

#### 9.4 APPLICATION FOR AN EXTENSION OF TIME TO A PLANNING PERMIT PLP218/13 FOR A 111 LOT SUBDIVISION AND REMOVAL OF NATIVE VEGETATION AT 85 RESERVOIR ROAD, BROADFORD

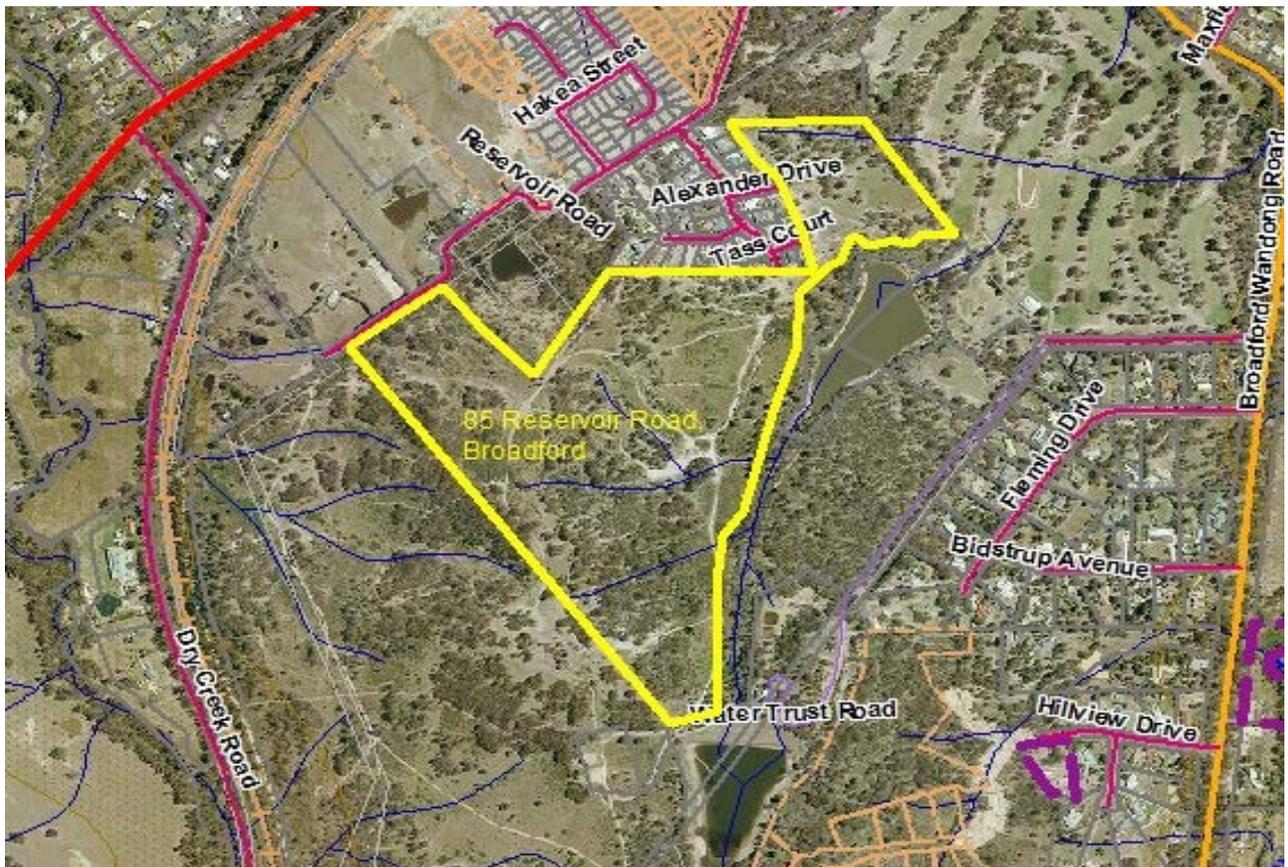
**Author:** Mathew Mertuszka - Principal Planner

**File No:** PLP218/13

**Attachments:** Nil

<b>Planning Permit No:</b>	PLP218/13
<b>Planning Officer:</b>	Mathew Mertuszka
<b>Address:</b>	85 Reservoir Road BROADFORD VIC 3658
<b>Property No:</b>	114788
<b>What the Permit allows:</b>	111 lot subdivision and removal of native vegetation
<b>Applicant:</b>	Millar & Merrigan
<b>Officer Declaration of Conflict of Interest:</b>	No officers involved in the preparation of this report have any direct or indirect interest in this matter

#### SITE MAP



APPLICATION FOR AN EXTENSION OF TIME TO A PLANNING PERMIT PLP218/13 FOR A 111 LOT SUBDIVISION AND REMOVAL OF NATIVE VEGETATION AT 85 RESERVOIR ROAD, BROADFORD (CONT.)

