

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1394/2007
PERMIT APPLICATION NO. P358/2006

CATCHWORDS

Application under S.79 of the *Planning and Environment Act 1987* for review of the failure to grant a permit within the prescribed time. Clause 56 Residential Subdivision. Neighbourhood character. Land in two zones.

APPLICANT FOR REVIEW	Chris Siomos
RESPONSIBLE AUTHORITY	Banyule City Council
RESPONDENTS	John J Hedigan, Chris Atanasovski, Kevin Lane, Melbourne Water Corporation, Country Fire Authority – Lilydale
SUBJECT LAND	57 Rosehill Road, Lower Plenty
WHERE HELD	Melbourne
BEFORE	N. Hadjigeorgiou, Member
HEARING TYPE	Merits hearing
PROPOSAL	Four lot subdivision
DATE OF HEARING	19 September 2007
DATE OF ORDER	12 November 2007
CITATION	Siomos v Banyule CC [2007] VCAT 2145

ORDER

The order of the Tribunal is that the decision of the Responsible Authority is set aside and a permit is directed to issue for the four lot subdivision of land at 57 Rosehill Road, Lower Plenty generally in accordance with endorsed plans and subject to the following conditions:

Amended Subdivision Plan Required

1. Prior to Certification of the Plan of Subdivision, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the advertised plans submitted on

16 January 2007 and the driveway and drainage Plan 12696 00 CS dated 27/8/2007 but modified to show:

- (a) Details of the common property accessway layout to the satisfaction of the CFA. The common property accessway is to be sealed and accessible in all weather conditions and must include the provision of at least one passing area and be designed to avoid the loss of trees;
- (b) Details of any lighting and screening along the common property accessway. Light spillage is not to affect the amenity within the surrounding properties;
- (c) Engineering plans showing a properly prepared design including:
 - (i) The internal drainage and method of disposal of stormwater from all roofed areas and sealed areas;
 - (ii) The drainage works necessary to connect the subject land to the Council nominated point of discharge. And
- (d) A drainage maintenance regime.
- (e) The provision of a 1.5m high tea-tree (brush box) fence between the common property accessway and the western boundary, beginning 5m before the commencement and terminating 5m beyond the end of the dwelling located at 2/61 Rosehill Rd.
- (f) Modification of the building envelopes to show no buildings within 5m of the eastern boundaries of lot 1 and lot 2.
- (g) The following restriction (or similar wording) on the plan of subdivision:
 - (i) The development of each lot must be contained within the building envelopes indicated on the endorsed plans (excluding ancillary works such as tennis courts and swimming pools.
 - (ii) Unless otherwise agreed by the Responsible Authority, each lot is to install a 10kL rainwater tank and connect it to each toilet within the property for flushing and all outdoor tap. The tank overflow is to be directed into the raingarden.
 - (iii) Unless otherwise agreed by the Responsible Authority, the body corporate is to maintain the common property driveway and raingardens in accordance with the maintenance regime to the satisfaction of the Responsible Authority.
 - (iv) Unless otherwise agreed by the Responsible Authority trees 16, 19, 22-27, 29 and 30 are to be retained on site and protected by Tree Protection Zones in accordance with condition 4 of this permit.
 - (v) Unless otherwise agreed by the Responsible Authority, within 6 months of the occupation of the future dwellings on all lots, the lots must be landscaped and thereafter maintained in accordance with the endorsed landscape plan.
 - (vi) All boundary fencing within the subdivision to be of post and wire design.

Landscape Plan

2. Prior to Certification of the Plan of Subdivision, a satisfactory landscape plan is to be submitted to and approved by the Responsible Authority for the common property and common property accessway. The plan must be prepared by a person suitably qualified or experienced in landscape design and shall include:
 - (a) the identification of existing vegetation (which is not intended to be removed), and nomination of vegetation for removal throughout the site;
 - (b) provision of replacement planting for vegetation that is to be removed;
 - (c) an indigenous planting theme;
 - (d) a schedule of all proposed trees, shrubs and ground cover, which includes the location and size at maturity of all plants, the botanical names of such plants and the location of all areas to be covered by grass, lawn or other surface material as specified;
 - (e) location and details of paving, steps, retaining walls, fence design details and other landscape works including cut and fill; and
 - (f) details of any screening along the common property accessway including The provision of a 1.5m high tea-tree (brush box) fence between the common property accessway and the western boundary, beginning 5m before the commencement and terminating 5m beyond the end of the dwelling located at 2/61 Rosehill Rd.

