is less than 50 percent of the floor area of the existing building. - An alteration or extension to an existing building used for accommodation (excluding a dwelling and a dependent person's unit) that is less than 25 percent of the floor area of the existing building. - <u>A building or works with a floor area of less than 100 square metres ancillary to a dwelling not used for accommodation.</u>
<p>Other relevant provisions:</p>	<p>Clause 62.02-2 <i>Buildings and works not requiring a permit unless specifically required by the planning scheme</i> specifies that any requirement in this scheme relating to the construction of a building or the construction or carrying out of works, other than a requirement in the Public Conservation and Resource Zone, does not apply to:</p> <ul style="list-style-type: none"> - Repairs and routine maintenance to an existing building or works. - Buildings and works associated with cat cages and runs, bird cages, dog houses, and other domestic animal enclosures associated with the use of the land as a dwelling

ATTACHMENT 4



DWELLING WORKS

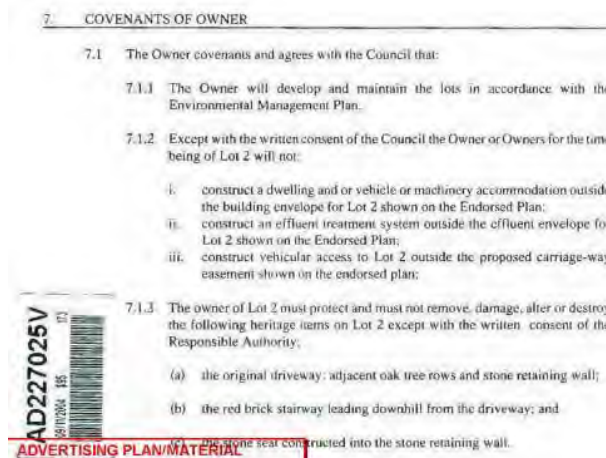
Scheme provisions	Relevant permit requirements
Current Scheme	
Relevant provisions:	<p>62.02-2 <i>Buildings and works not requiring a permit unless specifically required by the planning scheme</i> specifies that any requirement in this scheme relating to the construction of a building or the construction or carrying out of works, other than a requirement in the Public Conservation and Resource Zone, does not apply to:</p> <ul style="list-style-type: none"> • <u>The internal rearrangement of a building or works provided the gross floor area of the building, or the size of the works, is not increased and the number of dwellings is not increased.</u> • <u>Repairs and routine maintenance to an existing building or works.</u>
Does the zone or overlay specify that any of the above requires a permit?	
Rural Conservation Zone, Schedule 1 (RCZ1)	No
Significant Landscape Overlay, Schedule 4 (SLO4)	No
Environmental Significance Overlay, Schedule 2 (ESO2)	No
Bushfire Management Overlay (BMO)	No

ATTACHMENT 4



SECTION 173 AGREEMENT

Council evidence included a copy of the planning permit application for the now approved restaurant use, which includes a copy of the Section 173 Agreement as advertised with the application material. In summary the agreement covenants the following:



The attached plans show the nominated building and effluent envelopes. The Environmental Management Plans is provided at Annexure 1 of the Agreement and provides broad guidance relating to the construction of the additional dwelling (now acted upon), land care and conservation, heritage conservation, continued management and maintenance, and bushfire control.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**PLANNING AND ENVIRONMENT DIVISION****PLANNING AND ENVIRONMENT LIST**VCAT REFERENCE NO. P1604/2019
PERMIT APPLICATION NO. P/2019/6025**CATCHWORDS**

Section 82 of the *Planning and Environment Act 1987*; Knox Planning Scheme, Rural Conservation Zone; proposed restaurant; amenity impact on nearby dwelling.

APPLICANT	David Edward Merry
RESPONSIBLE AUTHORITY	Knox City Council
REFERRAL AUTHORITY	Country Fire Authority
RESPONDENT	Ratio Consultants Pty Ltd
SUBJECT LAND	201 Ferndale Road, Sassafras
WHERE HELD	Melbourne
BEFORE	Christina Fong, Member
HEARING TYPE	Hearing
DATE OF HEARING	17 February 2020
DATE OF ORDER	13 March 2020
CITATION	Merry v Knox CC [2020] VCAT 323

ORDER**Permit granted**

- 1 In application P1604/2019 the decision of the responsible authority is varied.
- 2 In planning permit application P/2019/6025 a permit is granted and directed to be issued for the land at 201 Ferndale Road, SASSAFRAS in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Change of use to a restaurant,
 - Associated buildings and works; and
 - Sale and consumption of alcohol.



