

9.7 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION

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File No: CL/04/004

Attachments: Nil

SUMMARY

The following is a summary of planning activity before the Victorian Civil and Administrative Tribunal (VCAT) as well as a list of decisions on planning permit applications dealt with under delegated powers for the period detailed.

RECOMMENDATION

THAT Council receive and note the report on the Victorian Civil and Administrative Tribunal Hearings and Activities carried out under delegation.

Victorian Civil and Administrative Tribunal (VCAT) activity update.

Upcoming appeals

The following is an update of the upcoming VCAT appeals.

| APPEAL DATE | REFERENCE NOS. | ADDRESS | PROPOSAL | APPEAL AGAINST |
|-----------------|--|---------------------------------|--|---|
| 5 February 2019 | VCAT – P1835/2018 Council – PLP177/17 | 67 High Street, Wallan | 4 lot subdivision | Appeal against Council's refusal to grant a planning permit |
| 19 July 2019 | VCAT – P2664/2018 Council – PLP027/18 | 51 Tootle Street, Kilmore | Multi lot subdivision & removal of native vegetation | Appealing conditions included in the permit |
| 24 July 2019 | VCAT – P57/2019 Council – PLP207/18 | 5 Springridge Boulevard, Wallan | 2 lot subdivision | Appeal against Council's refusal to grant a planning permit |

VCAT decisions since last report

530 Arkells Lane, Bylands

Council had previously approved the use and development of the above land for a transfer station. This decision was appealed by neighbouring land owners.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

The hearing occurred on Thursday 26 October 2018. A decision to set aside Council's approval has been received. Rather than refusing the application the tribunal has directed that the application re-commence with Council. This is to allow time to ascertain the requirement to undertake a Cultural Heritage Management Plan as part of the proposal. One was not undertaken as part of the original application process and the tribunal has directed that this is a question which needs to be resolved before the application proceeds any further.

Officers will now re-commence the application process and request this information from the applicant. The application will then follow the normal process before a final decision by Council.

9 Eden Place, Wallan

Council previously refused a planning permit application (PLP328/17) for the construction of 6 dwellings at 9 Eden Place in Wallan. The permit application appealed the refusal and a hearing occurred on 14 January 2019. A direction has now been received from the tribunal directing that Council's decision be set aside and that a permit should be issued.

Council had formed the view that as the Development Plan Overlay had been applied to the area, and the applicant had failed to address the requirements of this control, that the proposal would prejudice the coordinated development of the precinct. The tribunal member formed a contrary view and based upon their belief that the proposed development would not prejudice the precinct directed that a permit issue. This is a most disappointing decision from Council's perspective.

85 Reservoir Road, Broadford

Council had previously refused an amendment to an existing planning permit which allowed for the staged subdivision of land and removal of vegetation at 85 Reservoir Road in Broadford. The amendment proposed a greater lot yield in a smaller part of the overall land holding. Consequently, Council also refused permission to extend the life of the existing permit. Both decisions were appealed to VCAT.

On 31 January and 6 February officers attended a compulsory conference whereby agreement was reached to allow for the extension of time to be approved and that the applicant would withdraw their application to amend the existing permit. This is seen as a common sense approach to allow for the developer to come back to Council to negotiate a better site specific outcome that addresses Council's concerns and also provides for a better development outcome.

Wallara Waters Estate, Wallan

Council issued planning permit PLP015/18 for the staged multi-lot subdivision of land at the Wallara Waters estate in Wallan East to facilitate the development of the balance of their phase 1 area in line with an approved development plan for that area. That approval contained conditions from a determining authority, being VicRoads, requiring infrastructure upgrades and drainage work which the developer had appealed.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

On 4 February 2019 officers and representatives of all parties attended a compulsory conference relating to the appeal. At the conference agreement was reached on a reworded requirement for the timing on the delivery of necessary infrastructure upgrades. As agreement was reached by all parties, an order was made by the tribunal to that effect and a hearing is no longer required and is vacated. This is recorded as a variation of Council's previous decision.

