

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P25/2005
PERMIT APPLICATION NO. YR-2004/869

CATCHWORDS

Yarra Ranges Planning Scheme; Application under Section 77 of the *Planning and Environment Act 1987* (the Act) to review a decision to refuse a permit; Residential 1 zone; 8 single storey units and subdivision; Backyard amenity; Adequacy of side and rear setbacks; Tree retention; Neighbourhood character; Public Open space contribution.

APPLICANT	Lauri Aaltonen
RESPONSIBLE AUTHORITY	Yarra Ranges Shire Council
RESPONDENTS	A & J Bresnan; N & C Tassell; A McDonald; B O'Brien; P K Rigby; R & M E Mammoliti; J B & M E Dixon; P & G Long; J & J Tampaline; A McGeoch; H A Morrison; A J & A M Young; R & C Sterland; W & D Bushby; J Brown; C Weinberg; L Nardella; W Van Den Berg; A C Horner; L & D Bucci.
SUBJECT LAND	11 Peden Street, Chirnside Park
WHERE HELD	Melbourne
BEFORE	Mary-Anne Taranto, Member
HEARING TYPE	Hearing
DATE OF HEARING	14 April 2005
DATE OF ORDER	7 July 2005
CITATION	[2005] VCAT 1308

ORDER

The order of the Tribunal is that the decision of the Responsible Authority is set aside. In permit application YR-2004/869 a permit is granted and directed to be issued for the land at 11 Peden Street, Chirnside Park. The permit will allow the construction of eight dwellings and an eight lot subdivision in accordance with the endorsed plans and subject to the following conditions:

SUBDIVISION CONDITIONS

- 1 Prior to Certification of the Plan of Subdivision, an amended plan(s) substantially in accordance with the plans submitted with the application

must be submitted for approval to the satisfaction of the Responsible Authority showing:

- (a) a restriction requiring development to be limited to a single storey with a maximum height above ground level of 6 metres.

When approved the plan(s) will be endorsed to form part of this permit

- 2 If construction of the approved dwellings has not commenced when a Statement of Compliance is sought, the certified plan must be amended to include a Notice of Restriction to ensure that the vacant lots on the plan are developed in accordance with the development permit number YR2004/869 or any subsequent permit or variation approved by the Responsible Authority.
- 3 The layout and site dimensions of the proposed subdivision as shown on the endorsed plan(s) must not be altered or modified unless agreed to by the Responsible Authority.
- 4 This permit (as it relates to subdivision) will expire if the Plan of Subdivision is not certified, pursuant to the provisions of the *Subdivision Act* 1988, within two (2) years of the date of issue.
- 5 Prior to the issue of a Statement of Compliance, a payment equivalent to 5% of the value of the land as determined by the Responsible Authority must be made to the Responsible Authority being payment of cash-in-lieu of the Public Open Space requirement.
- 6 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity, gas and telecommunication services to each lot shown on the endorsed plan in accordance with the authority's requirements and relevant legislation at the time.
- 7 All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
- 8 The plan of subdivision submitted for certification under the *Subdivision Act* 1988 must be referred to the relevant authority in accordance with Section 8 of that Act.
- 9 Prior to a Statement of Compliance being issued, driveways within the common property to service each lot and a 6 metre wide vehicle crossing in Peden Street must be fully constructed, sealed and drained to the satisfaction of the Responsible Authority.
- 10 Prior to a Statement of Compliance being issued, piped drainage must be constructed to drain all lots to the satisfaction of the Responsible Authority.

- 11 Prior to a Statement of Compliance being issued, piped outfall drainage from the subdivision must be constructed to the pit outside No. 7 Peden Street to the satisfaction of the Responsible Authority.
- 12 Prior to a Statement of Compliance being issued, a stormwater detention system must be constructed to control all surface runoff from the subdivision, to the satisfaction of the Responsible Authority.
- 13 Prior to the commencement of road and/or drainage works as required by this permit, civil engineering construction plans and an estimate for the works shown on these plans must be submitted together with a checking fee to the value of 0.75% of the estimated cost of these works, for formal approval.
- 14 Prior to a Statement of Compliance being issued, an inspection / surveillance fee to the value of 2.5% of the cost of the road and/or drainage works must be paid to the Responsible Authority to the satisfaction of the Responsible Authority.
- 15 Prior to a Statement of Compliance being issued, a maintenance bond to the value of 5% of the cost of the road and/or drainage works or \$1000.00, whichever is greater, must be submitted to the Responsible Authority.
- 16 The construction of the driveways and drainage within the site is to be inspected and approved by a suitably qualified or experienced person or qualified civil engineer. Prior to a Statement of Compliance being issued the persons inspecting the works must certify the construction of these works, to the satisfaction of the Responsible Authority.

COUNTRY FIRE AUTHORITY

Access

- 17 Roads must meet the following requirements:
 - (a) Roads must be 3.5m wide if no parking is allowed on the road.
 - (b) Roads must be 5.4m wide if parking is allowed on one side of the road.
 - (c) Roads must be 7.3m wide if parking is allowed on both sides of the road.
 - (d) There must be a minimum 4m vertical clearance above roads.
- 18 There must be provision for turning at the end of the road, either in the form of a court bowl, of a “tee” or “wye” head. The turning area must be kept clear at all times.

Water supply

- 19 Fire hydrants must be supplied to the satisfaction of the CFA. The hydrants must be located within 120 metres of every building envelope with the spacing between hydrants being a maximum of 200 metres.

- 20 Fire hydrants must be clearly identified in accordance with the Fire Service Guideline - Identification of Street Hydrants for Fire Fighting Purposes.

Protective Features

- 21 Areas of Public Open Space must be managed in a minimum fuel condition, during the fire danger period.

MULTINET GAS

- 22 The plan of subdivision submitted for certification must be referred to Multinet Gas in accordance with Section 8 of the *Subdivision Act* 1988.

SPI ELECTRICITY

- 23 The applicant must enter into an agreement with SPI Electricity Ltd for the extension, upgrading or rearrangement of the electricity supply to lots on the plan of subdivision as required by SPI Electricity Ltd. A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may also be required.

