

PART A PANEL SUBMISSION

GREATER GEELONG PLANNING SCHEME AMENDMENT C436 & PLANNING PERMIT 573/2021

BALMORAL QUAY IN RIPPLESIDE

Part A Submission to the Independent Panel

Prepared by: Lana Krausas, Senior Strategic Planner
City of Greater Geelong

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INTRODUCTION

1. This submission has been prepared by the Planning Authority, the City of Greater Geelong, in response to the Panel's Direction No.8 issued on the 23 January 2024 which states:

Council must file its Part A (Background and context) submission by 12 noon on Monday, 5 February 2024 that includes:

- a) an explanation of the Amendment and Permit Application*
- b) a summary of the physical context of the subject land and surrounds*
- c) background to the Amendment including chronology of events*
- d) a summary of the strategic context, including:*
 - i) relevant planning policies and controls*
 - ii) any other recently approved or upcoming amendments that might impact on the Amendment*
- e) a summary of all permit applications and/or permits issued for the entire Balmoral Quay land parcel (including copies of all Permits)*
- f) an explanation of the history of the Barwon Water Pump Station and why it came to be located on the subject land*
- g) a summary of the issues raised in submissions.*

The amendment and permit application

2. The land subject to the amendment ("the subject land") is shown in Figure 1 Below. The amendment is required to facilitate Planning Permit PP573-2021 which seeks to develop 1 and 11 Harbourside Drive.
3. The amendment seeks to update Schedule 2 to the Comprehensive Development Zone and the associated incorporated documents, specifically:
 - i. Replace the *Rippleside Urban Design Guidelines June 2000* contained within the Schedule to Clause 72.04 of the Greater Geelong Planning Scheme with the *Rippleside Urban Design Guidelines March 2023*.
 - ii. Replace the *Rippleside Comprehensive Development Plan February 2000* contained within the Schedule to Clause 72.04 of the Greater Geelong Planning Scheme with the *Rippleside Comprehensive Development Plan March 2023*.

4. Currently the Rippleside Comprehensive Development Plan February 2000 has a maximum permitted height of 13.5 metres for 1 Harbourside Drive. The proposed building has a maximum proposed height of 27 metres (28.2 metres to the top of services), and as such an amendment to the incorporated documents to reflect this change is required.

The permit

5. The planning permit application seeks approval for the construction of an apartment development with associated office and marina shop and a reduction of car parking requirements.
6. A permit is required pursuant to Clause 37.02-4 of the Comprehensive Development Zone to construct an apartment development, and a further requirement is pursuant to Clause 52.06-3 of the Car Parking particular provision to reduce the number of car parking spaces required.

The main issues

7. The main issues that have come out of objecting submissions from local residents include: the increase to traffic and car parking impacts; the height and scale of the development; character impacts; overshadowing to both Rippleside Park and neighbouring properties; infrastructure strain and views.

Summary of Council's Part A submission

8. The structure of this submission is to initially take the Panel through the site context and surrounds and provide a background for the Amendment including a chronology of events. We will then move to a summary of the strategic context of the site including relevant planning policies and controls and any other amendments that might impact this Amendment. This submission will then give a summary of the permit history for the site, including copies of the permit which will be provided as attachments to this report. Further an explanation of the history of the Barwon Water Pump Station and how it came to be located on the land, and finally a summary of the issues raised in submissions.

SITE AND CONTEXT

Land affected by the amendment

9. The amendment applies to land located at 1, 11, 23, 40 and 60 Harbourside Drive and 1 to 20 Lumb Place, Rippleside as shown on the below map:



Figure 1 - Site context

Existing zoning and Overlays

10. The zoning of the area is shown in Figure 2. The subject land is zoned Comprehensive Development Zone Schedule 2 and the immediately surrounding land is zoned General Residential Zone to the west of the site, and Public Park and Recreation Zone to the north, east and south. The land is affected by an Environmental Audit Overlay. Some surrounding properties are affected by a Heritage Overlay.

