

Minutes

Meeting of Council

Tuesday 16 May 2023

Video conference

Zoom

Commenced at 6:00 pm

Council:

Cr Liz Pattison (Mayor)
Cr Gary Allen
Cr Paul Barker
Cr Mike Bodsworth
Cr Kate Gazzard
Cr Rose Hodge
Cr Adrian Schonfelder
Cr Libby Stapleton
Cr Heather Wellington

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1 Procedural Matters

1.1 Present

Cr Liz Pattison (Mayor)
Cr Gary Allen
Cr Mike Bodsworth
Cr Kate Gazzard
Cr Rose Hodge
Cr Adrian Schonfelder
Cr Libby Stapleton
Cr Heather Wellington

Chief Executive Officer - Robyn Seymour
General Manager Placemaking and Environment - Chris Pike
General Manager Community Life - Gail Gatt
Acting General Manager Strategy and Effectiveness - Damian Waight
Acting Executive Manager - Strategic Projects and Partnerships - Darryn Chiller
Manager Integrity and Governance - Jake Brown
Governance Officer - Stacey Ylstra
Governance Officer - Jess Menzel
Manager Planning and Compliance - Kate Sullivan
Coordinator Statutory Planning - Dee Gomes
Senior Lawyer - Heidi Mellar
Property Services Officer - Sheree Seiffert

Speakers

Item 1 - Planning Permit Application - 21/0333 - Hearing of Submissions - Retirement Village - 5 Coombes Road Torquay

Sue O'Shannassy on behalf of Greater Torquay Alliance and 3228 Residents Association
Peter Brighton
Karan Dawson
Peter Donnelly
John Foss
Mark Mathews
Ron Lowe
Toni Sincock and Leigh Prosser on behalf of the Applicant

Item 2 Potential Discontinuation and Sale of Cypress Lane Torquay and portion of Reserve no 3

Karan Dawson
John Foss
Mae Forsey
Sue O'Shannassy on behalf of Greater Torquay Alliance and 3228 Residents Association
Peter Donnelly
Peter Brighton
John Cicero on behalf of the Applicant
Kerryn Briody

Not in attendance

Cr Paul Barker

1.2 Opening

Mayor Pattison opened the meeting.

The Surf Coast Shire local government area spans the traditional lands of the Wadawurrung People and the Gulidjan and Gadubanud Peoples of the Eastern Maar. The main Council offices in Torquay are on Wadawurrung Country. We wish to acknowledge the Traditional Owners of the lands on which each person is attending or viewing this meeting today, and pay respect to Elders past and present. Council also acknowledges other First Nations People that may be attending the meeting today.

1.3 Pledge

Mayor Pattison recited the pledge.

As Councillors we carry out our responsibilities with diligence and integrity and make fair decisions of lasting value for the wellbeing of our community and environment.

1.4 Apologies

Council Resolution

Moved Cr Allen, Seconded Cr Gazzard

That an apology be received from Cr Barker.

CARRIED 7|0

For

Cr Allen
Cr Bodsworth
Cr Gazzard
Cr Hodge
Cr Pattison
Cr Schonfelder
Cr Stapleton

Against

Nil

Abstained

Nil

1.5 Conflicts of Interest

Nil.

Cr Wellington entered the meeting at 6:11pm.

2 Reports

2.1 Planning Permit Application - 21/0333 - Hearing of Submissions - Retirement Village - 5 Coombes Road Torquay

Council Plan	Theme Two - Healthy Connected Community Strategy 3 Facilitate the provision of social infrastructure and open space to enable healthy lifestyles.
Author's Title:	Principal Statutory Planning
General Manager:	Chris Pike, General Manager Placemaking & Environment
Division:	Placemaking and Environment
Department:	Planning and Compliance
Attachments:	Nil

Officer Conflict of Interest: No officer declared a conflict of interest under the *Local Government Act 2020* in the preparation of this report.

Status: This report and attachments contains no confidential information under section 66(2) of the *Local Government Act 2020*.

Purpose

1. The purpose of this report is to hear from the submitters to the application and consider submissions made to Planning Permit Application 21/0333 for the use and development of a retirement village, removal of native vegetation and removing a reservation from the land under Section 24A of the Subdivisions Act at 5 Coombes Road, 4, 10, 16, 22 Cypress Lane and 3A Blackwattle Mews, Torquay.

