

5. LEGISLATIVE REQUIREMENTS

5.1 PLANNING AND ENVIRONMENT ACT 1987 (THE ACT)

The Act is the relevant legislation governing planning in Victoria. The Act identifies subordinate legislation in the form of Planning Schemes to guide future land use and development.

Section 60 of the Act, requires the Responsible Authority to consider the following before deciding on an application:

- *The relevant planning scheme;*
- *The objectives of planning in Victoria;*
- *All objections and other submissions which it has received;*
- *Any decision and comments of a referral authority which it has received; and*
- *Any significant effects which the responsible authority considers the use or development may have on the environment or which the responsible authority considers the environment may have on the use or development.*

Section 61(4) of the Act makes specific reference to covenants. Under Section 61(4) of the Act the Responsible Authority must not issue a planning permit that would result in a breach of a registered restrictive covenant.

5.2 MANNINGHAM PLANNING SCHEME

Clauses of the Manningham Planning Scheme the Responsible Authority must consider:

- Planning Policy Framework:
- Clause 36.02 – Public Park and Recreation Zone (applying to reserve land)
- Clause 32.08 – General Residential Zone
- Clause 44.04 – Land Subject to Inundation Overlay (LSIO)
- Clause 52.06 – Car parking
- Clause 53.10 – Uses with adverse amenity potential
- Clause 65 – Decision Guidelines
- Clause 65.01 Approval of an Application or Plan
- Clause 71.02-3 Integrated decision making

5.2.1 PLANNING POLICY FRAMEWORK

The relevant sections of the Planning Policy Framework are as follows:

Clause 11 - Settlement

Clause 11 identifies that Planning is to recognise the need for, and as far as practicable contribute towards (as relevant):

- Health, wellbeing and safety.
- Adaptation in response to changing technology.
- A high standard of environmental sustainability, urban design and amenity.
- Climate change adaptation and mitigation.
- Prevention of land, water, air and noise pollution.
- Protecting, conserving and improving biodiversity, waterways and other natural resources

- Waste minimisation and resource recovery

It further recognises the role of planning in anticipating and responding to the needs of existing and future communities through the provision of zoned and serviced land. It particularly looks at facilitating sustainable development that takes complete advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services, expanded on in the relevant subclauses.

It includes objectives and strategies seeking to support a sustainable performance and urban environment by ways that include integrating the management of water resources and prioritising services, with the ongoing provision of land and supporting infrastructure to support these needs.

Clause 12 - Environmental and Landscape Values

Clause 12 recognises that planning should help protect the health of ecological systems and the biodiversity they support. Planning should aim to protect, restore and enhance site and features of native conservation, biodiversity, geological or landscape value.

Clause 12.01-1S Protection of biodiversity seeks to protect and enhance Victoria's biodiversity.

Clause 12.01-2S Native vegetation management seeks to ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Clause 12.03-1S River corridors, waterways, lakes and wetlands seeks to protect river corridors and ensure development responds to and respects the significant assets of water bodies.

Clause 12.05-2S Landscape seeks to protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments. Strategies to achieve this include ensuring that development does not detract from the natural qualities of significant landscapes and open spaces, and improving landscape qualities and open space linkages and environmental performance.

Clause 13 - Environmental Risks and Amenity

Clause 13 recognises that planning should strengthen the resilience and safety of communities by adopting a best practice environmental management and risk management approach. It further requires planning should identify, prevent and minimise the risk of harm to the environment, human health, and amenity through:

- Land use and development compatibility.
- Effective controls to prevent or mitigate significant impacts.

It further recognises that:

Planning should identify and manage the potential for the environment and environmental changes to impact on the economic, environmental or social wellbeing of society.

Planning should ensure development and risk mitigation does not detrimentally interfere with important natural processes.

Planning should prepare for and respond to the impacts of climate change.

Specific sub-clauses relevant to the proposal include:

Clause 13.03-1S Floodplain management includes the objective to assist the protection of:

- Life, property and community infrastructure from flood hazard, including coastal inundation, riverine and overland flows.
- The natural flood carrying capacity of rivers, streams and floodways.
- The flood storage function of floodplains and waterways.
- Floodplain areas of environmental significance or of importance to river, wetland or coastal health.

Clause 13.05-1S Noise abatement seeks “*To assist the management of noise effects on sensitive land uses*”. Strategies seek to minimise impacts, manage locations and include mitigation measures. Clause 13.05-1L Noise abatement – Manningham includes further strategies that seek to minimise impacts, manage locations and include mitigation measures.