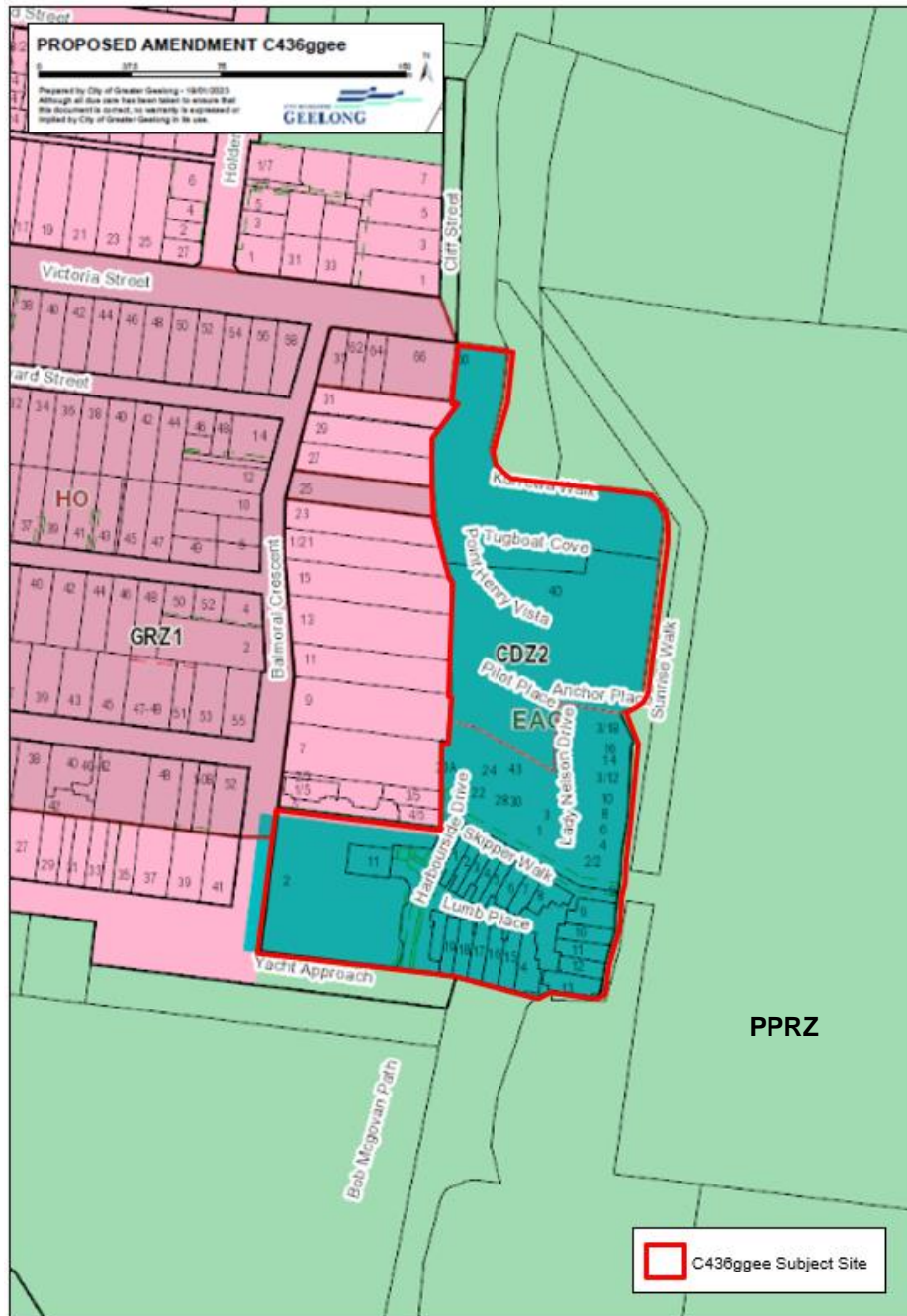


Figure 2 - Zone and Overlay Map

11. Land in the immediate surrounds of the site is a mixture of recreation open space, with Saint Helens Park directly north of the site, and Rippleside Park directly south of the site. The land has a direct abuttal to Corio Bay to the east. The existing marina and jetty to the east of the site was upgraded as a part of previous development stages, as well as a pedestrian path around the development at the waters edge.
12. Land directly west of the site is used for residential purposes until you reach the commercial area abutting Melbourne Road located 400 metres west of the site (as the crow flies).
13. The surrounding residential land has a mix of standard housing types, with adjoining units varying from one to three storeys, or single dwellings on allotments typically between one and two storeys. There are some examples of infill unit developments in the surrounding area although much of the area retains the original lot sizes. The area having been a long-standing suburb in Geelong, and a desirable location to live has a mixture of old and new housing typologies. Built form contains varying elements, and commonly newer houses and units draw on modernist elements, with cuboid forms, flat roofs, and rendered exteriors. The established housing stock is a mixture of brick or weatherboard exteriors, with typically pitched roof forms varying from tiled or colorbond materials. Front fencing is a common element in surrounding streets of varying heights.
