

ATTACHMENT TO AGENDA ITEM

Ordinary Meeting

15 July 2014

Agenda Item 7.1 2 Garley Nook, Shepparton North

Attachment 1 Delegates Report 253

Attachment 2 Extract - Planning and Environment Act 1987 267

Application Details:

Responsible Officer:	Ronan Murphy
Application Number:	2013-218
Applicants Name:	M Talarico
Date Application Received:	20 August 2013
Statutory Days:	
Land/Address:	2 Garley Nook SHEPPARTON NORTH VIC 3631
Zoning and Overlays:	Low Density Residential Zone Development Contributions Plan Overlay Development Plan Overlay Environmental Significance Overlay
Why is a permit required (include Permit Triggers)	32.02-3 Subdivision in the Low Density Residential Zone 42.01-2 Subdivision in the Environmental Significance Overlay 52.02 Variation of a Restrictive Covenant
Are there any Restrictive Covenants on the title?	Yes. Covenant T949974Q

Proposal

A Planning Permit application was made on 20 August 2013 for a three (3) lot subdivision and the variation to a Restrictive Covenant.

An application was also made to amend the Shepparton North Growth Corridor to reduce the minimum size of land for subdivision from 4,000 to 2,000m² as reticulation is available.

The subject land is within the Low Density Residential Zone and is affected by the Development Contributions Plan Overlay (DCPO1), the Development Plan Overlay (DPO4) and the Environmental Significance Overlay (ESO1).

A Planning Permit is required pursuant to the following Clauses of the Planning Scheme:

- Clause 32.03-3 for subdivision in the Low Density Residential Zone;
- Clause 42.01-2 for subdivision in the Environmental Significance Overlay;
- Clause 52.02 for a variation of a restriction.

Subdivision Application

The proposed subdivision would create three lots as outlined below:

Lot 1.

Would contain the existing dwelling and pool/ garden area and would also include the existing shedding. Lot 1 would have an area of 1ha.

Lot 2

Would be the south eastern lot and would have an area of 2,475m². At present the area of the site is generally vacant, however there is a small shed close to the northern boundary of the site.

Lot 3

Would be the south western lot and would have an area of 2,310m² and is vacant.

Both of lots 2 and 3 would be accessed from a drive way along the northern boundary, which connects to Garley Nook and both lots would be required to be connected to reticulated sewerage.

Variation of restriction

The title attached to the subject land includes a Restrictive Covenant (T949974Q) which in general has the following restrictions:

- Erect or cause to be erected more than one dwelling on the lot;
- Erect or cause to be erected any building or part thereof a building which has previously erected in another situation or second hand material;
- Dwelling must be of brick, stone or concrete;
- Fences must be rural fencing.

Previously the covenant was amended to remove the restriction for no further subdivision (Planning Permit 2011-341).

The application seeks to remove the restriction which prevents the construction of more than one dwelling on the lot.

The application for the variation of the restrictive covenant was notified to all parties affected by the covenant, while the application for the 3 lot subdivision was notified to neighbours and a sign on site. One objection was received.

The objection which was received generally related to how the new lots would be drained as the objector was concerned that the proposal would flood their driveway. In this regard the objector states:

"Storm water drainage at road entrance will need to be changed as water from the current two houses floods our driveway out, to add two more houses will add to much extra water"

The objector to the proposal is one of the landholders which is affected by the restrictive covenant.

In this case, pursuant to the provisions of Section 60 (2) of the Planning and Environment Act 1987, the Council must refuse an application for a variation of a restrictive covenant if an objection is received from a person benefitted by the restriction as set out in Section 60(5) of the Planning and Environment Act 1987.

Section 60(2) states:

The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that—

(a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

(b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

It is considered that in line with Section 60(2) of the Planning and Environment Act 1987 that the objector is concerned that they may suffer detriment if the restrictive covenant were varied and as this is the case, the Responsible Authority must refuse the application.

This position has been confirmed by Russell Kennedy who advised the Responsible Authority by phone in 26 March 2014 that the most appropriate course to take would be to refuse the application.

Therefore while the Responsible Authority would generally support the subdivision application, it is considered the application must be refused having regard to the provisions of Section 60(2) of the Planning and Environment Act 1987.

Summary of Key Issues

An application was received for a three (3) lot subdivision and variation of a restrictive covenant.