Clause 13.06-1S Air quality management seeks “*To assist the protection and improvement of air quality.*” Strategies seek to ensure where possible there is suitable separation between land uses that reduce air amenity and sensitive land uses.

Clause 13.07-1S Land use compatibility seeks “*To protect community amenity, human health and safety while facilitating appropriate commercial, industrial, infrastructure or other uses with potential adverse off-site impacts*”. Strategies include:

- Ensure that use or development of land is compatible with adjoining and nearby land uses
- Avoid locating incompatible uses in areas that may be impacted by adverse off-site impacts from commercial, industrial and other uses.
- Avoid or otherwise minimise adverse off-site impacts from commercial, industrial and other uses through land use separation, siting, building design and operational measures.
- Protect commercial, industrial and other employment generating uses from encroachment by use or development that would compromise the ability of those uses to function safely and effectively.

Clause 13.07-1L Non-residential uses and development in residential areas- Manningham. applies to the residential zoned areas of the subject land. It includes the objectives:

- To ensure that non-residential uses in residential areas:
- Do not adversely impact the amenity of the area.
- Respond to the existing or preferred neighbourhood character of the area.
- Respond to existing environmental and landscape values.

Strategies include:

- General:

Discourage non-residential uses that do not have a community service role from locating in residential areas, particularly areas removed from activity centres and main roads.

- Design:

Design non-residential development, including siting, scale and massing, height and setbacks, roof forms and window and proportions to ensure it:

Responds to existing or preferred neighbourhood character.

Responds to environmental and landscape values.

- Amenity:

Ensure that residential amenity is not adversely affected by:

Emission of noise, lighting, odours and waste.

Loss of privacy.

Traffic generation and car parking.

Disturbance associated with hours of operation

Clause 14 – Natural Resource Management

Clause 14 seeks planning is to assist in the conservation and wise use of natural resources including energy, water, land, stone and minerals to support both environmental quality and sustainable development. Specific sub-clauses relevant to the proposal include:

Clause 14-02-2S Water quality seeks to protect water quality. Strategies include:

- Protect reservoirs, water mains and local storage facilities from potential contamination.
- Ensure that land use activities potentially discharging contaminated runoff or wastes to waterways are sited and managed to minimise such discharges and to protect the quality of surface water and groundwater resources, rivers, streams, wetlands, estuaries and marine environments.
- Discourage incompatible land use activities in areas subject to flooding, severe soil degradation, groundwater salinity or geotechnical hazards where the land cannot be sustainably managed to ensure minimum impact on downstream water quality or flow volumes.

Clause 15 – Built Environment and Heritage

Clause 15 seeks to ensure all land use and development appropriately responds to its surrounding landscape, character, valued built form and cultural contexts. As such, planning should protect places and sites with significant heritage, architectural, aesthetic, scientific and cultural value. Planning should also promote development that is environmentally sustainable. Specific sub-clauses relevant to the proposal include:

Clause 15.01-5S Neighbourhood character

The objective seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place.

Strategies include:

- Support development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
- Ensure the preferred neighbourhood character is consistent with medium and higher density housing outcomes in areas identified for increased housing.
- Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by respecting the:
 - Pattern of local urban structure and subdivision.
 - Underlying natural landscape character and significant vegetation.

- Neighbourhood character values and built form that reflect community identity.

Clause 15.01-5-01L Landscaping Manningham

This policy applies to the residential zoned part of the subject land.

Strategies include:

- Provide landscaping to soften built form and the appearance of large areas of car parking, accessways and development.
- Incorporate indigenous planting and canopy trees.
- Provide setbacks to enable the retention of canopy trees and landscape treatments along road frontages roadside boundaries and interfaces with adjoining sites to complement the boulevard theme and character of the area.
- Retain existing vegetation and canopy trees along road frontages.
- Retain native vegetation where possible or, incorporate new native vegetation into landscaping.
- Support landscaping that provides visual interest to commercial uses and carparking areas to the surrounding area

Clause 15.01-2L Environmentally Sustainable development – Manningham

The policy seeks to achieve best practice in environmentally sustainable development from the design stage through to construction and operation.

- Strategies

Facilitate development that minimises environmental impacts.

Encourage environmentally sustainable development that: o Is consistent with the type and scale of the development.

Responds to site opportunities and constraints.

