10.6 HIDDEN VALLEY PLANNING CONTROL REVIEW

Author: *James McNulty - Manager Development Approvals*

File No: *PL/01/005/02*

Attachments: *1. Hidden Valley Planning Control Review*

1. EXECUTIVE SUMMARY

1.1 Council engaged planning consultants in early 2020 to undertake a review of the planning controls that exist in the Hidden Valley area of Wallan. This was undertaken as the residential elements of the development are in their final stages and there was concern that the various Section 173 agreements that exist to protect the character of the Valley would cease to have effect.

1.2 The review has undertaken an analysis of the current planning controls, history of development and of possible planning controls that could be implemented to ensure the ongoing protection of the character of the area.

1.3 The review makes broad recommendations of controls that could continue to apply in the area to protect the character of the Valley and recommends that a future Planning Scheme Amendment be undertaken to implement the future controls.

1.4 This report recommends that Council adopt the Hidden Valley Planning Control Review and it be used to inform a future planning scheme amendment to update the planning controls of Hidden Valley.

RECOMMENDATION

THAT Council adopt the Hidden Valley Planning Control Review (12 June 2020) as per attachment 1 and endorse its use to inform a future Planning Scheme Amendment to incorporate its recommendations into the Mitchell Planning Scheme.

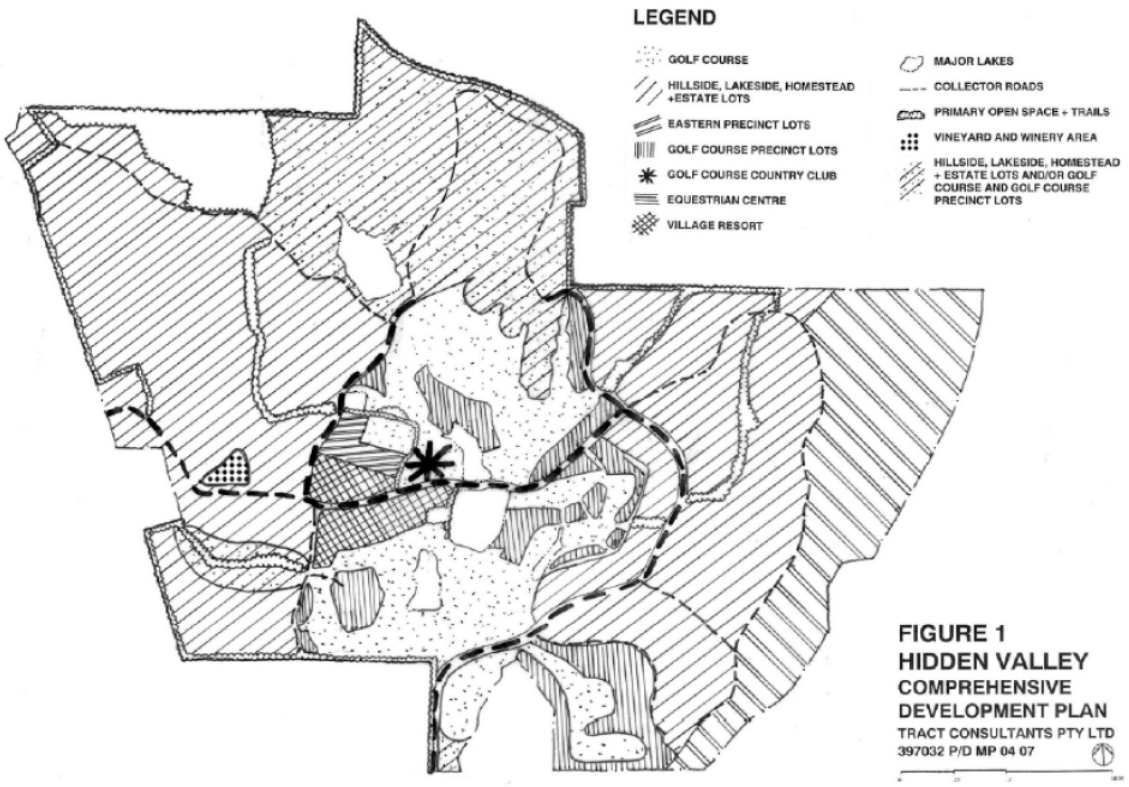
2. BACKGROUND

2.1 During the 1990s the former 1,000-hectare estate was sold to developers for what would become the Hidden Valley development. The development was to be a master-planned community to allow for recreational rural and equestrian facilities and activities in conjunction with residential and resort development on a range of lot sizes.

2.2 The land is included within the Comprehensive Development Zone with the following stated purpose:

- *To provide for the integrated subdivision and development of the land in accordance with the Hidden Valley Comprehensive Development Plan, December 1999 (Revision 01, March 2002).*

- *To provide for recreational rural and equestrian facilities and activities in conjunction with residential and resort development on a range of lot sizes*



2.3 The Comprehensive Development Plan, pictured above, divides the valley up into a series of categories of lots and precincts. The estate was envisaged to contain approximately 950 residential lots. It was intended that there be a range of lot types including “Hillside” and “Lakeside” lots which are small lots clustered around common property, “Golf Links Lots” which have golf course frontage, “Homestead Lots” which range up to 2ha and “Estate Lots” which are larger than 2ha. The planning framework also envisages more intensive subdivision and resort-based mix of housing in the golf precinct and village resort area.

2.4 Specific guidelines are provided for the use and development within each precinct. However, in general, dwellings must be located within a designated building envelope and the design and siting of all dwellings will be guided by the Hidden Valley Design Guidelines, prepared by Hidden Valley Australia PTY Ltd.

2.5 A number of Section 173 agreements exist across the development which in general give effect to the following:

- Compliance with the Design Guidelines
- General restrictions

- Development Contributions

2.6 The Development Contributions are in the form of a $450 per lot contribution which is paid at the time of a building permit being issued. This contribution is intended to provide community infrastructure above what the development or developer would provide as normal works.

2.7 The general restrictions can be enforced by any party to the agreement including Hidden Valley Australia, Council or a property owner through an enforcement order at VCAT and include some typical requirements which you would expect in most residential areas.

2.8 There are three sets of design guidelines which apply to the different areas being Homestead Lots and Estate Lots, Hillside Lots and Lakeside Lots, and Golf Links Lots. These have been largely the same since their inception in the early 2000's.

2.9 All owners wishing to build a house in Hidden Valley must have their plans prepared in accordance with the guidelines and must submit them for approval to Hidden Valley Australia who have established the Hidden Valley Design Review Panel and employed McCabe Architects to assess and approve the plans.

2.10 There are two development entities which currently control the Hidden Valley Estate being Arcadia and Hidden Valley Australia Pty Ltd. Broadly speaking, Arcadia owns land subject to the golf course, village core and club house whilst Hidden Valley Australia Pty Ltd controls the balance land.

2.11 With the residential subdivision component of the development nearing its end, there was a risk that the Section 173 Agreements may also cease to have effect. It was therefore deemed an appropriate time to review the planning controls and the agreements to develop a simplified set of contemporary planning controls that would seek to continue to protect the character of the Hidden Valley area. These planning controls would come into effect via a Planning Scheme Amendment to the Mitchell Shire Planning Scheme.

2.12 This review is now complete and is presented for adoption with this report.

3. POLICY AND LEGISLATIVE IMPLICATIONS

3.1 The ultimate Planning Scheme Amendment will follow all necessary policy and legislative requirements. The process to amend the planning regime is at all times conducted in accordance with the relevant legislation and ultimately determined by the Minister for Planning following Council adoption.

4. CHARTER OF HUMAN RIGHTS IMPLICATIONS

4.1 The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

5. CHILDREN AND YOUNG PEOPLE IMPLICATIONS

5.1 No Impact.

6. ISSUES AND DISCUSSION

6.1 Council engaged the services of Tract Consultants to undertake the Hidden Valley Planning Control Review (Attachment 1).

