

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1653/2014
PERMIT APPLICATION NO. WH/2013/449

CATCHWORDS

Whitehorse Planning Scheme; Application pursuant to Section 79 of the *Planning and Environment Act* 1987; Neighbourhood Residential Zone (NRZ7); Environmental Significance Overlay (ESO1); Significant Landscape Overlay (SLO5); Special Building Overlay (SBO); Retirement village; Place of assembly; Food and drink premises; Eight buildings; Indigenous vegetation; High-risk pathway; Conservation areas; Built form; Height; Setbacks; Landscaping; Access/parking layout.

APPLICANT	Australasian Conference Association Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
REFERRAL AUTHORITY	Melbourne Water Corporation
RESPONDENTS	The Blackburn & District Tree Preservation Society Inc, LCW & EM Boucher, Spiros & Kelly Papadopoulos, Hannah Wright, Gavin Mendis, Blackburn Village Residents' Group Inc (David Morrison), Stephen Bodin, Susan & Hugh Williams, Jennifer Robertson, R & A McLaren, Blackburn Lake Primary School, Bradley Hogan, Guy & Gertrud Ward, John & Mary Ainley, Mary Crouch, Trevor Hookey, Tim & Kylie McCorriston, Neil & Julie Finnegan, Darryl Shannon, Janet Danby, Hugh Marshall, Maimie Lim, Friends of Blackburn Lake Sanctuary Inc (Anne Payne).
SUBJECT LAND	131-173 Central Road, Nunawading
WHERE HELD	Melbourne
BEFORE	J A Bennett, Presiding Member Vicki Davies, Member
HEARING TYPE	Hearing
DATES OF HEARING	23, 24, 25, 26, 27, 30 and 31 March 2015
DATE OF ORDER	21 May 2015
CITATION	Australasian Conference Association Ltd v Whitehorse CC [2015] VCAT 712

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act* 1998, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: V-Arc
 - Drawing numbers: TP-100 Revision J, TP-110 Revision J, TP-111 Rev J, TP-112 Rev J, TP-113 Rev J, TP-114 Rev I, TP-115 Rev H, TP-120 Rev H, TP-121 Rev K, TP-122 Rev K, TP-123 Rev K, TP-124 Rev J, TP-200 Rev G, TP-210 Rev H, TP-215 Rev B, TP-220 Rev H, TP-230 Rev H, TP-231 Rev A, TP-400 Rev F, TP-600 Rev G, TP-601 Rev G, TP-602 Rev G all dated 02/02/15

Landscape Concept Plan and Landscape Sections prepared by MDG Landscape Architects, dated 06.02.2015
- 2 On or before Friday 31 July 2015, the Applicant must file with the Tribunal and serve on all parties, revised plans and notes addressing the recommended modifications set out at paragraph 106 of the Tribunal's reasons, together with any consequential changes arising from those modifications. A statement of service is required to be filed with the Tribunal.
- 3 If the Applicant does not intend to prepare revised plans then the Registrar of the Tribunal, and all parties, should be advised in writing of that decision by Friday 19 June 2015.
- 4 Within 28 days of its receipt of revised plans and notes, any party may file with the Tribunal and serve on the Applicant any written submissions relating to any revision to the proposed plans.
- 5 Unless parties specifically request a hearing to present their written submissions, the Tribunal will finalise its determination based on the filed material.
- 6 If no response is received by the Registrar of the Tribunal with respect to Order 4 it will be assumed that no further submissions are sought to be made by that party.
- 7 If the Permit Applicant does not respond to Order 2 or indicates that it does not wish to prepare amended plans, the Tribunal will affirm the Responsible Authority's decision and direct that no permit is to be issued.

J A Bennett
Presiding Member

Vicki Davies
Member

APPEARANCES

For Australasian Conference
Association Ltd

Mr Nick Tweedie, SC and Mr Barnaby Chessell, Barrister, instructed by McMahon Fearnley Lawyers Pty Ltd. They called evidence from the following witnesses:

- Mr Marco Negri, Town Planner of Contour Consultants Aust Pty Ltd.
- Mr Barry Murphy, Landscape Architect of MDG Landscape Architects.
- Mr Tim Biles, Town Planner of Message Consultants (Australia) Pty Ltd.
- Mr Aaron Organ, Ecologist of Ecology & Heritage Partners Pty Ltd.
- Ms Charmaine Dunstan, Traffic Engineer of Traffix Group Pty Ltd.
- Mr Rob Galbraith, Arborist of Galbraith & Associates.
- Mr Tony Bridge, Seniors Living and Aged Care Consultant of Bridge Advisory Group.
- Mr Jan Talacko, ARK Resources.

Mr Tim Marks prepared an acoustic evidence statement but parties agreed that it was not necessary for him to attend and answer questions.

For Whitehorse City Council

Ms Adeline Lane, Solicitor of Maddocks Lawyers.

For Respondents

Mr Chris McKenzie, Solicitor for Neil & Julie Finnegan.

Mr Tim McCorriston, Mr R Danby, Mr David Morrison (for the Blackburn Village Residents' Group Inc), Mr Bradley Hogan, Mr Robin McLaren, Mr Spiros Papadopoulos, Dr Mary Ainley, Mrs Anne Payne (for the Friends of Blackburn Lake Sanctuary Inc), Mr David Berry (for the Blackburn & District Tree Preservation Society Inc), Dr John Ainley and Ms Maimie Lim.

INFORMATION

Description of Proposal	Use and development of land for a retirement village with associated food and drink premises (café) and place of assembly, removal of vegetation, reduction in on-site parking and waiver of loading bay requirements.
Nature of Proceeding	Application under Section 79 of the <i>Planning and Environment Act</i> 1987 to review the failure to grant a permit within the prescribed time ¹ .
Zone and Overlays	Neighbourhood Residential Zone 7 (NRZ7). Environmental Significance Overlay (ESO1). Significant Landscape Overlay (SLO5). Special Building Overlay (SBO).
Permit Requirements	Cl. 32.09-1 (use land for retirement village, food and drink premises (café) and place of assembly in NRZ7). Cl. 32.09-7 (construct a building or construct or carry out works for a section 2 use in NRZ7). Cl. 42.01-2 (construct a building or construct or carry out works, construct a fence and remove, destroy or lop any vegetation in ESO1). Cl. 42.03-2 (construct a building or construct or carry out works, construct a fence and remove, destroy or lop any vegetation in SLO5). Cl. 44.05-1 (construct a building or construct or carry out works in SBO). Cl. 52.06-3 (reduce requirement for on-site car parking). Cl. 52.07 (vary loading bay requirements). Cl. 52.17 (remove, destroy or lop native vegetation).
Key Scheme policies and provisions	Clauses 9, 10, 11, 12, 13, 15, 16, 18, 19, 21.01, 21.02, 21.03, 21.04, 21.05, 21.06, 22.03, 22.04, 52.06, 52.07, 52.17, 52.34 and 65.