Subdivision Layout Not Altered

3. The subdivision as shown on the endorsed plan shall not be altered or modified (whether or not in order to comply with any statute, Statutory Rule or By-Law or for any other reason) without the consent of the Responsible Authority.

Tree Protection

4. Unless otherwise agreed in writing by the Responsible Authority, during construction of the subdivision works and works for the construction of the future dwellings, Tree Protection Zone (TPZ) must be established around the trees numbered 16, 19, 22-27, 29 and 30 in the arborist report (TreeTech) dated June 2006 if they fall within 10 metres of any proposed works. The TPZ must be installed and maintained to the satisfaction of the Responsible Authority, and meet the following requirements:
 - (a) Extent

Tree Preservation Zones are to be provided to the extent of the TPZs in the arborist report dated June 2006.

(b) Fencing

- (i) Vegetation protection fences with a minimum height of 1.2 to 1.5 metres of chain mesh or like and a top line of high visibility plastic hazard tape must be erected around the perimeter of the zone.
- (ii) The posts must be strong enough to sustain knocks from on site excavation equipment.
- (iii) The fences must not be removed or relocated without the prior consent of the Responsible Authority.

(c) Signage

Fixed signs are to be provided on all visible sides of the Tree Protection Fencing, stating "Tree Protection Zone – No entry without permission from the City of Banyule".

(d) Access to Tree Preservation Zone

- (i) No persons, vehicles or machinery are to enter the Vegetation Protection Zone except with the consent of the Responsible Authority;
- (ii) No fuel, oil dumps or chemicals are allowed to be used or stored within the Vegetation Preservation Zone and the servicing and re-fuelling of equipment and vehicles must be carried out away from the root zones;
- (iii) No storage of material, equipment or temporary building is to take place within the Vegetation Preservation Zone;
- (iv) Nothing whatsoever, including temporary services wires, nails, screws or any other fixing device, is to be attached to any tree.

NOTE: Requests for consent of the Responsible Authority (City of Banyule) pursuant to this Condition should be directed to Council's Arborist – Development Planning on 9457 9878. Consent for the conduct of works within the Tree Protection Zone, where granted, may be subject to conditions. Such conditions may include a requirement that:

- Any underground service installations within the Tree Protection Zone be bored to a depth of 1.5 metres;
- All root excavation be carried out by hand digging or with the use of 'Air-Excavation' techniques;
- Roots required to be cut be severed by saw cutting.

Or other conditions, as relevant, to ensure the ongoing health and stability of the subject tree/s.

Shared Trenching

5. Where possible, the provision of services is to be undertaken simultaneously and shared trenching shall be adopted to minimise costs and disturbance to trees and other vegetation.

Waste

6. Unless otherwise agreed by the waste must be collected by a private contracted waste collector.

Access

7. Vehicular access or egress to the subject land from any roadway or service lane must be by way of a vehicle crossing constructed in accordance with Council's Vehicle Crossing Specifications to suit the proposed driveway(s) and the vehicles that will use the crossing(s). The location, design and construction of the vehicle crossing(s) must be approved by the Responsible Authority. Any existing unused crossing(s) must be removed and replaced with concrete kerb, channel and naturestrip to the satisfaction of the Council prior to occupation of the building. All vehicle crossing works are to be carried out with Council Supervision under a Memorandum of Consent for Works which must be obtained prior to commencement of works.