Christina Fong
Member

APPEARANCES

For applicant	David Merry in person
For responsible authority	John Klarica, town planner, Calibre Planning Pty Ltd
For referral authority	No appearance
For respondent	Grant Logan, town planner, Ratio Consultants



INFORMATION

Description of proposal	Alterations and additions to existing building (one of the two dwellings within the land) and use part of this building (ground floor) as a 32 seating restaurant. Car parking is provided in two areas: six car spaces at the northern end of the land near the entrance from the road, and another seven near the building where the restaurant is located. A golf-cart shuttle is proposed to bring patrons from the northern car park to the restaurant. Sale and consumption of alcohol is confined to the building where the restaurant is located. The hours of operation are 12pm to 12am seven days a week, in the form of a 12-4pm lunch sitting, and 5pm-12am dinner sitting.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Knox Planning Scheme
Zone and overlays	Rural Conservation Zone (RCZ1), Environmental Significance Overlay (ESO2), Significant Landscape Overlay (SLO4), and Bushfire Management Overlay (BMO).
Permit requirements	Clauses 35.06-1 for the proposed use, 35.06-5 for the buildings and works in the Rural Conservation Zone, 42.01-2 for buildings and works in the ESO, and 42.03-2 for buildings and works in the ESO.
Relevant scheme policies and provisions	Clauses 11, 12, 13, 14, 15, 17, 18.02-4S, 21.01, 21.02, 21.03, 21.04, 21.05, 21.07, 21.10, 22.04, and 65.



Land description	<p>The land is located on the west side of Ferndale Road and accessed from Old Coach Road (to the north), Sassafras. It is irregular in shape and comprised of 2 lots. It has a 26 metres frontage to Old Coach Road and an area of 12.498 hectares.</p> <p>There are currently two dwellings in the land, with a number of outbuildings such as a shed and two dams. The site is heavily vegetated.</p> <p>At the junction of Old Coach Road and Ferndale Road is the review applicant's residence (No. 123 Old Coach Road). Further west along Old Coach Road are several residences in large lots. The visibility of these dwellings to the street is low, due to their deep setbacks and screening by vegetation. Visibility of dwellings become more obvious further west, say from No. 20 Old Coach Road onwards. The area generally east of the site is part of the Dandenong Ranges National Park.</p>
Tribunal inspection	29 February 2020, not accompanied by the parties.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is a review against a Notice of Decision to Grant a permit for a restaurant. Conditions attached to this decision include one for minor modifications to the plans (Condition 1), limiting the number of patrons to a maximum of 32 (Condition 3), and reducing the hours of operation to start later and finishing earlier: 10am to 10 pm weekdays, and 10am to 12am weekends and the 31 December.
- 2 At the commencement of the hearing, Council advised that, and in accordance with an e-mail to the Tribunal, conditions relating to noise management and bushfire management need to be adjusted due to a clerical error or as a requirement by the CFA, referral authority under the Bushfire Management Overlay. These conditions will be adjusted and in the conditions in Appendix A.
- 3 Mr. Merry advised that he has submissions from a number of nearby residents. The authors of these documents are not party to the proceeding and had not lodged a statement of grounds. Only limited weight can be given to these submissions. I have perused these documents and find that they have similar concerns as the review applicant.

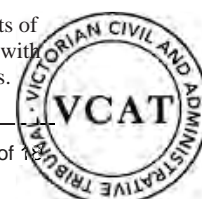
WHAT ARE THE KEY ISSUES?

- 4 The key issues are whether the proposal is an acceptable response to the zoning and the overlays that affect the site, and whether the concerns expressed by the review applicant regarding adverse amenity impact outweigh the merits of the proposal.

THE PROPOSAL'S RESPONSE TO ZONING AND OVERLAYS OF THE PLANNING SCHEME

- 5 The site is in the Rural Conservation Zone. The purpose of this zone, as relevant, are:
 - To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.
 - To protect and enhance natural resources and the biodiversity of the area.
 - To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.

¹ The submissions of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.

