5. LEGISLATIVE REQUIREMENTS

5.1 PLANNING AND ENVIRONMENT ACT 1987 (THE ACT)

The Planning and Environment Act 1987 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 *Planning and Environment 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 Planning & Environment Act 1987 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:

- State Planning Policy Framework
- · Local Planning Policy Framework
- Clause 35.06 Rural Conservation Zone, Schedule 3
- Clause 42.01 Environmental Significance Overlay Schedule 3
- Clause 43.01 Heritage Overlay
- Clause 44.06 Bushfire Management Overlay
- Clause 52.17 Native Vegetation
- Clause 52.06 Car Parking
- Clause 53.02 Bushfire Planning
- Clause 65 Decision Guidelines

Zone

Clause 35.06 Rural Conservation Zone Schedule 3

A Secondary School is a Section 2 Use and a permit is required for all buildings and works associated with the Section 2 use.

The purpose of the Rural Conservation Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve the values specified in a schedule to this zone.
- To protect and enhance the natural environment and natural processes for their historic, archaeological and scientific interest, landscape, faunal habitat and cultural values.
- To protect and enhance natural resources and the biodiversity of the area.

- To encourage development and use of land which is consistent with sustainable land management and land capability practices, and which takes into account the conservation values and environmental sensitivity of the locality.
- To provide for agricultural use consistent with the conservation of environmental and landscape values of the area.
- To conserve and enhance the cultural significance and character of open rural and scenic non urban landscapes.

Schedule 3 to the Zone has the following Conservation Values sought for the land:

- The existing character, landscape quality, viewlines and other natural environmental characteristics of the area protected and enhanced in an equitable and sustainable manner.
- Native vegetation retained as wildlife habitat, a corridor for wildlife movement, a source of genetic diversity and a component of landscape quality contributing to the character of the area.
- Cleared areas revegetated with indigenous species.
- Pest plants and pest animals controlled and eradicated.
- Use and development designed and sited in recognition of the natural environment, landscape quality, energy efficiency, local amenity considerations and bushfire protection.
- Recognised farming practices in areas suitable for farming, subject to considerations
 of land stability, soil erosion and natural systems, which are maintained and
 improved.
- · Good fire management practices.

The <u>Decision Guidelines</u> in the Zone for an application to use and develop land are:

General issues

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any Regional Catchment Strategy and associated plan applying to the land.
- The capability of the land to accommodate the proposed use or development.
- How the use or development conserves the values identified for the land in a schedule
- The capability of the land to accommodate the proposed use or development.
- Whether use or development protects and enhances the environmental and landscape qualities of the site and its surrounds.
- Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses.

Rural issues

- The environmental capacity of the site to sustain the development.
- The need to prepare an integrated land management plan.
- · The impact on the existing and proposed infrastructure.
- Whether the use or development will have an adverse impact on surrounding land uses.

Environmental issues

- An assessment of the likely environmental impact on the biodiversity and in particular the flora and fauna of the area.
- The protection and enhancement of the natural environment of the area, including the retention of vegetation and faunal habitats and the need to revegetate land

- including riparian buffers along waterways, gullies, ridgelines, property boundaries and saline discharge and recharge areas.
- How the use and development relates to sustainable land management and the need
 to prepare an integrated land management plan which addresses the protection and
 enhancement of native vegetation and waterways, stabilisation of soil and pest plant
 and animal control.
- The location of onsite effluent disposal areas to minimise the impact of nutrient loads on waterways and native vegetation.

Dwelling Issues

(Not relevant to this application)

Design and siting issues

- The need to minimise any adverse impacts of siting, design, height, bulk, and colours and materials to be used, on landscape features, major roads and vistas.
- The location and design of existing and proposed infrastructure services which minimises the visual impact on the landscape.
- The need to minimise adverse impacts on the character and appearance of the area or features of archaeological, historic or scientific significance or of natural scenic beauty or importance.
- The location and design of roads and existing and proposed infrastructure services to minimise the visual impact on the landscape.

Overlays

Clause 42.01 Environmental Significance Overlay Schedule 3

A permit is required for all buildings and works and the removal of vegetation.