MELBOURNE WATER

- 24 Prior to the issue of a Statement of Compliance, the Owner shall enter into and comply with an agreement with Melbourne Water Corporation under Section 269A of the Melbourne & Metropolitan Board of Works Act 1958, for the provision of drainage works and the acceptance of surface and stormwater from the subject land directly or indirectly into Melbourne Water's drainage system.
- 25 No polluted or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- 26 Prior to Certification, the Plan of Subdivision must be referred to Melbourne Water, in accordance with Section 8 of the Subdivision Act 1988.
- 27 At least 21 days before the construction commences, a Site Management Plan, detailing pollution and sediment control measures, must be submitted to Melbourne Water.

YARRA VALLEY WATER

Water

- 28 The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of water supply.

Sewerage

- 29 The owner of the subject land must enter into an agreement with Yarra Valley Water for the provision of sewerage.

TELSTRA

- 30 Prior to a Statement of Compliance being issued by the Responsible Authority, the owner shall provide to the satisfaction of Telstra all works for provision of telecommunication services to each lot created in the subdivision.
- 31 Where any extension or alterations to Telstra's network or plant are necessitated by the proposed subdivision, the cost of such works shall be met by the owner prior to the Statement of Compliance being issued.
- 32 The Plan of Subdivision submitted for certification must show details of easements and/or RCM/RIM sites which may be required by Telstra.

DEVELOPMENT CONDITIONS

- 33 Prior to the commencement of the permitted development, amended plans, generally in accordance with plans prepared by Millar and Merrigan Plan Ref. No.'s 11930P2 Version 4 and 11930P4 Version 2, must be submitted for approval to the satisfaction of the Responsible Authority showing:
 - (a) Existing and proposed finished site levels throughout the development, including within areas of private open space;
 - (b) Roofs to be constructed of tiles in muted colours;
 - (c) The west wall of Unit 1 (except for the garage) setback 1.5m from the western boundary, such that the area for landscaping on the east side of the driveway opposite this unit has a width of not less than 1m;
 - (d) Unit 1's garage decreased in size to a single car garage with an internal width of 3.5m, in favour of additional tree planting to the satisfaction of the Responsible Authority;
 - (e) Unit 2's setback from the east boundary increased to 2.8m to allow for the retention of the 3 cypress trees in this location, through a reduction in the floor area of this unit or other units;
 - (f) Details of the height and design of boundary fences along the boundaries in common with No.'s 9 and 15 Peden Street, including whether the existing hedge on the subject land along these boundaries is to be retained, following consultation with the owners of these two properties;
 - (g) Plan notations indicating the retention of:
 - (i) the 3 cypress trees along the eastern boundary as described above;
 - (ii) the silver birches (as far as practicable) adjacent to the bend in the driveway;
 - (h) In relation to units 3 and 5 and units 4 and 6, the provision of a 1.5m side setback between each unit and the corresponding common boundary so that a 3m separation is provided between them. This is to be achieved through a reduction in the floor area of these (or other) units;

- (i) Plan notations indicating the retention of all vegetation within the front setback other than those trees and shrubs within the area of a driveway that is no more than 5 metres wide.
- (j) The provision of suitably designed screen battens on a sturdy frame on the east side of Unit 2's landing, to minimise the potential for overlooking into the rear yard of No. 9 Peden Street.
- (k) Elevations of the proposed bin storage area, including proposed materials capable of screening bins from view.
- (l) All plant and equipment (including air conditioning units, heating units, hot-water systems, pool pumps etc.) which is proposed to be located externally shall be identified on the plans and located to the satisfaction of the Responsible Authority. Such equipment should be located away from bedrooms of adjoining properties.
- (m) The location, design, height and materials of all retaining walls.
- (n) A schedule and samples of all proposed external materials, colours and finishes.

When approved, the plans will be endorsed to form part of this permit.

- 34 The layout of the site and the size of any proposed buildings and works shown on the endorsed plans must not be altered or modified except with the prior written consent of the Responsible Authority.
- 35 Prior to the commencement of the permitted development, a Waste Management Plan must be submitted giving details of garbage disposal, including the location size and number of bins, where the bins will be collected from and who will be doing the collection. This plan must be to the satisfaction of the Responsible Authority and include the following details:
 - (a) measures (such as the sharing of larger bins) to minimise the number of bins associated with the development that are required to be stored on the land and collected from the Peden Street nature strip;
 - (b) the location of bins within the site, such that the bin storage area in the front setback area only houses receptacles for recyclables or green waste.

When the Waste Management Plan is to the satisfaction of the Responsible Authority, it will be endorsed and will then form part of this permit.

- 36 Prior to the endorsement of the plans referred to in Condition 1 of this permit, a report to the satisfaction of the Responsible Authority prepared by a suitably qualified arborist which outlines tree protection measures, including the specification of tree protection zones, required to retain trees:
 - (a) on the site identified in Condition 1 or otherwise shown on the Landscape Concept Plan prepared by Millar and Merrigan (Plan Ref.

11930LO1-V2 submitted at the Tribunal hearing in Application for Review No. P25/2005);

- (b) trees on adjoining land within 3m of any boundary, including the Peppercorn tree and cypress trees in the rear yard of No. 15 Peden Street;

must be submitted to the Responsible Authority for approval. Once approved, the report will be endorsed to form part of this permit.

- 37 Prior to the commencement of any development or demolition works a Tree Protection Zone Fence of cyclone wire or similar construction must be erected to a height of at least 1.8 metres around trees to be retained on the land at distances recommended in the approved arborist report.
- 38 The installation of utility services must be bored under the root systems of the trees to be retained or otherwise in accordance with the recommendations outlined in the approved arborist report, to the satisfaction of the Responsible Authority. In addition:
 - (a) Supplementary watering must be provided to all trees during dry periods, during and after the construction process. This must consist of a deep soaking at least twice a week during summer and daily in extreme heat conditions.
 - (b) nothing whatsoever shall be attached to any tree including temporary services, wires, nails, screws or any other fixing device.
 - (c) all root zones shall be bridged using timber planks, to assist in reducing soil compaction and consequent root damage.
 - (d) A qualified arborist must attend the site during site cut and excavation to ensure that all affected tree roots are managed correctly and to ensure any damaged or exposed tree roots are pruned cleanly and the cut ends sprayed with a root hormone solution before covering with soil.
 - (e) Any backfill material must be a mixture of quality topsoil and organic composted material and the trees must be monitored on a regular basis during and after construction, by the consultant arborist.
- 39 Before the development starts, or any trees or vegetation removed, the applicant/owner must submit three (3) copies of a landscape plan prepared by a suitably qualified and experienced person or firm. This plan when endorsed will form part of this permit. This plan must be generally in accordance with the Landscape Concept Plan Ref. 11930LO1-V2 prepared by Millar and Merrigan but amended to show as appropriate:
 - (a) A survey of all existing vegetation, abutting street trees, natural features and vegetation.
 - (b) Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.