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act* 1998 states a failure to make a decision is deemed to be a decision to refuse to make the decision.

Land Description

The review site comprises approximately 5 hectares of a 12.83 hectare site owned by the Seventh Day Adventist Church. The land affected by the application is primarily a now disused campground and includes numerous outbuildings, building foundations, gravel roads, slashed ground cover and exotic and native canopy vegetation. It also includes a residential property at 131 Central Road. The northern boundary is along the railway reserve, the western boundary is along the rear fences of properties fronting Cromwell Court and the southern front boundary is along Central Road. The site has a fall from north to south of approximately 15.5 metres and from Central Road has a gently upwards sloping appearance to the north.

Tribunal Inspection

We undertook an accompanied inspection on the afternoon of the third day of hearing and a further unaccompanied inspection one week after the hearing.

Cases Referred To

Seventh Day Adventist Church v Whitehorse CC [2006] VCAT 1952.

REASONS²

WHAT IS PROPOSED AND WHY ARE WHITEHORSE CITY COUNCIL, COMMUNITY GROUPS AND RESIDENTS OPPOSING IT?

- 1 For over a decade the Seventh Day Adventist Church has been trying to gain approval for an alternative use for its now defunct camping ground in suburban Blackburn, located at the northern end of the Blackburn Lake Sanctuary. The local community has taken great interest in what that future use may be and has now opposed two different proposals put forward by the Church. The City of Whitehorse has also opposed both proposals.
- 2 The land contains native vegetation of recognised high conservation significance and one of the main concerns of the local community, and Council, is to retain as much of that vegetation as possible. A related concern is the extent of built form and whether what has been proposed in this latest application responds to the site context and the bush character of land in the vicinity of the Blackburn Lake Sanctuary.
- 3 The review site comprises approximately half of a 12.83 hectare site owned by the Seventh Day Adventist Church. The site holds a former camping ground with conference facility, church, administration building, aged care facility, retirement village, school, sports oval, carparks and various outbuildings. It is the former camping ground of approximately 5 hectares which is the subject of this permit application and can be generally described as comprising the western half of the site.
- 4 The application proposes to construct a 150 dwelling retirement village within seven buildings, together with a separate multi-purpose building located to the north of the existing administration building. Buildings 1 and 2 are positioned across the Central Road frontage, west of the existing central driveway. Buildings 3, 4, 4A, 5 and 6 are positioned along the western boundary. Basement parking is provided under each building. A community store/kiosk and café is proposed in the ground floor of Building 1 and will be accessible from Central Road. Three conservation areas containing vegetation of the highest significance are set aside. Two are between the retirement village buildings and the central driveway/sports oval and the third is to the east of the multi-purpose building.
- 5 Although Council failed to make a decision in the prescribed time it has since decided to oppose the application for the following reasons:
 - 1 The proposal fails to provide a positive contribution to neighbourhood character, as required by state and local planning policies, by providing large bulky buildings with a lack of landscaping and opportunity for substantial vegetation. The outcome results in an overdevelopment that would present an

² We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

- unreasonable visual impact to adjoining properties and the streetscape.
 - 2 The proposal fails to comply with the State Planning Policy Framework at Clause 15 (Built Environment and Heritage).
 - 3 The proposal is inconsistent with existing lot sizes and built form pattern and the preferred neighbourhood character.
 - 4 The proposal does not meet the objectives and policy outcomes for residential development within the Minimal Change area of the Bush Environment Area as contained within Clause 22.03 of the Whitehorse Planning Scheme.
 - 5 The proposal does not meet the objectives and policy outcomes for tree conservation as contained within Clause 22.04 of the Whitehorse Planning Scheme.
 - 6 The proposal fails to adequately meet the objectives and decision guidelines of the Significant Landscape Overlay Schedule 5, as the buildings and works do not retain an inconspicuous profile within the landscape given the proposed setbacks, building height and scale, vegetation removal and lack of space for the planting of new vegetation.
 - 7 The proposal fails to adequately meet the objectives and decision guidelines of the Environmental Significance Overlay Schedule 1.
 - 8 The proposal fails to comply with Clause 52.06 (Car Parking) and Clause 52.34 (Bicycle Facilities) with respect to layout of vehicle and bicycle parking.
- 6 Despite the substitution of amended plans, Council still opposes the application for the eight reasons listed above. However, we do note that Council acknowledges increased setbacks as improvements.
 - 7 Community groups and neighbours also oppose the application and attended the hearing to present submissions explaining their reasons as to why the application should be refused. In large measure they replicate the reasons given by Council, although they are also concerned about inadequate parking, adverse traffic effects in Central Road and adverse impacts on drainage/stormwater quality and flows into Blackburn Lake.
 - 8 The permit applicant rejects these criticisms. It argues that the review site is clearly identified in local policy as having the potential to make a significant contribution to future housing stock in the context of its continued use for institutional purposes. Of the three large nominated sites in Clause 22.03-6 located near the Blackburn Lake Sanctuary, it is said to be the last development opportunity and that a retirement village allows for additional residential accommodation whilst also providing for the unified management of the three areas of very high significance native vegetation being set aside for conservation purposes. As such, it is submitted that the proposal achieves a substantial net community benefit.

THIS IS THE SECOND APPLICATION CONSIDERED BY THE TRIBUNAL³

- 9 In 2006 the Tribunal refused an application to subdivide approximately half the site into a 50 lot residential estate. In addition, two balance lots were to be created – one for a later medium density development and the other comprising about half the site containing the existing school, church, administration building, aged care facility and ancillary activities.
- 10 In its conclusion the Tribunal stated:
- [27] Although the land is zoned Residential 1 and the proposed development will have few off site amenity impacts, there is a need to balance often competing objectives and policies in determining whether an application is appropriate and ought to be supported. In this case we are not satisfied that the subdivision of the land and removal of native vegetation on this particular site, in this particular location, adequately responds to the whole suite of zone, overlay and policy provisions contained in the Planning Scheme. Aside from the issue of whether policy lends support for a subdivision of the layout proposed, we also find that we are unable to satisfactorily ‘design out’ identified shortcomings in the overall site layout. As will be clear from our earlier comments, it is the way in which the layout has responded to the very significant native vegetation and the broader site context which needs to be comprehensively reconsidered.
- 11 Although the latest permit application has attempted to deal with the Tribunal’s concerns about the layout responding to the very significant native vegetation on the site, we do not consider it a repeat appeal in the usually understood concept because the two applications are for such different proposals. However, despite those differences we consider that any new proposal must, as a minimum, respond to the Tribunal’s commentary about the very significant native vegetation on the site.