The environmental objectives to be achieved are:

- To protect and enhance the ecological values of Buffer Conservation Areas.
- To protect the ecological values of Critical and Core Conservation Areas.
- To encourage the location of development within those areas that are the most degraded and devoid of native vegetation.
- To encourage development that is in keeping with the semi-rural character of the area and is sympathetic to the existing built form.
- To ensure that development responds to the area's environmental and landscape characteristics, including topography and waterways.
- · To minimise earthworks.
- To ensure subdivision of land does not lead to a decline in the ecological integrity and environmental values of Buffer Conservation Areas and the adjacent Critical and Core Conservation Areas.
- To achieve an improvement in the extent and quality of Victorian native vegetation, consistent with the goal of Net Gain as set out in the background document Victoria's Native Vegetation Management – A Framework for Action (Department of Natural Resources and Environment, 2002) by:
 - ☐ Avoiding the removal of Victorian native vegetation.
 - ☐ Minimising the removal of Victorian native vegetation, if the removal of the Victorian native vegetation cannot be avoided, through appropriate planning and design.
 - ☐ Appropriately offsetting the loss of Victorian native vegetation.
- To conserve and where possible enhance habitat for flora and fauna species recognised as threatened at the municipal, regional, state or federal level.
- To retain Australian native trees for their habitat value and landscape contribution.

- To protect natural resources, ecological processes, genetic diversity and ecosystem services.
- To protect and enhance habitat corridors and ecological stepping-stones.

The decision guidelines the Responsible Authority must consider, as appropriate:

- Whether the removal of Victorian native vegetation has been avoided, or where this
 is not possible, whether adverse impacts have been minimised.
- Whether the loss of Victorian native vegetation will be offset and whether long term protection will be provided for the offsets.
- The extent to which the proposal will impact on the ecological values and function of Buffer Conservation Areas.
- The extent to which the proposal will impact on the ecological values and function of any nearby or adjacent Biosites.
- Whether the proposed development has been located to avoid impacts on areas where offsets for previous development have been provided.
- The extent to which the removal of vegetation will contribute to the fragmentation and isolation of existing flora and fauna habitat.
- The likely impact of the proposal on species of flora or fauna which are threatened at the municipal, regional, state or federal level and the extent to which provisions are made to negate, minimise or manage those impacts.
- The role of Australian native trees in providing habitat and landscape value.
- Whether replacement planting with indigenous vegetation is proposed for the removal of any Australian native trees (other than Victorian native vegetation).
- Whether the design and siting of buildings or other development minimises the environmental impacts on:
 - Native fauna.
 - o Waterway health, wetland condition and water quality.
 - o Site run-off and soil erosion.
 - Habitat corridors or ecological stepping-stones.
 - Any adjacent public open space.
- The extent to which the application complies with the background document Development Guide for Areas of Environmental and Landscape Significance (2011).
- Whether building design and siting is in keeping with the bushland character of the area and whether external building finishes and colours are non-reflective and blend with the natural environment.

Clause 43.01 Heritage Overlay

A planning permit is required for demolition/removal of a building and the proposed buildings and works. There are no tree controls listed in the schedule for this property.

The purpose of the overlay is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To conserve and enhance heritage places of natural or cultural significance.
- To conserve and enhance those elements which contribute to the significance of heritage places.
- To ensure that development does not adversely affect the significance of heritage places.
- To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist with the conservation of the significance of the heritage place.

<u>The decision guidelines</u> in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate are:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The significance of the heritage place and whether the proposal will adversely affect the natural or cultural significance of the place.
- Any applicable statement of significance (whether or not specified in the schedule to this overlay), heritage study and any applicable conservation policy.
- Any applicable heritage design guideline specified in the schedule to this overlay.
- Whether the location, bulk, form or appearance of the proposed building will adversely affect the significance of the heritage place.
- Whether the location, bulk, form and appearance of the proposed building is in keeping with the character and appearance of adjacent buildings and the heritage place.
- Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
- Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.
- Whether the proposed subdivision will adversely affect the significance of the heritage place.
- Whether the proposed subdivision may result in development which will adversely
 affect the significance, character or appearance of the heritage place.
- Whether the proposed sign will adversely affect the significance, character or appearance of the heritage place.
- Whether the lopping or development will adversely affect the health, appearance or significance of the tree.
- Whether the location, style, size, colour and materials of the proposed solar energy facility will adversely affect the significance, character or appearance of the heritage place.

Clause 44.06 Bushfire Management Overlay

A permit is required for an Education Centre.

The purpose of the Overlay is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To ensure that the development of land prioritises the protection of human life and strengthens community resilience to bushfire.
- To identify areas where the bushfire hazard warrants bushfire protection measures to be implemented.
- To ensure development is only permitted where the risk to life and property from bushfire can be reduced to an acceptable level.