To conserve and enhance cultural significance and character of open rural and scenic non-urban landscape.

- 6 The schedule to the zone has the following additional objectives:
- To conserve and enhance the environment of Dobsons Creek and immediate surrounds as a natural system.
 - To conserve areas of remnant vegetation and habitat identified in Council's Remnant Tree Study.
 - To provide development which complements the adjoining Dandenong Ranges National Park.
- 7 In terms of land use, a restaurant use is a section 2, that is permit required. In deciding on an application, the responsible authority is obliged to consider the decision guidelines in clause 35.06-6, which include the impact of the proposed use or development on the environmental capacity of the site to sustain rural enterprise, an integrated land management plan, impact on existing and proposed infrastructure, and whether the proposal would have an adverse impact on surrounding land uses.
- 8 These guidelines also require a consideration of the environmental impact of the proposal in the like of impact on the biodiversity and the flora and fauna of the area, protection of the natural environment, retention of vegetation and faunal habitat, and whether the proposal is sustainable in terms of land management, and onsite effluent disposal.
- 9 There are other criteria to consider, such as design and siting of buildings and works. There are additional considerations if the proposal is a dwelling. These criteria are not directly relevant to the proposal, as it is not for a dwelling and the proposal involves alterations to an existing building with no expansion of the footprint of the building.
- 10 The review applicant is a local resident who is concerned with possible impact on the residential amenity of his dwelling. This concern is shared by other residents, as indicated in the additional submissions he tabled at the hearing.
- 11 The Urban Conservation Zone is not a residential zone in the planning scheme. It is a rural zone. Instead of an aim to facilitate residential development, the purpose of this zone does not do so. This is different for a lot in a residential zone. Say in the General Residential Zone or Neighbourhood Residential Zone, which are common residential zones in metropolitan areas, a single dwelling is as-of-right, subject to whether the land meets the lot size criterion. To protect the amenity of dwellings in these residential zones, amenity impact is a critical consideration, and assessed under clause 55 (for a medium density development under a planning permit), or clause 54 (for a single dwelling under a building permit).



- 12 A 'dwelling' is not an as-of-right use in the Urban Conservation Zone. It is also a section 2 use (subject to a permit) but will become a prohibited use if the conditions against this use are not satisfied. These conditions require it to be the only dwelling on the lot and must meet the requirements of clause 35.06-2. This clause imposes requirements regarding access (all weather road with dimensions adequate to accommodate emergency vehicles), connections to reticulated sewerage or by means of an on-site treatment plant in accordance with EPA policy.
- 13 Further, an assessment for a dwelling use is subject to further assessment in clause 35.06-6, that is whether the proposed dwelling will result in the loss or fragmentation of productive agricultural land, whether it will be adversely affected by agricultural activities on adjacent and nearby land due to dust, noise, odour, use of chemicals and farm machinery, traffic and hours of operation, and whether this dwelling will adversely affect the operation and expansion of adjoining and nearby agricultural uses.
- 14 This put the review applicant's main concern, that is potential impact of the proposed use on the peace and quiet and residential amenity of the area, that they should prevail over a use deemed by council to be consistent and compatible with the use of land in the Rural Conservation Zone.
- 15 The respondent explains the nature of the proposal: a Japanese style of dining that focuses on simplicity and dining in a peaceful environment, drawing on from the sentimental which is tranquil and quiet, The operation of the restaurant will be under a booking system and is an orchestrated process, where people can drive and walk to the site. They will be encouraged to park in the seven car spaces (already existing) near the restaurant or be ferried from the car parking area at the northern end of the site. There will be someone full time in charge of managing the front of the site, where customers will be chauffeured by golf buggies, or they can walk up to the restaurant. He explained that the 'bar' area is intended for tea ceremony. The orientation of the restaurant is such that it will take advantage of the panoramic views in the foreground. He also submits that the hours of operation have been reduced by council to finish by 10pm for weekdays and retained as 12 am at weekends, that his client has accepted this time limitation.
- 16 He also submits that the use is unlikely to be achieve the maximum seating of 32, particularly for the lunch session.
- 17 Mr. Merry's concern is that the local community is made up of the residents of the area, and most of them chose to live there for the peace and quiet, the serenity and proximity to nature.
- 18 The local community is not just the residents in the immediate area. It is made up of other properties and activities on their land. The zoning of the land is clear that protection of residential amenity is not at the forefront of planning of the area. As referred to earlier in these reasons, a consideration for a dwelling use has to face a number of considerations, such as whether



would affect the viability of nearby agricultural or accepted use, even when these uses may generate increased traffic, noise and dust.