PRIMARY QUESTIONS FOR OUR CONSIDERATION

- 12 Based on our response to the material accompanying the application and presented at the hearing, we consider that the key questions to be decided are as follows:
- a What does the Planning Scheme say about future development for this part of Blackburn and for this site?
 - b Is the use, layout, built form and landscaping an acceptable response to the zone and overlays, and to the policy and site contexts?
 - c Is the acknowledged significant vegetation protected to an acceptable degree?
 - d Is parking sufficient and are there any traffic reasons for refusing the application?
- 13 We address each of these questions in the following sections.

³ *Seventh Day Adventist Church v Whitehorse CC* [2006] VCAT 1952.

WHAT DOES THE PLANNING SCHEME SAY ABOUT FUTURE DEVELOPMENT FOR THIS PART OF BLACKBURN AND FOR THIS SITE?

Plan Melbourne and State Planning Policy Framework

- 14 Clause 10 of the Planning Scheme requires consideration, where relevant, of *Plan Melbourne*. *Plan Melbourne* identifies five metropolitan sub-regions and the review site is within the Eastern Subregion. The projected future population growth to 2031 for this subregion is between 150,000 and 200,000 people with a dwelling requirement in the same time period of 80,000 to 110,000 dwellings. Nunawading station is identified as an urban renewal opportunity and Nunawading as an activity centre.⁴
- 15 In addition to *Plan Melbourne*, we are also required to consider all relevant State planning policies that apply to the site.
- 16 State policies in the Planning Scheme at Clauses 11, 12, 15, 16, 18 and 19 support the intensification of development on well located sites but require development to respond to site context including natural features and character. They include policies aimed at:
- Providing a diversity of housing in defined locations that cater for different households and are close to jobs and services.
 - Reducing the cost of living by increasing housing supply near services and public transport.
 - Facilitating social and affordable housing.
 - Creating a city of 20-minute neighbourhoods.
 - Protecting Melbourne and its suburb from inappropriate development.
 - Improving energy efficiency of housing.
 - Supporting the appropriate quantity, quality and type of housing including aged care facilities.
 - Ensuring housing stock matches changing demand by widening housing choice, particularly in the middle and outer suburbs.
- 17 State policy also recognises the need to:
- Protect and restore natural habitats in urban and non-urban areas.
 - Avoid the removal of native vegetation that makes a significant contribution to Victoria's biodiversity and minimise impacts on that biodiversity.
 - Ensure that all development responds appropriately to its landscape, valued built form and cultural context.
 - Create urban environments that are safe and functional and provide good quality environments with a sense of place and cultural identity.

⁴ Page 181.

- 18 Clauses 16 and 18 reinforce the need to locate new housing in or close to activity centres and close to or on the Principal Public Transport Network (PPTN). Clause 16.01-3 is policy for strategic redevelopment sites and lists six criteria by which such sites can be identified. As relevant to this application these include:
- Able to provide 10 or more dwelling units, close to activity centres and well served by public transport.
- 19 Clause 16.01 also refers to housing diversity and housing affordability. Clause 18.01-2 includes a strategy to encourage higher land use densities and mixed use developments near railway stations, major bus terminals, transport interchanges, tramways and principal bus routes.
- 20 Clauses 52.06 and 52.07 deal with carparking and loading/unloading of vehicles.
- 21 Clause 52.17 concerns native vegetation removal. There has been a significant change in the way applications are assessed under Clause 52.17 since the last hearing in 2006. Previously applications were considered under *Victoria's Native Vegetation Management – a Framework for Action* with a goal of net gain for native vegetation. The conservation significance of vegetation was assessed as Very High, High, Medium or Low with different responses and off set criteria depending on the conservation significance of the vegetation. As recorded in the previous decision, the vegetation on the site was assessed as being of Very High conservation significance. Under the revised Clause 52.17, applications to remove vegetation are classified as a risk based pathway – low, moderate or high as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines* (Department of Environment and Primary Industries, September 2013). We are advised that the application is to be assessed as a high risk pathway.

Local Planning Policy Framework

- 22 The four key local policies of relevance to this application concern Environment (Clause 21.05), Housing (Clause 21.06), Residential Development (Clause 22.03) and Tree Conservation (Clause 22.04).
- 23 Policy for environment at Clause 21.05 seeks to protect and enhance areas with special natural and environmental significance and facilitate environmental protection and improvements to known assets including water, flora, fauna and biodiversity assets. It also seeks to apply Significant Landscape and Environmental Significance Overlays to the review site and other nominated large sites.
- 24 Policy for housing at Clause 21.06 identifies three categories of housing change in the municipality – Limited, Natural and Substantial. The review site is included in the Limited Change Area. Clause 21.06-3 contains three objectives for such areas:

- Conserve and enhance those elements which contribute to the valued environmental, heritage and neighbourhood character of the place.
- Ensure new development protects and reinforces the environmental, heritage values and / or preferred future neighbourhood character of the area.
- Ensure new development mainly takes the form of renovations to existing houses, replacement of single dwellings with new dwellings and some limited medium density development.

25 In addition, separate objectives and strategies applicable to housing throughout the municipality are provided for housing diversity (Clause 21.06-4), housing affordability (Clause 21.06-5) and housing design (Clause 21.06-6). Clause 21.06 also identifies three different neighbourhood character types - Garden Suburban, Bush Suburban and Bush Environment. These character types - and sub precincts - are explained in Clause 22.03 (Residential Development Policy).

26 Clause 22.03 deals with character, built form and landscape. It includes policy for the three different housing change areas, for different character areas and precincts and for nominated large sites. The provisions were subject to different interpretations as we later discuss in paragraphs 47 and 48.

27 The last local policy of relevance concerns Tree Conservation at Clause 22.03. Amongst other objectives the policy seeks to assist in the management of the tree canopy by ensuring that new development minimises the loss of significant trees, by ensuring that new development does not detract from the natural environment and ecological systems and by promoting the regeneration of tall trees through the provision of adequate open space and landscaping areas in new development. Various policy statements and performance standards are listed to assist in the assessment of permit applications.

28 We discuss these policies and our responses later in our reasons.

Zone and Overlays

29 In addition, we need to consider the impact of the Neighbourhood Residential Zone and the Environmental Significance and Significant Landscape Overlays.

30 The site was previously zoned Residential 1 but since October 2014 has been included in the Neighbourhood Residential Zone (NRZ7). That zoning is applied to recognise areas of predominantly single and double storey residential development and seeks to limit opportunities for increased residential development; manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics; and implement neighbourhood character policy and adopted neighbourhood character guidelines.

