



15.3 Council Owned Land at Murray Road

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Report Author:	General Manager Planning & Infrastructure
Strategic Objective:	Preserve and enhance the Borough as a special place through excellence of design and conservation of its rich culture and unique heritage.
Portfolio:	Planning and Heritage
Portfolio Holder:	Cr Boyce Pizzey

Purpose

The purpose of this report is to advise Councillors on the final Development Plan for the Council owned land at Murray Road.

Background

The subject site is situated adjacent to the north-western edge of Queenscliff between Bellarine Highway and Murray Road with frontage to Fellows Road. The site is an irregularly shaped allotment with frontages of approximately 163 metres to Bellarine Highway, 219 metres to Fellows Road and 352 metres to Murray Road. The land has an area of approximately 6.96 hectares (17.21 acres).

The land is undeveloped and has been used in the past for a rubbish tip. The existing site levels range from 0.17m AHD to 1.74m AHD. The site topography comprises two high points in the south-eastern and north-eastern corners of site which are the result of previous filling of the site. The remainder of site is approximately a metre lower and characteristic of the marsh areas adjoining Swan Bay to the east of the site. An existing vehicle crossover is located on the south-eastern corner of the site, providing vehicle access from Murray Road to the site.

The site is currently vacant. Council records show the land has been zoned for residential purposes since at least 1981. A 2008 planning permit application for the site included a development plan (as required by the Queenscliffe Planning Scheme for any subdivision of the site) which provided for the subdivision of the eastern portion of the site into 18 residential lots. The application was referred to other relevant authorities and was opposed by the then Department of Sustainability and Environment due to the impact on significant native vegetation. It is believed that the Planning Permit Application was abandoned as a result.

Council considered an updated Development Plan in April 2015. Council resolved unanimously at the April 2015 Ordinary Meeting as follows:



That Council:

1. *Notes the contents of this report and the Development Plan Report included in Appendix 3;*
2. *Approve Council officers to prepare and submit a Planning Permit Application to enable the subdivision of 61-75 Murray Road into two lots in general accordance with the Development Plan;*
3. *Requests Council officers to provide a further report to Council at the conclusion of the Planning Application process;*
4. *If Council determines that the land is to be sold in the future, that Council establishes a mechanism to maintain the value of the asset;*
5. *Notes that the Department of Environment, Land, Water & Planning will fully assess the impact of this development of the flora and fauna on the site.*

Since Council's resolution above, further investigations and assessments were required to be undertaken as a result of the assessment of the Development Plan. These additional works are summarised below.

- Additional Flora and Fauna Significance Impact Assessment
- Referral to Department of Water, Environment, Land and Planning (DWELP)
- Referral to Corangamite Catchment Management Authority (CCMA)

In addition, informal advertising of the Development Plan was undertaken resulting in 5 objections being received. The matters raised above are discussed in more detail in the Discussion section of this report.

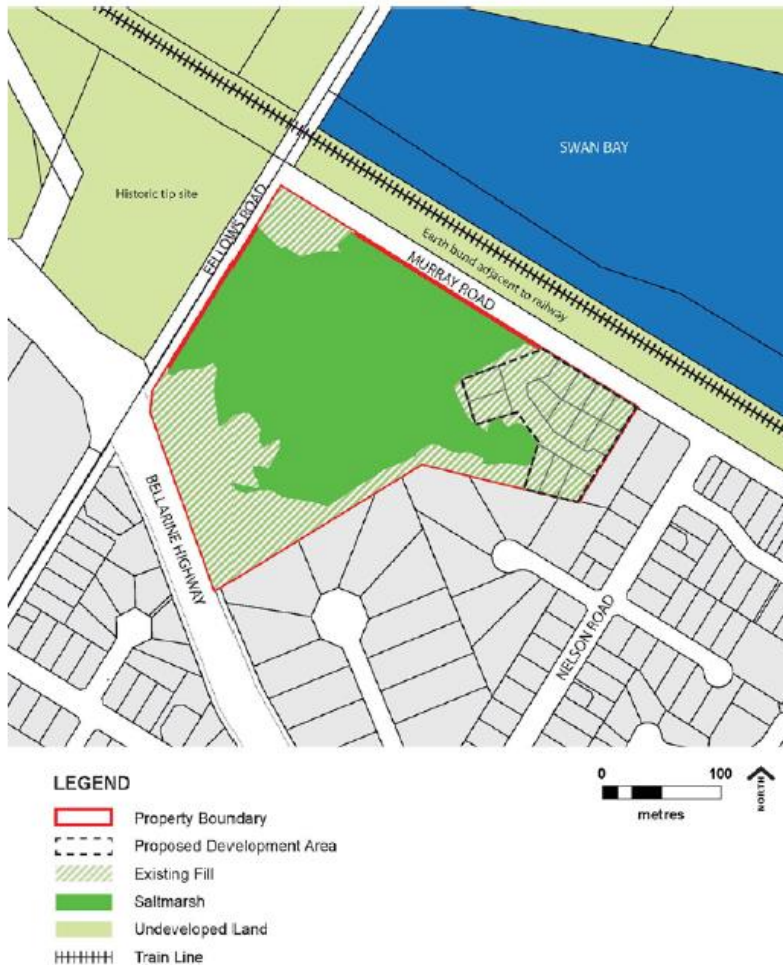
Key Issues

- Council note the approval of the Development Plan
- Council note the process for selling of Council owned land

