

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P3305/2004
PERMIT APPLICATION NO. WH/14805

CATCHWORDS

Application under Section 77 of the *Planning and Environment Act 1987* (the Act) to review a **decision to refuse** a permit. Residential 1 Zone. Significant Landscape Overlay. Clause 55 Two or more dwellings on a lot and residential buildings. Redevelopment of existing nursing home. Irregular Site (1.92 hectares). State and Local Planning Policy Framework. Zone Purposes. Landscape and neighbourhood character.. Loss of established trees. Impact of Blackburn Lake Sanctuary. Visual impact. Stormwater management. Building height. Car parking, Traffic.

APPLICANT	Regis Group P/L
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENT	Blackburn Lake Sanctuary Action Group Inc and others
SUBJECT LAND	1 Lake Road, Blackburn
WHERE HELD	Melbourne
BEFORE	Anthony Liston, Senior Member Rachel Naylor, Member
HEARING TYPE	Hearing
DATE OF HEARING	4, 5 & 6 April 2005
DATE OF ORDER	10 May 2005
CITATION	Regis Group Pty Ltd v Whitehorse CC [2005] VCAT 904

ORDER

The order of the Tribunal is that the decision of the Responsible Authority is set aside and that a permit be issued subject to conditions.

A permit is granted for use and development of a nursing home, including respite care, at 1 Lake Road, Blackburn generally in accordance with the endorsed plans and subject to the following conditions:-

- 1 Before the use and development starts, or any trees or vegetation removed amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the plans prepared by

Smith & Tracey Architects dated 1 March 2005 and substituted by the Tribunal but modified to show:

- (a) All buildings being to the north of the South Setback Line delineated in Attachment 3 of the Decision of Victorian Civil And Administrative Tribunal in application for review P3305/2004, together with any consequential changes to the eastern and northern setbacks;
 - (b) Trees to be removed and retained in accordance with the landscape plan approved under condition 2.
 - (c) The tree protection zones of the trees to be retained in accordance with the arborist report approved under condition 3. The plans should also include a note that no excavation shall occur in these tree protection zones without the consent of the responsible authority and that all other tree protection measures shall be implemented prior to and during construction in accordance with the endorsed arborist report to the satisfaction of the Responsible Authority.
 - (d) The dimensioned location of the vehicle access points;
 - (e) The details of any external air conditioning and plant equipment and associated screening, centrally located within the building footprint, in a manner which compliments the appearance of the building;
 - (f) A coloured schedule of exterior colours and materials;
 - (g) The maintenance of existing street edge treatments along the Lake Road and Central Road frontages of the site.
 - (h) The deletion of the sign shown on the site plan at the Central Road entrance.
- 2 Before the use and development starts, or any trees or vegetation removed, a landscape plan shall be submitted to and approved by the responsible authority. When endorsed, this plan shall form part of this permit. This plan must be generally in accordance with the Landscape Concept Plan prepared by ERM dated February 2005, but modified to show -
- (a) A survey of all existing vegetation, abutting street trees, natural features and vegetation;
 - (b) The retention of the pinus radiata trees along the Lake Road and Central Road frontages of the site, except those trees which would interfere with the construction of the crossover to Central Road and at least one tree to the west of the existing driveway off Central Road that has a poor form;
 - (c) Replacement street trees (if any) required as a consequence of the proposed vehicle access points;
 - (d) The botanical name of all trees and shrubs to be retained and removed as part of this development,;

- (e) Complimentary planting around the trees to be retained (other than the pinus radiata trees) to ensure the future uninhibited growth of these trees.
- (f) The layout of the buildings and car parking areas as required in condition 1.
- (g) Planting within and around the perimeter of the site comprising trees and shrubs capable of:
 - (i) providing additional upper canopy trees within the northern frontage of the site. These trees must be of a species capable of growing to a mature height of 12-20 metres.
 - (ii) providing permeable garden beds and paving when within the Tree Protection Zones of the trees to be retained,
 - (iii) providing a complete garden scheme,
 - (iv) softening the building bulk,
 - (v) providing some upper canopy for landscape perspective.
- (h) The proposed design features such as paths, paving, lawn and mulch.
- (i) 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.

Landscaping in accordance with this approved plan and schedule shall be completed before the building is occupied. Once approved, this plan will form part of the endorsed plans of this permit.

- 3 Before the use and development starts, or any trees or vegetation removed, an arborist report detailing the trees to be retained, the associated Tree Protection Zones and other tree protection measures to be implemented prior to and during construction shall be submitted to and approved by the responsible authority. When approved, this report will form part of the documents endorsed as part of this planning permit. The approved tree protection measures must be implemented to the satisfaction of the responsible authority.
- 4 The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of the responsible authority.
- 5 Before the use and development starts, an Environmentally Sustainable Development (ESD) Management Plan must be prepared by a suitably qualified environmental engineer or equivalent, elaborating on the proposed design initiatives and construction methods. The Plan must include, but not be limited to the following:
 - (a) The environmentally sustainable design features to be incorporated into the design detail of the approved development.