- 31 The site is also affected by a specific Environmental Significance Overlay (ESO1) applied to recognise remnant native vegetation of very high conservation significance, in response to an assessment undertaken by Biosis in 2007.⁵ The five environmental objectives seek to recognise the habitat importance of the site, ensure the long term protection of the very high conservation values, avoid the incremental removal of remnant vegetation, protect and maintain ecological processes and genetic diversity and ensure new development is sensitively designed to reinforce existing environmental characteristics of the site.
- 32 A Significant Landscape Overlay (SLO5) also applies, but only to this and three of the other nominated large sites. It includes landscape character objectives, together with specific objectives and design responses, permit requirements and decision guidelines. The specific objectives and design responses are as follows:

Objective	Design response
To retain and increase the native and indigenous vegetation on site.	<ul style="list-style-type: none"> • All existing native trees and exotic trees should be retained where possible. Any removal of <i>Pinus Radiata</i> trees around the perimeter should be staged to ensure maintenance of a vegetation screen, and replacement by indigenous species. • Buildings should be set back more than 4 metres from any vegetation that requires a permit to remove, destroy or lop under the provisions of this Schedule. A building may be closer than 4 metres provided it does not alter the existing ground level or topography of the land. • The location of crossovers should minimise vegetation removal. • The building site coverage should not exceed 33% and the total hard surface and building site coverage should not exceed 50%, including paved surfaces, decks, tennis courts and swimming pools. • Works comprising hard surfaced and impervious areas (including tennis courts and swimming pools, but excluding buildings) should not exceed 17% of the site area. • Disruption to the root system and canopy of all trees should be minimised.
To ensure development sits within a landscaped environment and does not dominate	<ul style="list-style-type: none"> • Building massing and siting should provide space for frequent pockets of existing and new trees and other vegetation throughout the site. • Buildings should be set back a minimum of 9 metres from the front and 6m from the rear boundaries.

⁵ 131 Central Road, Nunawading: Vegetation Assessment by Stephen Mueck, Biosis (November 2007).

the landscape.	<ul style="list-style-type: none"> • Setbacks from side boundaries should be not less than 1.2 metres. • Building materials should use earthy tones or lighter materials (eg. timber, non-masonry materials). • Built form and overall building height should sit below the existing tree canopy. • Development should be no higher than two storeys or 9 metres. • Building design should follow the contours of the site. • Openness to the perimeter roads and Blackburn Lake Sanctuary should be maintained and walled (gated) development with imposing entrance gates should be avoided.
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OUR ASSESSMENT

IS THE USE, LAYOUT, BUILT FORM AND LANDSCAPING AN ACCEPTABLE RESPONSE TO THE ZONE AND OVERLAYS, AND TO THE POLICY AND SITE CONTEXTS?

Use

- 33 We consider that the concept of constructing a 150 unit retirement village on the review site is consistent with the broad directions set by *Plan Melbourne* and State policies. A retirement village provides additional housing and a diversity of housing in a middle suburb and in a location which is on a bus route, close to an activity centre and train station at Nunawading, opposite the Blackburn Lake Sanctuary and within easy reach of a wide range of services including medical and community facilities.
- 34 The population is ageing and policy recognises that housing stock must match changing demand for different forms of housing. We accept that not only is there is a need to widen housing choice in terms of style and size, but that there is also a need to provide housing of a higher quality.
- 35 Mr Bridge, who specialises in seniors and aged care living, provided us with written and oral evidence about the demand and supply of seniors living accommodation and the community need for such facilities. No other evidence on these issues was provided by other parties.
- 36 We accept Mr Bridge's evidence that many of the existing retirement villages within the catchment area⁶ are small and in many cases quite old. We also accept that an increasing proportion of older people will seek to live in purpose built accommodation such as a retirement village and that expectations about what represents an acceptable standard of accommodation will be higher than in the past, consistent with the changing attitudes throughout the community.

⁶ Defined on page 12 of his evidence statement as comprising the Whitehorse Local Government Area (as the primary catchment) and 5 adjoining Statistical Local Areas (as a secondary catchment).

- 37 The material presented by Mr Bridge reinforces those State policies that are seeking to provide more housing choice and diversity in housing supply to meet the changing needs within the ageing community. We consider that a retirement village on the review site is an appropriate response to both State planning policy and the need for such accommodation in our community.
- 38 A permit is also required to use the land for a food and drink premises (café) and the place of assembly. Although we received submissions questioning whether the land should be used for these purposes, we have come to the conclusion that they are appropriate. Using the land for a place of assembly in the form of a multi-purpose facility is consistent with the very long term use of the site for institutional purposes. It is also consistent with the recognition and designation in the Planning Scheme as one of four nominated large sites in Clause 22.03-6. The desired future character statement notes that the review site is presently used for institutional purposes. We discuss built form later in our reasons, but we support the concept of using the land for a place of assembly (multi purpose facility).
- 39 A permit is also required to use the land for a food and drink premises (café). It is to be located in Building 1 adjacent to Central Road and the entrance driveway. It will be available to future residents but will also be available to non-residents with pedestrian access off Central Road. We consider that a small café serving residents and non-residents alike is a positive feature of the development. Newer and larger retirement villages commonly include café or dining facilities for residents and guests. Allowing access to non-residents will also provide a facility not available in the area or to users of the Blackburn Lake Sanctuary. Its relatively small size will ensure that it remains an ancillary part of the overall development.

Layout and built form including site coverage, height and setbacks

- 40 It will be clear from our earlier comments that we are supportive of the uses proposed as part of this application and do not agree with submissions that suggest that the use of the land for a retirement village, place of assembly and café is inappropriate or unacceptable.
- 41 In our opinion the key point in contention concerns the physical construction and appearance of the buildings and works, and the impact that has on the native vegetation recognised as being of very high conservation significance.
- 42 Consideration of layout and built form necessarily involves an assessment against the NRZ7, the ESO1, the SLO5 and local policies. Although broad State policies cannot be ignored, they tend to be at a more strategic level, less concerned with specific built form outcomes for individual sites and neighbourhoods.
- 43 Although the site is in the NRZ7, a retirement village is not affected by the limitations on the number of dwellings at Clause 32.09-3 and height at Clause 32.09-8. However, it is necessary to consider the application in the

context of the zone purposes and decision guidelines. The Neighbourhood Residential Zone⁷ recognises areas of predominantly single and double storey residential development and seeks to:

- Limit opportunities for increased residential development.
- Manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- Implement neighbourhood character policy and adopted neighbourhood character guidelines.
- Allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.