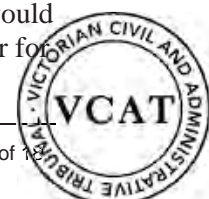
- 19 The proposal is for a restaurant. An earlier permit has been issued for the site for agriculture and in the form of hot houses on the land. I understand that the proposed restaurant will be using produce from the land. However, my decision is not based on the premises that ingredients will be sourced from the site, but whether the use, in the proposed scale, is an acceptable use in the zone and in the promotion of economic activity for a rural area.
- 20 The value of the land, in terms of the planning scheme, is in its contribution to agricultural production, and its impact on the environmental significance of the area through retention of vegetation and significant tree cover of the site.
- 21 The proposal does not involve removal of trees, nor would it cause a reduction in the tree cover of the land. This achieves the objectives for the ESO and SLO that affect the site. An earlier location of additional car spaces at the front of the land (near the northern end) involving some removal of trees have been changed and deleted. The extent of proposed buildings and works are within existing building envelope for one of the dwellings on the land. The use is to use an extended ground floor of this building, with the dwelling use of the building retained.
- 22 The proposal thus involves no expanded footprint or increase in height of the building. I consider this extent of building and work minor, which in turn will have minimal to no impact on the tree cover and natural environment of the site.
- 23 The land use argument is whether this restaurant use achieves the relevant planning policies for land in a Rural Conservation Zone. There are two main policy directions in the Municipal Strategic Planning statement relating to the Dandenong Foothills area, where the site is located.
- 24 Clause 21.03-1 stresses the importance of maintaining and strengthening Knox's green and leafy image. This is a recurring theme throughout Knox's policy to recognise that retention of canopy trees is the single most important factor in retaining Knox's landscape and natural environment. The part played by the Dandenong Foothills is an important one in placing the suburban part of Knox in a rural and natural landscape.
- 25 I agree with council that the proposed restaurant, given the limited building and works, involving no loss of trees or tree canopy, the limited number of patrons, and reduced operating hours, will not unreasonably impact on the environmental and landscape values of the area. This is due to:
 - The minor nature of the proposed buildings and works, contained within the footprint of the existing building by enclosing the existing void space within the central area of the dwelling;
 - These works not impacting on any surrounding vegetation, or are noticeable from surrounding properties;



- The works to construct the car parking and access not impacting on vegetation protected under the ESO and SLO;
 - The location of the restaurant deep in the land within an extensive site and distant from dwellings nearby; and
 - Permit conditions imposed to manage noise, light and waste pollution, by requiring compliance with noise management and waste management plans.
- 26 As for the proposed use, council submits that there is a general encouragement in planning policies for businesses to locate in activity centres. However, it recognises that not businesses must be located in such centres or commercial zones. It contends that certain uses do not have to be located in these area, and that the planning scheme is sufficiently robust to allow businesses to be located in residential or rural areas; that the proposed use is a small business, drawing visitors to the municipality, promoting tourism in the area and capitalising on the natural environment, the adjacent national park and distant views.
- 27 Council further submits that the proposed use complements this particular rural setting by making use of the natural environment to provide a small scale tourist enterprise, by no additional removal of vegetation, by making use of existing building and infrastructure, and without impacting on the biodiversity or the natural environment of the area.
- 28 From a land use point of view, I agree with council's assessment, that it is a small scale use which complements the natural environment of the area without causing erosion of the vegetation cover or depletion of tree cover, by making use of existing building without additional footprint, and maximising on the asset of the site, that is the extensive and panoramic views from the restaurant.
- 29 I also agree with Mr. Logan that the proposed use is a small scale tourism use, making use of existing building stock on the land and taking advantage of the landscape without adversely affecting this landscaping and the tree cover of the site.
- 30 I accept both council's and Mr. Logan's view that not all commercial businesses must occur in existing activity centres and commercial zones, although they will account for most of the businesses in Knox. The proposed use, by the very nature of the restaurant, the low number of customers, and the extensive grounds of the site, is one that takes advantage of the natural environment of the site and the landscape qualities of the Dandenong ranges, and represents a low scale tourism use.