- (b) An Energy Use and Management Plan;
- (c) A Waste Management Plan to encourage separation of garbage from recyclables;
- (d) Water Conservation and Re-use Plan
- (e) Input and Output Materials Plan for the Construction;
- (f) A demolition and construction Waste Management Plan.

When approved to the satisfaction of the responsible authority, the Plan will form part of the documents endorsed as part of this planning permit. The approved management plan must be implemented to the satisfaction of the responsible authority.

- 6 Before the use and development starts, or any trees or vegetation are removed, a "Construction Management Plan" (CMP) must be prepared to the satisfaction and approval of the Responsible Authority, detailing how the owner will manage the environmental and construction issues associated with the development. The approved management plan must be implemented to the satisfaction of the responsible authority.

The CMP must address: the staging of the development, any demolition, tree protection measures, excavation, management of the construction site, land disturbance, hours of construction, noise, control of dust, public safety, traffic management, construction vehicle road routes, soiling and cleaning of roadways, discharge of any polluted water, security fencing, disposal of site waste and any potentially contaminated materials, location of site offices, redirection of any above or underground services, and site lighting during any night works.

The "Construction Management Plan" (CMP) must be implemented to the satisfaction of the Responsible Authority and a contact name and phone numbers for the site manager must be provided.

- 7 Before the use and development starts, a waste storage and waste management plan for the site for the collection and disposal of garbage and recyclables for the uses on the site must be provided to the satisfaction of the Responsible Authority. The waste management plan must provide for:
- (a) the method of storage and collection of garbage and recyclables for the tenancies;
 - (b) designation of methods of collection;
 - (c) appropriate areas of bin storage on site and areas for bin storage on collection days;
 - (d) measures to minimise the impact upon local amenity of operations such as waste collection, vehicle loading and unloading times and management and maintenance waste refuse areas;
 - (e) litter management.

Once submitted and approved by the responsible authority the Waste Management Plan will form part of the documents endorsed as part of this planning permit. The approved management plan must be implemented to the satisfaction of the responsible authority.

- 8 Before the use or development starts, a lighting management plan shall be provided to the satisfaction of the responsible authority. This plan shall provide details of the site lighting and emissions and must address methods of protecting the Blackburn Lake Sanctuary and residential lots to the north west. The approved management plan must be implemented to the satisfaction of the responsible authority.
- 9 Plantings of proposed indigenous tree species shall be of the Blackburn Lake Sanctuary or Whitehorse provenance. The advanced indigenous plantings required shall be of plants produced by a specialist supplier of advanced stock grown to produce a sound and well maintained root system so as to allow the development of a well structured plant. Upon planting, both the planting hole and soil shall be properly prepared and the plant shall be staked for a period of 12 months in accordance with recommended horticultural practice. Mulch shall also be provided to minimise weed growth and reduce moisture loss. The Council's Planning Inspector shall be notified at the time of planting to enable inspection of the plants.
- 10 The garden areas shown on the endorsed plan and schedule shall only be used as gardens and shall 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.

The Council's Planning Inspector shall be advised of the completion of the landscaping so that a site inspection can be carried out. A further inspection will be carried out 6 months after the completion of the landscaping to ensure that species have been adequately maintained.

- 11 The car parking areas and accessways as shown on the endorsed plans shall be formed to such levels so that they may be used in accordance with the plan, and shall be properly constructed, surfaced, drained and line-marked (where applicable). The car park area and driveways shall be maintained to the satisfaction of the Responsible Authority.
- 12 Parking areas, loading bays and access lanes must be kept available for these purposes at all times.
- 13 All new or altered piping and ducting above the ground floor storey of the building shall be concealed and all existing external service piping and ducting shall be painted to match the colours of the walls of the buildings.
- 14 No equipment, services and architectural features other than those shown on the endorsed plan shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.

- 15 A drainage and stormwater management plan must be submitted to and approved by the responsible authority. This plan must have regard to *Urban Stormwater Best Practice Environmental Management Guidelines* (CSIRO) 1999 and show how stormwater from the pre-existing allotments fronting Central and Lake Roads will be drained. The approved plan must be implemented to the satisfaction of the responsible authority.
- 16 Proposed floor levels are to be approved by the Responsible Authority prior to the issue of the Building Permit in relation to flood areas as defined in Regulation 6.2 of the Building Regulations 1994 (as amended).
- 17 Soil erosion control measures must be adopted at all times to the satisfaction of Council's Design Engineer during the construction stages of the development. Site controls and erosion minimization techniques are to be in accordance with Soil Conservation Authority guidelines 'Control of Erosion on Construction Sites'. The applicant must ensure compliance with the above guidelines and in potentially high erosion areas it may be required that a plan be prepared indicating proposed measures and methodology.
- 18 Prior to the issue of the building permit design plans and specifications are to be prepared by a registered Civil Engineer detailing civil engineering works within the site in accordance with the endorsed plans.