44 The purposes also include, as with all zones, implementation of the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

45 None of Council's reasons for opposing the application specifically referenced the NRZ7, although many touched on neighbourhood character. Although neighbourhood character is a key consideration in the NRZ7, we agree with Mr Biles that the first zone objective:

...invites a comprehensive analysis of both state and local policy which in this instance is substantially broader than simply limiting opportunities for increased residential development.⁸

46 That comprehensive assessment necessarily involves a consideration of the many State and local policies we have referred to earlier in our reasons. It includes policies dealing with such broad subjects as urban consolidation, infill development, more efficient use of infrastructure including public transport, environmental and ecological processes, landscape, high quality urban design and site responsive development.

47 We have previously made mention that Council and the permit applicant took a different approach to the interpretation of policy in Clause 22.03 as it affects the review site. Council submitted that it is necessary to consider the strategies for Limited Change Areas in Clause 22.03-4, the preferred character statement for the Bush Environment in Clause 22.03-5 and the provisions for nominated large sites in Clause 22.03-6. The permit applicant on the other hand submitted that it was only the provisions for nominated large sites that are relevant.

48 We agree with the permit applicant, although we concede that the various parts of Clause 22.03 do create potential ambiguity in how the different provisions should be read. That is because of the way in which the review site is identified in a Limited Change Area and a Bushland Environment character precinct whilst also nominated as one of four large sites where a

⁷ Clause 32.09 – Purposes.

⁸ Page 9 of his evidence statement dated March 2015.

separate desired future character is provided. We consider it would be illogical to try and apply the outcomes sought for land in the Limited Change and Bushland Environment character areas when the character outcomes sought for the four large sites are different. Specifically, the desired future character for the nominated large sites is:

The properties at 1 Lake Road, Blackburn, 131-173 Central Road, Nunawading and 57-67 Central Road, Blackburn are located within the Blackburn Lake environs. Each site is presently used for institutional purposes including aged care accommodation and education facilities. While these uses must be supported for their contribution to the community, these sites also have the possibility to make a significant contribution to the future residential housing stock.

Each site makes a contribution to the special character of the Blackburn Lake Surrounds because of its location and landscape qualities. The landscape significance of the Blackburn Lake Surrounds is attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of indigenous trees, which it is sought to retain and enhance.

The property at 15 Virgillia Street Blackburn North is a remaining large residential site with botanical significance and plays an important role in contributing to the biodiversity of the Blackburn North area.

The preferred future character is to provide for the development of these sites for residential and institutional purposes through a site layout and built form which is subservient to the landscape character. In considering any permit application for development, including subdivision, consideration should be given to the Statement of nature and key elements of the landscape and the objectives of the Significant Landscape Overlay – Schedule 5 that applies to these sites and the Statement of Environmental Significance and environmental objectives of the Environmental Significance Overlay – Schedule 1 for the property at 131- 173 Central Road, Nunawading and Schedule 2 for the property at 15 Virgillia Street Blackburn North.⁹

- 49 Agreeing with the permit applicant about the interpretation of Clause 22.03 does not, however, negate other policies and controls dealing with built form including the reference in Clause 22.03-6 that the desired future character will be achieved through a site layout and built form which is subservient to the landscape character.
- 50 The SLO5 is a critical tool in any assessment given that the Amendment C90 Panel said it was to have the ‘key design response requirements’. It in effect operates as a type of Design and Development Overlay. The landscape objectives and design responses in SLO5 reinforce the concept of development sitting within a landscaped environment and not dominating the landscape. The specific design responses in SLO5 were discussed in

⁹ Clause 22.03-6.

submissions and evidence. These include setbacks from boundaries and vegetation requiring a permit for removal, site coverage, extent of hard surfaces and impervious surfaces, building materials and height and fencing.

- 51 In broad terms we consider that the proposal is largely acceptable when assessed against these design responses, but with a couple of notable exceptions. Those aspects of the development that we do not find acceptable concern the presentation of Buildings 1, 2 and 3 and involve overall height, setbacks from side and front boundaries, setbacks from the central driveway and the ability to provide adequate screening vegetation.
- 52 Although the communal area terrace of Building 1 is set back 11 metres, outdoor seating areas and timber decks extend to within 3 and 4 metres of the footpath. At its closest point, Building 1 is set back approximately 3 metres from the central driveway and upper levels are set back approximately 4.5 metres at this closest point.
- 53 The front walls of the four ground level dwellings in Building 2 are set back 11 metres but, as with Building 1, paved outdoor areas extend to within 7.5 metres of the footpath. At ground level Building 2 is also positioned 3.52 metres from the nearest residential abuttal to the west, although it angles back to a distance of 11.4 metres at the north west corner.
- 54 Whilst these setbacks may be acceptable, and even considered generous in another setting, we are not persuaded that these setbacks, particularly when combined with building heights well in excess of the 9 metres or two storeys referred to in SLO5, represent an appropriate response to either the site context or relevant Planning Scheme provisions.
- 55 The south east corner of Building 1 is particularly dominating when viewed from the south east in Central Road because it is positioned so close to the existing driveway located at a low point across the frontage of the site. Although the upper level setbacks assist in reducing the bulky appearance, this remains a very dominant built form and one quite at odds with the character outcomes referred to in Clause 22.06-3 or the SLO5. This building does not provide an inconspicuous profile, will dominate the landscape and will not enhance and respect the landscape qualities of the Blackburn Lake Sanctuary and surrounds.
- 56 We are also concerned about the visual impact of the south west corner of Building 2 which sits forward of the dwelling on the lot to the west, Despite upper level setbacks, the building will appear as a very strong built form when viewed from the south west along Central Road and from within Blackburn Lake Sanctuary, and from the residential property to the west at 129 Central Road.
- 57 Building 3 is less problematic in its presentation to Central Road given it is positioned behind Building 2. However, we are concerned about the length of the building as it presents to the rear yards and secluded open spaces of

dwellings fronting Cromwell Court to the west. We consider that the approach adopted for Building 4, which has been split into two components, offers a far more sensitive and less visually dominant built form presentation to these properties.

- 58 Although neighbours are concerned about the height and number of storeys of Buildings 3, 4, 4A, 5 and 6, we consider that subject to the comments about Building 3 in the preceding paragraph, the combination of boundary setbacks, recession of upper levels and articulation all combine to create buildings which do not dominate the landscape or result in unreasonable visual bulk. Although all have a three storey component, the overall heights are moderated by the way in which they are set into the ground to follow the slope and contours of the site. It means that the buildings are generally less than or very close to 9 metres high at the north end and higher at the southern end. When combined with the very generous boundary setbacks, which far and away exceed the B17 ResCode envelope normally applied to dwellings, we consider these buildings are acceptable.
- 59 We also find that the large setbacks protect privacy of the adjoining properties by largely providing separation distances that exceed the 9 metres specified in ResCode Standard B22. The setbacks also exceed the Design Responses called for in SLO5. In those instances where the 9 metres is not achieved, screening has been provided. The large setbacks also provide plenty of space for in-ground landscaping which in time will help filter views of the buildings and result in them sitting within a landscaped environment – one of the objectives of SLO5. We also observed on our accompanied inspection that most of the Cromwell Court properties provide landscaping (or the opportunity for landscaping) in rear yards.
- 60 The multi-purpose building (place of assembly) located centrally within the site behind the existing administration building was the least controversial aspect of the proposal because of its distance from boundaries, lack of perceived off-site amenity impacts and ability to appear inconspicuous because of intervening buildings and vegetation. In our assessment, more built form could be focussed centrally within the site and away from the more sensitive southern and south western interfaces.