Activities Carried out Under Delegation

A list of planning permit applications dealt with under delegated powers for the months of December 2018 and January 2019 are included below.

| Permit No. | Address | Description of Permit | Decision | Date Approved |
|-------------------|-------------------------------------|--|----------------------|---------------|
| South Ward | | | | |
| PLP166/18 | 200 Donovans Lane BEVERIDGE | Use and development of the land for a telecommunication facility | Planning Permit | 03/12/18 |
| PLP202/18 | 61 Wallan Whittlesea Road WALLAN | Staged multi-lot subdivision of the land | Planning Permit | 11/12/18 |
| PLP239/17 | 147 King Street WALLAN | Creation of an easement SPEAR S109403E | Planning Permit | 13/12/18 |
| PLP191/14.01 | 37 McCarthy Court WALLAN | 2 lot subdivision and construction of a second dwelling | Section 72 Amendment | 13/12/18 |
| PLP249/18 | 20 Pavonia Avenue WALLAN | Buildings and works for the construction of two dwellings | Planning Permit | 18/12/18 |
| PLP240/18 | 40 Windham Street WALLAN | Multi-unit development and reduction of car parking requirements (visitor parking) | Notice of Decision | 20/12/18 |
| PLP150/18 | 27 Junction Road HEATHCOTE JUNCTION | 2 Lot subdivision and removal of native vegetation SPEAR S123915J | Notice of Decision | 20/12/18 |
| PLP107/18 | 54-56 Stanley Street WALLAN | Use and development of the land for a childcare centre | Planning Permit | 21/12/18 |
| PLP251/18 | 15 Stotts Road WANDONG | Dwelling (Bushfire Replacement) | Planning Permit | 01/08/19 |
| PLP328/17 | 9 Eden Place WALLAN | Construction of 6 dwellings on a lot | Planning Permit | 14/01/19 |
| PLP240/18 | 40 Windham Street WALLAN | Multi unit development and reduction of car parking requirements | Planning Permit | 21/1/19 |
| PLP150/18 | 27 Junction Road HEATHCOTE JUNCTION | 2 Lot Subdivision SPEAR S123915J | Planning Permit | 21/1/19 |
| PLP265/18 | 9 McCarthy Court WALLAN | 2 Lot subdivision | Planning Permit | 24/1/19 |
| PLP274/18 | 2 Zack Street WALLAN | Development of the land for a dwelling | Planning Permit | 23/1/19 |

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

| | | | | |
|---------------------|-----------------------------------|---|---|----------|
| PLP248/18 | Wallan Whittlesea Road WALLAN | Multi-lot subdivision | Planning Permit | 31/01/19 |
| P306291/10.02 | 165 Rowes Lane WALLAN | Staged multi lot subdivision and the removal of native vegetation | Section 72 Amendment (considered by delegate committee) | 08/01/19 |
| Central Ward | | | | |
| PLP167/18 | 4 Mia Mia Road BROADFORD | Buildings and works for the construction of three dwellings and three lot subdivision | Planning Permit | 06/12/18 |
| PLP222/18 | 58C Fitzroy Street KILMORE | Removal of a reserve status SPEAR S128025C | Planning Permit | 05/12/18 |
| PLP221/18 | 515 Last Street BROADFORD | Buildings and works for the construction of a shed | Planning Permit | 07/12/18 |
| PLP282/17 | 84 White Street KILMORE | 7 Lot subdivision | Planning Permit | 14/12/18 |
| PLP282/18 | 12 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 18/12/18 |
| PLP329/18 | 130 Ryans Road CLONBINANE | Buildings and works for the construction of a deck | Planning Permit | 17/12/18 |
| PLP280/18 | 26 Violet Lane BROADFORD | Development of the land for a single dwelling | Planning Permit | 18/12/18 |
| PLP299/18 | 110/33 The Elms Boulevard KILMORE | Buildings and works for the construction of a verandah | Planning Permit | 11/12/18 |
| PLP298/18 | 17 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 18/12/18 |
| PLP300/18 | 28 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP312/18 | 10 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP320/18 | 5 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP321/18 | 6 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP323/18 | 22 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP328/18 | 20 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP318/18 | 4 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 21/12/18 |
| PLP066/18 | 212C High Street BROADFORD | Buildings and works for the construction of a second dwelling and a 2 lot subdivision | Planning Permit | 20/12/18 |
| PLP226/18 | 5 Hammond Court SUNDAY CREEK | Use and development of the land for a dwelling and shed | Planning Permit | 21/12/18 |
| PLP289/18 | 11 Fish Court BROADFORD | Development of the land for a dwelling | Planning Permit | 21/12/18 |
| PLP316/18 | 18 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 21/12/18 |
| PLP301/18 | 138 Gehreys Lane KILMORE | Development of the land for an outbuilding | Planning Permit | 20/12/18 |

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL HEARINGS AND ACTIVITIES CARRIED OUT UNDER DELEGATION (CONT.)