## SUMMARY

Council has received a request to extend the life of planning permit PLP218/13, requesting to extend the permit by an additional 2 years to enable the plan to be certified.

Condition 57a of the existing permit states that the permit will expire if the Plan of Subdivision for the first stage of the subdivision is not certified within 2 years of the date of the permit being issued, being 11 September 2015.

The applicant has submitted a request to extend the life of the permit before the expiry date of the permit which was run concurrently to a planning permit amendment, decided at Council's August meeting. The amendment to the permit was refused for a number of reasons including concern for safe access and egress to the proposed subdivision.

## Planning Controls

At time of decision	
Zoning	General Residential Zone
Overlays	Nil
Relevant Policies	See attachment
Particular Provisions	Clauses 52.01, 52.17, 56
Current Planning Controls	
Zoning	General Residential Zone
Overlays	Nil
Relevant Policies	See Attached

## Planning and Environment Act 1987

Section 69 of the *Planning & Environment Act 1987* provides:

- (1) *Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies may ask the responsible authority for an extension of time.*
- (1A) *The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if—*
  - (a) *the request for an extension of time is made within 12 months after the permit expires; and*
  - (b) *the development or stage started lawfully before the permit expired.*
- (2) *The responsible authority may extend the time within which the use or development or any stage of it is to be started or the development or any stage of it is to be completed or within which a plan under the Subdivision Act 1988 is to be certified.*

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- (3) *If the time is extended after the permit has expired the extension operates from the day the permit expired.*

### **Leading Decisions**

In assessing such applications for extensions of time Council must consider the relevant section of the Act, as outlined above, and also a number of leading decision of the tribunal on such matters.

The following relevant 'tests', drawn from the planning precedent set from the cases of *Best and Zygier v City of Malvern (1975)* and *Kantor v Murrindindi Shire Council (1997)* as well as the general principles of planning practice notes, will be considered to determine whether the application to extend the Planning Permit should be approved by Council, as the Responsible Authority:

- The Responsible Authority should treat the applicant as being obliged to advance some reason or material in support of the grant of an extension, and
- The Responsible Authority may rightly consider:
  - a) Whether there has been a change of planning policy;
  - b) Whether the landowner is seeking to "warehouse" the permit;
  - c) Intervening circumstances as bearing upon grant or refusal;
  - d) The total elapse of time;
  - e) Whether the limit originally imposed was adequate;
  - f) The economic burden imposed on the landowner by the permit;
  - g) The probability of a permit issuing should a fresh application be made.

### **Discussion**

The application to extend the life of the planning permit was received concurrently with an application to amend the planning permit. That amendment application was considered by Council at its ordinary meeting on 20 August 2019 and was refused for the following reasons:

1. *The proposal is inconsistent with Clauses 11.02-1S & 11.03-3S, 3 of the Mitchell Planning Scheme as the proposal:*
  - a) *will not strengthen and enhance the character and identities of towns within the region;*
  - b) *will not protect areas important to open space, landscapes and provide increased residential density in appropriate areas; and*
  - c) *fails to address established neighbourhood character and landscape considerations.*
  
2. *The proposal is inconsistent with Clause 13.02-1S of the Mitchell Planning Scheme as the proposal fails to priorities the protection of human life over all other policy considerations.*

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3. *The proposal is inconsistent with Clause 15.01-3S & 15.01-5S of the Mitchell Planning Scheme as the proposal:*
  - a) *Does not provide for a connected, safe subdivision layout that would contribute to healthy neighborhoods;*
  - b) *the proposed subdivision does not respect the pattern and urban structure of existing surrounding development;*
  
4. *The proposal is inconsistent with Clause 21.02-1 of the Mitchell Planning Scheme as the proposal fails to plan for the orderly development of existing settlements;*
  
5. *The design of the proposed subdivision is not consistent with Standard C6 of Clause 56.03-5 (Neighbourhood Character Objective) as the proposed amended design does not respect the existing bushland character of the land does not respond to and integrate with the surrounding urban environment.*
  
6. *The proposal is inconsistent with the Decision Guidelines at Clause 65 of the Mitchell Planning Scheme and results in a poor planning outcome for the area.*

Council in making the decision made particular reference to safety concerns for future residents due to access and egress constraints to the site and in the wider area in general.

In the assessment of the extension of time request officers must address the following questions as extracted from the above referenced VCAT case.