Landscaping

- 61 Mr Murphy has prepared a landscape design proposal based on four sections of the site as follows:
- The Central Road frontage (Buildings 1 and 2).
 - The western boundary (Buildings 3 to 6).
 - Land conservation areas.
 - Multi-purpose building and car park.
- 62 The landscape proposal is based on eight principles which underpin the design for each section of the site:

- reflect the well treed, predominantly native character of residential gardens along Central Road;
- provide for a dense native treed interface to Central Road;
- reinforce the strong, predominantly native, vegetation character of the site itself, which will allow the buildings to recede into an overall woodland setting;
- respect the conservation areas by protecting and enhancing them, while allowing for limited access through them;
- create useful spaces for the future residents in the form of private gardens, communal courtyards and broadly accessible spaces;
- link the buildings through a series of paths both outside the conservation areas and to a limited extent within them;
- create a green screening edge to the residential boundary to the west;
- provide a landscape that is rich in native vegetation and character that fits with the overall character of the site and surrounds.¹⁰

63 As we have already stated, we are concerned about the built form setback to Central Road and the extent of paving decks and terraces within the 9 metre setback from the footpath. Our concerns flow through to the landscaping proposed along this interface. Although one of the design principles is to provide for a dense native treed interface to Central Road, we are not persuaded that will be achieved given the often narrow spaces in which planting is to take place. Whilst we do not doubt that native trees and shrubs can be planted, we are not persuaded that such vegetation will create a dense interface and one where the development sits within a landscaped environment rather than dominating the landscape, particularly when viewed from Blackburn Lake Sanctuary opposite the site. That outcome is more likely if the majority of the 9 metre setback is given over to landscaping with indigenous plant species.

64 The approach taken to planting along the western boundary and within communal spaces provides for a more traditional planting theme with more deciduous trees and shrubs such as pears, plums, crepe myrtles, jacarandas and the like. Whilst we understand Mr Murphy's comment about future residents wanting the variety provided by more traditional and exotic species, the review site is not just another development site in suburbia. Although these areas are not within the three conservation areas, the whole locality has bushland or bushy character which is quite distinctive and very different to, for example, the more European landscapes found in Mont Albert, Kew and other similar suburbs.

¹⁰ Page 9 of his evidence statement dated March 2015.

- 65 The Planning Scheme recognises the unique environment through the imposition of Significant Landscape and other Environmental Overlays over most of the residential areas in this part of the municipality. Although existing gardens in the area have a wide mix of plant species, we favour a planting theme based almost entirely on indigenous and native species, with a preference, where practical, on the use of indigenous species.
- 66 We take the same view about planting around the multi-purpose building, and the areas between the buildings and the conservation areas. Mr Organ presented evidence about the ecological values of the site but also commented about the use of indigenous species for landscaping around the buildings and not just within the conservation areas. In answer to a question from the Tribunal, it was his strong preference that, as a minimum, planting between the buildings and conservation areas should complement and build upon the revegetation occurring within these three areas. We agree with his suggestion that species planted in these areas should be from the Valley Heathy Forest EVC.
- 67 Mr Murphy's evidence statement notes that the conservation areas are to be revegetated with a suite of lower storey flora, acquired from local provenance stock, to the recommendations and procedures contained in the Offset Management Plan to be prepared by others. He notes that the Department of Environment and Primary Industries is supportive of a limited number of gravel trails through these areas, with bollards or fences used to prevent uncontrolled access by vehicles and people. Whilst we agree with the approach to revegetation, we are somewhat dubious about the efficacy of bollards or low fences in protecting these areas containing vegetation of Very High conservation significance. In another recent case for a site in Bendigo involving High rather than Very High quality vegetation, the proposal included impermeable fencing, with very limited opportunities for pedestrian access. We consider a similar approach should be adopted at the review site.

IS THE ACKNOWLEDGED SIGNIFICANT VEGETATION PROTECTED TO AN ACCEPTABLE DEGREE?

- 68 The native vegetation on the review site has been previously identified as being of Very High conservation significance. One of the primary reasons for the refusal of the previous subdivision application was that little attempt had been made to recognise and protect that vegetation.
- 69 Under the current proposal, 110 trees are to be removed although not all of these form part of the vegetation of very high conservation significance. We do not itemise or discuss each of these trees but we note that Mr Galbraith undertook an Arboricultural assessment of 726 trees on the site. The Blackburn and District Tree Preservation Society Inc also undertook a detailed review of the trees and presented the findings in a submission.
- 70 Based on the material presented by parties, it is our understanding that 110 trees are to be removed. These were itemised in a separate list tabled by Mr

Tweedie (exhibit A1) and include 18 exotics or environmental weeds. Of the remaining 92 trees, 15 are Australian Native with the remaining 77 indigenous species.

- 71 Following the hearing in 2006, the City of Whitehorse commissioned Biosis Research Pty Ltd to undertake a Vegetation Assessment. The results of that assessment were produced in November 2007.¹¹ The study confirmed that the patches of native vegetation were remnants of the Ecological Vegetation Class (EVC) Valley Heathy Forest (EVC 127). Section 6.0 listed priorities for conservation and acknowledged that *if the land is to be developed it is likely that some native vegetation would be cleared*. The report stated that the highest priority for retention is Site 1 as it supported the highest density of large old trees, the best developed shrub layer and a diverse ground cover. The next most valuable area was stated as being the broader rectangular strip mapped as Site 2. If all of Site 2 cannot be protected then the better quality vegetation occurs within Site 3.
- 72 Council subsequently exhibited and had approved Amendment C73 which introduced a specific Environmental Significance Overlay (ESO1) over the review site. ESO1 requires a permit to remove, destroy or lop any vegetation, including dead vegetation. We have previously referred to the five environmental objectives sought to be achieved and these are reflected in the related decision guidelines.
- 73 In addition to the ESO1 provisions, the SLO5 requires a permit to remove, destroy or lop a tree over a certain size and subject to listed exemptions. Unlike the ESO1 provisions, the SLO5 objectives, design responses and decision guidelines are primarily focussed on vegetation in the landscape rather than the ecological or conservation significance of the vegetation.
- 74 More critically, it is the provisions of Clause 52.17 which require applications to remove vegetation to be classified using a risk based pathway approach. These pathways are low, moderate or high as defined in the *Permitted clearing of native vegetation – Biodiversity assessment guidelines*¹². As with the previous provisions of Clause 52.17, there is still an intention to use a three step approach of avoid, minimise and offset, but the focus is now on no net loss rather than net gain.
- 75 Unlike the previous regime under *Victoria's Native Vegetation Management – a Framework for Action*, the conservation significance of vegetation is not assessed on a site-by-site basis. Instead, determining which risk based pathway is adopted involves the extent of risk and the location risk. Location risk is effectively pre-determined by the Department of Environment and Primary Industries with most of the State mapped as Location A. The extent of risk is based on the extent of native vegetation to be removed – the area of any remnant patches and the number of scattered trees.