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|-------------------|--|--|--------------------|----------|
| PLP302/18 | 16 Violet Lane BROADFORD | Development of the land for a dwelling | Planning Permit | 21/12/18 |
| PLP145/18 | Balance Of Land 91 Tootle Street KILMORE | Development of 11 dwellings | Planning Permit | 31/12/18 |
| PLP287/18 | 10 Olive Court KILMORE EAST | Use & development of the land for race dog keeping | Planning Permit | 03/01/19 |
| PLP303/18 | 59/33 The Elms Boulevard KILMORE | Construction of verandah | Planning Permit | 01/08/19 |
| PLP255/18 | 6 John Court WATERFORD PARK | Works associated with a septic system | Planning Permit | 01/08/19 |
| PLP007/19 | 1/33 Ferguson Street BROADFORD | Subdivision of the land into three (3) lots SPEAR S130848E | Planning Permit | 22/1/19 |
| PLP242/18 | 114 White Street KILMORE | 2 Lot Subdivision | Planning Permit | 23/1/19 |
| PLP358/17 | 45 & 75 Willowmavin Road KILMORE | Four lot subdivision (resubdivision) | Planning Permit | 23/1/19 |
| PLP237/18 | 6 Maher Court KILMORE | Development of land for industry (concrete batching) | Planning Permit | 23/1/19 |
| PLP272/18 | 12A Melrose Drive KILMORE | Variation of restriction PS741932P to vary the wording to read "no dwelling or outbuilding is to be erected outside the Building Envelope without the prior written consent of the Responsible Authority". | Planning Permit | 31/01/19 |
| PLP172/18 | 125 Kennys Lane BROADFORD | Three lot re-subdivision | Notice of Decision | 23/01/19 |
| PLP261/18 | 36-38 Powlett Street KILMORE | Display of an electronic business identification sign | Planning Permit | 10/01/19 |
| North Ward | | | | |
| PLP308/18 | 18 Park Street SEYMOUR | VICSMART Buildings and works for a verandah and deck | Planning Permit | 07/12/18 |
| PLP131/18 | Crawfords Road HIGH CAMP | Buildings and works for the construction of a dwelling, shed and dam | Planning Permit | 10/12/18 |
| PLP100/18 | 13B Kobyboyn Road SEYMOUR | Multi-lot subdivision and removal of native vegetation | Planning Permit | 13/12/18 |
| PLP132/18 | 43 Loco Street SEYMOUR | Construction of multiple dwellings and a 4 lot subdivision | Planning Permit | 18/12/18 |
| PLP233/18 | 245 Broadford Kilmore Road Moranding | Earthworks associated with an existing dwelling (personal use motorcycle and bmx track) | Notice of Decision | 13/12/18 |

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| | | | | |
|---------------|--|--|-------------------------|----------|
| PLP288/18 | 4 Grey Box Court SEYMOUR | Building and works for the construction of a shed and extension to a dwelling | Planning Permit | 18/12/18 |
| PLP304/18 | 7 Callen Street SEYMOUR | Development of the land for a dwelling | Planning Permit | 20/12/18 |
| PLP232/18 | 2 Red Box Court SEYMOUR | Variation in restrictive covenant PS716084A | Planning Permit | 31/12/18 |
| PLP233/18 | 245 Broadford Kilmore Road MORANDING | Earthworks associated with an existing dwelling (personal use motorcycle and bmx track) | Planning Permit | 17/01/18 |
| PLP258/18 | 25 Goulburn Street SEYMOUR | 2 lot subdivision | Planning Permit | 23/1/19 |
| PLP250/18 | 515 West Road PYALONG | Extension to existing dwelling | Planning Permit | 23/1/19 |
| PLP149/18.01 | Goulburn Park - 36 The Esplanade Seymour | Buildings and works for the construction of a fishing jetty and removal of native vegetation | Amended Planning Permit | 25/1/19 |
| P305156/08.04 | 80-88 Anglesey Street SEYMOUR | Amendment to planning permit P305156/08 issued to subdivide the land into twenty lots | Section 72 Amendment | 31/01/19 |
| PLP246/18 | 144 Tarcombe Road SEYMOUR | Development of the land for multiple dwellings | Planning Permit | 31/01/19 |

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report. Failure to comply with the Child Safe Standards and associated legal responsibilities would be a breach of human rights.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.