The application for the variation of the restrictive covenant was notified to all parties affected by the covenant.

The application for the 3 lot subdivision was notified to neighbours and a sign on site. One objection was received.

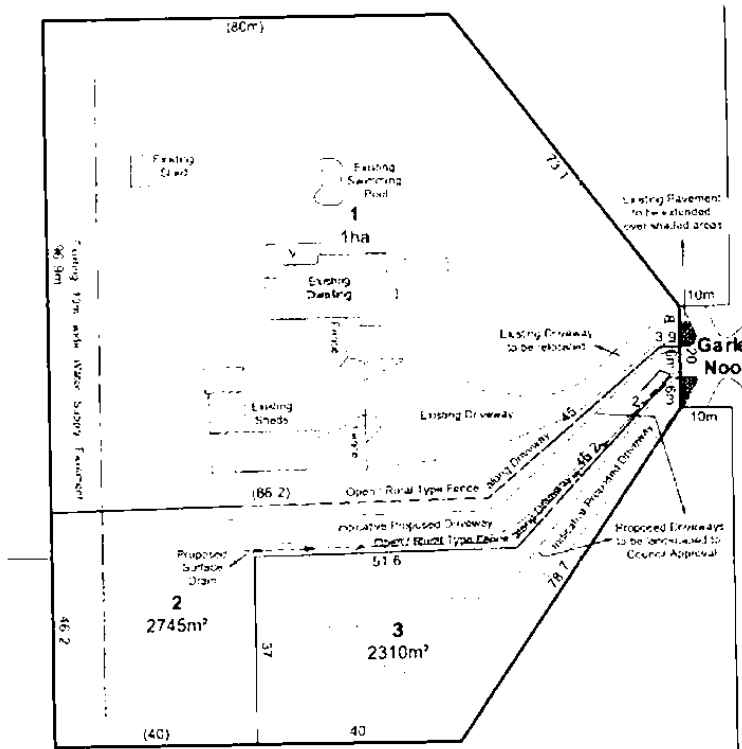
The objection which was received related to drainage.

The Planning Department attempted to mediate with the objector, however this was not successful and the objection was not withdrawn.

The attempted mediation included an onsite meeting and writing to the objector seeking clarification that the objection related only to drainage and not the variation of the covenant. The Planning Department did not receive a response. In light of this, the Planning Department could not be sure that no detriment would be caused.

The subdivision application was referred to APA, Goulburn Valley Water, Powercor, Broadcast Australia, Engineering and Health. There were no objections arising from referral of the application.

The proposed subdivision is shown below.



Recommendation

Refusal

That the Council having caused notice of Planning Application No. **2013-218** to be given under Section 52 of the *Planning and Environment Act 1987* and having considered all the matters required under Section 60 of the *Planning and Environment Act 1987* decides to refuse the application under the provisions of Clause 52.02 of the Greater Shepparton Planning Scheme in respect of the land known and described as **2 Garley Nook, SHEPPARTON NORTH, VIC 3631**, for a Three (3) lot subdivision and variation to a restrictive covenant.

For the following reasons:

The proposed variation of covenant may result in detriment, including perceived detriment, being suffered by a beneficiary of the covenant

Subject Site & Locality

An inspection of the site and the surrounding area has been undertaken.

Date: **28/8/2013**

Time: **10.18 am**

The site has a total area of **15,252** square metres and currently contains:

The land currently contains an existing, single storey dwelling and associated shedding.

The main site/locality characteristics are:

- 1) The subject lands currently contain a single storey brick dwelling and associated shedding/ swimming pool.

The main site/locality characteristics are:

- 1) The subject lands are within a predominantly residential area to the north of Shepparton CBD.
- 2) In general the lands are within a medium density residential development.

The Photos below show the existing site:



Permit/Site History

The history of the site includes:

2011-341

Planning Permit granted for the variation of a restrictive covenant to delete the restriction on subdivision and commercial activities that can be undertaken on the land.

Further Information

Was further information requested for this application? **YES**

What date was the further information requested?: **9/9/13**

What date was the further information received?: **4/10/13**

Public Notification

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- 1) Sending notices to the owners and occupiers of adjoining land.
- 2) Placing a sign on site.
- 3) Notice to all beneficiaries

Objections

The Council has received 1 objection to date. The key issues that were raised in the objections are.