¹¹ 131 Central Road, Nunawading: *Vegetation Assessment* (November 2007, Biosis Research Pty Ltd).

¹² Department of Environment and Primary Industries, September 2013.

- 76 The application proposes to remove 0.591 hectares of remnant native vegetation and 14 scattered remnant trees and Mr Organ states that the proposal falls under the high risk strategy.
- 77 The proposal involves the setting aside of three conservation areas to protect most of the land containing vegetation of very high conservation significance. These broadly correspond to the sites referred to in the Biosis report.
- 78 With the exception of the 18 exotic and environmental weed trees, we are primarily concerned about the proposed removal of 77 indigenous species, and to a lesser extent the 15 Australian Native species. It is really a question of whether the removal of 77 indigenous trees can be supported, when set against the opportunity to protect the three areas containing vegetation of very high conservation significance, including over 600 trees of different species. As we acknowledged to Mr Berry at the hearing, we fully understand that the proposal involves the removal of 77 indigenous trees and that their removal is not being justified on the basis that they are in poor health or otherwise of limited value. Even the 2007 Biosis study recognised the likelihood of some native vegetation being cleared if the site was developed.
- 79 Whilst the Blackburn and District Tree Preservation Society Inc and other parties would like to see many more trees retained, we have to decide whether an appropriate balance has been achieved between retaining vegetation whilst also allowing for the development of the site for residential and institutional purposes.
- 80 It is self evident that a different layout and smaller building footprints would potentially allow for more indigenous trees to be retained, but it is also the case that fewer trees would be retained if the conservation areas were reduced in size by larger building footprints.
- 81 Based on all the material before us, we have found that the proposal has struck an appropriate balance between removal and retention of vegetation of very high conservation significance. In any balancing exercise it is important to not only record the loss of 110 trees (or 92 indigenous or Australian native trees) but to recognise that three large conservation areas are being set aside to protect around 600 trees and allow for the regeneration of the Valley Heathy Forest EVC. We consider that Council, community groups and residents have not given sufficient credit towards the retention of such a large proportion of the review site for conservation purposes.
- 82 Although doubts were raised about whether the conservation areas will be managed appropriately, ultimately that will depend on suitable permit conditions and ongoing monitoring against the requirements of those conditions. Future public ownership of the conservation areas is not part of this application, although we understand that community groups and

residents are attracted to that possibility because of their positive experience with such an outcome at the nearby Regis site on the corner of Lake Road.

IS PARKING SUFFICIENT AND ARE THERE ANY TRAFFIC REASONS FOR REFUSING THE APPLICATION?

83 The earlier subdivision application considered by the Tribunal in 2006 included a new second access point to Central Road, east of the existing driveway, and required a bridge across the drainage line south of the administration building. The Tribunal was not entirely convinced about the merits of providing a new access point and commented that:

[26] The form of the road leading to the school (sitting as it does in a drainage line), the layout and circulation of the roads into the proposed residential subdivision, pedestrian permeability through to the Church's open spaces and habitat corridors from Blackburn Lake were also debated. We are not entirely convinced about the merits of providing a new access point to Central Road, although we can understand why Mr Fairlie would see benefit in separating residential and school traffic. There was some discussion about the location and 'bridging' structure of the new road over the grass swale and we agree that some form of light weight bridge, designed in keeping with the bushland character would be preferable to a bulky and visually unsympathetic bridge or embankment. However in view of rejection of the current proposal, an opportunity exists to revisit access arrangements in any new design. We do however wish to point out our strong impression that the sight lines from the proposed new road entry point appeared minimal, even though Mr Fairlie assured us they complied with the standard.

84 The proposed retirement village does not include a new access point to Central Road but instead utilises the existing driveway. One of Council's reasons for opposing the application concerns non-compliance with carparking and bicycle requirements (Clause 52.06 and 52.34) but none of the reasons concerned access or traffic movements. We note that Council's Transport team did not have a concern with car parking, loading/unloading arrangements and traffic generation.

85 However, community groups and neighbours did raise concerns about parking, pedestrian safety and traffic impacts and Ms Dunstan was called to provide expert written and oral evidence and answer questions about these matters.

86 Based on the amended figures contained in Table 7 of Ms Dunstan's evidence statement, a total of 315 car spaces are being provided against a statutory requirement of 327. In summary, parking is as follows:

- There is surplus of 20 spaces for residents (199 provided against a requirement for 179).
- There is shortfall of 18 residential visitor spaces (12 provided against a requirement for 30).

- There is a shortfall of 11 spaces for place of assembly (94 provided against a requirement for 105).
 - Café parking is provided at the required number (12 spaces).
- 87 We consider that a shortfall of just 9 spaces when set against such a large requirement is acceptable, particularly given the opportunity for shared use of spaces between the place of assembly and residential visitors. Clause 52.06-6 requires a Car Parking Demand Assessment to be undertaken when car parking is reduced below the statutory rate. Ms Dunstan undertook such an assessment and section 5.5 of her evidence statement contains that material. We accept her evidence about parking demands for residential visitors, users of the multi-purpose building (place of assembly) and the café and the ability to share available spaces between different activities at different times of the day and week.
- 88 Whilst we understand that residents do not want to replicate the parking congestion evident at the Regis Aged Care facility on the corner of Central and Lake Roads, we consider that the mix of uses, the number of spaces and the size of the review site provide much more scope and flexibility to meet all parking needs than on the Regis site.
- 89 Residents are also concerned about additional vehicles using the existing driveway and the effect that may have on pedestrian safety and traffic congestion in Central Road. At the hearing we were shown footage of vehicles entering and exiting the site and traffic and pedestrian movements in Central Road.
- 90 Central Road currently carries approximately 2700 vehicles per day which will increase to approximately 2900 vehicles per day if the development is approved. We are advised that the environmental capacity of Central Road is between 3000 and 7000 vehicles per day and that even with the retirement village traffic, Central Road is nowhere near the upper limit of its capacity.
- 91 Whilst we acknowledge there is some congestion at school drop off and pick up times because of vehicles turning into the site, we do not consider the level of traffic movements unreasonable given the limited time that congestion occurs (approximately 1 hour, twice a day for approximately 182 school days a year). The school crossing positioned just east of the entrance driveway actually assists in regulating traffic flows and moderating congestion caused by turning vehicles.
- 92 The school crossing also has a positive impact on pedestrian safety, because it can be used by pedestrians including school children. It also slows through traffic when it is supervised. Ms Dunstan's research did not uncover any casualty crashes along Central Road in proximity to the site, although we acknowledge that these statistics do not record non-casualty crashes. Sightlines where the driveway intersects the footpath are good and vehicles exiting the site will be travelling at relatively low speeds because