Background

2. Planning Application 21/0333 was lodged for the use and development of the land as a retirement village, removal of native vegetation and removing a reservation from the land under Section 24A of the Subdivisions Act on 18 August 2021. The application was advertised and received several submissions.
3. An amended application was lodged on 1 February 2023, to address concerns raised by officers and objectors. The amended application relocates the club house and primary central apartment building further from the western (side) boundary and proposes a reduced scale (four storey to three storey), with single storey independent living units now proposed along the western boundary; deletion of the three storey and two storey houses running along the southern boundary parallel to Deep Creek, with two two-storey apartment buildings now proposed in the south-east corner, parallel to Deep Creek.
4. The key features of the proposal are:
 - 196 independent living units (120 villas and 76 apartments)

- A centrally located apartment building and club house (u-shape), which includes the following:
 - Maximum height of 11.006 metres above natural ground level to the three storey component and 7.64 metres above natural ground level to the two storey component.
 - A basement level, which comprises a car park (58 spaces), swimming pool, gym, sauna and waste room.
 - Ground floor, which comprises entry foyer, library, seminar space, lounge, a salon, office, 20 apartments (2 single bedrooms and 18 two bedroom) and an external bowling green.
 - First floor, which comprises 24 apartments (2 single bedroom and 22 two bedroom) and a communal terrace.
 - Second floor (third storey), which comprises a club house including dining and lounge with kitchen facilities and an east facing terrace.
 - Two apartment buildings, which are located to the south-eastern corner, parallel to Deep Creek and includes the following:
 - Buildings stepped down the site with a maximum height of 7.543 metres above natural ground level.
 - Car parking to the north of the apartments
 - 32 apartments (12 single bedroom and 20 two-bedroom apartments).
5. The site is located on the southern side of Coombes Road, Torquay on the corner of the Surf Coast Highway. The site comprises a constructed land subdivision known as 4-22 Cypress Lane and 5 Coombes Road, comprising 10 lots, part of a reserve and the Cypress Lane road reserve. Deep Creek runs along the southern boundary of the site. The site is developed with the original dwelling and farm sheds, with the remaining lots being vacant.
6. The site includes boundary plantings (windrows) to the entrance, along the northern section of Cypress Lane and along the western boundary. The species are predominantly cypress, pine and eucalypts. 16 Cypress Lane, Torquay, which includes the existing dwelling is densely vegetated with planted vegetation, which includes a mixture of eucalypts and pine trees. The remainder of the site is predominantly pasture grasses.
7. The application is required to be assessed against the Surf Coast Planning Scheme. The requirement for a planning permit arises under Clause 32.03 (Low Density Residential Zone), where a permit is required to use (Section 2) and develop the land for accommodation, which includes a retirement village.

Issues

Notice of the amended application was given and a total of 111 objections were received and two submissions of support. The main issues raised:

Zone

- The use and development are not appropriate within the Low Density Residential Zone

Visual / Density

- Density and scale of the development are not appropriate within the Low Density Residential Zone
- Height of the apartment buildings (club house and buildings in the south-east corner parallel to Deep Creek)
- Buildings should not be higher than two storeys

Environment

- Environmental impacts on both flora and fauna. i.e. vegetation removal within the site and impacts on wildlife
- Environmental impacts to Deep Creek
- Environmentally sustainable design (ESD). Proposed average of 7.2 stars is not significantly greater than the required standard of 7 stars from October 2023

Landscape / Open Space

- Impacts on the landscape character of the area due to the proposed vegetation removal (native and exotic Pine and Cypress trees) and the loss of space
- Loss of open space
- Loss of access to Deep Creek reserve
- Impact on streetscape character

Stormwater

- Stormwater runoff impacts to Deep Creek, including pollution, erosion and impacts to Whites beach
- Cumulative stormwater impacts from existing and future development (i.e. Briody Drive rezoning)
- Impacts on Karaaf

Traffic

- Traffic impacts
- Coombes Road cannot handle additional traffic

Waste water

- Waste water is not provided to the site

Policy

- Not in keeping with Council's vision or climate emergency declaration
- Not in keeping with the Surf Coast Shire Planning Scheme and the Surf Coast Distinctive Area Landscape: Statement of Planning Policy (DAL)
- Marine and Coastal Policy (202) advises against development within 5.0km of the high tide water mark

Use / Demand

- Not required. There are already sufficient retirement villages planned or constructed within the Surf Coast Shire
- Is there an aged care component to the proposal?
- The proposal is high density housing marketed as a retirement village
- Land is not suitable for the elderly or disabled with mobility issues

Sale of Public Land

- Object to the sale of the road and part reserve
- Matter of the public land should have been decided prior to the consideration of a planning application
- What will stop the developer from going to VCAT once they own the land

Other

- Amenity impacts including visual amenity, noise, light, overlooking, gated community
- Fire risk will limit landscaping of the site
- Precedent for higher density with low density areas