6.2 This review was commissioned to better understand how the existing planning controls, design guidelines and legal agreements for the estate can be transitioned into an enduring planning policy response which will protect the key design elements of the estate into the future.

6.3 The review recommended the following key findings and directions;

- The expiring legal agreements currently applicable to property at Hidden Valley are recommended to be replaced with permanent planning controls. An opportunity exists to simplify the requirements and bring them in line with current policy requirements.

- Overall, the Review finds the existing zone control, the Comprehensive Development Zone (CDZ), the most appropriate zone for managing land use, subdivision, and development at the Estate. The existing CDZ would need to be replaced by a new CDZ and schedule. The existing Overlays are recommended to be retained to their current extent.

- A new Development Plan Overlay applied to the Estate would provide different benefits and opportunities to Council in regard to flexibility, enforcement, strength of decision making, time, and cost and it is recommended that one be applied to contain the majority of design controls.

- Whilst numerous mechanisms are available to Council in regulating the design intent of Hidden Valley Estate, the planning scheme is considered to be the most transparent method in achieving this.

- The estate is nearing completion, which will result in existing Section 173 Legal Agreements commencing to expire. A number of documents external to the planning scheme (such as design guidelines) currently apply to the estate through these Agreements. The review of planning controls provides an opportunity to consolidate a number of guiding mechanisms for the long- term benefit of residents in order to preserve

the master planning vision for this unique neighbourhood post-completion.

- The opportunity exists for an amendment of the current planning controls to include relevant provisions of the Agreements in order to ensure the key design elements of the estate are protected in perpetuity.

6.4 The adoption of the review document will underpin a future planning scheme amendment to implement a new set of planning controls. The scheme amendment would likely occur through 2021 providing opportunities to all relevant stakeholders to comment and become involved in the formal process

7. SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

7.1 The proposed planning scheme amendments will seem to ensure the character and unique environment of the Hidden Valley development is protected and maintained into the future.

8. RISK IMPLICATIONS

Risk Ranking is determined using ROHS201-G1- Corporate Risk Matrix. Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
There is a risk that without intervention the design controls in the Hidden Valley area will expire.	Medium	Amendment of the Planning Scheme to ensure the original character and intent of the Hidden Valley development is protected and retained	Within existing resources

9. COMMUNICATION PLAN

9.1 A communication plan may be developed as part of the Planning Scheme Amendment but is not required at this stage.

10. NEXT STEPS

10.1 Following Council adoption, implementation documents and Planning Scheme Amendment documents will be required to be developed. The aim will be for a formal Planning Scheme Amendment to commence in early 2021.

11. CONSULTATION

11.1 Informal consultation has been undertaken with both development entities of Hidden Valley and also the resident's association.

11.2 Further formal opportunities for engagement will come through the advancement of a future planning scheme amendment.

12. FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

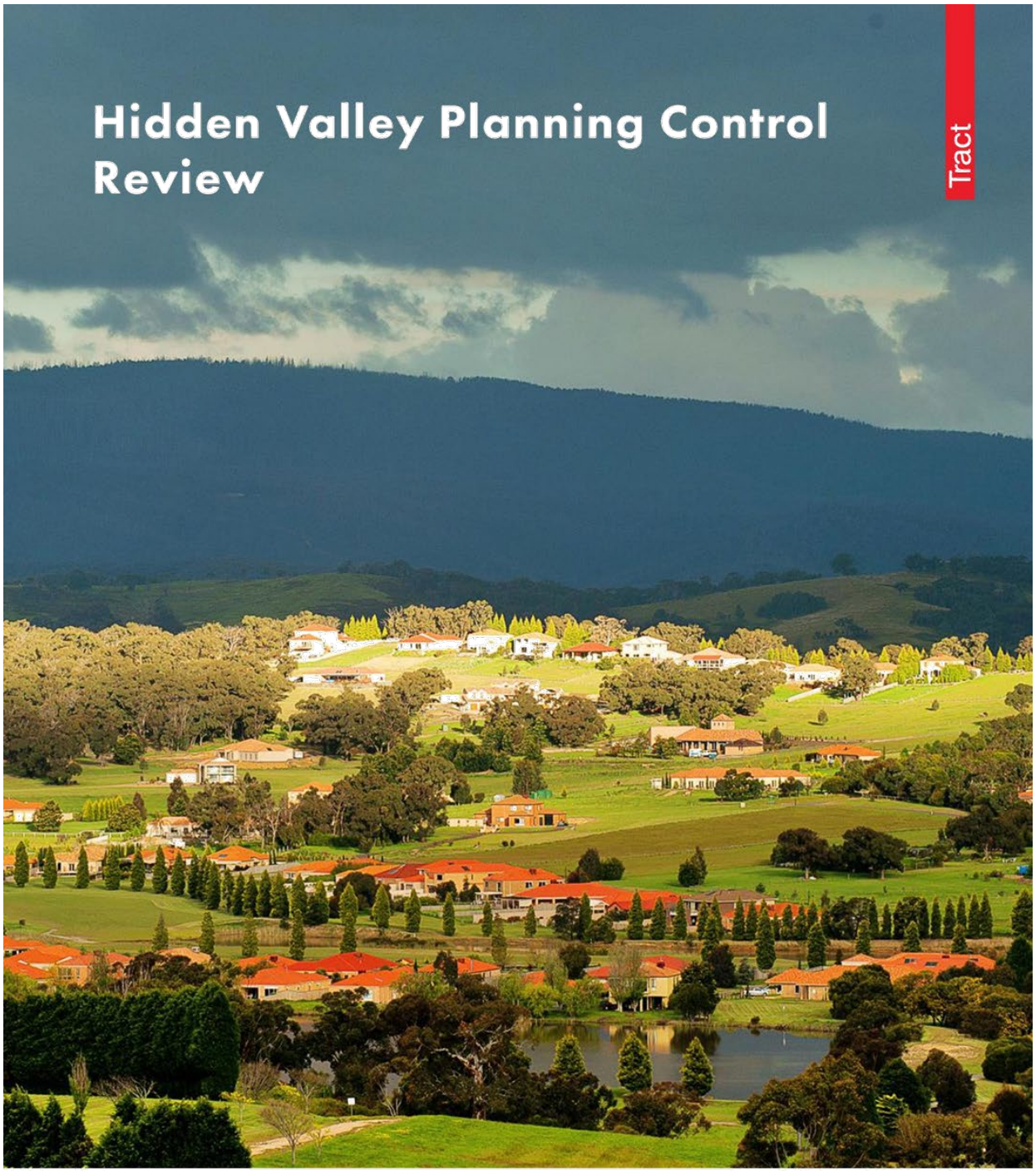
12.1 This project is being conducted within existing resources and existing budget allocations

13. OFFICER DECLARATION OF CONFLICT OF INTEREST

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

14. CONCLUSION

14.1 This report recommends the adoption of the Hidden Valley Planning Controls Review and for it to underpin a future planning scheme amendment. This is done to protect the existing unique character and environment of the Hidden Valley development. This is seen as an appropriate response to modernise planning control and protect the future of current and future residents of Hidden Valley.