Certification by the Civil Engineer that civil works have been completed in accordance with the design plans and specifications is required by the Responsible Authority subsequent to the completion of all works.
- 19 The Applicant/Owner shall be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner shall be responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.
- 20 Prior to occupation of the buildings hereby approved, the permit holder must undertake land consolidation to ensure all allotments occupied by the approved aged care facility form one title.
- 21 This permit will expire if one of the following circumstances applies:
 - (a) the development is not commenced within two (2) years from the date of this permit,
 - (b) the development is not completed within five (5) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

The Responsible Authority is directed to issue a permit in accordance with this order under the provisions of Section 85(1)(b) of the *Planning and Environment Act 1987*.

Anthony Liston
Senior Member

Rachel Naylor
Member

APPEARANCES:

For Applicant

Ms Susan Brennan, Barrister. Ms Brennan called Mr Rodney Jude, Traffic Engineer. Mr Tom Greenwood, Arborist. Mr Alan Wyatt, Landscape Architect and Mr Andrew Biasci, Town Planner as witnesses in support of her submissions.

For Responsible Authority

Ms Maria Marshall, Solicitor.

For Respondents

Mr Egils Stokans, Solicitor;
Mr Norman Winn;
Mr Ian Ellis;
Mr David Hallett;
Mr David Morrison;
Ms Susan Lockwood;
Mr David Berry;
Mr Gavin Oakley;
Mr David Willison;
Mr Phillip LaRoche;
Mr Ray Summers;
Mr Ron Grainger;
Mr John Bergin.

REASONS

Introduction

- 1 For more than a century the Victorian Deaf Society have owned land in Blackburn including the land which is now the Blackburn Lake Sanctuary. Until recent times the society has continued to own land adjoining the sanctuary at the south eastern corner of the intersections of Lake and Central Roads. On this land the society operates a 66 bed nursing home developed in various stages since the 1970's. The society has sold their land to the Applicant, an operator of nursing homes and retirement villages. The Applicant proposes to substantially redevelop the existing nursing home as a modern aged care facility to provide 175 bedrooms capable of accommodating up to 199 residents. The land is a significant and sensitive site, particularly from the perspective of the local community. The most important question we must determine is whether or not the proposal allows the establishment of inconspicuous buildings in a landscape vista dominated by vegetation.
- 2 The proposal originally submitted to the Responsible Authority was for both a redeveloped nursing home and a retirement village with the entire 2.72 hectares of the society's land being the subject of that permit application. This proposal included buildings three to five storeys in height, and proposed 288 bedrooms and associated facilities. The Responsible Authority issued a Notice of Refusal to Grant a Permit in relation to that proposal, and the Applicant made this application in relation to that decision.
- 3 The Applicant continued to negotiate with the council and the community and this ultimately resulted in the Applicant proposing an amended proposal.
- 4 The amended proposal deletes the proposed retirement village, and proposes the redevelopment of the existing nursing home on a reduced site with an area of 1.95 hectares. The balance of the land comprises eight residential lots, six fronting onto Central Road, and two onto Lake Road. The redeveloped nursing home is to contain 175 bedrooms in a building ranging in height from 1 to 3 storeys. The eight residential lots are excluded from the amended proposal, and can be separately sold and redeveloped in accordance with the planning scheme provisions.
- 5 Attachments 1 & 2 to this decision contain two plans from the amended plans, being the land survey plan, and the proposed site plan. These plans help explain the relationship of the land to the sanctuary and the surrounding residential area, and the changes to the site area referred to above.
- 6 Notice of the amended proposal was given in accordance with directions of the Tribunal. At the commencement of the hearing Ms Brennan applied to

amend the permit application by the substitution of the amending plans, and we ordered the amendment of the permit application in this way.

- 7 The Responsible Authority prior to the hearing of the application considered the amended proposal and resolved to support the revised proposal subject to significant increases in the setbacks proposed from the south and east boundaries of the site, that is the boundaries of the site with the sanctuary; a reduction in site coverage (including impervious surfaces) to 42%; and the deletion of the third level to achieve a maximum building height of 9 metres. Objectors were generally not supportive of the amended proposal.
- 8 The parties and the witnesses at the hearing of the application for review relied on both written and oral submissions and a number of photographs, plans and other documents were tendered to the Tribunal. The Tribunal inspected the subject site and its locality. In particular the Tribunal inspected the site from within the sanctuary, and considered those parts of the locality which are affected by a Significant Landscape Overlay (SLO1), and a Significant Landscape Overlay (SLO2).