Adopts best practice through a combination of methods, processes and locally available technology that demonstrably minimise environmental impacts.

- Integrated water management

Reduce total operating potable water use through appropriate design measures such as water efficient fixtures, appliances, equipment, irrigation and landscaping.

Encourage the appropriate use of alternative water (including greywater, rainwater and stormwater).

Incorporate best practice water sensitive urban design to improve the quality of stormwater runoff and reduce impacts on water systems and water bodies.

- Urban ecology

Protect and enhance biodiversity by incorporating natural habitats and planting indigenous vegetation.

Reduce urban heat island effects through building design, landscape design, water sensitive urban design and the

retention and provision of canopy and significant trees.

Encourage the provision of space for productive gardens, particularly in larger residential developments.

Clause 15.03-2S Aboriginal cultural heritage:

Objective seeks to ensure the protection and conservation of places of Aboriginal cultural heritage significance.

Strategies include to:

- Identify, assess and document places of Aboriginal cultural heritage significance, in consultation with relevant Registered Aboriginal Parties, as a basis for their inclusion in the planning scheme.
- Provide for the protection and conservation of pre-contact and post-contact Aboriginal cultural heritage places.
- Ensure that permit approvals align with the recommendations of any relevant Cultural Heritage Management Plan approved under the Aboriginal Heritage Act 2006.

Clause 19 – Infrastructure

Clause 19 seeks to ensure planning facilitates the efficient use of existing infrastructure and minimises the impact of use and development on the operation of major infrastructure of national, state and regional significance. Specific sub-clauses relevant to the proposal include:

Clause 19.02-6S Open Space seeks to establish, manage and improve a diverse and integrated network of public open space that meets the needs of the community. Strategies include:

- Ensure that open space networks:
 - Are linked, including through the provision of walking and cycling trails.*
 - Are integrated with open space from abutting subdivisions.*
 - Maintain public accessibility on public land immediately adjoining waterways and coasts.*

Clause 19.02-6L Open space – Manningham seeks to provide a range of high quality and accessible public open space areas. Strategies include:

- Minimise the negative impacts of development on public open space, including flora and fauna habitat, hydrology, water, visual qualities and landscape qualities.
- Increase the landscape values of public open space.
- Minimise the impact of the use and development of public open space on surrounding areas.

Clause 19.03-3S Integrated water management seeks to sustainably manage water supply and demand, water resources, wastewater, drainage and stormwater through an integrated water management approach. Strategies include:

- Reduce pressure on Victoria's drinking water supplies.
- Minimise drainage, water or wastewater infrastructure and operational costs.
- Minimise flood risks.
- Provide urban environments that are more resilient to the effects of climate change.
- Integrate water into the landscape to facilitate cooling, local habitat improvements and provision of attractive and enjoyable spaces for community use.
- Ensure land is set aside for water management infrastructure at the subdivision design stage.
- Protect areas with potential to recycle water for forestry, agriculture or other uses that can use treated effluent of an appropriate quality.

5.2.2 ZONES

Clause 36.02 – Public Park and Recreation Zone (applying to reserve land)

The purpose of the zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To recognise areas for public recreation and open space.
- To protect and conserve areas of significance where appropriate.
- To provide for commercial uses where appropriate.

A permit is required under the zone to:

- Clause 36.02-1 of the Public Parks and Recreation Zone to use the land for a 'utility installation'.
- Clause 36.02-2 of the Public Parks and Recreation Zone to construct a building or construct or carry out works.

The Decision Guidelines at Clause 36.02-5 require that, before deciding on an application to use or subdivide land, construct a building or construct or carry out works, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

The Municipal Planning Strategy and the Planning Policy Framework.

The comments of any public land manager or other relevant land manager having responsibility for the care or management of the land or adjacent land.

Whether the development is appropriately located and designed, including in accordance with any relevant use, design or siting guidelines.

Clause 32.08 – General Residential Zone (applying to 6 Whittens Lane and 32 Grange Park Avenue)

The purpose of the zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.

- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

A permit is required under the zone to:

- Clause 32.08-2 of the General Residential Zone Schedule 1 to use the land for a 'utility installation'.
- Clause 32.08-9 of the General Residential Zone Schedule 1 to construct a building or construct or carry out works for a use in Section 2.

The decision guidelines at Clause 32.08-13 require that, before deciding on an application in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

The Municipal Planning Strategy and the Planning Policy Framework.

The purpose of this zone.

Whether the use or development is compatible with residential use.