- (c) Planting within and around the perimeter of the site comprising trees and shrubs capable of:
 - (i) Providing a complete garden scheme,
 - (ii) Providing some upper canopy for landscape perspective,
 - (iii) Minimising the potential of any overlooking between habitable rooms of adjacent dwellings.
 - (d) A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed incorporating any relevant requirements of Condition No. 1.
 - (e) The proposed design features such as paths, paving, lawn and mulch.
 - (f) A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant. This must include:
 - the use of evergreen trees along the northern, southern and eastern site boundaries, with a height of 1.5m at the time of planting and capable of reaching a height of at least 6m at the time of maturity
- 40 Landscaping in accordance with the approved landscape plan and schedule must be completed before the building is occupied, to the satisfaction of the Responsible Authority.
- 41 Only those trees marked *Trees to be removed* (or similar notation) are allowed to be removed or destroyed.
- 42 No other vegetation on site, shown as an existing tree or shrub on the endorsed plan, may be destroyed, felled, lopped or uprooted without the prior written consent of the Responsible Authority (other than in accordance with a notice given pursuant to the *Local Government Act*).
- 43 All existing vegetation to be retained must be maintained to the satisfaction of the Responsible Authority including suitable management during any construction stage.
- 44 The garden areas shown on the endorsed plan and schedule may only be used as gardens and must be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it may be required to be replaced by a tree or shrub of similar size and variety, to the satisfaction of the Responsible Authority.
- 45 All brickwork on or facing the boundaries of the site must be raked and cleaned or rendered to the satisfaction of the Responsible Authority.
- 46 All service pipes, fixtures and fittings must be concealed on exposed elevations to the satisfaction of the Responsible Authority.

- 47 The bin storage area must be kept in a clean and odour free condition at all times to the satisfaction of the Responsible Authority.
- 48 Prior to the occupation of the permitted development, piped outfall drainage from the site to the pit outside No. 7 Peden Street must be constructed to the satisfaction of the Responsible Authority.
- 49 Prior to the occupation of the permitted development, the parking areas and vehicular accessways shown on the endorsed plan must be fully constructed, sealed, drained and delineated to the satisfaction of the Responsible Authority.
- 50 Prior to the occupation of the permitted development, a 6 metre wide vehicle crossing must be constructed in Peden Street to serve the development to the satisfaction of the Responsible Authority.
- 51 Prior to the occupation of the permitted development, piped drainage, including a detention system, must be constructed to drain all paved areas to the satisfaction of the Responsible Authority.
- 52 Prior to the commencement of any works covered by this permit, engineering plans showing all carparking, driveways and drainage must be submitted to the Responsible Authority for approval.
- 53 Prior to the approval of civil engineering construction plans showing all carparking, vehicular accessways and drainage, a checking fee of \$300 must be paid to the Responsible Authority.
- 54 Prior to the approval of civil engineering construction plans an inspection / surveillance fee to the value of 2.5% of the cost of the works as required by condition 17 must be paid to the Responsible Authority.
- 55 The construction of all internal civil works, including carparking, vehicular accessways and drainage is to be inspected and approved by a suitably qualified or experienced person or a qualified civil engineer. Prior to the occupation of the permitted development, the person inspecting the works must certify the construction of these works, to the satisfaction of the Responsible Authority.
- 56 The parking areas and vehicular accessways and drainage approved by this permit must be maintained to the satisfaction of the Responsible Authority.
- 57 The parking areas and vehicular accessways must not be obstructed or made inaccessible to the satisfaction of the Responsible Authority.
- 58 The works as required by conditions 17 of this permit are to be maintained in good condition and repair by the developer, for a period of three months from the date of practical completion, to the satisfaction of the Responsible Authority.
- 59 A maintenance bond to the value of 5% of the cost of the works included in conditions 17 of this permit or \$1,000, whichever is greater, must be

submitted to the Responsible Authority on the practical completion of the works.

- 60 The permit (as it relates to the approved development) will expire if one of the following circumstances apply:
- (a) The development is not started within two years of the date of this permit; or
 - (b) The development is not completed within four years of the date of this permit.

Mary-Anne Taranto
Member

APPEARANCES:

For Applicant	Mr Simon Merrigan
For Responsible Authority	Ms Louise Wolfers, town planning consultant
For Respondents	A & J Bresnan; A McDonald; R & M E Mammoliti; A McGeoch; Mr A McDonald also appeared on behalf of B O'Brien; P K Rigby; P & G Long; A J & A M Young; R & C Sterland; W & D Bushby; C Weinberg; L Nardella; W Van Den Berg and A C Horner.

REASONS

Introduction

- 1 This is an application brought by Lauri Aaltonen to review a decision by Yarra Ranges Shire Council (“the Council”) to refuse a permit for the construction of 8 units (single storey) and the subdivision of the land. The review site is a large irregular shaped lot (battle-axe shape) with an area of 3326sq.m. It is developed with a two-storey dwelling centrally located and surrounded by a variety of mainly exotic trees. The land has abutments with 11 other properties which are each developed with detached dwellings.
- 2 Council required notice of the application to be given to the owners and occupiers of adjoining and surrounding properties and received petitions and 24 individual objections.
- 3 Although Council’s officers recommended the grant of a permit, the Council resolved to refuse the application on the following grounds:
 1. [The proposal] is inconsistent with local planning policies for residential areas, particularly those that deal with medium-density development and the need for such development to be compatible with the existing neighbourhood character for the area within [sic.] it is proposed to locate; and for it not to have an adverse impact on the natural, built-form and landscape amenity of the area.
 2. Fails to properly address the physical characteristics of the site and neighbourhood character, in the design and layout of dwellings on the site and the way in which those dwellings interact with adjoining residential properties and on the remnant vegetation within.