Planning Scheme Provisions

- 9 The subject land falls within both a Residential 1 zone, and a Significant Landscape Overlay (SLO5). A nursing home is a type of residential building, and as a consequence of the nesting of land use terms under the planning scheme is a Section 2 use in accordance with the zone provisions, and therefore a permit is required for the construction of extensions to the existing nursing home. The SLO5 is an interim control under which a planning permit is required to remove, destroy or lop trees that have a circumference greater than 0.5 metres. The landscape objectives to be achieved in relation to the subject land are:
 - To retain and enhance the vegetation dominated vistas, streetscapes and sites, through ensuring the dominance of native and exotic vegetation cover.
 - To provide for the retention and planting of tall trees in a natural bush setting.
 - To ensure that all setbacks are well vegetated.
 - To ensure that buildings and works retain an inconspicuous profile and do not dominate the landscape.
 - To ensure that development is compatible with the character of the area.
- 10 The Planning Policy Framework places particular emphasis on the ageing of the Whitehorse population, and the need to encourage new and diverse housing types to accommodate this demographic characteristic of the municipality. At the same time, the protection of the valued landscape character of Blackburn and its sanctuary is recognised as an important objective. It is the resolution of the tension which exists between the

achievement of these two different policy directives which is at the heart of this application for review.

- 11 Ms Marshall in particular referred to clause 21.03 which sets out the key challenges identified by the Responsible Authority as embodying a succinct statement of this tension between competing planning objectives. Of understated relevance to this current proposal is the importance of key sites for new development opportunities because of the relative unavailability of land for redevelopment.

Amendments C50 & C54

- 12 There are at present two planning scheme amendments Amendment C50 part 2 and Amendment C54 which relate to the subject land. The genesis of these amendments was the Blackburn Lake Surrounds Study – September 2002 and the panel report for Amendment C46 part 2 which related to the application of a Neighbourhood Character Overlay, and a Significant Landscape Overlay, over residential land in the vicinity of the Blackburn Lake Sanctuary. The study developed design principles in relation to three institutional sites (including the subject land) within the vicinity of the lake and the panel considering Amendment C46 encouraged the application of a Significant Landscape Overlay to these sites, which were not the subject of the amendment. The panel recommended the use of SLO2 for the institutional sites, but acknowledged that a further planning scheme amendment process would be required to incorporate such an overlay over these sites.
- 13 Amendments C50 part 2 and C54 are presently before a panel. The more specific provisions of these amendments have varied considerably over time. Ms Marshall set out the history of these amendments in some detail and we think it unnecessary to repeat that here. The changes introduced essentially related to the debate in the council and in the community about what constitutes appropriate design standards for the redevelopment of the subject land with the particular focus being on building height and site coverage of both buildings and impervious services. Notwithstanding this debate, the objective of achieving buildings set within a visually dominant landscape is accepted by all the parties.

The Blackburn Lake Surrounds Study

- 14 The Blackburn Lake Surrounds Study – September 2002 is a reference document in the planning scheme. A further study The Review Of Sites In The Blackburn Lakes Surrounds Area – June 2004 reported specifically on the institutional sites. The development principles for the Victorian Deaf Society Land which originated in the surrounds study and which were relied on in the later review are set out below:
 - Retain the sense of spaciousness on and around the site.
 - Set development back from front boundary to retain openness of the streetscape.

- Retain all perimeter tall trees.
- Built form should be preferably confined to the existing building footprint.
- Dwellings should be set unobtrusively and sensitively within the site and landform.
- Provide a strong bio-link to Blackburn Lake Sanctuary through the use of indigenous species.
- Ensure new subdivision accords with strong ecological design principles to minimise run-off to Blackburn Lake (eg. Minimise hard paving, provide litter traps).
- Dwellings should front to the Sanctuary.
- Develop a pedestrian link to Blackburn Lake Sanctuary.
- Avoid high rear fences abutting the Sanctuary.
- Develop using conventional layout and retaining existing perimeter trees.

15 The subject land has an open park like character with the buildings set within extensive lawns dotted with relatively immature native and exotic trees and shrubs. The street frontages of the land are dominated by rows of mature pine trees, remnants of the original rural landscape.

Notwithstanding the size of these trees, the boundary vegetation is relatively transparent and the open park like setting referred to above is apparent from the surrounding streets. The open character of the subject land is not really typical of either the sanctuary, or the surrounding residential area and it is a desire to preserve this spaciousness which we think has influenced the development of the design principles set out above. We think that these design principles are useful in that they recognise the sensitivity of the site, and the importance of landscape to the character of the area but seem to us to be unduly focussed on preserving the status quo. In our opinion, they fail to have adequate regard to the zoning of the land and the opportunity the site represents for the achievement of other planning objectives.

16 For many of the community members who made submissions at the hearing, their preferred position was that the land should be acquired and used to extend the existing Blackburn Lakes Sanctuary. While this is a matter for the relevant public authorities, and not for this Tribunal, it is important to note that even in this scenario the existing character of the land would be radically altered.

Basis for Decision

17 We think that the issues raised by this application can be best dealt with under three broad headings - the use of the land for a nursing home; the impact of the proposed redevelopment on landscape character; and the impact of the proposed redevelopment on the Blackburn Lake Sanctuary.