14. The site has proximity to the following places of interest (as the crow flies):
 - i. Commercial area containing takeaway food premises, post office, hair dresser and myotherapist – 420 metres north-west of the site
 - ii. North Geelong Railway Station – 530 metres north-west of the site
 - iii. Bus Stop on Melbourne Road Routes 20 – 470 metres north-west of the site
 - iv. Rippleside Park and Playground – directly south of site
 - v. St Helens Park – 300m north of stage 5
 - vi. St Helens Boat Ramp – 400m north of Stage 5
 - vii. Osborne Park North Geelong – 700m north of Stage 5
 - viii. Geelong CBD – Approximately 1.6km south of the site



Figure 3 - Site Aerial Context

Site Details

15. The land has been partially developed in accordance with Planning Permit 647/2004. Specifically in accordance with Planning Permit PP-647-2004/C issued on 21 March 2005, and the Comprehensive Development Plan and Rippleside Urban Design Guidelines, the development of this land has commenced and the delivery of new dwellings on the land is substantially underway, with dwellings delivered within Stage 1 and Stage 2, as well as the delivery of the remediated Rippleside Beach, water front path and the stage 1 (30 berths) of the Rippleside Marina as visible in Figure 3.

16. Stages 3 and 4 containing 61 dwellings were due for completion December 2023 but this date is now revised to March 2024. As is the infill/Triangle Park and viewing/seating areas on public access walkways.

17. Figure 4 - Site Stage Plan, below shows the stages of the Balmoral Quay development. The permit application applies to Stage 5.