Before deciding on an application, in addition to the decision guidelines in Clause 53.02 and Clause 65, the responsible authority must consider, as appropriate:

- The Municipal Planning Strategy and the Planning Policy Framework.
- Any other matters specified in a schedule to this overlay.

Planning Policy Framework

The relevant sections of the state planning policy framework are as follows:

Clause 12.01-S Protection of Biodiversity

The objective is:

To assist the protection and conservation of Victoria's biodiversity

Clause 12.02-S Native Vegetation Management

The objective is:

To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation.

Clause 12.05-2S Landscapes

The objective is:

To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments

Clause 13.02-1S Bushfire Planning

The objective is:

To strengthen the resilience of settlements and communities to bushfire through risk-based planning that prioritises the protection of human life.

Clause 15.02-1S Energy and resource efficiency

The objective is:

To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.

Clause 18.02-5 Car parking

The policy objective is:

To ensure an adequate supply of car parking that is appropriately designed and located.

Local Planning Policy Framework (LPPF)

Municipal Strategic Statement

Clause 21.07 Green Wedge and Yarra River Corridor

Clause 21.07-4 Built Form and Landscape Character

The objectives of the policy are:

- To encourage building form that responds appropriately to the landscape and minimises risk.
- To encourage retention of native vegetation.
- To minimise the extent of earthworks and to preserve and enhance natural drainage lines.
- To encourage the planting of indigenous vegetation.
- To protect and enhance landscape quality, view lines and vistas

Clause 21.10 Environmentally Sustainable Development

The objectives of the policy are:

- To achieve appropriate siting and design, to minimise non-renewable energy consumption and greenhouse gas emissions.
- To require development to incorporate efficient use of energy, by including current best practice in passive design, and resource use, which demonstrates low environmental impact.
- To encourage development which incorporates sustainable building materials.

Clause 22.02 Native Vegetation Policy

The objectives of the policy are:

- To establish principles and guidelines for the implementation of 'Net Gain' within Manningham.
- To protect, conserve and where possible enhance the biodiversity values of the municipality.

- To recognise, protect and conserve ecosystem services and functions.
- To protect and conserve and where possible enhance Manningham's native vegetation particularly Biosites - Sites of Biological Significance (Core Conservation Areas) and Buffer Conservation Areas.
- To protect, conserve and enhance habitat corridors and habitat connectivity.
- To protect and conserve species of indigenous flora and/or fauna which are considered threatened within Manningham.
- To minimise, mitigate and manage threatening processes and negative impacts upon indigenous flora and fauna.

Clause 22.03 Cultural Heritage Policy

The objectives of the policy are:

- To recognise, protect, conserve, manage and enhance identified cultural heritage places.
- To ensure that the significance of cultural heritage places involving the aesthetic, historic, scientific, architectural or social value of a heritage asset to past, present and future generations, is assessed and used to guide planning decisions.
- To encourage the retention of cultural heritage places and ensure that these places are recognised and afforded appropriate protection to enrich the character, identity and heritage of the municipality.
- To ensure that the subdivision of a cultural heritage place does not adversely affect
 the identified aesthetic, historic, scientific, architectural or social value of the heritage
 place or other features identified in the Schedule to the Heritage Overlay.
- To promote the identification, protection and management of sites and areas of archaeological significance including aboriginal cultural heritage.

Clause 22.08 Safety Through Urban Design Policy

The objectives of the policy are:

- To provide and maintain a safer physical environment for those who live in, work in or visit the City of Manningham.
- To minimise opportunities for crime, through well designed and well maintained buildings and spaces.
- To encourage the use of public spaces.
- To improve accessibility by creating attractive, vibrant, walkable environments.
- To discourage graffiti and vandalism.

Clause 22.09 Access for Disabled People Policy

The objectives of the policy are:

- To facilitate the integration of people with a disability into the community.
- To ensure that people with a disability have the same level of access to buildings, services and facilities as any other person.

Clause 22.12 Environmentally Sustainable Development

The overarching objective is that development should achieve best practice in environmentally sustainable development from the design stage through to construction and operation.

Clause 22.14 Environmental and Landscape Significance Protection The objectives of the policy are:

 To retain vegetation and to preserve the recognised environmental and landscape significance of the municipality while also promoting development that is safe from the risk of wildfire.

 To encourage higher construction standards and/or alternative treatments in preference to vegetation removal or development that would impact on recognised environmental and/or landscape values.