The objector was concerned that the proposal would exacerbate storm water issues in the area.

Title Details

The title contains a restrictive covenant. The title also contains a Section 173 Agreement.

The application would breach the restrictive covenant for the following reasons:

- The existing covenant does not allow for more than one dwelling to be erected on the land.

The current application is seeking to vary the restrictive covenant to delete the restriction on the number of dwellings allowed on the land.

It should be noted even if the subdivision were approved, the covenant still restricts development of dwellings on the lots.

The Section 173 Agreement relates to:

- Further subdivision prohibited without augmentation of the water supply at the developers cost;
- No part of the land can be developed with a lot less than 1 ha without the provision of reticulated sewerage at the applicants expense.

With regard to the Section 173 Agreement it is noted that the applicants can connect to reticulated water and sewerage. This will be a condition of the permit.

Consultation

Consultation was undertaken. Relevant aspects of consultation, included:

1. Planning Officers and Development Engineers met the applicants agent on site to discuss the entrance to Garley Nook as it was considered that the proposed access may have lead to dangerous traffic movements at the entrance to the Nook. Arising from

these discussions the entrance to the proposal was amended to set the entrance of the new lots back to allow for more space for cars to manoeuvre.

2. Further to this Planning Officers also consulted with the objector, who was concerned with stormwater discharge. Planning and Engineering officers met the objector on site and discussed the issues raised by the objector.
3. In response to the on site discussions, the Engineering Department prepared draft conditions which would mitigate the concerns of the objector. Specifically Conditions 3 and 6 of the Draft Notice of Decision related to these discussions.
4. The Permit (at that stage) was faxed to the objector on 23 December 2013. This was followed up by phone calls and faxes, the objector did not withdraw their objection.
5. Further to this the Planning Department spoke to the objector who confirmed that they would not withdraw their objection. Therefore the Planning Department could not satisfy itself that no detriment would be caused to the objector by the variation of the restrictive covenant.
6. The Planning Department wrote to the objector asking for a clarification if the grounds of objection related solely to drainage issues or the variation of the covenant. The Planning Department did not receive a response to this letter.
7. The Responsible Authority sought the advice of Russell Kennedy Solicitors with regard to the status of the objection and the ability of the Responsible Authorities ability to issue a Planning Permit, given the perceived detriment test.
8. Russell Kennedy advised that the most appropriate action would be to refuse the application having regard to Section 60(2) of the Planning and Environment Act.

Referrals

External Referrals/Notices Required by the Planning Scheme:

Referrals/Notice	Advice/Response/Conditions
Section 55 Referrals	APA No objection GVW No objection Powercor No objection Broadcast Australia No response within the specified timeframe, consent was therefore deemed and confirmed by phone conversation.
Section 52 Notices	

Internal Council Notices	Advice/Response/Conditions
Engineering	No objection subject to conditions
Health	No objection, subject to conditions

Assessment

The zoning of the land

The subject lands are with the Low Density Residential Zone. The purpose of the Low Density Residential Zone is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

Clause 32.03-6 of the Planning Scheme sets out decision guidelines for subdivision as outlined below:

- The protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat and the need to plant vegetation along waterways, gullies, ridgelines and property boundaries.
- The availability and provision of utility services, including sewerage, water, drainage, electricity, gas and telecommunications.

In the absence of reticulated sewerage:

- The capability of the lot to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria) under the Environment Protection Act 1970.
- The benefits of restricting the size of lots to the minimum required to treat and retain all wastewater in accordance with the State Environment Protection Policy (Waters of Victoria).
- The benefits of restricting the size of lots to generally no more than 2 hectares to enable lots to be efficiently maintained without the need for agricultural techniques and equipment.
- The relevant standards of Clauses 56.07-1 to 56.07-4.

The proposed subdivision would comply in the following ways:

- The proposal would not impact on the natural environment or character of the area.
- The subject lands can connect to all services, including reticulated sewerage.

It is considered that the proposal would comply with the provisions of the Low Density Residential Zone as the proposed subdivision would provide appropriately dimensioned lots within a predominantly residential area.

The amendment to the North Shepparton Outline Development Plan (which is considered in more detail below) would allow for the reduction in the size of lots from 4,000 to 2,000m², subject to the lands being appropriately connected to reticulated services, in light of this, it is considered that the proposal is appropriate and would comply with the provisions of Clause 32.03-6 of the Planning Scheme.