The use of the land for a nursing home

- 18 The particular implications of an ageing population for the City of Whitehorse is clearly identified in the Municipal Strategic Statement. In this case we have an existing 66 bed nursing home set on a very large site, which must be regarded as a key development site, albeit one with particular environmental and neighbourhood character sensitivities. The Responsible Authority has acknowledged that the expansion of the existing nursing home on the subject land is supported by the Planning Policy Framework.
- 19 Objectors submitted that the importance of achieving the housing related objectives of the planning scheme is exaggerated. It is argued that the growth in demand in nursing home beds is overstated and that the projected growth can be largely accommodated elsewhere by minor increases in the capacity of existing nursing homes. There is no evidence to support the contention that existing nursing homes within Whitehorse are capable of expansion, or even if they are capable of satisfying the new standards for nursing homes coming into effect in 2008. Moreover, it is important to recognise the long term nature of the problem, that is the timeframe over which the proportion of the aged in the population is likely to grow. Moreover, nursing home beds are publicly funded, and their development results from a needs based assessment by the responsible Commonwealth agency, if there is no need for beds in this locality they will not be funded.
- 20 We are of the opinion that a continued and expanded use of the subject land as a nursing home including respite care is supported by both the zoning of the land and the Planning Policy Framework, therefore we find the use of the land to be appropriate.

Landscape character

- 21 The impact of the proposal on landscape character is a function of the opportunities for landscaping within the site, including the retention of existing trees, and the size and layout of the proposed building and its location within the site. For the purposes of this discussion we are limiting our consideration to the impacts of the proposal on the surrounding neighbourhood, as we deal with the impacts of the proposal on the sanctuary separately.

The frontage setbacks

- 22 The new two and three storey sections of the building proposed are predominantly sited towards the east of the subject land and the important visual impact of these new building elements will be from Central Road. The frontage setback from Central Road is very large at 43 metres. Because of the relative transparency of the perimeter pine trees, views into the eastern half of the site from Central Road are quite open, and the proposed new building will be highly visible, at least in the early stages of development. However, the development of the six residential lots fronting

onto Central Road will significantly constrain views towards the new building and the very large frontage setback means that there will be no difficulty in establishing an appropriate landscape setting for the proposed building from this viewpoint.

- 23 The existing single storey buildings are located towards the Lake Road frontage of the subject land, and it is proposed that they be extended. The resulting frontage setback from Lake Road varies from 8.2 metres to 30 metres. While, in part, the extensions to the single storey buildings do intrude into the existing frontage setback from Lake Road, there remains significant space for the enhancement for the existing landscape setting. We do not think that the proposed changes to the existing buildings from this viewpoint are likely to have a significant adverse affect on neighbourhood character. Indeed, this aspect of the proposed development was not a central focus of the submissions at the hearing.

Site coverage

- 24 Ms Marshall submitted that the proposed building site coverage was approximately 32% with the total impervious surfaces site coverage (i.e. buildings and exterior paved services) being approximately 48%. These figures are close to the site coverage figures which are permit triggers under SLO2, which affects most of the residential properties around the perimeter of the sanctuary. The Responsible Authority advocated the imposition of a condition reducing the total impervious surfaces site coverage to 42%, a figure more akin to that found in SLO1 which affects some of the older, and less conventionally developed suburban pockets with a heavy tree coverage found nearby.
- 25 The location of the proposed buildings on the highly irregular subject land is evident in attachment 2. Other than for a number of relatively small courtyards and circulation spaces all the undeveloped land available for landscaping is concentrated to the perimeters of the site, more particularly where the land abuts the adjoining streets, and the sanctuary. Later in this decision we will outline why we consider it necessary to make some changes to the southern setbacks, but notwithstanding this we consider that the overall area of undeveloped land, and its disposition on the land as a consequence of the proposed design, results in an appropriate balance being achieved between the need to provide additional accommodation in nursing homes, and the requirement to create an appropriate landscape setting for the proposed buildings which is responsive to the neighbourhood character of the locality.

Building height

- 26 The proposal for a third level as part of the redevelopment of the existing nursing home was highly contentious. It was submitted that the third storey was totally inappropriate having regard to the one and two storey character

of the dwellings which, with their gardens, helped define the suburban character of the locality.

- 27 It is our conclusion that these submissions disregard the size and relative isolation of the subject land and considerably overstate the likely impact of the proposed third level.
- 28 The proposed third level is located towards the centre of the site and at its closest, is setback 52 metres from Central Road and 87 metres from Lake Road. Care has been taken with the design of the roof form of the proposed building to reduce its visual impact. The footprint of the proposed third level is very small by comparison to the footprint of the overall building and the area of the subject land. We are of the opinion that the social and economic benefits arising from the additional accommodation provided for in this third level considerably outweighs any adverse visual consequences, if any. We reiterate our earlier findings that the frontage setbacks provide sufficient space for the establishment of an appropriate landscape setting for the proposed building.