Preliminary Review Findings Report

Research Report

Prepared for Mitchell Shire Council

Tract
Level 6, 6 Riverside Quay, Southbank, VIC 3006
(03) 9429 6133
www.tract.com.au

12 June 2020

Quality Assurance

Hidden Valley Planning Control Review
Preliminary Review Findings Report
Research Report

Project Number
320-0046-00-P-01
Revision (see below)
03
Prepared By
G Banks
Reviewed By
N Wadeson
Project Principal
N Wadeson
Date of Issue
12 June 2020

Revisions

Rev	Date	Details	Prepared By	Reviewed By	Project Principal
01	21 April 2020	Draft report	GB & CF	NW	NW
02	21 May 2020	Final report	GB	NW	NW
03	12 June 2020	Revised report	GB	NW	NW

Contents

Hidden Valley Planning Control Review		**6**
1	**Introduction**	**6**
1.1	Executive Summary	6
1.2	Project rationale	6
1.2.1	Section 173 Legal Agreements	7
1.3	Scope of review	8
2	**Current conditions**	**9**
2.1	A brief history of Hidden Valley	9
2.2	Planning controls	9
2.2.1	Comprehensive Development Zone – Schedule 1 (CDZ1) (Hidden Valley Comprehensive Development Plan)	9
2.2.2	Vegetation Protection Overlay (VPO)	10
2.2.3	Bushfire Management Overlay – Schedule 1 (BMO1) Broadford, Heathcote Junction, Kilmore, Seymour, Wallan, Wandong BAL-12.5 Areas	11
2.2.4	Bushfire Prone Area	11
2.2.5	Areas of Cultural Heritage Sensitivity	12
2.3	Opportunities and constraints	12
3	**The legal agreements**	**14**
3.1	Summary	14
3.2	Agreements with varied expiry conditions	14
3.3	Criteria for key controls	15
3.3.1	Key controls	16
3.4	The Design Guidelines	16

3.4.1	Design Review Panel	16
4	**Planning Scheme Amendment Options**	**18**
4.1	18	
4.1.1	New Comprehensive Development Zone (CDZ)	19
4.1.2	New Comprehensive Development Plan	19
4.1.3	New Neighbourhood Character Overlay	19
4.1.4	Development Plan Overlay	20
5	**Strategic Basis**	**21**
5.1	State Planning Policy	21
5.2	Local Planning Policy	21
5.3	Other documents	21
6	**Recommendation**	**22**
6.1	Planning Scheme Amendment	22
6.2	Section 173 Legal Agreements	22
6.3	Recommended Process	22
7	**Conclusion**	**23**

Figures

Figure 1 - Extract from Design Guidelines showing the Hidden Valley Approval Process (January 2003). 17

Hidden Valley Planning Control Review

1 Introduction

This Report has been prepared by Tract Consultants (Tract) for the Mitchell Shire Council (Council) in relation to the Hidden Valley Estate area north east of the Wallan township. This review has been commissioned by Council in order to better understand how the existing planning controls, design guidelines and legal agreements for the estate can be transitioned into an enduring planning policy response which will protect the key design elements of the estate into the future.

1.1 Executive Summary

The expiring legal agreements currently applicable to property at Hidden Valley Estate are recommended to be replaced with permanent planning controls. An opportunity exists to simplify the requirements and bring them in line with current policy requirements. The Report identifies the importance in communicating any new planning control clearly to existing residents and landowners of the Estate. There is likely to be a transition period required whereby both the Council statutory planning department, and the Hidden Valley Estate Design Review Panel may be assessing applications on properties where Agreements are yet to expire.

Overall, the Report finds the existing zone control, the Comprehensive Development Zone (CDZ), the most appropriate zone for managing land use, subdivision, and development at the Estate. The existing CDZ would need to be replaced by a new CDZ and schedule. The existing Overlays are recommended to be retained to their current extent.

A new Development Plan Overlay applied to the Estate would provide different benefits and opportunities to Council in regard to flexibility, enforcement, strength of decision making, time, and cost and it is recommended that one be applied to contain the majority of design controls.

Whilst numerous mechanisms are available to Council in regulating the design intent of Hidden Valley Estate, the planning scheme is considered to be the most transparent method in achieving this.

1.2 Project rationale

There are two development entities which currently control the Hidden Valley Estate being Arcadia and Hidden Valley Australia Pty Ltd. Broadly speaking, Arcadia owns land subject to the golf course, village core and club house whilst Hidden Valley Australia Pty Ltd controls the balance land.

The estate is nearing completion, which will result in existing Section 173 Legal Agreements (Agreements) commencing to expire. A number of documents external to the planning scheme (such as design guidelines) currently apply to the estate through these Agreements.

The review of planning controls provides an opportunity to consolidate a number of guiding mechanisms for the long-term benefit of residents in order to preserve the master planning vision for this unique neighbourhood post-completion.

1.2.1 Section 173 Legal Agreements

Hidden Valley Estate as a whole is subject to numerous Section 173 Legal Agreements put in place in accordance with Section 173 of the *Planning & Environment Act 1987*. The Agreements apply a number of differing controls over the land.

A number of these Agreements include expiry conditions such as the below.

> *If at any time after the expiration of 10 years from the date of this Agreement, Hidden Valley no longer has a legal interest in the Site or the Development, and has not legally assigned its interest under this Agreement to a nominated successor for the purpose of the ongoing administration and enforcement of the Guidelines under clauses 4 and 5, the Council may in its absolute discretion and without consultation with any party, and by notice in writing to the Owner of each Allotment:*
>
> *a) Assume the role of Hidden Valley under clauses 4 and 5 of this Agreement; or*
>
> *b) Unilaterally end the Agreement.*

Having regard to the above, the age of the Estate means that most Agreements were entered into greater than 10 years ago.

Council is unwilling to assume the role of Hidden Valley Australia Pty Ltd given the ongoing financial and resource input this will require. It is understood by Council that Hidden Valley Australia Pty Ltd is entering into the final stages of development and working towards the issue of titles and settlement of these lots.

Legal advice has been obtained from Maddocks Lawyers to understand under what circumstances the Agreements will expire. In summary, the advice notes that whilst Hidden Valley Australia Pty Ltd may soon be divesting of its final landholding, its role in administering the Design Guidelines and architectural review process for new dwellings is likely to continue. Until such time that this role is terminated the Agreements will remain in effect.

The expiry of the agreements has been a point of confusion in the past, and some interpretations have been that only 10 years *after* Hidden Valley Australia Pty Ltd no long own land in the Estate will the Agreements expire.

This report has sought to remedy this confusion and to provide recommendations which result in a clear path forward for residents seeking dwelling approvals and other works on their land.

Council is exploring the opportunity for an amendment of the current planning controls to include relevant provisions of the Agreements in order to ensure the key design elements of the estate are protected in perpetuity. In addition to this, Council may also seek to terminate the Section 173 Agreements ahead of the formal withdrawal of Hidden Valley Australia Pty Ltd from the Estate, as is able to occur lawfully under Section 178A(5) of the *Planning & Environment Act 1987*.

This termination requires a process of assessment and notification of all affected by an agreement. It is noted that some agreements only impact a few properties, whilst others apply to either the entire estate, or large lot stages. It is recommended that Council complete further investigations into the cost of such a process if it were to act as proponent.

This process would certainty prove worthwhile as it would provide clarity to residents and ensure all properties within the Estate were affected by the same controls.

1.3 Scope of review

Tract has been approached by Mitchell Shire Council to consider the expiry of existing Section 173 Legal Agreements which currently apply to the Hidden Valley Estate, and propose alternative planning controls in order to understand how the key elements of these Agreements can be maintained in the long-term through the Mitchell Planning Scheme.

The aim of this review is to:

- Provide Council an understanding of the key elements of expiring Section 173 Legal Agreements which would need to be continued in order to preserve the character of Hidden Valley Estate (those great than 10 years old).
- Outline the opportunities and constraints in regard to a change in planning controls.
- Assess the strategic basis for a planning scheme amendment to change the planning controls affecting the Estate.
- Examine the different options for creating new planning controls for the Hidden Valley Estate.
- Recommend a single option which best represents the vision of Mitchell Shire Council for the Estate.
- Provide guidance as to the initial work and consultation which would need to be completed in order to support an amendment to the Mitchell Planning Scheme.

It is understood that the findings of this Report will be provided to Council in order to justify the commencement of a planning scheme amendment process.

2 Current conditions

The Hidden Valley Estate is currently at various stages of development. This is a key consideration in the commencement of a planning scheme amendment to replace existing Section 173 Legal Agreements with alternative planning controls.