Previous Directions

- 4 Following the conclusion of the hearing, I gave further written directions¹ requiring the applicant to properly identify the location of a hedge along various boundaries of the site and invited submissions on this further material. I also allowed submissions in relation to Council's proposed condition requiring a 5% Public Open Space contribution associated with the subdivision of the land.
- 5 I received and have subsequently considered the further material and submissions in response to my Directions.

Subject site and locality

- 6 The land is an irregular battle-axe shaped lot with a frontage of 21.34m to Peden Street and total site area of approximately 3326sq.m. It is located on the south side of Peden Street in Chirnside Park close to Lilydale, with Maroondah Highway located further to the south.
- 7 The land has a moderate fall from west to east of approximately 9m and a fall from the rear, south boundary to the front of approximately 3m. It is developed with a 2-storey dwelling which is located within the rear, central portion of the site, thus not being visible from the street. There is a scattering of trees and shrubs (native and exotic) throughout the site, including a copse of Birch trees near the eastern boundary, native trees along the western boundary (adjoining 6 Roseman Road) and a grove of lemon trees along the southern site boundary.
- 8 The property, because of its unusual configuration and large size has abutments with 11 other properties, all of which are developed with detached dwellings, generally constructed in the past 25-30 years or so. The abutments with two of these sites are however quite minor (ie. No.'s 34 St. Andrews Drive and 4 Roseman Road).
- 9 Views between the review site and the backyards of some neighbouring properties are possible. Most notably, there are expansive views into and across the site from an elevated rear deck on the adjoining dwelling to the south at No. 3 Greythorn Court. Views over a low hedge along the boundaries in common with No.'s 13 and 9 Peden Street are also readily available.
- 10 Peden Street is a local residential street which runs east-west between Victoria and Roseman Roads. It has a width of 7.3 metres, is sealed and is said by Council's traffic engineer capable of carrying up to 3000 vehicles per day. There are no concrete footpaths.
- 11 The site is located approximately 480m from the Lilydale West Primary School, 1.5km to the Lilydale Main Street shopping centre and 1.4km to the Lilydale train station. The nearest bus stop (for the local telebus service) is located approximately 120m to the east near Victoria Road. Other nearby

¹ Directions dated 29 April 2005.

services and facilities include convenience shops (1.1km to the south), parkland, kindergarten and a secondary school (Lillydale Heights).

Proposal

- 12 This proposal involves the construction of 8 single storey units and the subdivision of the land into 8 lots, each containing one of the proposed units. The dwellings are all to be accessed via a common driveway running adjacent to the site's eastern boundary which then turns west running centrally through the rear portion of the site.
- 13 Each of the dwellings contains 2 bedrooms with a single car garage except for Unit 1 which has one bedroom and a double garage. This latter dwelling is located within the front north portion of the site, setback more than 21m from the front boundary.
- 14 The remaining 7 dwellings occupy the rear portion of the site, located on either side of the common driveway. Three visitor car spaces and a turning area for CFA vehicles in the south-east bend in the driveway are also proposed.
- 15 Side and rear boundary setbacks range from a minimum of 1.08m to 1.3m.
- 16 Except for Dwelling 1 which has an elongated design, the dwellings are identical in design, with open plan living, dining and kitchen areas and a separate wing for bedroom, bathroom and laundry facilities. Secluded areas of private open space for each dwelling (with a width of 3+ metres) range from approximately 45sq.m to 54sq.m.
- 17 The dwellings are fairly simple in design and are to be constructed of brick with colorbond hipped roofs.

Planning Scheme Provisions

- 18 The land is included in a Residential 1 zone. Pursuant to Clause 32.01-4 of the Scheme, a planning permit is required to construct two or more dwellings on a lot. Such applications must meet the requirements of Clause 55 of the Scheme (Rescode). These requirements are that a development must meet the objectives and should meet the standards of that clause.
- 19 A planning permit is also required for subdivision. Applications for subdivision must meet the requirements of Clause 56.
- 20 A permit is required for buildings and works and vegetation removal under the provisions of Clause 53 (Upper Yarra Valley and Dandenong Ranges Region). These works are not exempt under the Schedule to this clause.
- 21 No overlay controls affect the site.
- 22 State and Local planning policies relevant to this application include Clauses 11, 14, 15.12, 16.02, 18.02, 21.01, 22.01 (Residential Areas) and Clause 22.11 (Development in Residential, Rural Living and Rural Areas).

- 23 In essence, the local policy framework provides direction for development that responds to a number of key issues. These issues are:
- The wider strategic need to contain the outward spread of metropolitan Melbourne, conserve areas of environmental significance, protect agricultural land and maximise the use of available infrastructure.
 - The incapability of land to cope with additional and sustainable population growth, increased urban densities, further land subdivision and specific types of use and development, and the need therefore to confine urban development to existing urban zones.
- 24 Council’s Municipal Strategic Statement (MSS) identifies twelve geographical-functional areas in the Shire (Clause 21.02-3). The site is located within the “Metropolitan Urban Area” (MUA), a preferred area for additional residential development including medium density housing. This area is described as being:
- Fully serviced urban areas; mostly detached houses; major concentration of population; several major commercial centres; extensive industrial land; range of educational facilities.
- 25 Council’s policy at Clause 22.01 (which alternatively refers to the MUA as the “Metropolitan Residential Area”) provides more detailed guidance for development in these locations, explaining that:
- Most of the housing stock in these areas comprises single detached dwellings, with some medium density development in selected locations. Some areas on the fringe of Chirnside Park and Lilydale remain undeveloped, although they are committed to development for detached housing. Opportunities for further medium density development exists on vacant and underutilised sites in established areas which have convenient access to commercial centres, community facilities and public transport.
- 26 Objectives for the Metropolitan Residential Areas are to:
- Provide for a range of housing types to meet the varied accommodation needs of the Shire’s population.
 - Maintain a safe and attractive living environment.
 - Provide for well designed development which utilises existing physical and social infrastructure.
 - Provide for non residential uses that are primarily aimed at meeting the needs of the local community.
- 27 Clause 65 sets out decision guidelines that must be considered, as appropriate, when considering any application for a permit under the scheme. Of relevance to the issues in this case are the State and local planning policy provisions referred to above, the purpose of the zone and other relevant controls, the orderly planning of the area and any effect on the amenity of the area. Of relevance also, as provided for at Section 60 of

the Act, is the Metropolitan Strategy, Melbourne 2030, it being a strategic plan adopted by the minister.