Completion of works prior to the issue of a Statement of Compliance

8. Unless otherwise agreed in writing by the Responsible Authority, prior to the issue of a Statement of Compliance:
 - (a) The sealed common property driveway is to be constructed to the satisfaction of the Responsible Authority;
 - (b) All works indicated on the drainage plan endorsed pursuant to Condition 1 of this permit is to be completed to the satisfaction of the Responsible Authority;
 - (c) Other works including the connection to sewer mains are completed to the satisfaction of the Responsible Authority.
 - (d) A 2% Public Open Space Contribution in respect of that land in the Low Density Residential Zone shall be paid to the Responsible Authority.

Melbourne Water

9. Prior to the issue of a Statement of Compliance, the owner shall enter into and comply with an agreement with Melbourne Water Corporation, under Section 269A of the Melbourne and Metropolitan Board of Works Act 1958, for the provision of drainage works and the acceptance of surface and stormwater from the subject land directly or indirectly into Melbourne Water's Drainage system.
10. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
11. Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the Subdivision Act 1988.

Yarra Valley Water

12. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of reticulated water supply.
13. The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of sewerage.

Telstra

14. The plan of subdivision submitted for certification must be referred to Telstra in accordance with Section 8 of the Subdivision Act 1988.

SPI Electricity Pty Ltd

15. The plan of subdivision submitted for certification must be referred to SPI Electricity Pty Ltd in accordance with Section 8 of the Subdivision Act 1988.
16. The applicant must -
 - Enter in an agreement with SPI Electricity Pty Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision as required by SPI Electricity Pty Ltd. A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required.

The Responsible Authority is directed to issue a permit in accordance with this order under the provisions of Section 85(1)(b) of the *Planning and Environment Act 1987*.

N. Hadjigeorgiou
Member

APPEARANCES:

For the Applicant for Review	Mr Michael Wright QC Barrister, assisted by Ms Juliet Forsyth, Barrister, instructed by Mahons Solicitors. Mr Wright called Ms Julie Katz, Town Planning Consultant of the Planning Group to give evidence.
For the Responsible Authority	Mr Michael Constantine, Town Planner.
For Respondents	Mr Anthony Hooper, QC Barrister, appeared by direct brief on behalf of John J Hedigan and called Mr Shayne Linke Town Planner of Contour Consultants. Mr Kevin Lane appeared in person.

REASONS

- 1 This proceeding resulted from an application for review of the Responsible Authority's failure to determine an application within the prescribed time.
- 2 The responsible authority has subsequently indicated had it been able to determine the application it would have refused the grant of a permit for the subdivision of land at 57 Rosehill Road, Lower Plenty into four lots.
- 3 The Responsible Authority indicated had it been able to determine the application as mentioned above it would have refused the grant of the permit on the following grounds:
 1. The proposal does not satisfactorily respond to the relevant sections of the State and Local Planning Policy Frameworks.
 2. The proposal does not satisfactorily respond to clause 65 of the Banyule Planning Scheme.
 3. The proposal does not comply with the objectives of the Neighbourhood Character policy.
 4. The proposal represents an overdevelopment of the site.
- 4 A number of objectors supported the council's grounds of refusal.

Site and surrounding area

- 5 The review site is located on the south side of Rosehill Road and lies between Rosehill Road and the Yarra River to its rear. The site is irregular in shape with a frontage of approximately 11.5 metres in an 'axe handle' configuration, leading to the rear of the site which has a width of approximately 106.6 metres and a depth of approximately 294.6 metres. This forms the main portion of the land. The site has a significant fall in its southern half abutting the Yarra River embankment. The front half of the site is relatively flat.
- 6 The review site is heavily vegetated particularly at its southern half and effectively can be characterised into two distinct characters. The front half of the site is contained within a low density residential zone containing a mixture of exotic and native canopy trees, mostly located along the site's boundary and fence lines. In this part of the site, cypress pine trees are dominant features particularly along the main access road from Rosehill Road.
- 7 The rear half of the site is zoned Rural Conservation and slopes significantly towards the river valley. The existing dwelling is located within this portion of land and the vegetation is quite dense with significant components of indigenous flora and fauna. This part of the site has a strong untouched bush woodland character, which is highly valued and common in this part of the municipality.