2.1 A brief history of Hidden Valley

Formerly the private estate of Robert and Janet Holmes a Court, the estimated 1,000-hectare property was sold in 1997 to developers the Far East Consortium who developed the land into Hidden Valley.

Hidden Valley has become a unique community shaped by thorough master planning and strict design controls leading to approximately 950 residential lots of various sizes and a decidedly Tuscan-style housing typology.

The Estate has been comprehensively planned for residential, rural, and recreational development. Today it incorporates a golf course and club house alongside residential properties. Road networks throughout the Estate seek to maximise views and create a sense of arrival as alluded to within the title of the Estate.

The Estate comprises several residential allotment types including:

- Hillside lots.
- Lakeside lots.
- Golf Links lots.
- Homestead lots.
- Estate lots.

An equestrian centre, village resort precinct, commercial vineyard and winery precinct, and lakes are all provided for within the Estate vision, as it significant open space for the enjoyment of residents.

2.2 Planning controls

The planning controls are summarised below.

2.2.1 Comprehensive Development Zone – Schedule 1 (CDZ1) (Hidden Valley Comprehensive Development Plan)

The purpose of the CDZ1 is:

- *To provide for the integrated subdivision and development of the land in accordance with the Hidden Valley Comprehensive Development Plan, December 1999 (Revision 01, March 2002).*
- *To provide for recreational rural and equestrian facilities and activities in conjunction with residential and resort development on a range of lot sizes.*

The key features of the CDZ1 are:

- Permit applications for use, subdivision or buildings and works are exempt from public notice requirements if they are generally in accordance with the Hidden Valley Comprehensive Development Plan.
- Land uses such as 'dwelling' and 'rural industry' associated with a vineyard are specifically encouraged and are only permit required where they are not generally in accordance with the Development Plan.
- A tailored list of inappropriate land uses is prohibited; however, most land uses are permit required.

- The CDZ1 enforces larger lot sizes where reticulated services are not available.
- The CDZ1 enforces not only the Development Plan, but also the design guidelines which are part of a number of Section173 Agreements.
- Unusually for this CDZ1, sections of the Development Plan wording appear within the zone schedule.

The Comprehensive Development Zone is a useful tool in guiding the use and development of areas of specific character or design. It allows for a range of tailored outcomes with regard to permit requirements, exemptions and prohibitions. The CDZ is accompanied by a Comprehensive Development Plan which is *incorporated* within the planning scheme. This means that a Planning Scheme Amendment process is required in order to alter the content of the Development Plan.

The Development Plan is typically referenced within the CDZ schedule and Clause 72.04 – Documents Incorporated in this Planning Scheme, however the Development Plan itself would be kept on Council's website, and on the Department of Environment, Land, Water and Planning's (DELWPs) online Resource Library for public access.

2.2.2 Vegetation Protection Overlay (VPO)

There are two VPOs applying to the land. The VPO Schedule 2 (VPO2) applies to vegetation along the Hume Freeway at the north-eastern boundary of Hidden Valley Estate. The VPO Schedule 1 (VPO1) applies to vegetation along the Northern Highway, forming the western boundary of Hidden Valley Estate.

Vegetation Protection Overlays are put in place:

- *To protect areas of significant vegetation.*
- *To ensure that development minimises loss of vegetation.*
- *To preserve existing trees and other vegetation.*
- *To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.*
- *To maintain and enhance habitat and habitat corridors for indigenous fauna.*
- *To encourage the regeneration of native vegetation.*

The VPO will require a permit to "remove, destroy or lop any vegetation specified in a schedule" to the overlay. Further specification will be provided within each schedule.

The VPO also sets standard exemptions for this permit requirement which apply whether or not the vegetation requires a permit under the schedule. For example, if the vegetation was planted.

Vegetation Protection Overlay – Schedule 1 (VPO1) Roadside and Corridor Protection

Does not require a permit to remove, destroy or lop any:

- Exotic vegetation.
- Vegetation to the minimum extent necessary to construct, use or maintain the Broadford Water Supply Project, in accordance with an approved Project Impact Assessment, environmental management plan and native vegetation offset plan.

Vegetation Protection Overlay – Schedule 2 (VPO2) Freeway Environs Protection

Does not require a permit to remove, destroy or lop any:

- Dead or exotic vegetation.
- Vegetation on the Goulburn Valley Highway between the Hume Freeway and Mangalore Road, as shown on Drawing No 12263CBA.DGN, dated 14 August 1998, as attached to this schedule.
- Vegetation to the minimum extent necessary to construct, use or maintain the Broadford Water Supply Project, in accordance with an approved Project Impact Assessment, environmental management plan and native vegetation offset plan.

2.2.3 Bushfire Management Overlay – Schedule 1 (BMO1) Broadford, Heathcote Junction, Kilmore, Seymour, Wallan, Wandong BAL-12.5 Areas

The purpose of the BMO is:

- *To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.*
- *To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.*
- *To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.*

The BMO requires a permit:

- To subdivide land (unless a schedule states otherwise).
- For buildings and works associated with use of the land for: Accommodation (including a Dependent person's unit); Education centre; Hospital; Industry; Leisure and recreation; Office; Place of assembly; Retail premises; Service station; Timber production; and Warehouse.

The buildings and works permit is not required if:

- A schedule specifies otherwise.
- The building or works is consistent with an agreement under Section 173 of the Act.
- The building or works meet other conditions specified in the overlay.

A subdivision application will typically be required to specify on a Bushfire Management Plan a building envelope for a future dwelling, whilst any ongoing management requirements will be enforced via a Section 173 Legal Agreement registered on the title of the new lot in accordance with Clause 44.06-5 of the *Mitchell Planning Scheme*.

The BMO1 specifies that all dwellings must be constructed to a BAL 12.5 with 30 metres of defendable space.

2.2.4 Bushfire Prone Area

The Estate is within a Bushfire Prone Area. This means it is of low bushfire risk. Where this designation and a BMO applies to the same piece of land, the requirements of the BMO take precedence.

Clause 13.02-1S Bushfire planning states that *"bushfire risk should be considered when assessing planning applications for the following uses and development: Subdivisions of more than 10 lots; Accommodation; Child care centre; Education centre; Emergency services facility; Hospital; Indoor recreation facility; Major sports and recreation facility; Place of assembly; or Any application for development that will result in people congregating in large numbers."*

An application for these uses and development must include a bushfire hazard assessment and consider the *Australian Standard 3959-2009 Construction of Buildings in Bushfire-prone Areas* which may include requirements for construction.

2.2.5 Areas of Cultural Heritage Sensitivity

Areas of cultural heritage sensitivity relate to registered Aboriginal cultural heritage places, as well as landforms and land categories that are generally deemed to be more likely to contain Aboriginal cultural heritage. They generally require a Cultural Heritage Management Plan (CHMP) to be prepared for any 'high impact activity'.

It is understood that a Cultural Heritage Management Plan has already been prepared for development of the Hidden Valley Estate.

2.3 Opportunities and constraints

A SWOT (strengths, weaknesses, opportunities, threats) analysis of replacing the expiring Section 173 Legal Agreements with permanent planning controls is outlined below.

Strength	Weakness
• Longevity of controls. • Up to date controls. • The amendment process will notify current landowners of the replacement of the Agreements with planning controls via a formalised exhibition period. • Maintains a clear and standardised assessment pathway for subdivision, use and development in a unique estate.	• Controls will need to be supported by the Mitchell Planning Scheme and may be limited to a certain extent compared to the current Agreements. • Complexity in ensuring future owners are aware of expired Agreements and the replacement controls. • Not all of the Agreements containing design controls will expire at the same time. As a result, some allotments will be subject to stricter design controls than others within the Estate.