Discussion

As mentioned, a Development Plan was presented to Council previously. The Development Plan proposes 13 residential lots between approximately 440 and 650 square metres in area as shown in Figure 1 below (Context Plan) extracted from the Development Plan document.

Figure 1 – Context Plan



CONTEXT PLAN

The Development Plan is limited to the eastern portion of the land shown in the above context plan as *Proposed Development Area*.

During the assessment process, further information was requested before finalising assessment of the Development Plan. The further information requested and now provided is detailed below.

Flora and Fauna Significance Impact Assessment (SIA)

The Murray Road site has been the subject of a number of ecological assessments dating back to 2004. Biodiversity values identified from within (or in close proximity to) the land include remnant vegetation (Coastal Saltmarsh, Brackish Sedgeland and Estuarine Flats Grassland Ecological Vegetation Communities), as well as potential foraging habitat for the critically endangered Orange Bellied Parrot (OBP). The land is also identified to be in close proximity to the Port Phillip Bay (western shoreline) and Bellarine Peninsula Ramsar site. Both the OBP and the Port Phillip Bay (western shoreline) and Bellarine Peninsula Ramsar site are considered Matters of National Environmental Significance (MNES). OBP is listed as critically endangered under the Environment Protection and Biodiversity Conservation Act, 1999.



The most recent ecological report prepared for the site (PKA, 2017) recommends that development of the lot be referred to the Commonwealth Department of Environment and Energy (DoEE) for potential impacts on the two MNES identified above. On review of the proposed subdivision plan however, it was considered that the likely impacts could be considered minor in nature, and a SIA should be undertaken to inform the need or otherwise for the development to be referred to DoEE for impacts to the aforementioned MNES.

The current plan has avoided any need for the removal of vegetation that has been highlighted as having the potential to support the OBP. This has been achieved by limiting the extent of the developable land to the eastern corner of the site, within vegetation that is dominated by exotic grassy and broad-leaf weed species.

A SIA was undertaken by a suitably qualified consultant, AECOM, who concluded:

In consideration of the extent of the proposed development and the fact that native vegetation and OBP habitat will not be directly impacted, the proposed action unlikely to result in a significant impact to the MNES addressed. As such it is considered that referral of the matter to the Commonwealth Minister of Environment is not required. Appropriate controls to mitigate the risk of indirect impacts should be detailed in a Construction environment Management Plan (CEMP) or similar.

Referrals

No formal referral requirements are detailed in the Queenscliffe Planning Scheme for a Development Plan. Informal external referrals were sought from DELWP and CCMA and are summarised below:

DELWP

- Requested notice of any multi lot subdivision occur to DELWP in future noting they are not a formal referral authority.
- Development Plan should make a salinity Management plan part of future subdivision permission.
- Development Plan should allow for management of risk associated with Coast Acid Sulfate Soils as part of future subdivision.
- Drainage for the land unclear and broader overview required.
- Impacts on Swan Bay should be further analysed.
- Supports Development Plan requiring a Construction Environmental Management Plan for future subdivision works.

CCMA

- No objection to the proposal with consideration of issues of future sea level rise as detailed in Clause 13.01-1 of the Queenscliffe Planning Scheme related to 0.2 metres over current 1 in 100 year flood levels by 2040 for urban infill development.
 - Outlined that a minimum floor level for development will need to be 1.56 metres AHD to cater for anticipated 2040 flood levels
 - Suggested consideration should be given to nominating higher levels to cater for 2100 period at 1.86 metres AHD.
 - Suggested access to east across adjacent land to Nelson Road would be positive to provide an alternative access that is less impacted by future folding.
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Public Notification

No formal process exists for the public notice of Development Plan applications within the Planning & Environment Act 1987 or the Queenscliffe Planning Scheme.

Informal notification of the application has occurred to allow the opportunity for parties to provide input into Council's decision on the Development Plan however no formal rights are conferred to submitters. The application has been informally advertised by:

- Sending notices to the owners and occupiers of adjoining land;
- Placing a notice in the Municipal Offices

Five objections have been received as a result of the public notification.