Relevant overlay provisions

The land is affected by the Development Contributions Plan Overlay (Schedule 1).

The purpose of the Development Contributions Plan Overlay is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify areas which require the preparation of a development contributions plan for the purpose of levying contributions for the provision of works, services and facilities before development can commence.

Schedule 1 of the Development Contributions Plan Overlay relates to the North Corridor Development Contribution Plan.

A Planning Permit is not required pursuant to the provisions of the Development Contributions Plan Overlay.

Clause 45.06-1 of the Planning Scheme states:

A permit granted must:

- Be consistent with the provisions of the relevant development contributions plan.
- Include any conditions required to give effect to any contributions or levies imposed, conditions or requirements set out in the relevant schedule to this overlay.

Schedule 1 of the Development Contributions Plan sets out the contributions required.

It is likely that a figure of \$7,913 may be required for the subdivision. However, a final figure would be calculated by the Councils Engineering Department, should a Planning Permit issue.

The subject lands are also affected by the Development Plan Overlay. The purpose of the Development Plan Overlay is

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.
- To exempt an application from notice and review if it is generally in accordance with a development plan.

Schedule 4 of the Development Plan Overlay relates to the North Growth Corridor .The Development Plan has been approved by the Responsible Authority and therefore the proposal would comply with the amended Development Plan.

A concurrent application for an amendment to the existing development plan has been lodged with the Responsible Authority to amend the Development Plan to allow for the reduction of the minimum lot size for subdivision from 4,000m² to 2000 m².

This is justified because having regard to the low density lots in the general area, the subdivision of the subject land into three would respect the character of the area.

The application for the amendment was referred to Goulburn Valley Water, the Council's Engineering Department and the Councils Health Department. No objections were received. However it is noted that the Health Department has stated that all lots must be connected to the Goulburn Valley Water Sewerage Scheme.

The application was informally notified (this is standard practice) to adjoining properties and no objections were received.

Having regard to the above, it is considered that the proposed amendment is appropriate, subject to all lots being connected to the Goulburn Valley Water Sewerage Scheme.

The subject land is affected by the Environmental Significance Overlay. The purpose of the Environmental Significance Overlay is:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To identify areas where the development of land may be affected by environmental constraints.
- To ensure that development is compatible with identified environmental values.

Schedule 1 of the Overlay relates to the Radio Australia Environmental Significance Overlay.

A Planning Permit is required pursuant to the provisions of Clause 42.01-2 of the Planning Scheme for a subdivision in the Environmental Significance Overlay.

The application was referred to Broadcast Australia who did not make a comment on the application. However by phone call dated 5/12/13 (Phone call with Kylie Potter), it was confirmed that Broadcast Australia did not object to the proposal.

Therefore it is considered that the proposal would comply with the provisions of the Environmental Significance Overlay.

The State Planning Policy Framework (SPPF)

There are no State Planning policies which are related to the proposal.

The Local Planning Policy Framework (LPPF)- including the Municipal Strategic Statement (MSS), local planning policies and Structure Plans

Clause 21.04

Clause 21.04 of the Planning Scheme acknowledges that the population of the municipality is projected to grow by approximately 12,300 persons by 2026. In response the Council is committed to consolidating the urban centres of the municipality to facilitate this growth.

Clause 21.04-1 identifies the subject land as being potential low density land.

The proposal (the amendment of the North Growth Corridor Development Plan to allow the reduction in size of lots from 4,000m² to 2000m² and to allow a two lot subdivision) would comply with the strategic direction of Clause 21.04-1 of the Planning Scheme by providing traditional low density lots.

It is noted that lands at 370 Verney Road (Grammar Park Estate, to the south and west of the subject land) was rezoned from Low Density Residential to Residential 1 by an amendment to the Planning Scheme (C-68) on 16 August 2007. It is considered that the proposed subdivision would be in keeping with the density of residential development in the area as considered appropriate by the C-68.

It is considered that the proposal would comply with the provisions of Clause 21.04 of the Planning Scheme.

Relevant Particular Provisions

52.01 Public Open Space

Clause 52.01 of the Planning Scheme states:

A person who proposes to subdivide land must make a contribution to the council for public open space in an amount specified in the schedule to this clause (being a percentage of the land intended to be used for residential, industrial or commercial purposes, or a percentage of the site value of such land, or a combination of both). If no amount is specified, a contribution for public open space may still be required under section 18 of the Subdivision Act 1988.