- 8 The surrounding area is categorised by rolling hills and large residential properties set within a generally treed environment or spacious garden setting.
- 9 To the north of the review site (and effectively east of the Rosehill Rd frontage abuttal) is the Hedigan property. This is a large property having its primary focus along the Rosehill Road frontage.
- 10 To the west is another large allotment with a house located towards the front of the site, with the rear internal part of the site having been subdivided into six lots. Dwelling 2/61 Rosehill Road is located close to the western boundary of the review site opposite the proposed position of lot 1 of the subdivision is located.
- 11 To the east is another large lot that runs all the way down to the river bank. A dwelling is located in the south east portion of that land and is thus well separated from the review site.
- 12 A substantial amount of subdivision and redevelopment has taken place in and around the review site. New dwellings have been constructed with frontages to Rosehill Road and some set back behind the front dwellings with generally all set within a garden/vegetation setting.
- 13 Because of the natural topography of the area and the undulating nature of the land, some dwellings are clearly visible from the road while others are well hidden in the valleys and behind existing vegetation.
- 14 Thus the significant character of this area is one of large homes set within large lots in a well vegetated environment.

Proposal

- 15 This application proposes to subdivide the review site into four lots. Three lots are proposed on the northern portion of the land, wholly contained within the Low Density Residential Zone (LDRZ). The fourth lot is the balance of the land, which is all within a Rural Conservation Zone (RCZ).
- 16 Lots 1 to 3 have areas just over 4,000 square metres while lot 4 will have an area of 2.6 hectares. Lot 4 contains the most significant components of indigenous vegetation on the land. The existing vegetation along the river valley escarpment is proposed to be retained and no vegetation is proposed to be removed as a consequence of the subdivision.
- 17 Lots 1, 2 & 3 each have a building envelope to facilitate the position of any future dwelling on the proposed lots. It was submitted the building envelopes are substantial in size to provide flexibility in the positioning of any future dwelling.

Zoning

- 18 As gathered by the above the land is contained within two zones. The northern part being a low density residential zone. The LDRZ also applies to all the surrounding land having frontage to Rosehill Road.

- 19 The rear portion of the land contained within lot 4 and the abutting land to it is generally contained within a Rural Conservation Zone.
- 20 The review site is also effected in part or wholly by a number of overlays including the Environmental Significance Overlay Schedule 1 (ESO1), the Vegetation Protection Overlay Schedule 1 (VPO1), Significant Landscape Overlay Schedule 1 (SLO1), Land Subject to Inundation (LSIO) and a Public Acquisition Overlay which runs along the river valley.
- 21 The ESO1 PA02 and the LSIO are all overlays which only effect the most southern portion of the land and thus are not immediately relevant to the considerations that effect this subdivision. The SLO1 and the VPO1 cover the whole of the site however these two overlays are not relevant to the subdivision of land as they are primarily concerned vegetation removal.
- 22 In terms of the Environmental Significance Overlay a planning permit is required for subdivision however this overlay only effects the most southern portion of the land which is not being itself subdivided. Mr Wright submitted that in his opinion no permit is required in order to satisfy the concerns raised by Mr Hooper (who suggested that as the land was effected by this overlay, even in part, a permit ought to be obtained). I indicated that I would amend the permit application and any permit issued to include approval for subdivision of land within the ESO1 overlay. Mr Hooper had no objection to this course of action.

Tribunal's consideration

- 23 Having heard the submissions of Mr Constantine on behalf of the council, Mr Hooper on behalf of Mr Hedigan and Mr Lane representing himself and Mr Wright on behalf of the permit applicant and taking into account the evidence of both Mr Linke for the objectors and Ms Katz for the permit applicant and following the inspection of the site and the surrounding area I considered the following matters need to be determined in this matter:
 1. Is the proposal consistent with the State and Local Planning Policy Framework.
 2. Does the proposed subdivision respond in a positive manner to the character of the area.
 3. Are there any unacceptable amenity impacts that arise from the proposed subdivision.

Policy

- 24 There is a strong emphasis for urban consolidation within both the state and local planning policy framework of the Banyule Planning Scheme (BPS). A strong caveat to achieving that policy objective is to ensure that subdivision and the subsequent future development respects the character of the area.