The pines

- 29 The perimeter pines are a very dominant visual element. The pines along the Central Road frontage of the subject land are part of a row of pines which extends along the south side of Central Road from its intersection with Lake Road through to the eastern boundary of the sanctuary. The pine trees are, in the main, mature trees with relatively short useful life expectancies. It is the Applicant's position that they want to remove the pine trees from their site. It is argued on behalf of the Applicant that this is the most sensible approach which simply acknowledges the inevitable fact that ultimately these trees must be removed because of their age and condition. Moreover, it was argued that the preferred landscape character for the area and in particular for the sanctuary was an indigenous landscape character and that the removal of the pines would advance the achievement of this objective.
- 30 While we can accept in the longer term the future of these pines needs to be addressed indeed, it may ultimately be the case that a public liability issue arises which requires them to be removed. However, this is not the situation which confronts us in this application. In this case we are being asked to consider in relation to both Central and Lake Roads, the removal of a relatively short length of pines trees from what are much longer relatively continuous rows of pines. Ultimately we have concluded that, at the present, these pine trees are an important element of the neighbourhood character, and that most of the pine trees located along the street frontages of the site should be retained where possible. It is our decision in this regard that:
- All the pine trees within the site but not located on its external road boundaries can be removed.

- Pine trees which would interfere with the construction of the proposed new crossover onto Central Road can be removed.
- There is at least one pine tree to the west of the existing driveway off Central Road which has a poor form, and which should in our view be removed even if it is not directly affected by the proposed new crossover.

The Blackburn Lake Sanctuary

- 31 There are essentially two ways in which the proposed redevelopment can effect the Blackburn Lake Sanctuary. They are the impacts relating to the enjoyment of the park by users, and environmental impacts.

The public enjoyment of the sanctuary

- 32 While the proposed development is intended to intensify the use of the land, it is highly unlikely that the use of the land for a larger nursing home than that which presently exists will have any real impact on the public's enjoyment of the sanctuary. A potentially real impact is a visual impact. Will the public's perception of the tranquillity and isolation of the sanctuary be adversely effected by the appearance of the proposed new buildings? Before turning to a boundary by boundary assessment of the visual impact of the proposal, it is our general observation that the proposed development can have no significant impact on the sanctuary because it will not be substantially visible from any important public viewing point within the sanctuary itself.
- 33 The eastern façade of the proposed building is very deeply articulated, and proposed setbacks vary enormously, ranging from approximately 13 metres to approximately 44 metres. Landscaping within the sanctuary along this boundary is quite dense and is already an effective visual barrier. Having regard to this existing landscaping, and the substantial opportunities for new landscaping within the subject land, it is our view that there can be no significant visual impact on the sanctuary along this boundary.
- 34 Along the southern boundary of the site the development is essentially in two parts, the first is the existing single storey development and its proposed extensions, occupying the western half of the southern boundary, and the second is the newer two and three level building occupying the eastern half of the southern boundary. The extended single storey building is to have varied setbacks with a minimum of approximately 4 metres. The newer two and three level building is to have setbacks ranging from 11.7 metres and 26.2 metres.
- 35 The sanctuary to the south of this boundary is principally Box Stringy Bark Open Forest which is, for the most part, of good quality. Public access to this part of the sanctuary is not encouraged, there is however an informal walking track along the fence line between the subject land and the

sanctuary, which is used as a shortcut by some locals gaining access to the sanctuary.

- 36 The existing nursing home buildings are visible from within the sanctuary in this location, and the proposed buildings will also be visible. Having regard to the open character of the woodland on the sanctuary adjacent to this boundary, and the limited public access which exists along the boundary, we have formed the view that there is some sensitivity to this boundary, and some improvements, albeit relatively minor improvements, to the southern setbacks are warranted. The setback line we propose is somewhat more complex than that proposed by the Responsible Authority, and is described in attachment 3. In settling on this setback line we have had regard to a number of factors:
- Our view that the existing single storey buildings are a useful starting point for the determination of appropriate setbacks;
 - Our recognition of the design parameters influencing the architects in seeking to adapt the existing nursing home into a future dementia unit;
 - Our view that the frontage setback from Central Road is very large, and could be reduced, to accommodate the proposed setback for the new two and three storey building and to replace any bedrooms lost as a consequence of our proposed design changes, and;
 - Our view that minor variations to the proposed east boundary setbacks a consequence of the changes to the south boundary setbacks would be acceptable.
- 37 It is also our observation that the visual impact of the extended single storey buildings along the southern boundary would be reduced if the new rooms closest to the boundary were glazed sitting rooms, not unlike those proposed at the eastern extremities of the new two and three storey building. It is likely that our southern setback requirements as they relate to the extension of the existing buildings will require a greater replanning of these buildings.
- 38 In summary, we understand that the design consequences of incorporating our southern setback requirements may include:
- The Central Road frontage setback being reduced;
 - The east boundary setbacks being marginally varied; and
 - Some variations to the alterations and extensions to the existing single storey buildings.

Environmental impacts

- 39 The significant environmental issues relate to the impacts of the proposal on the floristic values of the sanctuary, and on water quality.