APPLICANT'S CONCERNS

- 31 Mr. Merry's concerns are those relating to the site being in a bushfire area and the extreme danger of bushfire to the use, increased traffic which would be catastrophic for the area, inadequacy of the local road system to cater for



increased traffic, possibility of the proposed car parking not working which would depend on the restaurant using a pre-booking system instead of customers arriving on their own accord, impact of proposal on the wild life of the area, amenity impact in lights shining on existing dwellings and additional noise, and the proposal being detrimental to the rural character of the area. To him, these impacts are not appropriate to the local community, which is made up of the eleven residences in that part of the area.

- 32 With regard to bushfire risks, the site is affected by the Bushfire Management Overlay. The Dandenong Ranges had experienced bushfires in the past. This does not mean use and development in the area should be quarantined, particularly when this hazard can be managed. Importantly, the CFA is the expert authority on bushfire and the referral authority for this issue under the Bushfire Management Overlay. It has requested a number of conditions on the permit which have been included. I consider the CFA's no objection and its permit conditions as a satisfactory and appropriate way to manage bushfire hazards of the land.
- 33 With regard to increased traffic, the proposal will generate increased traffic compared to the current use and development of the land, a site that is over 12 hectares in area. Mr. Merry is concerned with the local road system not able to cope with the increased traffic, and where part of the road is single width. Council's traffic engineer has assessed the traffic and parking side of the proposal and offered no objection. I consider council's traffic engineer having the necessary expertise in road management, given it is the road authority for the local road system and having local knowledge of road capabilities and conditions.
- 34 My inspection of the site reveals that parts of Old Coach Road is a single width road. However, this does not mean the road cannot allow for two way traffic. Two vehicles can pass each other, or one can go to the side and wait for a vehicle to pass. Rural roads are generally unpaved or have urban standard of construction. They are expected to manage traffic generated by rural uses, such as agriculture or animal husbandry, often involving trucks and heavy vehicles. There is no evidence or expert opinion to counter council's traffic engineer's assessment.
- 35 As for noise, it is a matter subject to EPA guidelines and policies. A permit condition has stated the relevant EPA policies to be met.
- 36 As for light shining into windows of existing dwellings, the nearest dwelling likely to be impacted is No. 123 Old Coach Road, the review applicant's property. This lot sits on the low side of the road. Along the Old Coach Road boundary is a brush-fence of around 1.8 metres high within that property that wraps around its Old Coach Road frontage and part of the Ferndale Road frontage. The house sits on a slope on the downhill side of Old Coach Road in a part single storey and part two storey building. Its roof is barely above the brush fence. The brush fence is an effective screen to prevent light spill from the road and from nearby properties.



CONCLUSION

- 37 In all, I am not persuaded by the review applicant's argument that the proposed use should be refused. I am satisfied that it is acceptable in the Rural Conservation Zone, consistent with planning policies, and various issues of concern to the review applicant, such as bushfire and noise, are managed by permit conditions.
- 38 The conditions contained in the Notice of Decision to Grant a Permit have been modified to correct a clerical error as pointed out by council, to update CFA's permit conditions, inclusion of a mandatory bushfire condition according to clause 44.06-5 and clarify the noise condition as discussed at the hearing.
- 39 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Christina Fong
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	P/2018/6025
LAND	201 Ferndale Road SASSAFRAS VIC 3787

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Change of use to a restaurant, associated buildings and works, and sale and consumption of liquor.

CONDITIONS**Amended Plans**

- 1 Prior to the issue of a Building Permit under the *Building Act 1993* for the development, amended development plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The development plans must be approved prior to other plans required by this permit. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - 1.1 A Red Line Area (area in which alcohol is to be sold and consumed) on the Ground Floor Plan.
 - 1.2 Dimensions of the floor plans.
 - 1.3 An annotation stating ‘The gravel vehicular crossing must be thoroughly compacted with vibrator rolled and sealed to prevent dirt, dust or any loose materials washing onto the road surface. Gravel must be good quality laterite, free from clay, vegetation, silt etc.’
 - 1.4 An annotation stating ‘All structures (including signage, fences, letterboxes and meter boxes) must clear of the splayed area (2m x 2.5m) or no more than 900mm high near the access way in accordance with Knox Planning Scheme Clause 52.06-8.’
 - 1.5 Swept path diagrams for waste vehicle must be provided to show how the vehicle can access the site, turn and exit in a forward direction.
 - 1.6 An annotation stating ‘the existing gravel surface access road not disturbed and car parking spaces 1-6 surface to be constructed above grade with permeable material over geotextile with excavation limited to removal of surface debris only.’
 - 1.7 Waste Management Plan in accordance with Condition 10.