BASIS OF DECISION

Introduction

- 28 The parties at the hearing of the application for review relied on both written and oral submissions. A number of photographs, plans and other documents were tendered to the Tribunal and are retained on file. I also conducted an inspection of the site and its locality. During my inspection, I visited five neighbouring properties² from where I viewed the review site. I set out my findings in relation to the key issues in this Application, having regard to these submissions, the material presented at the hearing, my inspection of the site and surrounds and the policies, objectives and decision guidelines of the Scheme.
- 29 I have also taken into account Council's Draft Neighbourhood Character Study and the relevant brochures for the Chirnside Park precinct. I note that while the brochures have been adopted by Council they have not yet been referenced or incorporated into the Planning Scheme.
- 30 The key issues for consideration are whether the:
- a site's location is suitable for medium density housing in the context of State and local planning policies;
 - b design of the proposal is acceptable in the context of surrounding development and the neighbourhood character;
 - c proposed tree removal and opportunities for landscaping are acceptable;
 - d traffic and carparking arrangements are satisfactory;
 - e proposed condition requiring an open space contribution of 5% is appropriate.

Suitability of site for medium density housing

- 31 A number of objectors raised concerns about the suitability of the site for medium density housing, submitting that land in the area is overwhelmingly developed with detached dwellings on generous sized lots in the range of 835sq.m 1200sq.m. It was said that the proposed development would result in the setting of an undesirable precedent for similar applications thus resulting in the erosion of the spacious character which residents so enjoy.
- 32 Ms Wolfers conceded that the site is located within a preferred area for medium density housing (ie. the Metropolitan Residential Area) having regard to local planning policies. She also agreed that the development would advance statewide policies for urban consolidation including

² No.'s 9, 13, 15 and 19 Peden Street and No. 3 Greythorn Crt.

strategies under Melbourne 2030. Notwithstanding, she referred to the need for development to respond to neighbourhood character objectives, a matter which I will return to shortly.

- 33 From my inspection of the site and surrounding area, it is apparent that detached housing is the dominant form of development in the neighbourhood, except for one recent 2-dwelling development on a corner lot³. Housing stock is relatively new with most development having occurred within the past 25 to 30 years, comprising mainly brick dwellings within attractively maintained gardens.
- 34 While detached housing is without question the dominant style, this does not mean that medium density housing should not be located in this area. Such areas are described at Clause 21.05-1 as including “areas of suburban development that form part of the Melbourne metropolitan area and include Lilydale, Mooroolbark, Kilsyth and Chirnside Park”. Importantly, the land is included in a Residential 1 zone, the most commonly occurring residential zone in metropolitan Melbourne. The proposal is entirely consistent with one of the purposes of this zone, which is:
- To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all residents.
- 35 Council’s local policies also recognise the need to provide more diverse forms of housing, given the changing nature of household types, driven by population increases but more particularly, the reduction in the number of persons per household. Demographic trends such as the ageing of the population and the increasing diversity of family types are contributing factors.
- 36 While medium density housing represents a departure from the traditional larger style of housing that presently exists, the proposal will add to the diversity and affordability of housing in the area. Importantly, the site achieves a number of Council’s policy objectives, including those at Clause 22.01-1 which recognises the need to:
- Maximise the use of existing infrastructure and services for improved cost-effectiveness and to prevent the continued and unsustainable outward residential sprawl beyond existing urban areas;
 - direct development to sites which are free from environmental constraints such as flooding, steep topography or containing significant vegetation with particular landscape or ecological value;
 - ensure that land suitable for agricultural use is protected for this purpose.
- 37 As well as being within a “Metropolitan Residential Area”, specific policies in relation to medium density housing at Clause 22.01-3 also describe the following locational criteria:

³ Development on the corner of Roseman Road and Valley Ho Road.

- The site is to be located within convenient walking distance to a commercial centre and at least two public transport routes.

38 In terms of “convenient” walking distance, I acknowledge that the site is not located within the often quoted benchmark of 400m. However, I still consider the site to be relatively well positioned in relation to two public transport routes (bus and train) and a commercial centre (Lilydale Main Street shopping centre). I note for example that the nearest bus stop (telebus service) is located about 120m away and several other bus routes are located about 1.2km away in Maroondah Highway, providing connections with the Lilydale train station and Chirnside Park Shopping Centre.

39 In forming my view about the suitability of the site for medium density housing development, I am guided by Clause 11 of the Planning Scheme which requires that planning and responsible authorities (and the Tribunal on review):

... will endeavour to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.

40 I find that on balance there is substantial policy support for the redevelopment of this site with additional dwellings which outweigh any disadvantages arising from its location that would otherwise warrant refusal of the application. I make this finding on the basis that:

- the proposed dwellings are fairly modest in size and will offer a form of accommodation which is likely to cater to smaller households which are growing in number;
- the proposal is for seven additional dwelling rather than, for example a large apartment complex more suited within or at the periphery of an activity centre;
- in relative terms, the site’s 1.1km distance from the nearest convenience shops (and 1.5km to the Lilydale activity centre) would still advance sustainability objectives including strategies at Clause 22.09-3 the latter which seeks to “Encourage housing diversity, new development and urban consolidation, within existing urban zoned areas, which maximises existing infrastructure ” compared with the development of new dwellings within townships outside the established urban area;
- the site and surrounding area is well serviced by established infrastructure including essential utilities and other services and facilities such as schools, sport and recreation facilities and major employment generators such as those within the commercial/business precincts on the south side of Maroondah Highway between Manchester and Dorset Roads; the Lilydale township area and the Chirnside Park shopping centre;

- the land has no environmental constraints of the kind described above which might otherwise limit development opportunities.

41 For these reasons I am satisfied that the location of the site is acceptable for the proposed development.

Proposed design and the Neighbourhood Character

42 A recurrent theme raised by submitters opposed to the development, is the spacious, low density character of the area. It was submitted that the setbacks of buildings from boundaries are generous and contribute to the area's spacious feel, a quality which was said to be a particular characteristic of back-yard amenity. It was argued that the number of dwellings proposed, especially the siting of 7 dwellings in the rear portion of the site together with proposed setbacks would destroy this sense of spaciousness.