- 25 This site, as mentioned earlier, has part of the land zone within a low density residential zone. There is an expectation that LDRZ land can be subdivided into lots of not less than 4,000 square metres provided the sites can manage their own wastewater. In this proposal the applicant has given an undertaking that the land will be serviced by reticulated sewerage and water supply. Thus those service constraints in terms of subdivision are not relevant to this application.
- 26 From my inspection of the site and surrounding area and through examination of the aerial photo it is clear that much of the LDRZ land is currently subdivided into approximately 4,000 metre lots in the surrounding and nearby area.
- 27 What was apparent to me on my inspection was that these smaller lots were generally located back from the main road abuttal and located to the rear of the lots fronting Rosehill Road.
- 28 While towards the eastern end of Rosehill Road large homes on large lots fronting the road were quite evident, around the review site and to the west of the review site it was the vegetation to the front of the lots which was a dominant feature. Dwellings in this part of the land were generally nestled into the vegetated lots.
- 29 However when one went behind the front lots and looked to the rear a more intensive development form was generally more evident. Karfilli Drive located immediately next door to the review site is one such example.
- 30 Thus the policy imperative of maintaining the character of Rosehill Road, is maintained in this proposed subdivision by locating the more intensive form of subdivision to the rear of the land fronting Rosehill Road.
- 31 It appeared to me that neither the council nor the objectors sought to seriously suggest the yield of three or four lots on the rear parcel of land was inconsistent with the State Planning Policy Framework of seeking to better utilise the land. Nor was it contended that the proposal would not be consistent with the Local Planning Policy Framework of providing housing variety and diversity.
- 32 The key question arising from the policy perspective was whether the lot configuration arising from the site's constraints provided adequate opportunity to ensure the future development on the site would maintain that open bush woodland setting that the planning policy tries to maintain and enhance in this area.

The neighbourhood character policy

- 33 Clause 22.07 of the BPS identifies the review site as being within the Bush Woodland Precinct 2 (BW2) of the Banyule Character Study.
- 34 The BW2 covers most of the LDRZ north of the RCZ along the Yarra River embankment and Rosehill Road.

- 35 What is evident in this area is the extent of subdivision that have already taken place within the BW2 precinct, in subdivision parcels of lots of between one hectare and 0.4 hectare.
- 36 The BW2 has as part of its key characteristics a number of matters that importantly include:
- Position on site – buildings are set in the grounds of the allotment frequently centrally placed with large setbacks from all boundaries.
 - Height – dwellings are predominantly single storey although some two storey forms on sloping sites are found.
 - Vehicle access – driveways are long and frequently unpaved other than in new subdivisions and garages are provided on site usually out of site and incorporated within the building design.
- 37 In terms of the character guidelines the following components are considered important:
- Relationship between built form and the vegetation objectives seek to maintain the indigenous vegetation landscape vistas.
 - Relationship between topography and built form objective seeks to ensure that dwellings do not dominate the landscape.
 - Position on site objective seeks to maintain the appearance of buildings in grounds and to maintain the spaciousness of dwelling location.
 - Vehicle access objective seeks to minimise excavation for car access and the dominance of car access and storage facilities.
- 38 The existing subdivision of the land has a battleaxe form. A 15.25 metre wide access way currently leads from the Rosehill Road abuttal to the existing dwelling located mid block to the rear of the land.
- 39 This accessway is to be upgraded as part of the works of the subdivision if the subdivision is approved. Thus the street interface as it currently exists is unlikely to change and the current accessway together with turning areas to facilitate CFA truck movements are all proposed to occur within the common property access of the proposed subdivision.
- 40 The key concern of all the objector parties and council was the potential impact of future building on the site resulting from the provision of the designated building envelopes on each allotment.
- 41 Mr Hooper made submissions at length in respect of the constrained nature of these allotments resulting from:
- The use of the existing accessway to the western part of the site.
 - The location of the transmission easement through the northern part of the site.