of the manner in which the driveway intersects with the gutter along Central Road. This is not a standard residential intersection where two roads intersect at a 'T' junction.

- 93 Whilst traffic volumes will increase, we are not persuaded that the proposal should be refused because of concerns about pedestrian and vehicle safety or traffic congestion in Central Road.

ACOUSTIC ISSUES WERE NOT IN DISPUTE

- 94 An acoustic evidence statement was prepared by Mr Marks to address noise issues associated with the train line along the northern boundary of the site, noise from traffic on Central Road, noise from commercial and industrial uses north of the railway line, noise from plant and equipment, noise from waste collection and noise from communal areas. None of the submissions or our own assessment identified unacceptable impacts from these noise sources and Mr Marks was not called to present written and oral evidence and answer questions. The parties acknowledge that there is a need for a permit condition regarding Building 6 and rail noise, and draft permit condition 1(i) circulated to all parties includes such a requirement.

ENVIRONMENTALLY SUSTAINABLE DESIGN NOT IN DISPUTE

- 95 Mr Talacko prepared a witness statement about environmentally sustainable design outcomes of the proposal. He made reference to the draft Clause 22.19 (Environmentally Sustainable Development) which seeks to introduce policy about energy efficiency, water resources, indoor environment quality, stormwater management, transport, waste management and urban ecology.
- 96 The absence of an assessment of the proposal against a recognised ESD rating framework was originally criticised by Council. Mr Talacko's witness statement and attached Sustainability Management Plan sought to address that shortcoming. None of Council's reasons for opposing the application or its submission identified ESD matters as a reason to reject the proposal.
- 97 Based on Mr Talacko's evidence we consider that ESD issues have been addressed satisfactorily.

CONCLUSION

- 98 We agree with Council, community groups and neighbours that the current proposal should not be supported. However, we consider that a modified proposal may strike the right balance having regard to the test set out in Clause 10.04 which requires us to 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.
- 99 We have previously outlined our concerns with the setbacks and presentation of Buildings 1, 2 and 3. We consider that our concerns with

these buildings can be overcome through a redesigned layout. Although we could have refused the application, we have decided instead to provide the permit applicant with the opportunity to respond to our concerns. Our decision to allow for a redesign is driven by two primary considerations.

- 100 The first is that the vegetation of very high conservation significance cannot continue to remain unprotected while yet another proposal is formulated for this land. Nine years have passed since the last proposal was assessed by the Tribunal and we are concerned that current management practices will eventually lead to decline in the acknowledged environmental attributes of the site.
- 101 The second is that we are in a position to recommend changes to the layout which will largely overcome our concerns with Buildings 1, 2 and 3. What we require is for these three buildings to be reduced in height, width and depth by setting back Buildings 1 and 2 further from the south and west boundaries and from the central driveway without any reduction in the setback or separation distance to Conservation Area 3.
- 102 Building 1 is to be reduced in height to approximately 11.5 metres along its eastern side. Building 3 is to be separated into two components in a similar manner to Buildings 4 and 4A without any reduction to the setbacks to Conservation Area 3.
- 103 Front setbacks of Buildings 1 and 2, including all decks and terraces are to be a minimum of 9 metres. The setback of Building 1 to the central driveway is to be increased to a minimum of 6 metres. The ground floor setback of Building 2 to the western boundary is to be increased to not less than 5 metres at its closest point with an increase to upper level setbacks to retain the existing articulation.
- 104 We accept there will be a loss of dwellings as result of these changes. In response we are suggesting that the shortfall could be made up by the construction of a retirement village building in place of the ground level car park associated with the multi purpose building. The slope of the land provides an opportunity to construct underground parking for both the dwellings and the multi purpose facility, and in a location with minimal impacts on the conservation areas or in the appearance of the site when viewed from Central Road, the Blackburn Lake Sanctuary or nearby residential properties.
- 105 In the next section we have included a list of modifications which we require the applicant to make to the proposal we have considered. They are changes that may result in an outcome that achieves a more acceptable balance when assessed against the relevant and sometimes conflicting objectives and policies contained in the Whitehorse Planning Scheme. We emphasise, however, that even if these changes are made, we may not approve the development if we are not satisfied that it results in an acceptable outcome.

RECOMMENDED MODIFICATIONS

- 106 A new set of plans is to be prepared based on the modified layout shown on the substituted plans but with the following further changes:
- a Buildings 1 and 2, including outdoor paved areas, terraces and decks, set back a minimum of 9 metres from the Central Road frontage. Except for narrow connecting pathways, the setback areas are to be landscaped with indigenous species.
 - b Building 1 is to be set back a minimum of 6 metres from the central driveway and its overall height reduced to not more than 11.5 metres.
 - c At ground level Building 2 is to be set back 5 metres from the western boundary. Upper level setbacks are to be increased to retain the relationship between the different levels.
 - d Building 3 to be divided into two, similar to the changes made to Building 4 (now 4 and 4A). Setbacks to the western boundary and Conservation Area 3 are not to be reduced.
 - e The shortfall in dwellings caused by the changes to Buildings 1, 2 and 3 may be made up by constructing a building with underground parking in the space currently occupied by the ground level car park for the multi-purpose facility.
 - f A revised landscape proposal which includes more indigenous species to complement the vegetation of Very High conservation significance and the bushland environment of this part of Nunawading opposite the Blackburn Lake Sanctuary.
 - g Fencing around the three conservation areas of a standard and style designed to limit all access except to and along defined gravel paths.
 - h Where still relevant, any changes required by the circulated draft condition 1.
 - i Any consequential changes arising from the modifications listed above. An opportunity should also be taken to make corrections to plans (such as accurate levels and boundaries of conservation areas amended to not encroach on the oval or road).

J A Bennett
Presiding Member

Vicki Davies
Member