43 I agree with submissions that the area enjoys a spacious quality. While this is generally true of the broader neighbourhood character, the review site has a particularly spacious feel, which is somewhat unusual compared with neighbouring properties. It is accentuated by:

- the large size of the site (approximately 3 to 4 times the size of its neighbours);
- the existing low density development of the land with one dwelling, sited towards the rear of this irregular configured lot;
- low, open style fencing (with hedge planting) along the eastern, western and portions of the northern (side) boundary allowing views between properties.

44 From my observations of the site and neighbouring properties, it is apparent that neighbouring properties do, to some extent, borrow their amenity and benefit from the unusual characteristics of the review site. While I appreciate that the proposed development will inevitably bring about some change, I am required to consider whether the outcome will be acceptable. Change of itself will not be a reason to refuse the application. In forming my view about the acceptability of the development in neighbourhood character terms, I will deal with each of the proposed units in turn.

45 Unit 1 is setback more than 21m from the frontage. A number of trees within the front setback area are to be retained including two liquid ambers and a willow. I find that the setback of this dwelling and its single storey design, together with the proposed vegetation retention in this location will not cause any unreasonable streetscape impacts.

46 This dwelling is to have a 1.08m setback along most of its western side except for the wall of the garage which is located on the boundary in common with No. 13 Peden Street. The existing low hedge along this boundary is to be removed and replaced with climbing plants on a trellis. While the proposed setbacks numerically comply with the relevant

ResCode standards, I consider that the 25.5m length of the western elevation relieved only by a small courtyard is excessive in the context of the prevailing setbacks of neighbouring properties. I will therefore require the main western setback of this unit to be increased to 1.5m and the double garage converted to a single car garage with an internal width of 3.5m for improved landscaping opportunities. In so doing, I will also require that the width of the landscape strip immediately opposite on the east side of the site adjacent to No. 9 Peden Street must not be reduced to less than 1m.

47 In relation to Unit 2, which is to be located in the site's south-east corner, I consider that the 1.3m setback from the eastern boundary is insufficient. I say this for several reasons, namely:

- Although not depicted on the plan of survey / existing conditions plan, there are 3 cypress trees adjacent to this part of the boundary which are worthy of retention;
- the floor level and landing to the laundry is elevated up to 1m above ground level and located quite close to the fence, allowing overlooking into the backyard of No. 9 Peden Street;
- a pathway to the south of the landing is proposed, restricting the potential for landscaping along this boundary.

48 I will therefore require the setback of Unit 2 from the east boundary to be increased by a further 1.5m to achieve a 2.8m setback, thus enabling the retention of the cypress trees and improved landscaping opportunities. I will also require the provision of screen battens to the eastern side of the landing to minimise overlooking opportunities into No. 9 Peden Street.

49 Continuing along the balance of the south boundary (ie Units 4, 6 and 8 which abut No.'s 2 and 3 Greythorn Court), I am generally satisfied with the form of development and proposed setbacks from this boundary. I consider that the single storey form of the units, together with their stepped floor levels which respond to the fall of the land, will not result in any unreasonable visual impacts upon neighbouring properties to the south. For the most part, the proposed dwellings are setback 5m to 6m from this boundary allowing a reasonable degree of planting to occur in this location to soften the appearance of the new buildings. I will however require the setback between Units 4 and 6 to be increased to a total of 3m (i.e 1.5m on either side) to facilitate pedestrian access to private open space, given that a retaining wall is proposed between these dwellings. I will similarly require a 3m spacing between dwellings 3 and 5 on the north side of the driveway.

50 I will also require tiles instead of colorbond to be used on the roofs of dwellings which is the characteristic material in this area.

51 I am satisfied that the development would not cause any unreasonable amenity impacts upon the adjoining dwellings to the west. I say this having regard to the position of a large shed in the rear yard of 6 Roseman Road (adjacent to Unit 8) and the location of the dwelling whose outlook and

main area of private open space associated with the dwelling is located further north of Unit 7.

- 52 I consider that Units 3, 5 and 7 will not cause any unreasonable visual impacts having regard to the proposed setbacks which are predominantly 5m to 6m from the north boundary. While some portions of these units have setbacks ranging from 1m to 2.5m, I find that the length of these walls is acceptable and are generally well positioned so as to be visually unobtrusive from neighbouring properties. For example, the narrowest setback of 1m to Unit 3's bedroom 2 is opposite a shed at the rear of No. 13 Peden Street.
- 53 Overall, I find that the proposed dwellings, with the modifications I have suggested, will result in an acceptable outcome. While the density of 1 per 416sqm is approximately double that of its neighbours, such an analysis does not take into account the size of the dwellings and must be approached with caution. The dwellings are fairly modest in size, with floor areas (including garages) totalling about 136sqm. Approximately 40% of the site will be permeable (ie. free from buildings and paving), a figure that will increase with the modifications I have described. I am not persuaded that the development will cause any unreasonable loss of amenity such that it ought to be refused or the number of units reduced.

Tree Retention and landscaping

- 54 The majority of trees on this site are proposed for removal. It was submitted by the Council and residents that the extent of tree removal is excessive and would be inconsistent with Council's policy at Clause 22.01-3 which requires medium density housing proposals to comply with the following:
- The development be located to avoid the removal of remnant vegetation, or the removal of mature trees with a height of five metres or more.
- 55 Existing vegetation comprises fruit trees and mainly exotic, ornamental species. There are some trees on the site for removal with a height of 5m+, such as the *Eucalyptus sideroxylon* (Ironbark). I agree with Council's arborist that the vegetation proposed for removal is not of such significance as to warrant retention, having regard to its location, condition and type. In the case of the Ironbark which is the largest tree on the site, Council's arborist described it as having a bifurcated trunk "with flaring and a crack, making failure highly likely in the medium term". There are no indigenous trees on the site to be removed and I am not persuaded that other vegetation such as the row of lemon trees is so significant in landscape terms as to warrant retention.
- 56 In relation to the hedge along portions of the east, west and northern boundaries, survey information provided in accordance with my directions confirms that the hedge has been planted within the review site, although

portions of its canopy appear to partially extend into neighbouring properties. The construction of timber paling fences along the site boundaries in locations occupied by the hedge (and a low open wire fence) will most likely result in the removal of this planting. While a timber paling fence is necessary to ensure privacy between the back yards of existing dwellings and the units (ie. west and north boundaries) there is the potential for the hedge to be retained adjacent to No. 9 Peden Street. This will ultimately be a matter for detailed review when Council assesses a landscape plan for approval. I will require a condition that prior to Council's consideration of this matter, consultation is to occur with the owners of No.'s 9 Peden Street. I also acknowledge Mrs Mammolito's and Ms Bresnan's preference for a solid timber paling fence in preference to a fence with trellis. These matters can also be dealt with by permit conditions.