In this instance it is noted that a public open space contribution was made at the time of the original subdivision. It is therefore considered that the proposal would comply with Clause 52.01 of the Planning Scheme.

52.02 Easements restrictions and reserves

The purpose of Clause 52.02 of the Planning Scheme is to enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.

The application seeks to vary paragraph of restrictive covenant (T949974Q) which prevents more than one dwelling on the land.

The proposal was notified to all land owners affected by the restrictive covenant and 1 objection was received to the proposed amendment.

In light of previous permits which varied the covenant to remove the restriction on subdivision, it is may be considered appropriate that the covenant should be varied to allow for dwellings to be considered on any permitted subdivided lots.

However, it is noted an objection from one of the beneficiaries of the restrictive covenant has been received. Therefore having regard to Section 60(2) of the Planning and Environment Act, the application must be refused.

In this regard the Planning Department received advises from Russell Kennedy with regard to the status of the objection:

The objection appears to be in relation to the construction of more than one dwelling which is the subject of the variation of the covenant and the permit and that fact the construction will have an impact on his lot because of flooding. Therefore, if flooding is an issue or is likely to be an issue then there will some other material detriment to Mr Holthuisen and a permit should be refused.

The advises also note that:

On balance, unless the objection is fanciful in that flooding will never happen or the objector agrees in writing, given the objection of one of the benefitted land owners, who may very well suffer some detriment, Council should refuse the application.

The notion of perceived detriment and removal and or variation of a restrictive covenant has been the subject of numerous cases.

In *Scuderi v Hume CC* [VCAT 469] the tribunal set out issues to be considered in cases of perceived detriment and the removal / variation of restrictive covenants.

The legal advice obtained by the Planning Department has considered relevant VCAT cases and has advised that, in this case, the Planning Department cannot adequately satisfy itself that the proposed variation of the restrictive covenant would not cause any detriment to the objector, therefore the application must be refused.

The decision guidelines of Clause 65

Before deciding on an application to subdivide land, the responsible authority must also consider, as appropriate:

- The suitability of the land for subdivision.
- The existing use and possible future development of the land and nearby land.
- The availability of subdivided land in the locality, and the need for the creation of further lots.
- The effect of development on the use or development of other land which has a common means of drainage.
- The subdivision pattern having regard to the physical characteristics of the land including existing vegetation.
- The density of the proposed development.
- The area and dimensions of each lot in the subdivision.
- The layout of roads having regard to their function and relationship to existing roads.
- The movement of pedestrians and vehicles throughout the subdivision and the ease of access to all lots.
- The provision and location of reserves for public open space and other community facilities.
- The staging of the subdivision.
- The design and siting of buildings having regard to safety and the risk of spread of fire.
- The provision of off-street parking.
- The provision and location of common property.
- The functions of any body corporate.
- The availability and provision of utility services, including water, sewerage, drainage, electricity and gas.
- If the land is not sewered and no provision has been made for the land to be sewered, the capacity of the land to treat and retain all sewage and sullage within the boundaries of each lot.
- Whether, in relation to subdivision plans, native vegetation can be protected through subdivision and siting of open space areas.

The proposal would comply with the provisions of Clause 65 in the following ways:

- The subject land is suitable for subdivision subject to connection to reticulated water and sewerage, this will be a condition of the permit.

- The density of the subdivision is considered appropriate
- The proposed lots are large enough to accommodate a dwelling and associated outbuildings
- The roads are appropriately dimensioned and laid out to accommodate traffic
- The subdivision would not be staged
- There is no requirement for off street parking
- Common property is not proposed
- There is no body corporate proposed
- The land can be connected to reticulated sewerage and water.

It is considered that the proposal complies with the provisions of Clause 65.02 of the Planning Scheme.

Relevant incorporated or reference documents

There are no relevant incorporated or reference documents which are relevant to the proposal.

Other relevant adopted State policies or strategies policies

There are no State policies or strategic policies which are pertinent to the proposal.

Relevant Planning Scheme amendments

There are no relevant Planning Scheme amendments which are pertinent to the proposal.

Are there any significant social & economic effects?

There are no significant social and economic effects associated with the proposal.