Opportunity	Threat
• Removal of trivial restrictions. • Removal of repetitive/contradictory restrictions. • Improve the operation of the Mitchell Planning Scheme. • Enforce desired built form and land use controls in perpetuity. • The 'balance' lot in the north of the Estate is able to be designated for a particular use within planning controls.	• Objections to no further subdivision (from owners of larger lots for example). • Objections to removal of trivial restrictions (restrictions on pets for example). • Community expectations regarding the 'look and feel' of Hidden Valley Estate. • Ensuring landowners and the Hidden Valley Australia design review committee are clear on which properties require a planning permit.

The SWOT analysis reveals some key matters which will need resolution in preparing a planning scheme amendment for the replacement of the Agreements with permanent planning controls. Key to this is the expectations of the community, predominantly those of which who live / own land at Hidden Valley Estate.

This includes communication to landowners of the difference between the new planning controls, and the Agreements which either will not be expiring for some time or will not be expiring at all.

For example, a number of Agreements contain both the BMO restriction on title regarding building envelopes and defendable space, as well as the strict estate design guidelines. For these Agreements, they contain a different expiry requirement due to the importance of retaining the bushfire restrictions in perpetuity (although an application can be made to amend or remove the Agreement). These legacy agreements may mean that one landowner has a different level of restrictions on their property than their neighbour across the street.

Another matter which will be required to be resolved is the status of the vacant piece of land within the north of the precinct. Ideally, a building envelope would be nominated close to the most appropriate vehicle access point so the lot could be transferred to private ownership. Matters such as bushfire protection and vegetation removal will need to be assessed prior to this occurring.

3 The legal agreements

3.1 Summary

The Agreements which are expected to expire upon the withdrawal of Hidden Valley Australia Pty Ltd from the Estate are broad and wide ranging in their content. Despite this, many elements are similar if not the same. In order to distil the content of Agreements into a simplified set of requirements, a criterion was developed and applied.

Agreements which have been confirmed as expiring include:

- Agreement AB258841F (22/04/2002).
- Agreement AB271102W (29/04/2002).
- Agreement AB258779H (22/04/2002).
- Agreement AC955171F (26/05/2004).
- Agreement AG500358T (04/05/2009).

It is considered that for the purposes of this review, the above-mentioned agreements are representative of the restrictions placed on most lots within the Estate. In regard to the Design Guidelines, all lots are deemed to be affected by the same copy of the Design Guidelines, being that dated April 2001[1].

Not all expiring agreements were reviewed, only those which are listed above. It is recommended that a more comprehensive stocktake of agreements be undertaken in order to identify how each individual lot is affected by existing Section 173 Agreements.

3.2 Agreements with varied expiry conditions

It is imperative to understand that not all Agreements are expiring when Hidden Valley Australia Pty Ltd no long holds interests within the Estate.

For example, Agreement No. AM371978X applies to Stages 2A, 3A-F, 4A-B and is in regard to (among other things):

- Payment of the Community Infrastructure Levy.
- Enforcement of buildings and works only within the prescribed building envelope.
- Type and style of fencing abutting a reserve.
- Open space contribution.
- Enforcement of the design guidelines, particularly in regard to Homestead Lots and Estate Lots.

[1] *It is noted that the Design Guidelines have since been updated and appear on the Hidden Valley Australia website. The most updated version of the Guidelines is dated January 2003.*

The expiry is stated as:

> *"This Agreement ends:*
>
> - *By agreement between the parties; or*
> - *Otherwise in accordance with the Act."*

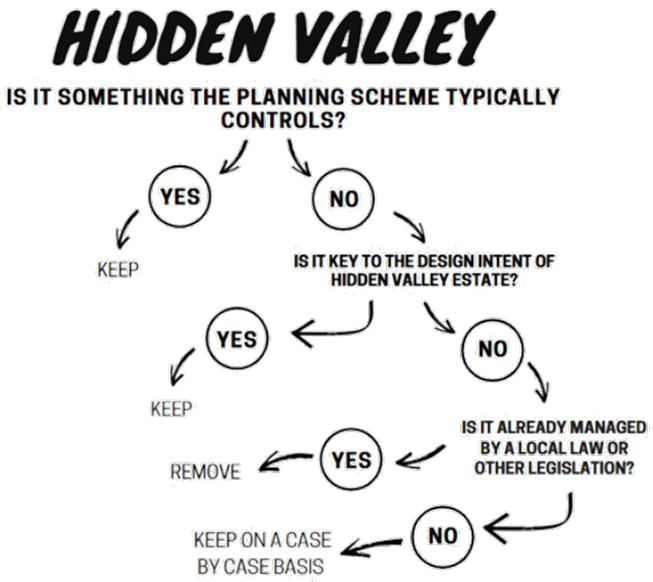
This is an example of an agreement which does not expire upon the conclusion of involvement in the estate by Hidden Valley Australia Pty Ltd, but which would continue to mandate development in accordance with the design guidelines.

This is likely to be a cause for confusion amongst landowners, particularly with regard to the processing of planning and building permits, and what is and is not a permitted subdivision, use or development outcome.

3.3 Criteria for key controls

The expiring Section 173 Agreements listed at 3.1 predominantly pertain to implementation of the Design Guidelines and thus contain a varied collection of restrictions and requirements. Upon the review of each agreement it has become clear that not all restrictions are appropriate to carry through in perpetuity. For example, "No pets except for 1 dog (provided there is a domestic dog containment zone) unless approved by Design Review Panel". Such controls are substantially restrictive and exclusionary. In addition, they have no or little bearing on the overall character and amenity value of the Estate and are not a matter able to be enforced by the Mitchell Planning Scheme.

In order to ascertain which controls within the expiring Agreements should be translated to planning controls, the following methodology was adopted.



3.3.1 Key controls

In accordance with the methodology outlined above, the key controls which are recommended for inclusion within new planning controls are:

- Maximum of one dwelling on a lot (Source: legal agreement).
- No further subdivision to create a new lot in residential areas (Source: legal agreement).
- No temporary structures (Source: legal agreement).
- No vehicle storage (trucks) (Source: legal agreement).
- No works which affect natural vegetation (Source: legal agreement).
- Must not remove any trees (Source: legal agreement).
- Payment of Community Infrastructure Levy (Source: legal agreement).
- All buildings and structures are to be contained within the relevant building envelope (Source: legal agreement).
- Specification of external materials and finishes of dwellings and garages (Source: Design Guidelines).
- Specification of plumbing, windows, external fixtures, paving, and landscaping (Source: Design Guidelines).
- Specification of landscape guidelines including tree species (Source: Design Guidelines).

Please refer to Appendix C for a list of Section 173 Legal Agreement requirements which are recommended to be removed from the Estate.

3.4 The Design Guidelines

Having regard to the above, the Hidden Valley Estate Design Guidelines (the 'Guidelines') remain largely relevant to the ongoing use and development of the land. The Design Guidelines are important documents in protecting and enhancing the character of the Estate to retain its unique layout and design.

It is noted that there is some scope to review the content of the Design Guidelines in detail and to remove items which are deemed overly restrictive or unnecessary in maintaining the overall design intent of the Estate. For example, the approval of skylights or the colour of drainpipes.

The Guidelines currently contain several elements. Chapter 3: The Housing Design guidelines and Chapter 4: Landscape Principles (incl. Appendix 1) are recommended for detailed review with a view to retain a number of elements within these chapters.

However, Chapter 2: How the Guidelines Work will be mostly irrelevant upon the withdrawal of Hidden Valley Australia from the Estate.

3.4.1 Design Review Panel

At present, the Design Review Panel is administered by Hidden Valley Australia in conjunction with McCabe Architects. As specified at Figure 2 below, the role of the Design Review Panel is to review (within a timeframe of 14 days) any proposed development plans against the provisions of the Design Guidelines. Once final construction plans are approved by Hidden Valley Australia (via the Design Review Panel i.e. McCabe Architects), the landowner may then proceed with Council building permit approvals.

This process effectively 'skips' the Mitchell Shire Council statutory planning assessment process due to the exemption from planning permit within the current Comprehensive Development Zone Schedule 1 controls.