- 40 As already described, the existing landscaping on the site is a highly managed parklike landscape with mown grasses and a fairly disperse pattern of immature trees, including exotic trees. There is little evidence that this approach to the management of the subject land has adversely affected the sanctuary. In fact, the regeneration of the woodland along the western half of the southern boundary has produced a good quality outcome, including an understorey of native grasses etc. The quality of the woodland further to the east is lesser, but that to the west demonstrates what can be achieved in the context of existing management regimes.
- 41 The new landscape plan proposes many more new indigenous trees around the perimeter of the subject land above an understorey of mown grasses. This is essentially an improvement over the existing management practices both from the perspective of the sanctuary, but also from the perspective of establishing a landscape setting for the proposed buildings consistent with neighbourhood character.
- 42 Exotic shrubs and trees are also to be used in the proposed landscape, but these are intended to be focused within the internal courtyards and the immediate environs of the proposed buildings, where they will not directly impinge upon the sanctuary. Mr Wyatt's intention in this regard is to create a landscape which interacts appropriately with the building from a seasonal perspective, and includes plants which would be familiar to and valued by the elderly residents of the facility. Private gardens nearby tend to be a mix of both native and exotic species, and we can see no reason why the Applicant should not be permitted a similar approach on the subject land.
- 43 The proposal will result in an increase in the site coverage of impervious services, and therefore increases the rate at which water is discharged from the land. At the same time uncontrolled runoff from the pervious or grass surfaces of the land is commensurately reduced. While it is important that a drainage system is devised to properly manage the discharge of water from the land, current day best practice stormwater design provides engineers with an enormous array of techniques to ensure an appropriate outcome. This is a matter readily addressed through permit conditions.

Traffic and car parking

- 44 Nursing homes are not significant generators of either traffic, or car parking demand. The proposal is for a relatively large nursing home, but it is on a very large site, which enjoys frontages to both Central and Lake Roads. We accept Mr Jude's assessment, generally supported by that of the Responsible Authority's own traffic engineers, that the proposal is unlikely to have any adverse consequences arising from either traffic generation, or car parking demand. In this regard we note that the Responsible Authority has sought to impose turning movement restrictions in relation to the Lake Road crossover, it is our view that these restrictions are a response to a concern expressed by residents, but one which is not warranted having regard to the likely vehicle movements and associated impacts. We can see

no justification for limiting access to and from the proposed nursing home in this way.

- 45 Mr LaRoche, in particular, was very concerned about the traffic impact of the proposal on the operation of the roundabout at the intersection of Lake and Central Roads. While we accept that there is some short term congestion at this roundabout at the end of the school day, we do not accept that this fundamentally changes our conclusion that the traffic impacts of the proposed development will be minor.