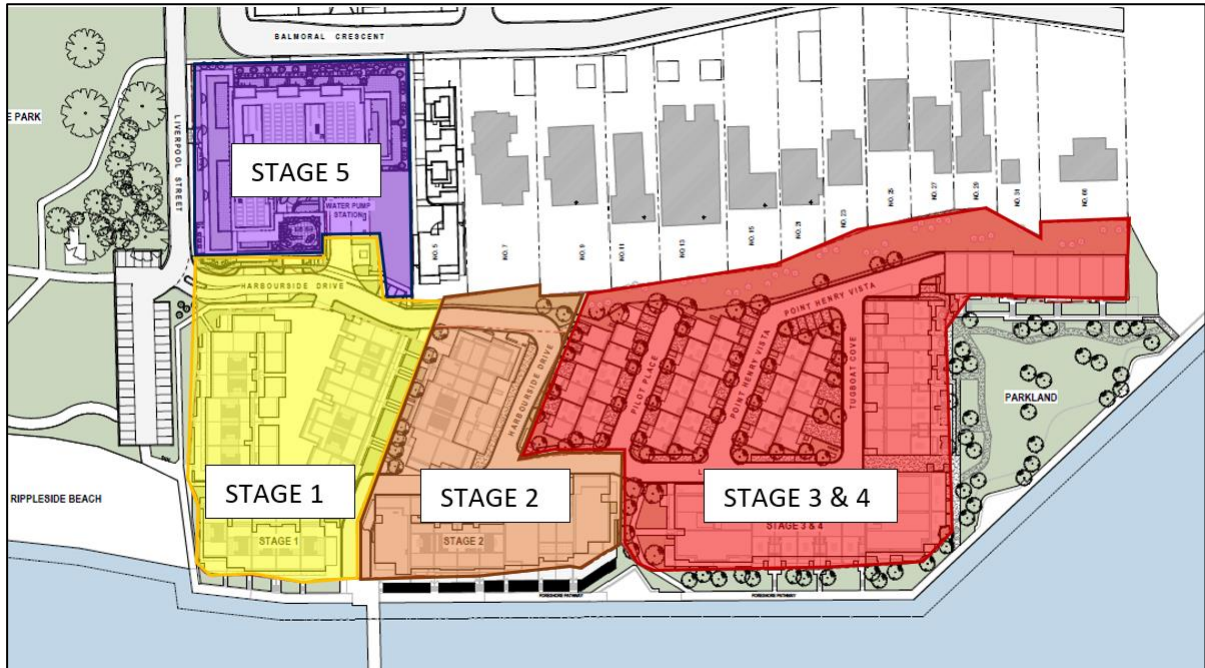


Figure 4 - Site Stage Plan

BACKGROUND OF AMENDMENT

Chronology of events

18. As requested in the Panel Directions, the following is a brief chronology of the key events relating to the original rezoning and the current amendment and permit application for the site:

Date	Event
May 1999	Exhibition of Amendment R245 to rezone former Rippleside shipyards (land now subject to Amendment C436ggee).
May 2000	Panel provides report on Amendment R245
13 Sep 2000	Council adopts Amendment C2 (formerly R245 which lapsed upon approval of New Format Planning Scheme)
8 Mar 2001	Amendment C2 gazetted. Rezoned land to Comprehensive Development Zone (CDZ2) with Environmental Audit Overlay. Rippleside Comprehensive Development Plan and Urban Design Guidelines incorporated into Planning Scheme.
28 Feb 2005	Planning Permit 647/2004 issued for use of land for convenience shop, restricted recreation facility, marina, 98 dwellings and buildings and works at direction of VCAT
24 Nov 2020	Urbis (for proponent) submits pre-application docs to CoGG to revise planning scheme controls and permits for subject land including planning overview, plans and draft amendment. Discussions commence.
22 Jan 2021	CoGG provides initial pre-application advice/feedback letter to Urbis
25 May 2021	Combined amendment and planning permit application (under section 96A) received
22 Jun 2021	CoGG strategic planner requests further information – 3D model and provides advice on S173 agreement affecting land
Aug-Sept 2021	Referrals to internal and external departments undertaken
8 Oct 2021	CoGG provides 8 page letter to Urbis with referral comments and requests further information (RFI)

15 Jul 2022	Urbis responds to RFI and submits revised plans and docs
Sept - Oct 2022	2 nd round of internal and external referrals (of revised application)
22 Nov 2022	Council considers officer report on proposal. Resolves to support preparation and exhibition of the amendment (C436ggee) and permit (PP573-2021) and request Ministerial authorisation
Dec 2022 to Mar 2023	CoGG prepares final version of amendment docs and draft planning permit
16 Mar 2023	CoGG request Minister's authorisation
Mar - Jul 2023	Review of proposal by DTP and Minister's office including requests for further information from applicant
25 Jul 2023	Minister's delegate authorises amendment preparation and exhibition
24 Aug to 25 Sept 2023	Public Exhibition of Amendment C436ggee and PP573-2021
12 Dec 2023	Council considers a report on submissions and resolves to refer submissions to a Panel
14 Dec 2023	3 person Panel appointed at request of CoGG
22 Jan 2024	Panel Directions Hearing
23 Jan 2024	Panel issues timetable and directions
19 Feb 2024	Panel hearing to commence

Application and supporting documents

19. On 25 May 2021 Urbis consultants on behalf of Balmoral Quay Pty Ltd submitted a combined planning scheme amendment and planning permit application for the subject land.