- 57 Although not indicated on the plans, there may be some earthworks proposed in proximity to the Peppercorn tree and cypress trees on No. 15 Peden Street located close to the common boundary near Unit 5. I will require details of any earthworks near this vegetation (and throughout the site more broadly) together with arboricultural measures to ensure adequate tree protection works are implemented. Similarly, I will also require the implementation of relevant arboricultural measures in relation to trees for retention on the review site.
- 58 I consider that with the increased boundary setbacks that I have previously described and the vegetation for retention, there will be adequate opportunity for landscaping such that the development will readily integrate with its surrounds.

Traffic and parking

- 59 The adequacy of Peden Street to cater for additional traffic generated by the proposal was cited as a particular concern by residents, especially during peak times. A crest in the road near the entrance to the site was also said to create dangerous conditions for motorists, particularly cars exiting from residential properties. It was also submitted that the proposal would generate additional pressure for on-street parking.
- 60 In forming my view about traffic conditions, I note that Council's traffic engineer has reviewed the proposal and raised no objection to it on traffic grounds. In relation to increased traffic volumes, I accept that the development will generate an additional 50 to 70 extra vehicle movements per day (vmpd). In the context of Peden Street's design, which is capable of accommodating approximately 3000vmpd, I agree with the response from Council's traffic engineer that the increase in traffic is relatively minor. I do not consider that the development would result in any unreasonable amenity impacts such as headlight glare or noise beyond what might normally be expected in a residential area. In relation to vehicle movements on the site, I would anticipate that vehicles would travel at low

speeds, particularly at the bend in the driveway opposite the habitable room windows of the Bresnan's house.

- 61 In relation to safety concerns for exiting vehicles, given the crest in Peden Street, I have not been presented with any evidence to dissuade me from accepting the advice of Council's traffic engineer who has concluded that sight distances are adequate. Nor did my observations of Peden Street cause me to reach a different view about this issue.
- 62 I consider that the proposed on-site car parking arrangements will be adequate to meet the needs of residents and their visitors. The provision of 3 visitor spaces for shared use more than meets the ResCode requirement of 1 visitor car space per 5 dwellings. In relation to resident parking provision, each dwelling is provided with one garaged space with scope for a tandem space if required. This also exceeds the ResCode standard of 1 car space per one or two bedroom dwelling.

Open Space Contribution

The Legislation

- 63 Council, in its role as a Responsible Authority, is empowered under Section 18 of the *Subdivision Act* 1988 ("the SD Act") to require an applicant who proposes to create any additional or separately disposable parcel of land by a plan of subdivision to, inter alia:
- s.18(1)(b) pay or agree to pay to the Council a percentage of the site value of all the land in the subdivision intended to be used for residential, industrial or commercial purposes, being a percentage set by the Council not exceeding 5%.
- 64 Section 18(1A) of the SD Act provides that a Council may only seek a public open space requirement if it considers that, as a result of the subdivision, there will be a need for more open space, having regard to:
- (a) the existing and proposed use or development of the land;
 - (b) any likelihood that existing open space will be more intensively used after than before the subdivision;
 - (c) any existing or likely population density in the area of the subdivision and the effect of the subdivision on this;
 - (d) whether there are existing places of public resort or recreation in the neighbourhood of the subdivision, and the adequacy of these;
 - (e) how much of the land in the subdivision is likely to be used for the places of resort and recreation for lot owners;
 - (f) any policies of the Council concerning the provision of places of public resort and recreation.
- 65 Section 20 of the SD Act sets out what Council must do with any payment towards public open space obtained under the SD Act. This includes using

the funds to buy land or to improve land already set aside or zoned as parklands or for a similar purpose.

Scheme Provisions and Relevant Policies

- 66 There are various references of relevance to my consideration of an open space contribution in the Planning Scheme. They are:
- Clause 19.01-2, which allows "*the placing of open space requirements on development proposals*" in Schemes.
 - Clause 52.01 (Subdivision) does not specify an amount for an open space contribution within the Shire of Yarra Ranges and the proposal is not exempt from the provisions of that Clause.
 - Local policies at Clause 21.09-3 include a general objective for the establishment of a good standard of physical infrastructure in established urban areas, and where appropriate upgrading of existing infrastructure. Further strategic works includes the preparation of a development contributions levy policy for the Shire which outlines the required standard of infrastructure and other matters such as the cost of provision.

Principles for Consideration

- 67 There have been previous decisions of the Tribunal that have established important principles relevant to the consideration of this issue. A comprehensive summary of these are set out by Senior Member Baird in *Inland Consultants Pty Ltd v Mildura Rural City Council* [2005] VCAT 955 which I adopt. They are (at paragraph 13):

- Even though there may be no specific requirement for a public open space contribution under Clause 52.01 of the Scheme, a contribution under Section 18 of the Act may still be sought (*Katella Barbara Nominees Pty Ltd v Glen Eira CC* (2002) 11 VPR at paragraph 10).
- A contribution is not mandatory and the provisions of Section 18 of the Act do not adopt 5% as the starting point if a contribution is to be required. Rather, an appropriate amount not exceeding 5% may be identified having regard to the matters set out at Section 18. (*Phillips v Macedon Ranges SC* [2003] VCAT 1882).
- Open space contributions do not necessarily need to be for the acquisition of new open space and may be used for capital works/improvements to existing open spaces (*Peter Herbert and Associates Pty Ltd v City of Stonnington* 17 AATR; 31).
- The funds are not intended for general maintenance and it is reasonable to consider improvements to both local and regional open space as relevant to the circumstances of the case (*Herbert, Williams v Nillumbik SC* [2002] VCAT 1566 and *Stokoe Pty Ltd v Melbourne CC* [2000] VCAT 2621).