Figure 1: **Hidden Valley Approval Process**

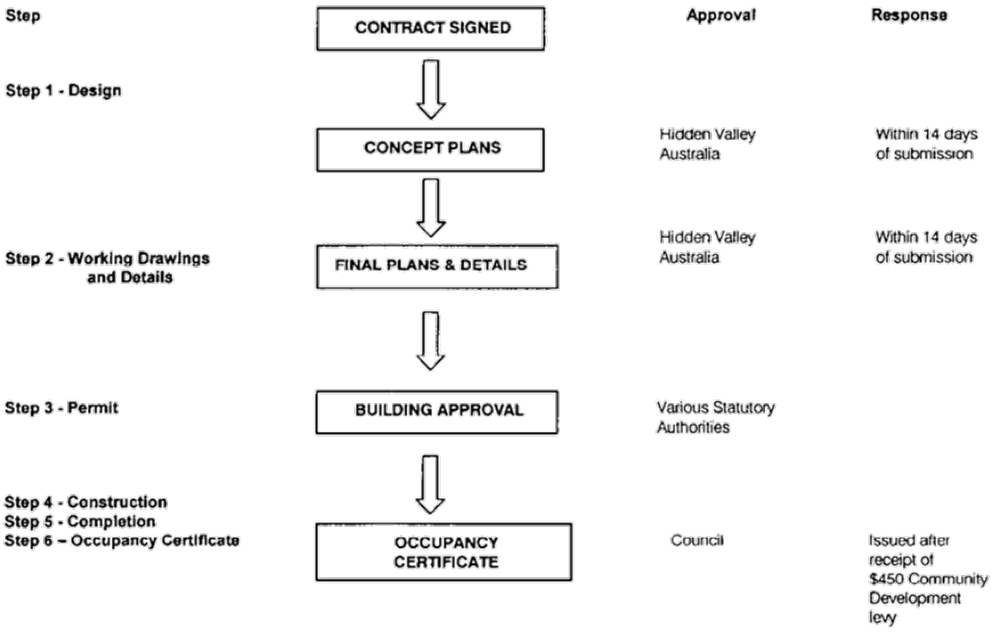


Figure 1 - Extract from Design Guidelines showing the Hidden Valley Approval Process (January 2003).

It is understood that Mitchell Shire Council is not seeking to replace the role of the Hidden Valley Design Review Panel within the assessment process. Instead, Council is seeking to require a planning permit and assess applications against new policy requirements prior to the issue of a planning permit, as occurs with residential development across the Shire.

The options for such policy requirements are outlined in Chapter 4 of this Report.

The discussion remains to be had with Hidden Valley Australia Pty Ltd whether its interest in providing a regulatory function for the Estate will end upon the sale of the final lot, or whether it has a desire for this role to continue.

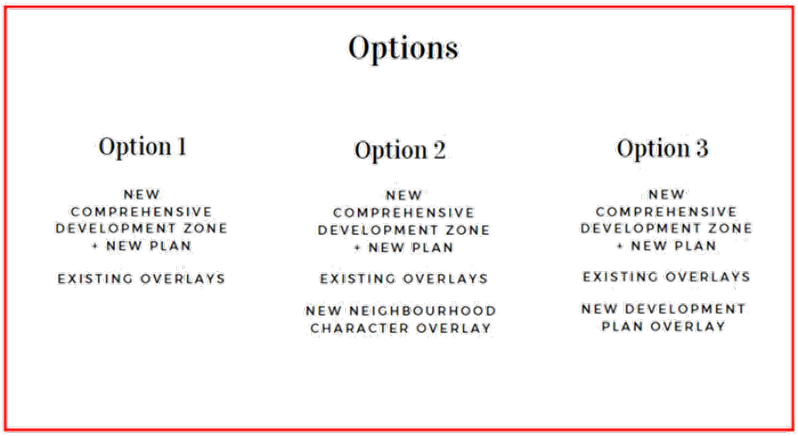
If not, it is likely that for some properties with existing Agreements (those not expiring), Step 1 and 2 in Figure 2 above, as well as a Council planning permit process, will need to be undertaken.

If yes, then Council may be required to review the Agreements which are not expiring in order to clarify the approval process for landowners and to ensure there are no conflicting matters.

4 Planning Scheme Amendment Options

4.1

Upon review of the various planning zone and overlay controls available for use, the following three options are considered.



There are several key considerations which have resulted in the development of the above three options. These are:

- Simplicity of the planning controls.
- Flexibility of the planning controls.
- Strength of decision making (for example, if Council were to refuse to grant a permit).
- Whether the planning controls can be highly tailored.
- The ability for the planning controls to incorporate the key controls listed at Section 3.3.1 of this Report.

In all circumstances where planning controls were reviewed, the Comprehensive Development Zone (CDZ) was deemed the most appropriate land use zone due to the highly tailored nature of the current controls applicable to Hidden Valley Estate.

The content of the Comprehensive Development Plan (CDP) implemented by the CDZ could be detailed, including the design guidelines within the CDP document as well as the plan of the Site, or simply, showing only a plan identifying the various precincts and lot types (simple CDP).

Additional controls, such as the Neighbourhood Character Overlay could be used to strengthen the design intent and unique character of the Estate by reinforcing standard permit requirements for buildings and works, removal of dwellings, and removal of vegetation.

Other mechanisms, such as the Development Plan Overlay, provide flexibility *and* rigidity. For example, the Development Plan Overlay does not allow for a permit to be granted where a proposal is not generally in accordance with the Development Plan (rigidity). But the Development Plan itself can be updated without the need for a planning scheme amendment (flexibility).

4.1.1 New Comprehensive Development Zone (CDZ)

In Options 1-3, a new CDZ would comply with the Ministerial Direction on the Form and Content of Planning Schemes and include the following elements:

- Description of the land.
- The purpose of the control.
- Table of uses.
- Use of land.
- Subdivision.
- Buildings and Works.
- Signs.

It is noted that the CDZ can require a permit granted must be *generally* in accordance with the CDP, or *in accordance* with the CDP. Due to the highly tailored nature of the zone control, there is an ability to implement strict requirements if appropriate.

Changes to the existing CDZ

It is anticipated that key changes would be made to the existing CDZ. See Appendix B.

4.1.2 New Comprehensive Development Plan

A new Comprehensive Development Plan should be created to accompany the changes to the CDZ schedule.

In the case of Options 1 and 2, a detailed CDP would be proposed. The table of contents for a revised Hidden Valley Comprehensive Development Plan could include:

- Introduction.
- Site and context.
- Key Considerations.
- Development Plan.
- Design Requirements.
- Planning Scheme Requirements.
- Conclusion.

In the case of Option 3, a simple CDP would be proposed, consisting only of an Estate plan identifying the allotment types (Homestead, Hillside, Lakeside, Estate, and Golf Links lots), precincts, roads, and open space areas referred to within the new CDZ schedule. This is because a Development Plan Overlay could contain the other requirements.

It is envisaged that the CDP would also be updated where references were made in relation to specific land uses in accordance with the VC148 Smart Planning amendment to the Victoria Planning Provisions for consistency.

4.1.3 New Neighbourhood Character Overlay

The new Neighbourhood Character Overlay proposed by Option 2 could be used to strengthen decision making above that included in Option 1. It would reinforce a neighbourhood character statement and objectives, as well as the requirements for planning permit.

This control may be difficult to implement as it is likely to require a Neighbourhood Character Study.

The use of this control may be supported by landowners within the Estate who are concerned about character of the neighbourhood being eroded overtime. The Neighbourhood Character Overlay would enshrine the merit of the design and demonstrate its value but could not be altered unless a new planning scheme amendment process were entered into.

4.1.4 Development Plan Overlay

Option 3 proposes the use of a Development Plan Overlay used in conjunction with a CDZ and simple CDP.