9. The application is required to be assessed against the Surf Coast Planning Scheme.

The relevant policies within the Scheme that must be considered include:

- Clause 02.02 Vision
- Clause 02.03-2 Environmental landscapes and values
- Clause 02.03-6 Housing
- Clause 11.01-1L-02 Torquay Jan Juc
- Clause 11.03-5S Distinctive areas and landscapes
- Clause 12.01-1S Protection of biodiversity
- Clause 12.01-1L Protection of biodiversity in Surf Coast
- Clause 12.03-1L River, corridors, waterways, lakes and wetlands in Surf Coast
- Clause 13.02-1S Bushfire planning
- Clause 13.02-1L Bushfire planning in Surf Coast
- Clause 15.01-5S Neighbourhood character
- Clause 15.01-5L-02 Torquay-Jan Juc preferred neighbourhood character
- Clause 15.03-2S Aboriginal cultural heritage
- Clause 16.01-1S Housing supply
- Clause 16.01-1L-02 Torquay-Jan Juc housing growth
- Clause 16.01-5S Residential aged care facilities
- Clause 16.01-5L Residential aged care facilities in Surf Coast
- Clause 32.03 Low Density Residential Zone
- Clause 45.06 Development Contributions Plan Overlay - Schedule 2
- Clause 52.17 Native vegetation
- Clause 52.06 Car Parking
- Clause 65.01 Decision Guidelines

Cr Schonfelder experienced technical difficulties throughout this item and his camera was off between 6:13pm – 7:23pm.

Recommendation

That Council:

1. Receives and notes the submissions relating to Planning Permit Application 21/0333 for the use and development of a retirement village, removal of native vegetation and removing a reservation from the land under Section 24A of the *Subdivision Act 1988*.
2. Considers the submissions in a report regarding Planning Permit Application 21/0333 at a future Council meeting.

Council Resolution

Moved Cr Allen, Seconded Cr Gazzard

That Council:

1. Receives and notes the submissions relating to Planning Permit Application 21/0333 for the use and development of a retirement village, removal of native vegetation and removing a reservation from the land under Section 24A of the *Subdivision Act 1988*.
2. Considers the submissions in a report regarding Planning Permit Application 21/0333 at a future Council meeting.

CARRIED 8|0

For	Against	Abstained
Cr Allen	Nil	Nil
Cr Bodsworth		
Cr Gazzard		
Cr Hodge		
Cr Pattison		
Cr Schonfelder		
Cr Stapleton		
Cr Wellington		

2.2 Potential Discontinuation and Sale of Cypress Lane Torquay and portion of Reserve no 3

Council Plan	Theme Seven - Accountable and Viable Council Strategy 19 - Improve Council's credibility as a trusted decision maker through meaningful engagement.
Author's Title:	Property Officer
General Manager:	Damian Waight, Acting General Manager Strategy and Effectiveness
Division:	Strategy and Effectiveness
Department:	Governance
Attachments:	Nil

Officer Conflict of Interest: No officer declared a conflict of interest under the *Local Government Act 2020* in the preparation of this report.

Status: This report and attachments contains no confidential information under section 66(2) of the *Local Government Act 2020*.

Purpose

1. The purpose of this report is to present submissions relating to the potential discontinuation and sale of Cypress Lane Torquay and sale of a portion of reserve number 3.

Background

2. Council resolved at its meeting held on 28 February 2023 to:
 - 2.1. *Give notice in accordance with section 223 of the Local Government Act 1989 of its intention to discontinue the road reserve and sell the land, known as Cypress Lane Torquay, (Lot R1 on plan number PS305011W identified in Attachment 1) to Coombes Road Pty Ltd (the adjoining property owner) and invite submissions on the proposed road discontinuance and sale; and*
 - 2.2. *Give notice of its intention to remove the reserve status on a portion of land with an area of approximately 1,790m² of reserve number 3 (the Reserve) - identified in Attachment 1 - on PS305011W which will be completed under section 24A of the Subdivision Act 1988.*
3. A total of 73 submissions were received by the closing date of 7 April 2023. There were 70 objections and three submissions received in support of the discontinuation and sale of Cypress Lane and sale of portion of reserve number 3.
4. Due to the large number of submissions received, they have not been summarised individually. Councillors have been provided with access to a full copy of each submission.