Whether the use generally serves local community needs.

The scale and intensity of the use and development.

The design, height, setback and appearance of the proposed buildings and works.

The proposed landscaping.

The provision of car and bicycle parking and associated accessways.

Any proposed loading and refuse collection facilities.

The safety, efficiency and amenity effects of traffic to be generated by the proposal

5.2.3 OVERLAYS

Clause 44.04 – Land Subject to Inundation Overlay (LSIO)

The purpose of this overlay is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify flood prone land in a riverine or coastal area affected by the 1 in 100 (1 per cent Annual Exceedance Probability) year flood or any other area determined by the floodplain management authority.
- To ensure that development maintains the free passage and temporary storage of floodwaters, minimises flood damage, responds to the flood hazard and local drainage conditions and will not cause any significant rise in flood level or flow velocity.
- To minimise the potential flood risk to life, health and safety associated with development.
- To reflect a declaration under Division 4 of Part 10 of the Water Act, 1989.
- To protect water quality and waterways as natural resources by managing urban stormwater, protecting water supply catchment areas, and managing saline discharges to minimise the risks to the environmental quality of water and groundwater.
- To ensure that development maintains or improves river, marine, coastal and wetland health, waterway protection and floodplain health.

A permit is required under Clause 44.04-2 to construct a building or construct or carry out works.

The decision guidelines at Clause 44.04-8 require that, before deciding on an application in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

The Municipal Planning Strategy and the Planning Policy Framework.

Any local floodplain development plan.

Any comments from the relevant floodplain management authority.

The existing use and development of the land.

Whether the proposed use or development could be located on flood-free land or land with a lesser flood hazard outside this overlay.

Alternative design or flood proofing responses.

The susceptibility of the development to flooding and flood damage.

The potential flood risk to life, health and safety associated with the development. Flood risk factors to consider include:

- The frequency, duration, extent, depth and velocity of flooding of the site and accessway.
- The flood warning time available.
- Tidal patterns.
- Coastal inundation and erosion.
- The danger to the occupants of the development, other floodplain residents and emergency personnel if the site or accessway is flooded.

The effect of the development on redirecting or obstructing floodwater, stormwater or drainage water and the effect of the development on reducing flood storage and increasing flood levels and flow velocities.

The effect of the development on river, marine and coastal health values including wetlands, natural habitat, stream stability, erosion, environmental flows, water quality, estuaries and sites of scientific significance.

Any other matters specified in a schedule to this overlay.

5.2.4 PARTICULAR AND GENERAL PROVISIONS

Clause 52.06 Car Parking

Clause 52.06 regulates car parking requirements and design standards. Relevant purposes include to ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality and to ensure that car parking does not adversely affect the amenity of the locality.

A specific parking rate is not specified for the proposed utility installation use. As such, the appropriateness of the proposed parking provision must be to the satisfaction of the Responsible Authority.

Clause 53.10 Uses with adverse amenity potential

Clause 53.10 seeks to identify the types of uses and activities, which if not appropriately designed and located, may cause offence or unacceptable risk to the neighbourhood.

Clause 53.10-1 details specific threshold distances, which in this case is measured as the shortest distance from any part of the land to land (not a road) in the nominated zones,

which relevantly includes the residential zones. The Table to Clause 53.10-1 does not specify a threshold distance for a water recycling facility and as such, requires referral to the Environment Protection Authority under Section 55 of the Planning and Environment Act 1987 (P&E Act).

Clause 65.01 Approval of an Application or Plan

This clause outlines that before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

- The matters set out in section 60 of the Act.
- Any significant effects the environment, including the contamination of land, may have on the use or development.
- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of the zone, overlay or other provision.
- Any matter required to be considered in the zone, overlay or other provision.
- The orderly planning of the area.
- The effect on the environment, human health and amenity of the area.
- The proximity of the land to any public land.
- Factors likely to cause or contribute to land degradation, salinity or reduce water quality.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- The extent and character of native vegetation and the likelihood of its destruction.
- Whether native vegetation is to be or can be protected, planted or allowed to regenerate.
- The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.
- The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.
- The impact the use or development will have on the current and future development and operation of the transport system.

Clause 71.02-3 Integrated decision making

It is policy that Planning and responsible authorities should endeavour to integrate the range of planning policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

Planning authorities should identify the potential for regional impacts in their decision making and coordinate strategic planning with their neighbours and other public bodies to achieve sustainable development and effective and efficient use of resources.