The benefits of this overlay are numerous:

- A permit granted must be generally in accordance with the development plan.
- If an application is not generally in accordance with the development plan, it is refused.
- An application is exempt from notice.
- Updates to the Development Plan may occur over time without the need for a planning scheme amendment process, and would require Council's endorsement.
- If the Development Plan were an instrument created by Mitchell Shire Council, it could only be updated or removed by Mitchell Shire Council or with Council's endorsement.
- The Development Plan can be created and amended without community consultation.
- The Development Plan Overlay guides the creation of the Development Plan and any revision.
- The Development Plan Overlay itself is only able to be altered via a planning scheme amendment.

In combination with the CDZ and CDP, a Development Plan Overlay and Development Plan would provide an adequate level of control over the future character of the Estate and would be flexible enough to be updated from time to time.

It is understood that Council has a desire for the Arcadia land to be strategically planned in order to create greater certainty around the future of the golf course and village core precinct. A separate DPO is able to be applied to these areas in order to guide their ongoing development, and to trigger the requirement for a Development Plan to be created prior to any new permit being issued for the land.

5 Strategic Basis

The options outlined in Chapter 4 have considered the following strategic policy and guidance material.

5.1 State Planning Policy

- Clause 11.01-1S – Settlement.
- Clause 11.02-1S – Supply of Urban Land.
- Clause 11.02-2S – Structure Planning.
- Clause 11.03-3S – Peri-urban Areas.
- Clause 11.03-6S – Regional and local places.
- Clause 12.01-1S – Protection of biodiversity.
- Clause 12.01-2S – Native vegetation management.
- Clause 12.05-2S – Landscapes.
- Clause 13.02 – Bushfire.
- Clause 14.01-1S – Protection of agricultural land.
- Clause 15 – Built environment and heritage.
- Clause 16.01-5S – Rural residential development.

5.2 Local Planning Policy

- Clause 21.01 – Mitchell Shire.
- Clause 21.02 – Settlement.
- Clause 21.03 – Landscape and environmental values.
- Clause 21.06 – Built environment and heritage.
- Clause 21.07 - Housing.
- Clause 21.11 – Local Areas.

5.3 Other documents

- Hidden Valley Design Guidelines: Hillside Lots and Lakeside Lots.
- Hidden Valley Design Guidelines: Golf Links Lots.
- Hidden Valley Design Guidelines: Homestead Lots and Estate Lots.
- Plan Melbourne 2017-2050 (including Addendum 2019).
- Planning Practice Note 23: Applying the Incorporated Plan and Development Plan Overlays.
- Ministerial Direction: The form and content of planning schemes.
- Ministerial Direction No. 11: Strategic Assessment of Amendments.
- Ministerial Direction No. 15: The Planning Scheme Amendment Process.

6 Recommendation

6.1 Planning Scheme Amendment

The proposal to translate existing Section 173 Agreements, which have staggered expiry dates, into the Mitchell Planning Scheme is recommended to be undertaken through implementation of the following:

1. A new Comprehensive Development Zone schedule to apply to the entire Estate and amended in accordance with Appendix B.
2. A new Comprehensive Development Plan which consists of an amended version of the Hidden Valley Land Use Plan at Appendix C, as created by Mitchell Shire Council, and identifies different sections of the land for different purposes. The 'residential area' should identify the different character areas being: Hillside, Estate, Golf Links, Homestead and Lakeside lots.
3. A new Development Plan Overlay schedule to apply to the residential areas identified on the Hidden Valley Land Use Plan at Appendix C as prepared by Mitchell Shire Council.
4. A new Development Plan for the residential area which includes the design guidelines as appropriate for continued implementation as applicable to each different character area.
5. A new Development Plan Overlay schedule to apply to the golf course, club house and village core areas as shown on the Hidden Valley Land Use Plan at Appendix C, as created by Mitchell Shire Council. The new DPO would state the following: *"A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority."*

6.2 Section 173 Legal Agreements

Given the ambiguity surrounding the expiry of the relevant legal agreements, and the existence of agreements which do not have a specified expiry date, it is recommended that Mitchell Shire Council seek to remove / amend all agreements to remove the design guidelines, and other matters such as those listed at Appendix A. This will standardise the approval process for all buildings and works within the Estate, and improve community understanding of the controls.

A wholesale review of all Section 173 Agreements, completed adequately, will serve Council in the long-term, and reduce the need to revisit Agreements as they expire.

6.3 Recommended Process

The following actions are recommended to be undertaken in order to support a planning scheme amendment:

1. Obtain a copy of all Section 173 Legal Agreements applicable to each allotment.
2. Review Agreements on an individual basis to identify which require removal in their entirety, and which require amendment.
3. Draft a new CDZ schedule and Comprehensive Development Plan, a new DPO schedule and Development Plan.
4. Undertake the background research required to justify a new Development Plan Overlay for the golf course / village core / club house precinct owned by Arcadia. Draft a new DPO schedule for these precincts with clear objectives.

7 Conclusion

The Hidden Valley Estate is an exclusive neighbourhood with specific design outcomes which creates a unique country-style Estate within which to live. It is unlike any other Estate in the Shire of Mitchell. The protection of the Estate's design integrity thus far has been managed through the use of numerous Section 173 Legal Agreements.

Upon the gradual expiry of Agreements, the relevant content of these Agreements should be afforded a mechanism within which to guide use, subdivision, and development of the Estate in perpetuity. The Mitchell Planning Scheme is the appropriate mechanism through which to achieve this in a manner which is transparent, enforceable, and adaptable.

There are several options presented to Council which would balance the competing needs of the Estate and which could be implemented via a planning scheme amendment process.

It is recommended that this be completed through the implementation of a new Comprehensive Development Zone schedule to cover the entire estate, and two new Development Plan Overlays to apply to each of the residential and non-residential/retirement precincts, respectively.

Appendix A Section 173 Agreement Review

Items which are not recommended for inclusion within new planning scheme controls:

- Must complete construction within 15 months (this is enforced through the Building Permit and Planning Permit).
- Must not live on lot until construction complete (this is enforced through the Building Permit process).
- Must not live in garage-like structure (this is enforced through the regulations).
- Must only use as residence (home based business is allowable within the Mitchell Planning Scheme without a planning permit up to a particular scale, most other land uses within the zone require a planning permit be obtained for use of the land).
- Motor vehicles/vehicles to be towed must be kept in garage (difficult to enforce, not a planning matter, and not connected to the overall built form and layout of the estate).
- No signs without permission (certain signs are exempt from a planning permit under the Mitchell Planning Scheme, there is no reason these should be prohibited).
- No excavation unless in course of construction permitted (excavation would cause "change to the natural or existing condition or topography of land" which is defined as 'works' and requires a planning permit in accordance with the zone).
- Grass shorter than 300m, must not present fire hazard (lots which are affected by the Bushfire Management Overlay already have requirements to maintain bushfire defendable space).
- Free of noxious weeds or other weeds, "which may cause a nuisance or detract from the appearance" (of the lot) (this is managed through other legislation).
- No growing of crops ('Agriculture' is a land use under the Mitchell Planning Scheme and the requirements of the zone would apply in this regard).
- No animals except for 1 horse and 1 cat at the discretion of the Design Review Panel (not a planning matter).
- No animals except for 2 dogs, 2 domestic birds and 1 horse at the discretion of the Design Review Panel (not a planning matter).
- No electric fence (not a planning matter).
- Must not conduct any burning off on the land without the approval of Council (managed through local laws / CFA requirements, and must be registered in any case with ESTA).
- Must not fail to comply with any order, notice and direction of Council (duplicates local laws and other regulations).
- Must not erect or allow to be erected any sign on the land which faces the Hume Highway (sign controls separately apply to the land).