- The location of the rural conservation zone boundary.
 - The interface with the adjoining neighbours.
- 42 Mr Hooper submitted, that as a result of these constraints, the proposed subdivision and proposed building envelopes were concentrated too closely together in the southern portion of each lots 1, 2 and 3.
- 43 Mr Linke also raised the issue of the clustering of dwellings in one location of the subdivided land as being inconsistent with the pattern of subdivision development of the nearby area.
- 44 Mr Wright and Ms Katz submitted the generous and substantial building envelopes that were set out on the plan provided for flexibility for future home owners to position their dwellings within the building envelope. Given the size of the building envelopes it was highly unlikely, they submitted, that all of the building envelope area would be utilised.
- 45 While I agree with this observation, I believe it is incumbent on the planning authorities to ensure that the typical ‘setting of buildings within a garden environment’ should be an explicit objective outcome rather than one that is left to some future owner or implied. To that extent, I believe that lots 1 and 2 should not have the potential for zero lot lines, that are not commonly found in the area and are in fact a foreign element for this character area, to occur. In my view, both the eastern boundaries of the building envelopes for lots 1 and 2 should be setback a minimum of 5 metres from their respective eastern boundaries.
- 46 As a consequence, the building envelope area is reduced by approximately 25%. This leaves lot 1 with a building envelope area of approximately 459 square metres (approximately 17 metres wide by 27 metres in length), while lot 2 would result in a building envelope of 435 square metres (approximately 30 metres in length and between 14.5 and 15.7 metres in width). Lot 3 remains unchanged.
- 47 As a result of these changes, the minimum separation of buildings between lots 2 and 3 becomes 10 metres, and between buildings on lots 1 and 2 approximately 25 metres (including the width of the existing tennis court). These separation distances are not dissimilar to those found in nearby subdivisions.
- 48 While the clustering of the three dwellings on lots 1, 2 and 3 will potentially be visible from the rear of Mr Hedigan’s property, the separation distance between Mr Hedigan’s property and the proposed building envelopes is substantial being in the order of between 90 and 100 metres. In addition, the intervening vegetation and screening will soften any visual impact of any future dwellings on these proposed lots.
- 49 In terms of visual impact to Mr Lane’s property located to the west, the separation distance again is quite substantial being in the order of 25 metres.

- 50 In addition, the existing vegetation in the intervening area will assist to soften any visual impact. However, if necessary, a short brush box screen fence could limit views from Mr Lane's property from the proposed subdivided and/or future developed lots.
- 51 More importantly the potential visual impact to the properties to the east and west is essentially the same as that of any single dwelling interface commonly found in the area.
- 52 Another important factor in terms of character is that the impact from the road reservation is relatively unchanged. That is the view from Rosehill Road will remain unchanged. While Mr Hooper made submissions suggesting one may get a view to the future three dwellings when travelling up the incline of Rosehill Road from the west that view will only be available for a very short time and will most likely be further limited with a development of a dwelling at no.1/61 Rosehill Road (which is currently undeveloped). In any event the intervening vegetation would soften any visual impact from that view corridor.
- 53 From a neighbourhood character perspective the outcome of this proposal would not be dissimilar to the clustering of dwellings that currently exist at the rear of 61 to 63 Rosehill Road particularly dwellings at 3 and 4/61 Rosehill Road and 2/63 Rosehill Road.
- 54 Of course that's not to say that makes this outcome acceptable. However, what it does do, is provide an indication of what it currently exists in the area. On my assessment, the outcome on this lot will be a more superior one than that occurring between 61 and 63 as a consequence of the retention of much of the existing vegetation on the land.
- 55 Thus in my view the neighbourhood objective outcomes of the BW2 are satisfied by this subdivision.

Amenity impacts

- 56 The amenity impacts raised in this application related primarily to traffic impacts to Mr Lane and Mr Hedigan's property resulting from an increase traffic use of the common access way from Rosehill Rd, the visual impact of proposed dwellings on the subdivided lots to adjoining landowners and the privacy issue particularly related to Mr Lane's property.
- 57 In terms of traffic impact it is fair to say that there will be an increase in the volume of traffic along the common property accessway resulting from the three additional dwellings serviced by the common accesway.
- 58 It is often submitted to the Tribunal that residential dwellings generates something in the order of six to ten vehicle movements per day with 10% of those movements occurring within the am or pm peak period.