The key issues raised in the objections are summarised and responded to below:

Lack of stormwater management detail

The 1.2 hectare area to be developed is above the 1 in 100 ARI flood level. The level of stormwater discharge from the proposed development is not considered to a level to detrimentally impact the surrounding area beyond that already occurring from urban development. Detailed stormwater management plans will need to be included as part of any future subdivision.

Sea level rise impacts not considered

The CCMA have previously (2014) noted that development on areas of the site below the 1 in 100 ARI flood event should not occur and will add to known flood risk. In the regard the level of development outlined in the Development Plan relates to an area of 1.2 hectares that is located above the 1 in 100 ARI flood extent. The Development Plan application has been referred to the CCMA for comment. The CCMA have not objected to the proposal with consideration of issues of future sea level rise as detailed in Clause 13.01-1 of the Queenscliffe Planning Scheme related to 0.2 metres over current 1 in 100 year flood levels by 2040 for urban infill development. The CCMA have outlined that a minimum floor level for development will need to be 1.56 metres AHD to cater for anticipated 2040 flood levels. The majority of the land area of the future subdivision can achieve this level apart from some lots to the eastern end where floor levels of future development may need to be elevated.

Access from Murray Road across swale drain a concern – character and environmental impacts

Environmental studies undertaken for the site and supporting the application have not indicated significant environmental features of the swale drain in Murray Road. Other sensitive environmental areas have been identified on the broader site to the west and south. The concept subdivision design in the Development Plan seeks to protect key environmental features from development and having some lots with access to Murray Road will ensure that identified environmental features on other parts of the site can be maintained.

Small size of the proposed lots not in character with the area

The lots proposed range from 440 square metres through to 760 square metres. Whilst there are larger lots in Noma Court to the south, the existing arrangements of lots in Nelson Road and Edgewater Close provide a reasonable expectation for lots with areas as proposed. The lot sizes



proposed are also balanced against the remainder of the land not being identified for development as part of the current Development Plan.

Traffic impacts to area

Traffic assessment by Traffix Group indicates that any increased traffic would be minimal and not have undue impact on the surrounding road network including Murray Road.

Development Plan should provide for a road connection to adjoining land at 81 Nelson Road

The opportunity for a road connection to land at 81 Nelson Road is acknowledged. It is considered recognition of such opportunity should be provided for in the Development Plan and this can be referenced as a concept through appropriate notation on the Development Plan. Such access is also supported by the CCMA to provide an alternative access point to the land with less potential flood impact into the future.

Details of built form and landscaping on each lot needed

The current Development Plan is not intended nor required to cover the detail of the future development of the lots. Detailed design of the future subdivision and development of each lot is subject to detailed planning permit processes as part of future applications. Such detail cannot be processed until a Development Plan has been approved.

Detailed servicing arrangements for each lot will also be investigated through future processes.

Issues of sale and process have been raised by some submitters

The sale of the land is subject to separate Council processes under the Local Government Act and is not relevant to the assessment of the Development Plan application against provisions of the Queenscliffe Planning Scheme, however is discussed further in this report.

Overall the issues raised in the submissions are noted and whilst some change to the Development Plan was recommended, overall the issues raised in submissions were not considered reasons to not support the Development Plan.

It should be noted that the detailed assessment was carried out by an independent planning consultant. A delegates report was prepared and subsequently the Development Plan was approved under delegation subject to changes to the Development Plan. The changes identified are:

1. Amend the Development Plan to outline that prior to any permission for multi lot residential subdivision further testing related to contaminants consistent with the Hygienics report June 2005 and Earthtech report December 2005 must be undertaken and all asphalt removed and advice on whether the environmental condition of the land is suitable for the proposed use/s and whether an environmental audit of all, or part, of the land is recommended having regard to the Potentially Contaminated Land General Practice Note June 2005, DSE as amended from time to time must be provided.
 2. Amend the Development Plan to outline that prior to any multi lot residential subdivision occurring a salinity management and coastal acid sulfate soil investigation must be undertaken to confirm any saline soil risk or acid soil risk and inform appropriate construction techniques to manage these impacts on future development if present.
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3. Amend the Development Plan to note the advice from the CCMA that the floor levels for development will need to be 1.56 metres AHD to cater for anticipated 2040 flood levels per Clause 13.01-1 of the Queenscliffe Planning Scheme.
4. Amend the Development Plan to note the boundary to 81 Nelson Road with the text “Road reserve with opportunity to connect through to Nelson Road subject to land owner agreement” to allow for alternative access per advice from CCMA.
5. Amend the Development Plan to note a detailed stormwater management plan to support residential multi lot subdivision will be required with an aim of reducing stormwater impacts from the development to the balance of the site and to Swan Bay.
6. Amend the Development Plan to outline that a detailed Construction Environment Management Plan will be required for any multi lot residential subdivision that should include:
 - Removal of contaminants and landfill in a manner that prevents offsite impacts
 - Design construction
 - Stormwater management during construction and operation, and
 - Minimisation of disturbance to native vegetation and habitats

Subdivision of Land in Accordance with Development Plan

With the approval of the Development Plan, a planning permit has been issued for a two lot subdivision as the subdivision plan is in accordance with the Development Plan. The subdivision contains two lots, being Lot 1 of approximately 9,509 square metres identified as developable land in the Development Plan and Lot 2 of approximately 6.045ha in size.