Discuss any other relevant Acts that relate to the application?

There are no other Acts which relate to the application.

Summary of Key Issues

The proposal comprises of a three lot subdivision and variation of a restrictive covenant.

The application for the amendment of the North Growth Corridor Development Plan was notified and no objections were received.

The application for the variation of the restrictive covenant was notified to all beneficiaries of the covenant and no objections were received.

The application for subdivision was notified to neighbours and one objection was received.

The objection concerned the potential for the proposed subdivision may lead to stormwater flooding their property.

Officers of the Planning and Development met with the objector to discuss the objection and try and mitigate the objection.

The attempts to mitigate the concerns of the objector were unsuccessful and the objection was not withdrawn.

The application for the three (3) lot subdivision was referred to APA, Goulburn Valley Water, Powercor and Broadcast Australia. The Planning Department did not receive any objections to the proposed subdivision and amendment to the Restrictive Covenant.

While there is support for the amendment to the Development Plan and the proposed 3 lot subdivision, the application for the variation of the restrictive covenant cannot be supported for the reasons outlined in this report. As the application must be considered as a whole and does not comply with Section 60(2) of the Planning and Environment Act 1987 and therefore the application must be refused.

Conclusion

It is considered that, while the proposal is considered would comply with the provisions of the Planning Scheme, it is noted that the proposed variation of the restrictive covenant would not comply with Section 60(2) of the Planning and Development Act 1987 and it is recommended that the application should be refused.

Planning and Environment Act 1987 No. 45

- (d) the approved strategy plan under Part 3C; and S. 60(1A)(d) amended by No. 44/2005 s. 4(a).
- (e) any amendment to the approved strategy plan under Part 3C adopted under this Act but not, as at the date on which the application is considered, approved by the Minister; and S. 60(1A)(e) amended by No. 44/2005 s. 4(a).
- (ea) the approved strategy plan under Part 3D; and S. 60(1A)(ea) inserted by No. 44/2005 s. 4(b).
- (eb) any amendment to the approved strategy plan under Part 3D adopted under this Act but not, as at the date on which the application is considered, approved by the Minister; and S. 60(1A)(eb) inserted by No. 44/2005 s. 4(b).
- (f) any relevant State environment protection policy declared in any Order made by the Governor in Council under section 16 of the **Environment Protection Act 1970**; and
- (g) any other strategic plan, policy statement, code or guideline which has been adopted by a Minister, government department, public authority or municipal council; and
- (h) any amendment to the planning scheme which has been adopted by a planning authority but not, as at the date on which the application is considered, approved by the Minister or a planning authority; and
- (i) any agreement made pursuant to section 173 affecting the land the subject of the application; and
- (j) any other relevant matter.
- (2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the **Subdivision Act 1988**) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer—
- (a) financial loss; or
- (b) loss of amenity; or
- S. 60(2) inserted by No. 48/1991 s. 61(2)(b).

Planning and Environment Act 1987 No. 45

(c) loss arising from change to the character of the neighbourhood; or

(d) any other material detriment—

as a consequence of the removal or variation of the restriction.

S. 60(3) inserted by No. 128/1993 s. 15, amended by No. 81/2004 s. 23(2).

(3) Despite sub-section (1)(c), if no notice is required to be given under section 52(1) or 57B or the planning scheme of an application, the responsible authority is not required to consider any objection or submission received in respect of the application before deciding the application.

S. 60(3A) inserted by No. 53/2012 s. 7, amended by No. 3/2013 s. 76(5).

(3A) If an application for a permit is of a class that is exempted by a planning scheme wholly or in part from the requirements of subsections (1)(b) to (f) and (1A), the responsible authority is not required to consider the exempted matters before deciding the application.

S. 60(4) inserted by No. 128/1993 s. 15.

(4) Sub-section (2) does not apply to any restriction which was—

(a) registered under the **Subdivision Act 1988**; or

(b) lodged for registration or recording under the **Transfer of Land Act 1958**; or

(c) created—

before 25 June 1991.

S. 60(5) inserted by No. 128/1993 s. 15.

(5) The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in sub-section (4) unless it is satisfied that—

(a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

(b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

S. 60(6) inserted by No. 128/1993 s. 15, amended by No. 52/1998 s. 191(1).

(6) If an application for a permit to remove or vary a restriction referred to in sub-section (4) was made on