Conclusion

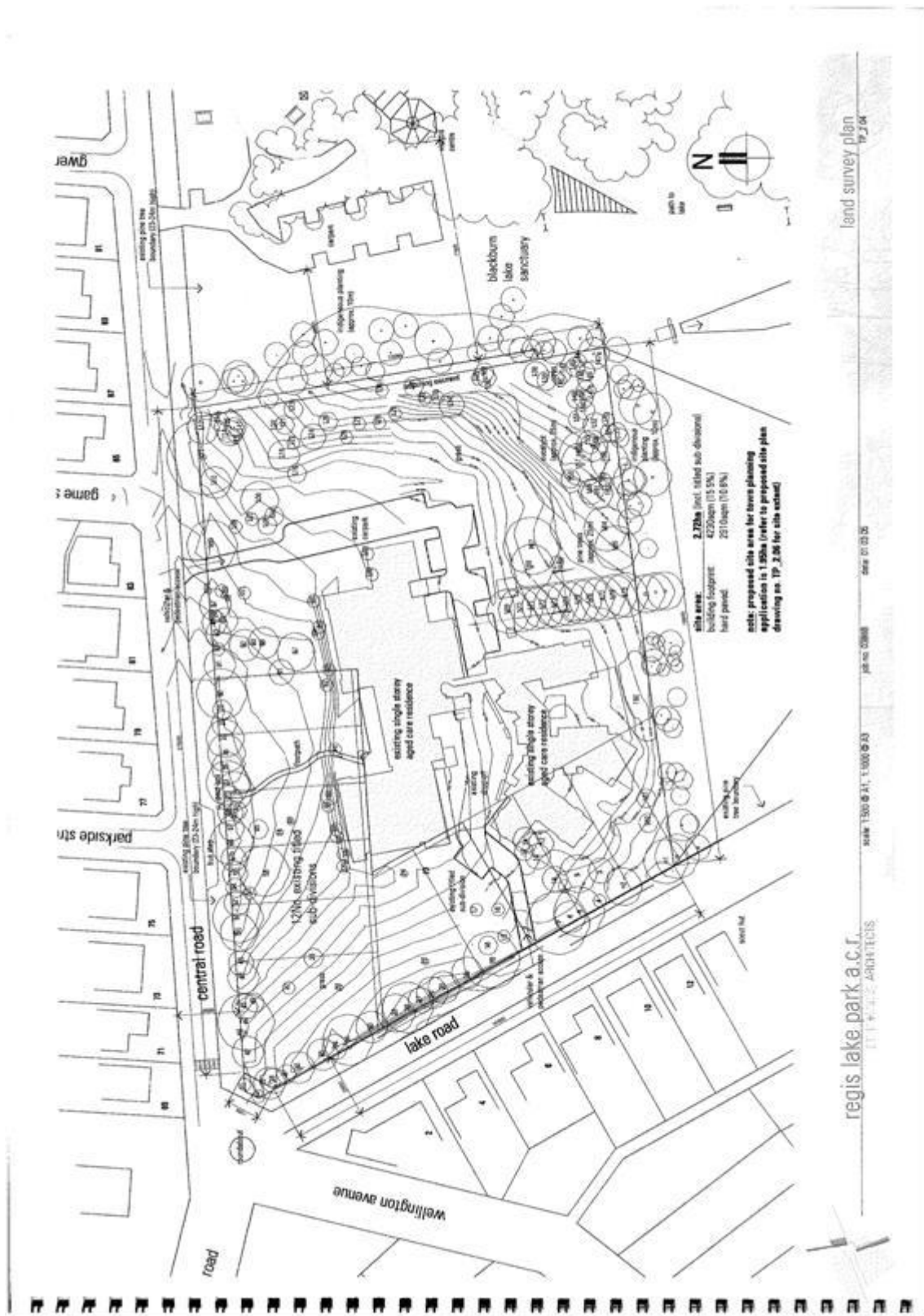
- 46 It is our conclusion that, subject to some minor variations to the southern setbacks, the proposal is one which responds appropriately to the opportunities created by this key, relatively undeveloped site. The proposal will achieve important housing related objectives of the planning scheme while at the same time recognising the particular sensitivity of its location. We believe that the proposal will result in a considerable net community benefit and that therefore the decision of the Responsible Authority should be set aside and a permit issued.
- 47 Many who appeared before the Tribunal are of the opinion that the subject land, indeed all the Deaf Society land, should be acquired and form part of the Blackburn Lake Sanctuary. Notwithstanding the loss of nursing home beds, and the loss of an opportunity to create new nursing home beds, such an outcome would arguably result in a considerable community benefit in its own right. However this is not a matter which is relevant to our decision in this case.
- 48 In deciding the conditions to be included on the permit we have had regard to the draft conditions provided to the Tribunal by the Responsible Authority and the submissions and evidence of the parties in addition to the matters which arise from our reasons. In particular we make the following observations in this regard:
- i We find that it is reasonable for any street trees to be replaced, if necessary, as a result of the proposed vehicle access points.
 - ii We find that any plant should be located centrally within the approved building footprint and screened in a manner which compliments the appearance of the building.
 - iii Two arborist reports were submitted with the permit application and an expert arborist report was presented as evidence during this hearing. Given this, we agree with the parties that a new arborist report should be prepared and approved by the Council detailing the trees to be retained (as outlined in the amended plans and including the pinus radiata trees adjacent to each street frontage) and the tree protection measures required.

- iv In regard to the environmentally sustainable development management plan, Ms Brennan submitted that the ongoing monitoring of the plan would be onerous as it may involve regular reports to Council that serve no real purpose. We are of the opinion that the design should encompass environmentally sustainable design details and actions and these should be outlined in a management plan. Once approved, the use must operate in accordance with this plan. This is an ongoing obligation in the same way that a development must continue to be in accordance with the approved plans.
- v We feel that the construction management plan should address the staging of the development in addition to the other matters contained in the draft condition.
- vi There were a number of draft conditions regarding the stormwater and drainage of the site, including the drainage of the individual allotments adjacent to the site that do not form part of this application. We find that the development should include a drainage and stormwater management plan which includes an onsite stormwater detention system and demonstrates how stormwater from the pre-existing allotments fronting Central and Lake Roads is or will be conveyed to an underground drainage pipe system.
- vii Mr Stokans requested a condition stating that “the development must be a cat-free zone” and Ms Brennan agreed to this. However, we are doubtful as to whether there will be any cats residing in the nursing home and we question how, realistically, such a condition could be enforced. Given this, we have not included this condition in the permit.
- viii Mr Stokans also requested a legal agreement requiring the consolidation of the pre-existing allotments fronting Central and Lake Roads. Given that these allotments do not form part of the subject land before us for consideration, we do not consider it appropriate to require changes to these allotments other than to ensure that appropriate management is in place for drainage.

Anthony Liston
Senior Member

Rachel Naylor
Member

ATTACHMENT 1 – THE LAND SURVEY PLAN



ATTACHMENT 2 – THE PROPOSED SITE PLAN



ATTACHMENT 3 – REVISED SOUTH SETBACKS PLAN