Issues

Summary of objections received without officer assessment or feedback

Topic/Issue

1. Cypress Lane and reserve no 3 were gifted to Council by the Body Corporate and should be retained for public use.
 4. Access to and enjoyment of Deep Creek
 - Access would no longer be available to the reserve by members of the community
 - The reserve should be retained as open public space to be enjoyed by the community
 - Access to Deep Creek would be restricted and only be available via a gated community, reducing the open space feel of the area
 - The community enjoys walking along the reserve in the bush environment and feel the development will reduce the overall peace of the area
 5. Retirement living
 - Enough aged care (and other senior living) facilities within Torquay and surrounding areas
 - If housing is required areas within existing built-up areas should be utilised and not green public open space
 - No guarantee a portion of the development will be made available for people with a disability.
 - Too many dwellings for the size of the land when compared to other retirement villages (ie. Kithbrooke)
 - Retirement Villages are an exclusive (and expensive) resort style development which will cater for a small portion of the community
 - Over development of senior living facilities with the proposed development in Briody Drive West will put a strain on local public health infrastructure
- Submissions relating to planning and compliance will be considered as part of the planning permit application. The below submissions were received as part of the declaration of intention to discontinue Cypress Lane and part of reserve No. 3 and have been listed below for transparency.**
6. Stormwater run-off into Deep Creek
 - report provided with the application for planning permit is outdated and does not fully address the upstream effect
 - Concerns stormwater issues with Karaaf wetlands will be repeated with this proposal
 - Collection and treatment of water before entering the creek has not been adequately considered, rushing of water entering the creek has caused bank erosion
 - Deep Creek area already experiences major issues with lack of proper storm water drainage and the development will pose further impact
 - Concern of the downstream effect on Deep Creek and outflow onto Whites Beach and the potential of erosion and beach pollution
 7. Fauna and Flora
 - Areas of Deep Creek reserve are home to a large number of animal species which will be affected by the proposed development

2.2 Declaration of Intention to Discontinue Cypress Lane and Part of Reserve No 3 and Sale of the Land

- Loss of habitat for the local birdlife and native fauna
 - Instead of selling the land, a suggestion was provided that Council, in conjunction with State and Federal Governments, should purchase the land and set it up as a Nature reserve to protect the flora, fauna and biodiversity of the sensitive creek landscape
 - Concerns have been raised that removal of vegetation from the land will endanger the animal species
 - An environmental study has not been obtained determining the impact the development will have on the native wildlife and the health of Deep Creek
 - Removal of the Cypress trees feels like an attack on the character of Torquay
5. Low Density Residential Zone (LRDZ)
- Number of dwellings exceeds the density limits
 - The *Vic 2020 Marine & Coastal Policy* advises against developments within 5km of the high tide water mark
 - Building height exceeds Vic State Planning regulations
 - Under new *Distinctive Area Landscapes (DAL)* states under best practice measures to protect and conserve the unique features and special characteristics of the declared area
6. Noise and traffic congestion
- Development will heavily impact on an already overused road that does not cope with existing traffic
 - Entry to the development is close to Surf Coast Highway and will lead to traffic congestion and potential accidents
 - Coombes Road is already struggling with the amount of traffic utilising the road daily and the development will compound the impact of congestion
 - The gated nature of the development will cause traffic to spill out onto Coombes Road in busier times while waiting for the gates to open
 - No plans for reducing the impact of traffic near an intersection have been provided
 - Could be a need to widen the road in the future which would require removal of vegetation along the road reserve
 - Noise pollution will be excessive with building works and enormous amount of dust will be generated and will affect surrounding homes and residents

Summary of supporting submissions received without officer assessment or feedback

Key Theme Feedback received

1. Submitter would consider purchasing a unit
2. The road is surrounded by land in common ownership, it does not make sense for Council to retain it and be responsible for its maintenance, selling it would enable funds to be used for another purpose to benefit the community
3. No issue with the land being sold

Recommendation

That Council:

1. Receives and notes the submissions related to the potential discontinuation and sale of Cypress Lane Torquay and sale of a portion of reserve number 3; and
2. Considers the submissions in a report regarding the potential discontinuation and sale of Cypress Lane Torquay and sale of a portion of reserve number 3 at a future Council meeting.

Council Resolution

Moved Cr Hodge, Seconded Cr Bodsworth

That Council:

1. Receives and notes the submissions related to the potential discontinuation and sale of Cypress Lane Torquay and sale of a portion of reserve number 3; and
2. Considers the submissions in a report regarding the potential discontinuation and sale of Cypress Lane Torquay and sale of a portion of reserve number 3 at a future Council meeting.

CARRIED 8|0

For	Against	Abstained
Cr Allen Cr Bodsworth Cr Gazzard Cr Hodge Cr Pattison Cr Schonfelder Cr Stapleton Cr Wellington	Nil	Nil

3 Close of Meeting

The Special Council Meeting for Hearing Submissions closed at 8:25pm.