1.8 A Noise Management Plan in accordance with Condition 11.
to the satisfaction of the Responsible Authority.

Amended Bushfire Management Plan

2 Before the development starts (or the commencement of use as appropriate to the conditions), an amended Bushfire Management Plan must be submitted to and endorsed by the Responsible Authority. The plan must be generally in accordance with the submitted Bushfire Management Plan prepared by Terramatrix and dated 11/06/2019 but updated to show:

Construction standards

2.1 Nominate a minimum Bushfire Attack Level of 12.5 (BAL-12.5) that the building will be designed and constructed to.

Bushfire Emergency Management Plan

2.2 Prior to commencement of the use, prepare and submit bushfire emergency plan (BEP) to the satisfaction of the Responsible Authority that addresses that following matters.

- (a) Premises details
 - Describe property and business details.
 - Identify the purpose of the BEP stating that the plan outlines procedures for:
 - i **Closure of premises** on any day with a Fire Danger Rating of Severe, Extreme and Code Red.
 - ii **Evacuation** (evacuation from the site to a designated safer off-site location).
 - iii **Shelter-in-place** (remaining on-site in a designated building).
- (b) Review of the BEP
 - Outline that the plan must be reviewed and updated annually prior to the commencement of the declared Fire Danger Period.
 - Include a Version Control Table.
- (c) Roles & Responsibilities
 - Detail the staff responsibilities for implementing the emergency procedures in the event of a bushfire. This must include assigning responsibility for the:
 - Management and oversight of emergency procedures.
 - Training of employees in emergency procedures.
 - Accounting for all persons during the emergency procedures.
- (d) Emergency contact details



- Outline organisation/position/contact details for emergency services personnel
- (e) Bushfire monitoring procedures
- Details the use of radio, internet and social networks that will assist in monitoring potential threats during the bushfire danger period.
 - Describe and show (include a map) the area to be monitored for potential bushfire activity (i.e. within 30 km of the site).
- (f) Action Statements – trigger points for action
- i Prior to the Fire Danger Period
- Describe on-site training sessions and fire equipment checks.
 - Identify maintenance of bushfire mitigation measures such as vegetation management (including implementation of mitigation measures required by any endorsed Bushfire Management Plan).
- ii Closure of premise during forecast FDR days (i.e. Severe, Extreme and Code Red)
- Outline guest notification procedures and details of premises closure (including timing of closure).
- iii Evacuation
- Identify triggers for evacuation from site. For example, when evacuation is recommended by emergency services.
 - Details of the location/s of the offsite emergency assembly location.
 - Transport arrangements for staff and guests including details such as:
 - Number of vehicles required
 - Name of company providing transportation
 - Contact phone number for transport company
 - Time required before transportation is likely to be available
 - Estimated travelling time to destination
 - Actions after the bushfire emergency event.
- iv. Shelter-in-place
- Show the location and describe the type of shelter-in-place.
 - Triggers for commencing the shelter-in-place option.
 - Procedures for emergency assembly in the shelter-in-place building.



- 3 The bushfire protection measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defensible space, water supply and access, must be maintained to the satisfaction of the responsible authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

Use

- 4 All activities associated with the use must be restricted to only inside the facility.

Operating Capacity

- 5 No more than thirty-two (32) patrons are permitted on site at any one time.
- 6 The serving of customers, including the sale and consumption of liquor must operate between and not exceed the following hours, without the written consent of the Responsible Authority:
- | | |
|-------------------------------------|-------------------|
| 6.1 Weekdays (Sunday-Thursday) | 10:00am-10:00pm |
| 6.2 Friday & Saturday & 31 December | 10:00am – 12:00am |

General

- 7 The use/development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 8 The use/development must be in accordance with the endorsed plans.
- 9 Alcohol may only be sold or consumed within the area bound by the red line on the endorsed plan.
- 10 Once the use is started it must be continued to the satisfaction of the Responsible Authority.