- 59 Thus what we are talking about in this particular application assuming the highest order of vehicle movements is approximately an additional 30 vehicle movements per day with three of those vehicle movements occurring within the peak am or pm hour. This represents a peak traffic volume of one vehicle every 20 minutes. I essentially agree with council's assessment that this is unlikely to have any substantial impact even in this low density residential area. Certainly there were no submissions in relation to the capacity of the street network to accommodate this minor increase.
- 60 Mr Lane raised the issue of headlights along the common driveway effecting the habitable room areas on the east side of his house and in particular the bedroom areas. Mr Wright offered the construction of a low height brush box type fence to be erected between the western boundary of the review site and the common accessway opposite Mr Lane's dwelling. Ms Katz suggested the height of the brush box fence will be approximately 1 metre. I believe the concept of a brush box screen fence is a worthy consideration however I believe the height should be a minimum of 1.5 metres and that the commencement of the fence should be at least 5 metres on either side of the Lanes' dwelling. That is, 5 metres either side of the length of the building.
- 61 This 'screen fence' will also assist in addressing some of Mr Lane's privacy concerns arising out of the potential for any future dwelling constructed on lot 1 overlooking his property. As I stated earlier the separation distance is substantial and privacy across this distance is not a major concern of the Tribunal.
- 62 Both Mr Lane, and in particular Mr Hooper, raised concerns in respect of the construction and enhancement of the common property accessway. On my inspection I took note of the condition of the common accessway. I noted that it was in reasonable condition, and was sealed. However given the likely construction of both reticulated water supply and sewerage and other infrastructure, there may be an impact on the condition of the access road. I believe that a properly sealed pavement ought to be the outcome of any road servicing these properties. Any accessway surface should be in accordance with the requirements of the Responsible Authority. Mr Wright indicated an imposition of such a condition was satisfactory to his client.
- 63 The final impact referred to was that of a visual impact from the existing dwellings to any future buildings constructed on the review site. While it is impossible to assess the exact impact what is clear is that the substantial separation distance of the building envelopes from the adjoining buildings and the intervening vegetation that currently exists will assist to soften any future built form on each of these allotments.

Conditions discussion

- 64 At the conclusion of the hearing discussion took place on a number of draft conditions circulated by the Responsible Authority. Ms Forsyth assisting Mr Wright produced a revised set of conditions which essentially drew on the council's circulated conditions and were modified for simplification as the basis of future discussion.
- 65 A number of key issues were discussed including the use of consistent terminology for the main access to be known as the common property accessway; the need to ensure the common property accessway is sealed; the need for services to the site in terms of water supply and sewerage to be reticulated; and the simplification of some conditions and the amount of public open space contribution to be made.
- 66 In terms of this latter issue Ms Forsyth submitted the public open space contribution should be reduced from 3% to 2%. In support Ms Forsyth tabled a decision of the Tribunal where the Tribunal made a reduction of 3% to 2%. Mr Constantine submitted that it was council practice to apply a flat rate of 3% based on the number of allotments being created. This appears to be a legacy of some previous practice perhaps arising from the former VicCode table of open space contributions for subdivision or dwelling development.
- 67 However the Subdivision Act requires the consideration of a number of matters in determining the requirement of open space including the proposed use and development of the land, the increase intensity of use as a result of the subdivision including the increased population density. For those reasons I adopt the analysis of my colleague Senior Member Byard and determine that a 2% contribution should be applied in this instance.

Conclusion

- 68 Having considered all of the submissions the expert evidence and having inspected the site and surrounding area I have come to the conclusion that the proposed subdivision is consistent with the policy objectives of the Banyule Planning Scheme and is not inconsistent with the Bush Woodland Precinct 2 character and accordingly I propose to set aside the Responsible Authority's determination and direct the grant of a permit with conditions.

N. Hadjigeorgiou
Member