Appendix B Changes to the Comprehensive Development Zone Schedule

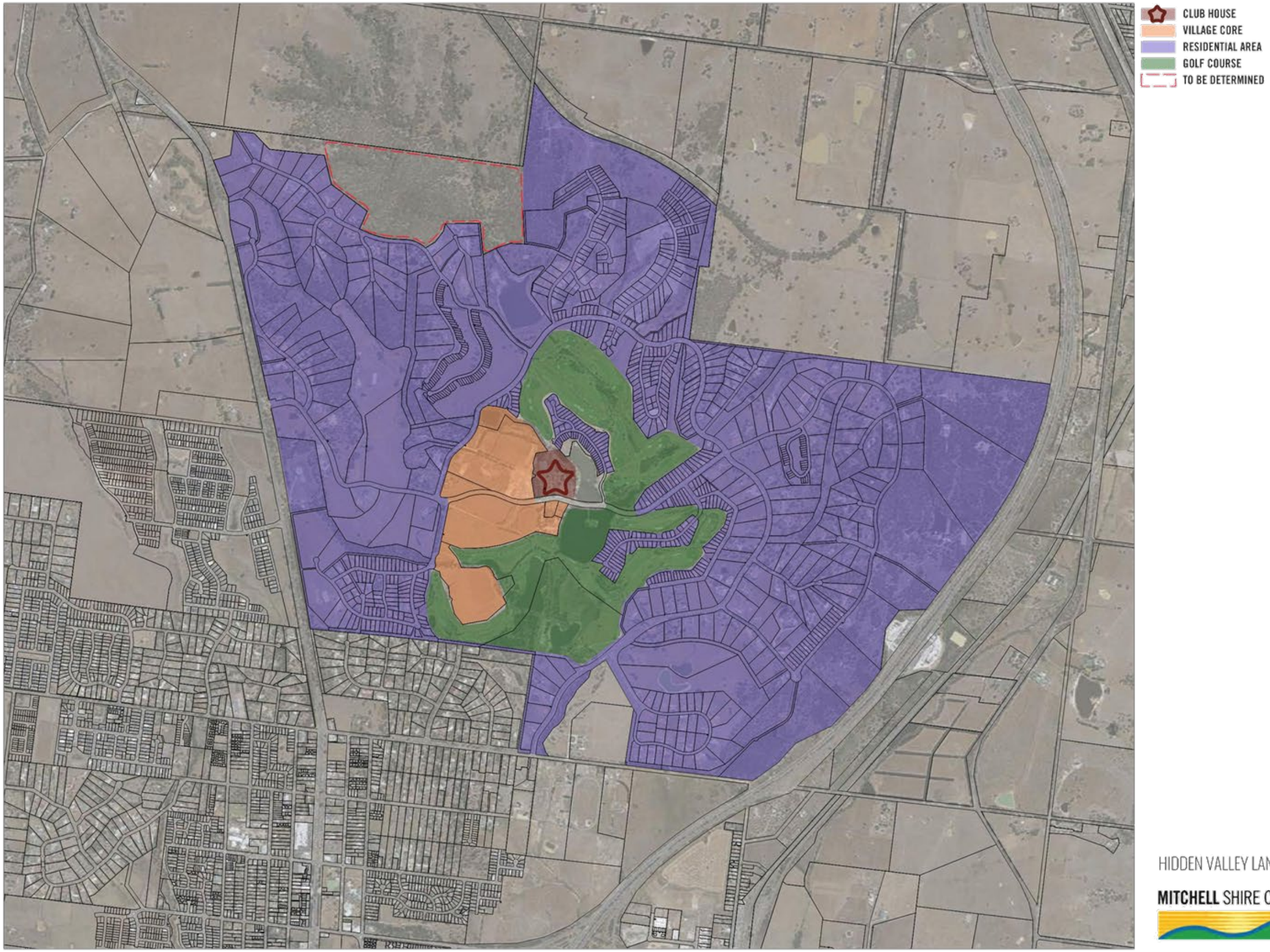
The following changes to the existing Comprehensive Development Zone schedule are recommended:

- Refences to the Hidden Valley Comprehensive Development Plan to be updated and reference a new development plan.
- Remove 'Dwelling' from Section 1 – Permit not required and move to Section 2 – Permit required in the Table of Uses at 1.0.
- Include 'Vehicle store' at Section 3 – Prohibited.
- At Section 1 – Permit not required, include 'Agriculture (except Animal boarding, Dog breeding, Racing dog keeping, Intensive animal husbandry, Rice growing and Timber production)' with the condition 'must be located on Hillside, Lakeside, Homestead and Estate Lots larger than 1 hectare in size or within the Eastern Precinct , or within the Commercial Vineyard and Winery Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.
- At Section 1 – Permit not required, include 'Accommodation (except Boarding house, Camping & caravan park, Corrective institution, Dependent person's unit, Hostel, Nurses home and Nursing home)' with the condition 'must be located on Golf Course Precinct Lots or on land within the Golf Course and Associated Country Club Precinct, or on land within the Village Resort Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.
- At Section 1 – Permit not required, include 'Food and drink premises' and 'Leisure and recreation (except Motor racing track, Paintball games facility, and Race course)' with the condition 'must be located on land within the Golf Course and Associated Country Club Precinct or within land in the Village Resort Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.
- At Section 1 – Permit not required, include 'Animal husbandry (except Animal boarding, Dog breeding, Racing dog keeping and Intensive animal husbandry)', 'Leisure and recreation (except Motor racing track, Paintball games facility and Race course)', and 'Place of assembly (except Amusement parlour, Drive in theatre, Nightclub, Place of worship)' with the condition 'must be located on land within the Equestrian Centre Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.
- At Section 1 – Permit not required, include 'Office', 'Place of assembly (except Drive in theatre' and 'Shop (except Adult sex product shop)' with the condition 'must be located on land within the Village Resort Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'. Include under the condition for 'Shop' the condition 'A Retail premises must be less than 2,500sqm combined leasable floor area'.
- At Section 1 – Permit not required, include 'Informal outdoor recreation' with the condition 'must be located within Lake Areas, Collector Roads, Open Space Trails, and Links as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.

- At Section 1 – Permit not required, include 'Winery' with the condition 'must be located on land within the Commercial Vineyard and Winery Precinct as shown on the Hidden Valley Estate Comprehensive Development Plan (XXX)'.
- At 3.0:
  - Require a permit for subdivision of the land.
  - Include a new requirement that subdivision of the land must only occur within the Village Resort or Golf Links lots.
  - Retain the existing subdivision requirements applicable to the Village Resort and Golf Links lots.
  - Remove the requirement for design guidelines in accordance with Section 173 of the Act.
- At 4.0:
  - Require a permit for construction and carrying out of works.
  - Specify that the construction and carrying out of works includes the 'destruction, lopping or removal of any vegetation'.
  - Include as a requirement that 'building envelopes for dwellings must be at least 100 metres from the Hume Freeway'.
  - Include as a requirement that 'all buildings and works must be undertaken within a prescribed building envelope unless otherwise agreed by the responsible authority'.
  - Include as a requirement the need to pay a Community Infrastructure Levy.
  - Include as a requirement that any permit granted must be generally in accordance with the Hidden Valley Estate Comprehensive Development Plan (XXX).
  - Include a modified list of decision guidelines which provides added ability to enforce the Development Plan. For example: "The responsible authority must consider, as relevant, whether the vegetation to be removed is significant to the overall landscape theme of the estate".
- At 5.0:
  - Retain sign requirements.
- Ensure each subsection includes:
  - Permit requirement.
  - Application requirements.
  - Exemption from notice and review.
  - Decision guidelines.
  - VicSmart applications.

The entire schedule should be brought up to date with the Ministerial Direction: The Form and Content of Planning Schemes.

Appendix C Hidden Valley Land Use Plan


CLUB HOUSE
VILLAGE CORE
RESIDENTIAL AREA
GOLF COURSE
TO BE DETERMINED
HIDDEN VALLEY LAND USE
MITCHELL SHIRE COUNCIL