20. The application was accompanied by a Planning Report with the following additional information and technical reports:

- i. Covering Letter – Urbis – 21 May 2021
- ii. Acoustic Report – Prepared by Renzo Tonin & Associates 29 July 2020

- iii. BESS Report
- iv. Compliance with Statement of Environmental Audit Letter – SLR – 12 March 2021
- v. Copy of Current Comprehensive Development Plan
- vi. Design Response Plans – SJB – May 2021
- vii. Development Summary – SJB – May 2021
- viii. Market Viability and Market Analysis – Urbis - March 2021
- ix. Shadowing Impacts of Development – Urbis – March 2021
- x. Draft Clause 37.02-2 – Urbis
- xi. Explanatory Report Draft – Urbis
- xii. Geotechnical Report – Douglas Partners – May 2019
- xiii. Landscape Concept Report – Tract – 10 May 2021
- xiv. NCC 2019 Energy Efficiency Section J Compliance Report – ACOR Consultants – 30 April 2021
- xv. Preliminary House Energy Rating Report – ACOR Consultants – April 2021
- xvi. Planning Permit application form
- xvii. Town Planning Report – Urbis – May 2021
- xviii. Proposed Changes to Rippleside Urban Design Guidelines
- xix. Proposed changes to Comprehensive Development Plan
- xx. Statement of Environmental Audit – Lane Piper 5 Sep 2008
- xxi. Sustainability Management Plan – ACOR Consultants – May 2021
- xxii. Title Plans – Produced 14 May 2021
- xxiii. Traffic and Transport Assessment – Cardno 13 May 2021
- xxiv. Tree Impacts Assessment – LTAT March 2021
- xxv. Urban Context Report – April 2021
- xxvi. Waste Management Plan – 12 May 2021

The proposed amendment

21. The amendment seeks to:

- i. Amend Schedule 2 to Clause 37.02 Comprehensive Development Zone (CDZ2) to update the references to the Rippleside Comprehensive Development Plan 2000 and Rippleside Urban Design Guidelines 2000 and to make various other consequential updates.
- ii. Replace the Rippleside Urban Design Guidelines June 2000 contained within the Schedule to Clause 72.04 of the Greater Geelong Planning Scheme with the Rippleside Urban Design Guidelines March 2023.
- iii. Replace the Rippleside Comprehensive Development Plan February 2000 contained within the Schedule to Clause 72.04 of the Greater Geelong Planning Scheme with the Rippleside Comprehensive Development Plan March 2023.

22. Changes to the Urban Design Guidelines, particularly their wording have been minimised where possible with the intention of retaining as much of the original directions as possible, particularly given most of the site (Stage 1-4) were approved under the Rippleside Urban Design Guidelines 2000. However some references within the original Urban Design Guidelines were never realised in the approved development for the site. In particular elements such as the Village Centre and open space areas were not realised in Stages 1-4, as such some plans and guidelines within the Urban Design Guidelines were redundant. In these instances, plans were either removed from the Urban Design Guidelines and solely the wording is relied upon to achieve the outcome, or some plans were updated. Further maximum heights and references within the Urban Design Guidelines needed to be updated to reflect the Comprehensive Development Plan. It is noted that the view sharing diagram remains the same as the original. Other changes to wording reflected the removal of maps, or changes to the plans in the Urban Design Guidelines.

23. The Comprehensive Development Plan changes were revised to reflect the approved Stages 1-4 development, and also to change the permitted maximum height for the Stage 5 building to 27 metres.

The proposed planning permit

24. The Planning Permit Assessment Report prepared by Mrs Anastos, the CoGG Town Planner dealing with the permit application describes the proposal as follows:

25. "The application seeks approval for buildings and works associated with the construction of 84 apartments, with an associated office & marine shop and reduction of car parking requirements. The shop is as of right if only for the sale and hire or marine related goods and services."
26. The proposed building has an overall height of 27.0 metres and contains five storeys above ground level and incorporates the following:
- Lower Ground Floor - Harbourside Drive Entry
 - Containing 65 car spaces including visitor parking, bicycle parking and storage, an office (34.7sqm) and one shop (77.8sqm).
 - Ground Floor - Liverpool Street Lobby Entry
 - Containing 35 car spaces, storage, 12 apartments and approximately 242 square metres of terrace/courtyard area.
 - Level 1 - Balmoral Crescent Entry
 - Containing 36 car spaces, residential amenity/gym area and 13 apartments.
 - Level 2: containing 21 apartments
 - Level 3: containing 17 apartments and a communal landscaped roof terrace.
 - Level 4: containing 11 apartments.
 - Level 5: containing 10 apartments.
27. The apartment building is proposed to be constructed from concrete with a variety of external finishes, metal balustrades and perforated screens.
28. Pursuant to Clause 52.06-3, a reduction of car parking requirements is proposed. The application provides for 136 car parking spaces. 102 spaces will be provided for residential purposes, 32 for shared marina/residential visitor spaces including one electric vehicle charging space. There are 2 spaces allocated to commercial tenancies.
29. The statutory requirement is 154 spaces and the application seeks a reduction of 18 spaces.
30. A copy of the exhibited concept plan is shown at Figure 5- East Elevation.



3 ELEVATION - EAST
SD02_01 SCALE 1:200

Figure 5- East Elevation



Figure 6 - South Elevation (previous approved building envelope shown blue)

STRATEGIC CONTEXT

Municipal Planning Strategy

31. The following Municipal policies within the Municipal Planning Strategy were considered relevant to the Amendment:

- i. **Clause 02.02 (Vision)** highlights key land use and development aspirations for Geelong including:
 - a. Sustainable development that supports population growth and protects the natural environment.
 - b. An inclusive, diverse, healthy and socially connected community.
- ii. **Clause 02.03-1 (Settlement)** includes key strategies with respect to settlement that outlines the predicted growth of Geelong that will create a demand for in excess of 73,000 new dwellings that are to be delivered via a combination of greenfield and infill development, with the share of infill development to increase over time. Selective infill development is supported in areas with good access to infrastructure and services Further medium and high density housing is required to achieve a high level of amenity for future residents while being appropriate for the site and neighbourhood.
- iii. **Clause 02.03-5 (Building Environment and sustainability)** outlines directions that seek to ensure that development enhances Geelong's sense of place and identity, support the design and provision of health, walkable neighbourhoods, encourages environmentally sustainable design in all development and provide high quality urban design and landscaping.
- iv. **Clause 02.03-6 (Housing)** outline areas for increased housing diversity and also directs the facilitation of infill development to increase its housing supply contribution and increase housing diversity in established communities.

Planning Policy Framework

32. The following planning policies were considered relevant to the Amendment:

- i. Clause 11.01-1S – Settlement
- ii. Clause 11.01-1R – Settlement Geelong (G21)
- iii. Clause 11.01-1L-01 – Settlement Greater Geelong
- iv. Clause 11.02-1S – Supply of Urban Land
- v. Clause 15.01-1S – Urban Design

- vi. Clause 15.01-2S – Building Design
- vii. Clause 15.01-2L – Environmentally Sustainable Development
- viii. Clause 16.01-1S – Housing Supply
- ix. Clause 16.01-1R – Infill housing – Geelong G21
- x. Clause 16.01-2S – Housing Affordability
- xi. Clause 1701-1R – Diversified economy – Geelong G21
- xii. Clause 18.02-1S – Walking
- xiii. Clause 18.02-3S - Cycling

Strategic Assessment

33. Minister’s Direction No. 11 requires a planning authority to evaluate and discuss how an amendment addresses a number of strategic considerations. What should be considered as part of the Direction is explained in the DELWP Practice Note 46 (May 2017): “*Strategic Assessment Guidelines for preparing and evaluating planning scheme amendments.*” The exhibited Explanatory Report includes a Strategic Assessment and this is the basis for the response to the Strategic Assessment Guidelines provided in **Appendix 1 - Response to Strategic Assessment Guidelines.**
34. The proposal also aligns with Council’s Community Plan 2021-2025 Strategic Priority of sustainable growth and environment.
35. The amendment similarly aligns with the City’s 30-year Vision community aspiration for ‘sustainable development that supports population growth and protects the natural environment.’