Waste Management Plan

- 11 Prior to the commencement of works, the applicant is to submit a Waste Management Plan (WMP) to the satisfaction of the Responsible Authority. The WMP forms part of the endorsed plans and must not be varied without prior written consent from the Responsible Authority. The WMP must include but is not limited to:
- 11.1 Commercial Waste Areas
 - 11.2 Residential Waste Areas
 - 11.3 Grease and Oil Interceptor Areas
 - 11.4 Waste bin cleaning and maintenance resources
 - 11.5 Waste Collection Procedures / Protocols



11.6 Litter management in public areas of the proposed site to the satisfaction of the Responsible Authority.

Noise Management Plan

12 Prior to the commencement of works, the applicant is to submit a Noise Management Plan (NMP) to the satisfaction of the Responsible Authority. The NMP forms part of the endorsed plans and must not be varied without prior written consent from the Responsible Authority. The NMP must include but is not limited to:

- 12.1 Demolition and construction noise
- 12.2. Waste collection noise
- 12.3 Commercial delivery noise
- 12.4 Body Corporate gardening, cleaning and maintenance times
- 12.5 Noise from fixed domestic plant
- 12.6 Audible intruder alarms
- 12.7 Pest Control
- 12.8 Odour Control

to the satisfaction of the Responsible Authority.

General amenity

- 13 At the request of the Responsible Authority, the operator will within 30 days supply an assessment of the noise emitted from the site by a qualified acoustic consultant with readings taken at times specified by the responsible authority. The assessment will document compliance with relevant noise control criteria at nearby residential premises. All costs associated with such an assessment are to be borne by the operator of the premises.
- 14 In the event that any unreasonable detriment as determined by the Responsible Authority is caused to the amenity of the area as a result of noise emanating from the activities within the site hereby permitted, noise amelioration measures must be undertaken to address this amenity issues to the satisfaction of the Responsible Authority.
- 15 No speakers or amplified music is to be located external to the building.
- 16 Noise emissions from the premises must comply with the requirements of the State Environment Protection regulations.
- 17 The use must be managed so that the amenity of the area is not detrimentally affected through the:
 - 17.1 Transport of materials, goods or commodities to or from the land;



- 17.2 Appearance of any building, works, or materials;
 - 17.3 Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, wastewater, waste products, grit or oil;
 - 17.4 Presence of vermin.
- To the satisfaction of the Responsible Authority

Car Parking & Accessways

- 18 The driveway is common property and must be kept clear to enable manoeuvres from the car spaces. No parking is permitted in the designated turning area.
- 19 Parking areas and driveways must be kept available and maintained for these purposes at all times to the satisfaction of the Responsible Authority.

Stormwater

- 20 Stormwater runoff from all buildings and hardstanding surfaces shall be properly collected and discharged in a complete and effective system of drains within the property and shall not cause or create a nuisance to abutting properties.

Amenity During Construction

- 21 Upon commencement and until conclusion of the development, the developer shall ensure that the development does not adversely affect the amenity of the area in any way, including:
 - 21.1 the appearance of building, works or materials on the land
 - 21.2 parking of motor vehicles
 - 21.3 transporting of materials or goods to or from the site
 - 21.4 hours of operation
 - 21.5 stockpiling of top soil or fill materials
 - 21.6 air borne dust emanating from the site
 - 21.7 noise
 - 21.8 rubbish and litter
 - 21.9 sediment runoff
 - 21.10 vibration

Should the development cause undue detriment to the amenity of the area then immediate remedial measures must be undertaken to address the issue as directed by, and to the satisfaction of, the Responsible Authority.



Permit expiry

22 This permit will expire if one of the following circumstances applies:

22.1 The use is not started within two years of the date of this permit.

22.2 The use is discontinued for a period of two years.

Pursuant to Section 69 of the *Planning & Environment Act 1987*, the Responsible Authority may extend:

- The commencement date referred to if a request is made in writing before the permit expires or within six (6) months afterwards.
- The completion date referred to if a request is made in writing within 12 months after the permit expires and the development started lawfully before the permit expired.

– End of conditions –