Clause 22.20 Use and Development in the Rural Conservation Zone The objectives of this policy are:

- To provide for use and development that protect the environmental, cultural and landscape values of the Rural Conservation Zone.
- To facilitate use and development in the Rural Conservation Zone that is compatible with the surrounding area.
- To minimise the loss of amenity and privacy to people living in the Rural Conservation Zone.
- To ensure use and development in the Rural Conservation Zone is appropriately serviced.

It is policy to assess use and development in the Rural Conservation Zone against the following criteria, as relevant:

General:

- Provide for adequate waste collection and disposal.
- Require that utility services (including gas, electricity, potable water and reticulated sewerage) be available to the site.
- Ensure an adequate effluent disposal system is provided where reticulated sewerage is not available.

Environment:

- Replace canopy trees or native vegetation removed as part of the development.
- · Respect the character and cultural heritage of the area.
- Integrate development into the surrounding landscape.
- Discourage buildings and works, including earthworks, that detrimentally impact
 waterways and drainage lines, habitat and wildlife corridors and, natural systems and
 landscapes.
- Locate infrastructure such as drainage, reticulated sewerage and utilities to minimise earthworks and vegetation removal.

Traffic, carparking and access:

- Avoid access road widenings that would result in the loss of significant roadside vegetation.
- Ensure the road network has sufficient capacity to carry the additional volumes of traffic generated by the proposal, including at peak times.
- Encourage only one vehicle entry point to limit the disruption of pedestrian movements and minimise earthworks.
- Encourage the retention of the existing entry point to provide access.
- Ensure car parking areas and accessways are sealed and drained.
- Design car parking areas and accessways for vehicles to exit the site in a forward direction, including waste collection, tourism and commercial vehicles.
- Design vehicle and pedestrian movements within the site and road network to be safe and convenient.
- Locate car parking areas and accessways to minimise visual impacts within the public realm and adjoining and nearby privately-owned properties.

Design and siting:

• Encourage development that is subordinate to the landscape.

- Encourage development that respond to the site's aspect, topography, soils, waterways,
- vegetation and view lines.
- Discourage buildings that break a horizon line to prevent silhouetting against the skyline.
- · Minimise the bulk, massing and prominence of buildings and structures by:
 - Using articulated building design.
 - Minimising sheer walls exceeding two storeys in height.
 - Limiting retaining walls to a maximum height of 1.0 metre.
 - Limiting batter slopes to a maximum gradient of 1:3.
 - -Minimising cut and fill by 'stepping' the finished levels of a development with the site's slope.
- Use materials and finishes that blend with the natural environment. Development should:
 - Avoid bright or contrasting colours in areas that are clearly visible from surrounding properties or roads.
 - Avoid reflective materials.
- Encourage development, including accessways and car parking areas, that minimise the removal, destruction or lopping of native vegetation.
- Ensure development, including accessways and car parking areas, are set back a sufficient distance from the site's boundaries to allow existing vegetation to be retained and generous landscaping to be planted.

Amenity and landscaping:

- Protect the amenity of nearby residents from adverse impacts by way of:
 - Noise, odour, loss of privacy, traffic, car parking, lighting, signage or visual appearance.
 - o The location of waste disposal and storage facilities.
- Ensure uses should not adversely affect the amenity of nearby residents by disturbance associated with hours of operation, frequency of events and expected numbers of visitors.
- Promote an interface that respects adjoining properties by:
 - Providing appropriate noise attenuation measures that inhibit the transmission of noise from buildings, car parking areas and external plant equipment, including exhaust fans and air-conditioning units.
 - Maintaining the privacy of adjoining residential properties through the sensitive siting and design of car parking areas, windows, doors, services areas, outdoor waste and storage areas and the use of appropriate techniques including the treatment of windows, screening, and landscaping techniques.
 - Designing and siting lighting (including security lighting) to minimise light spill to adjoining properties.
- Use native and indigenous species to landscape development and avoid the use of exotic species.
- · Promote a continuous corridor of landscaping and vegetation abutting road reserves.

Particular Provisions

Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions The overarching purpose of the provision is to protect metropolitan green wedge land from uses and development that would diminish its agricultural, environmental, cultural heritage, conservation, landscape natural resource or recreation values.

Clause 52.06 Car Parking

Pursuant to Clause 52.06-5, car parking is required to be provided at the following rates

- Primary School (1 space to each employee that is part of the maximum number of employees on the site at any one time).
- Secondary School (1.2 spaces to each employee that is part of the maximum number of employees on the site at any one time).

General Provisions

Clause 65 Decision Guidelines

This clause outlines that before deciding on an application, the responsible authority must consider, as appropriate:

- 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 amenity of the area.
- Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.
- 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.





