- It is valid to consider contributions being used to facilitate both the active and passive recreation needs of occupants (*Stokoe Pty Ltd*).
- It is a matter for a Council as to how a contribution is to be provided, whether by way of land, cash or a combination of both (*Trethowan v Mornington Peninsula SC* [2002] VCAT 1377).
- There should be evidence of a programme in place for monies to be spent but not necessarily in the same financial year (*Herbert*).

The Submissions

68 Council's proposed conditions include a requirement for a 5% public open space contribution associated with the subdivision of the land. Mr Merrigan contested the quantum of the contribution, submitting that a contribution of 1.5% would be more appropriate. He arrived at this figure by expressing the communal open space which includes a BBQ area as a percentage of the total site area. This area, purportedly about 120sq.m equating to 3.5%, was then subtracted from the 5% requested by Council.

69 Council's submissions, including its supplementary submissions responding to my earlier directions, justified its condition by referring to the 'sliding scale' under VicCode 2 Element 7 (Open space performance measure) which suggests a 5% contribution for 6 or more dwellings. The various matters under Section 18(1)(A) of the SD Act were also considered. Council submitted that the proposal satisfies a number of these matters because of the:

- addition of 7 dwellings;
- likelihood that existing open space will be more intensively used given the minimal area of open space (private or communal) proposed on the site;
- increase in population density arising from the development;
- minimal provision of private open space;
- minimal area of the BBQ area which it regards as part of the landscaping on the site;
- existence of Council's Open Space Strategy which was adopted in 1998.

70 Not surprisingly, residents were supportive of Council's request for a 5% contribution and the Council's justification for doing so. Mr & Mrs Mammoliti provided a detailed description of open space and recreation facilities nearby. The nearest area of public open space, the Old Pound Reserve contains a walking track for passive recreation linking with the Lilydale Heights Secondary College and surrounding residential areas. Active recreation facilities are provided further afield at Melba Park and

Lilydale Lake, where play equipment and a walking circuit, barbeques, skate park and dog recreation area are available.

The Merits of 1.5% v. 5% contribution

- 71 In forming my view about this issue, I note at the outset that the need for some form of contribution was not contested by Mr Merrigan, just the amount that should be required.
- 72 I do not accept Mr Merrigan's argument that the communal BBQ area should be included in the open space calculation for a number of reasons. Firstly, upon my review of the dimensions of the area concerned, I find that is approximately 65sq.m, not 120sq.m as submitted by Mr Merrigan. Notwithstanding, as a matter of principle, I would still not accept this lesser amount as an appropriate means of satisfying a portion (approximately 1.95%) of the open space contribution. I say this because:
- I consider the communal area as part and parcel of landscaping normally associated with developments of this kind. It sits adjacent to a bend in the driveway, between 2 garages and a visitor car space. While the inclusion of a BBQ offers the potential for neighbours to socialise arguably taking it beyond its role as 'landscaping', its location, configuration and size still constrain its use for different recreational or leisure pursuits that residents might reasonably expect to enjoy.
 - While one might regard this area to be generous in terms of its landscape function, the spacious characteristic of development in the area leads me to conclude that the proportions of this communal area is not unusual in the local context.
- 73 Disregarding the area of communal open space, the question remains as to what is a reasonable contribution?
- 74 Council's rationale for 5% includes reference to the VicCode 'sliding scale', which I consider to be fairly arbitrary. I do not accept that 5% should be the starting point for assessing contributions, a principle which has been established in previous Tribunal decisions. It is difficult from the submissions I have received to determine whether 5% was in fact Council's starting point given Council's use of the 'sliding scale' approach. I do note however that the officer's report on the application includes an analysis, albeit brief, of the particular circumstances at play in this case against the various matters set out under Section 18 of the SD Act.
- 75 In any event, I am satisfied from the material presented during and subsequent to the hearing that the subdivision will create a need for more open space and that need warrants a contribution at the higher end of the scale. I make this finding given that:
- The proposal will result in a seven-fold increase in the number of dwellings on the land.

- There is a strong likelihood that existing areas of public open space nearby will be more intensively used given the fairly modest size of secluded areas of private open space and their limited use for recreational pursuits. Although complying with ResCode standards, it is difficult to envisage that private open space areas on the review will exclusively meet all recreational and open space needs of future residents. Residents will be able to take advantage of nearby facilities offering a variety of recreational opportunities, such as enjoying an extended walk around the scenic environs of the nearby Lilydale Lake.
- The additional dwellings, although accommodating households that may be smaller in size than, for example the existing 2-storey dwelling, the establishment of 7 additional dwellings will, nonetheless cause an increased population density. I also give particular weight to Council's planning policy framework which identifies the site within a preferred area for medium density housing where detached housing on 800sq.m+ lots (albeit in a Residential 1 zone) currently prevails. Integral to this policy is the Council's identified need to use existing infrastructure more efficiently and to ensure it is of a suitable quality to meet the demands of the population benefiting from it. I consider such infrastructure to include land set aside for public recreation purposes, public resort or parkland (such as Lilydale Lake, Old Pound Reserve and Melba Park).
- The existence of an open space policy and a clear statement of intent within the policy as to the use of funds collected so as to directly benefit residents of the subdivision. Such funds are to be specifically identified in and spent as part of Council's Capital Works Program.

76 In the circumstances, I am therefore persuaded that a 5% contribution is appropriate.

Other Issues

- 77 Some uncertainty surrounded the proposed waste management arrangements, including whether a private contractor would be required to service the development and the adequacy of the nature strip in front of the site to accommodate the number of bins associated with the development. Concerns were also raised about odours and noise associated with the use of the bin storage area proposed in the front setback area.
- 78 I consider it desirable that the sharing of bins occur and that the proposed bin storage area only be used for recyclable materials. These matters can be best dealt with as part of a waste management plan submitted to the Council for its approval.
- 79 Overall, I am satisfied with the level of on-site amenity that this proposal will offer future residents, including outlook from main living areas and the provision of private open space. I also consider that no unreasonable

overshadowing impacts will occur in relation to private open space areas on the site or surrounding properties.

Conclusion

80 For the reasons I have set out, the decision of the Responsible Authority is set aside. I will direct the grant of a permit with the conditions I have described.

Mary-Anne Taranto
Member