It should be noted that public notice of the subdivision is not required and no third party appeal rights are available.

The plan of subdivision will be lodged with the titles office for registration. It is estimated that registration by titles office will take approximately 6 to 8 weeks.

Possible sale of land

The Development Plan has been prepared in a manner that would allow development of 13 lots on the smaller of the two lots (Lot 1) created by the subdivision. Council could consider the sale of this lot given its potential for residential development.

If Council determine to consider the sale of land, it must comply with Section 189 of the Local Government Act 189, which states:

189 Restriction on power to sell land

- (1) *Except where section 181 or 191 applies, if a Council sells or exchanges any land it must comply with this section.*
- (2) *Before selling or exchanging the land the Council must—*
 - (a) *ensure that public notice of intention to do so is given at least 4 weeks prior to selling or exchanging the land; and*



- (b) *obtain from a person who holds the qualifications or experience specified under section 13DA(2) of the **Valuation of Land Act 1960** a valuation of the land which is made not more than 6 months prior to the sale or exchange.*
- (3) *A person has a right to make a submission under section 223 on the proposed sale or exchange.*
- (4) *Subsection (3) does not apply to the sale of land that formed part of a road that has been discontinued and which the Council has resolved to sell as the result of a Council exercising its powers under clause 3 of Schedule 10*

Council Plan

The Development Plan and subsequent subdivision of Council owned land in Murray Road is supported by the following Strategic Objectives and Strategies from the Council Plan 2017-2021:

Strategic Objective 4 – Planning and Heritage

Preserve and enhance the Borough as a special place through excellence of design and conservation of its rich culture and unique heritage.

Strategy

- Engage the community in strategic land use planning.

Strategic Objective 5 - Governance and Performance

Maintain a cohesive, well governed, financially sustainable and independent Borough.

Strategy

- Maximise the return on Council assets and leverage external funding opportunities.

Financial

The estimated value of the developable land if sold as a single 1.22 Ha site to a developer is based on the realisation value of the 13 lots less development costs and profit margin for a developer. Development cost estimates include provision of and augmentation of utility services as well as possible replacement of fill across the developable area. Given these estimated costs for development are subject to change, they could impact the final market value of the land before sale to a developer. In accordance with Section 189 of the Act, a formal valuation of the land would need to be obtained in the event Council determines to sell the land.

Social

If the 1.22 Ha of land identified in the Development Plan for residential development was to proceed, it would result in a further 13 properties available for purchase which would potentially lead to new residents in the Borough.



The proposal will have a minor impact on some existing residences in Nelson Road and Noma Court (i.e. properties currently backing on to the developable area of Council owned land), however these impacts can be managed through the Planning Permit Application process and relevant building regulations.

Environmental

The impact to the environment should the development proceed as outlined in the Development Plan is considered to be minimal. The developable area is limited to an area that does not include significant vegetation and therefore will not necessitate the removal of significant native vegetation. It is considered the additional 13 lots would have minimal impact to Swan Bay from a stormwater drainage point of view and can be managed appropriately through the detailed design process and the requirement for a stormwater management plan. The Development Plan also recommends that during the 13 lot subdivision approvals stage, a Construction Environmental Management Plan be prepared by the developer to ensure impacts to Swan Bay, native vegetation and habitats during construction are minimal and appropriately managed.

Risk Management

There are no significant risks associated with this report at this time.

Officer Direct or Indirect Interest

Under Section 80C (1) (2) of the Local Government Act 1989, Council staff and persons engaged under a contract to provide advice or a report to a meeting of the Council or a special committee, and who have a direct or indirect interest in a matter to which the advice or report relates, must disclose the type of interest when providing the advice or report and before the advice or report is considered by the Council or the committee.

Officers involved in developing the report have no direct or indirect interests.

Assessment

The updated Development Plan has been publically advertised and referred to external agencies. The Development Plan and submissions were assessed by an independent planning consultant against relevant provisions of the Queenscliffe Planning Scheme. The independent consultant recommended approval with conditions.

Conclusion

The Development Plan application has been assessed and found to be consistent with the State and Local Planning Policy Framework and the Development Plan overlay provisions. The application was approved subject to the recommended conditions to update the Development Plan.



Recommendation:

That Council:

- 1. Note the approval of the Development Plan related to Council owned land at 61-75 Murray Road;**
 - 2. Note the formal subdivision of the land into two lots.**
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