Has there been a change in policy (including changes to zoning and overlay controls)?

Since the issue of the permit a number of policy changes that affect this proposal, including native vegetation controls found in Clause 52.17, have been implemented.

The reforms place greater emphasis on avoiding the removal of vegetation as well as provide a platform to provide greater justification to remove vegetation with high retention value. It had also identified that the vegetation located on the development site is considered to be an endangered ecological class. The old provisions under which the application was considered did not account for this level of detail.

Under the revised provisions the subject site classification and the quantity of vegetation to be removed would fall under 'Detailed' Category, which is the highest assessment pathway as opposed the previous 'high risk based pathway', which had reduced requirements.

Other policy changes relevant to this application since the time of assessment relate to the General Residential Zone and the introduction of the Garden Area Provisions, which set out to protect amenity of residential subdivision particularly in infill development sites. A new permit would introduce the ability for Council to incorporate the retention of some vegetation into the development above that considered under the policies of the day.

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Is the landowner seeking to “warehouse” the permit?

The permit holder is not considered to be warehousing the permit given that the ownership of the site has changed hands since the issue of the permit. Recently the applicant has sought changes to the permit in the view of carrying out the development in the short to medium term.

Are there any intervening circumstances?

The applicant has not demonstrated any intervening circumstances in relation to seeking an extension of time apart from the change in ownership details.

What has been the total elapse of time since the original issue of Permit?

At the time of the request being submitted, the total elapse of time since the original issue of the permit is 1 year and 9 months. It should be noted that Council Officers had concurrently been dealing with a Section 72 Amendment to the permit which was heard at Council's Ordinary August meeting, where the amendment was unanimously refused by Council.

Was the limit originally imposed adequate?

It is considered that the limit originally imposed by the planning permit was reasonable. However, given the change in ownership of the subject land, this has delayed the development moving forward.

Has there been any economic burden imposed on the landowner by the permit?

The requirements of the permit are not considered to have caused any unreasonable economic burden on the permit holder.

What is the probability of a permit issuing should a fresh application be made?

In consideration of the wholesale changes to the relevant Planning Scheme Provisions, it is considered unlikely that a fresh permit would be issued should the proposed layout remain the same as proposed. It is considered that significant alteration to the proposal would be required to enable the proposed development to be supported.

**Other Considerations**

Will the extension of time affect or breach any restrictions (incl. covenants and agreements)?

The extension of time request will not directly breach any covenants and agreements as none currently affect the site.

Would the approval of the extension of time cause material detriment to any person?

Given the significant changes with new dwellings built in the vicinity since the original grant of permit, it cannot be ruled out whether or not the extension of time would cause material detriment to any person. This can be demonstrated by the receipt of a number of objections to the previous amendment application from nearby residents.

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Has there been any significant change to the site or surrounds since the issue of the original permit?

The surrounding area has changed since the issue of the permit with surrounding development around Reservoir Road progressing, the construction of new dwellings within the residentially zoned land in the past two years.

**Conclusion**

Since the issue of the original planning permit there have been comprehensive changes to key planning policies that could potentially alter the outcome should a fresh permit application be made for the same proposal.

In particular, changes to the native vegetation provisions found in Clause 52.17, garden area provision within Clause 32.08-4 as well as a range of State and Local Policies being either introduced and updated that would alter a decision should a new application been made for the same proposal. The request to amend the permit had considered a number of these policy changes and an amended permit would have addressed some of these matters through updated conditions. However, this amendment has been refused and the original permit now stands.

For this reason, it is recommended that the extension of time for the original proposal not be supported.

**RECOMMENDATION**

**THAT** Council having complied with the relevant Sections of the *Planning and Environment Act 1987*, resolve to Refuse an Extension of Time to Planning Permit PLP213/13 at 85 Reservoir Road (Section 2 and Section 5 on PS 513461C), subject to the following reasons:

1. The proposed subdivision may prejudice the strategic outcomes of the Broadford Structure Plan.
2. Since the issue of the permit there have been significant changes to the Victoria Planning Provisions (VPP's) and specific clauses within the Mitchell Planning Scheme through Planning Scheme Amendment VC148 (July 2018) that would directly affect the outcome of the proposal should a fresh application be made.
3. Changes to Clause 52.17 of the Mitchell Planning Scheme through Planning Scheme amendment VC138 (December 2017) has resulting altered controls around native vegetation removal.
4. Planning Scheme amendment VC142 (March 2017) and the introduction to Garden Area Provisions found in Clause 32.08-4 may result in an altered subdivision layout of the site to address these provisions.