Which zone is the most appropriate?

36. The existing Comprehensive Development Zone remains the most appropriate zone for this site. The utilisation of the Incorporated Comprehensive Development Plan, as required by the Schedule to the zone, allows specific controls to this unique site in order to achieve the vision set out by the Urban Design Guidelines. As such the continued utilisation of the Comprehensive Zone is a logical outcome.

Why are the changes proposed?

37. The operation of the Comprehensive Development Zone Schedule 2 sets a reasonable framework and purpose for the land. Some changes to the purpose of the zone are proposed to reflect the increased density outcome sought for Stage 5. It is considered important to acknowledge that since the Comprehensive Development

Zone Schedule 2 was implemented, both Strategic and Local Policy directives have shifted, with an increased focus on infill development in desirable locations with good access to services and infrastructure.

38. The changes sought to the Comprehensive Development Zone Schedule 2 are considered to be responsive to the Municipal Planning Strategy and relevant planning policies. The changes in particular highlight an additional purpose to contribute towards housing density and diversity. Other changes reflect updates requirements or more responsive decision guidelines to the development.
39. Changes proposed to the Comprehensive Development Plan result in an updating of the plan to reflect the revised Stages 1-4 and an increased maximum height for Stage 5 to 27 metres.

Will any future amendments impact the Strategic Context for the land?

40. There are currently no amendments proposed for Geelong that will impact the Strategic Context of the land.

PERMIT HISTORY

Council resolution to prepare and exhibit an Amendment

41. On 22 November 2022 Council considered a report on the proposal and made the following resolution:

That Council:

1. Support the preparation and exhibition of Amendment C436ggee Balmoral Quay Rippleside - Combined Amendment and Planning Permit PP573-2021 to the Greater Geelong Planning Scheme to:
 - 1.1 Amend Schedule 2 to Clause 37.02 Comprehensive Development Zone to update references to the Rippleside Comprehensive Development Plan February 2000 and the Rippleside Urban Design Guidelines June 2000;
 - 1.2 Amend the Schedule to Clause 72.04 Incorporated Documents to update references to the Rippleside Comprehensive Development Plan February 2000 and the Rippleside Urban Design Guidelines June 2000;
 - 1.3 Amend the Rippleside Comprehensive Development Plan February 2000 to refer to a maximum height of 28.2 metres (AHD) or seven storeys above ground level for stage 5; and
 - 1.4 Amend the Rippleside Urban Design Guidelines June 2000 to reference a maximum permissible height.
2. Consider the application for a planning permit to construct a residential apartment building and reduction in car parking concurrently with the preparation of the amendment, in accordance with the provisions of Section 96A of the Planning and Environment Act 1987; and
3. Request the Minister for Planning authorise the preparation and exhibition of Amendment C436ggee.

42. In accordance with the Panels Direction 8 e) a summary of all permit applications and/or permits issued for the entire Balmoral Quay land parcel, including copies of all permits is provided. Below a summary of all of the permit applications and amendments issued is provided. Due to the substantial file size of endorsed plans, and considerable length of each planning permit, they have not been provided as appendices to this report. Instead, they will be labelled in accordance with the below descriptions and provided separately to the Panel and parties to the Planning Panel process.

Original Planning Permit – PP-647-2004

43. Planning Permit 647/2004 was issued on 28 February 2005 for the Use of the land for a convenience shop, restricted recreation facility, marina and more than 98 dwellings, and construction of buildings and works, at the direction of the Victorian Civil & Administrative Tribunal in its Order dated 28 February 2005, (P2386/2004).

VCAT Order P2386/2004

44. A copy of the VCAT order is attached as Appendix 3. The VCAT order is a result of a permit application being lodged with the Greater Geelong City Council in May 2004. The application sought approval for 178 apartments including townhouse or terrace

style dwellings with building clusters or rows. Buildings ranged between two and four storeys in height and included over ground or semi-basement car parking. A small convenience shop and café were proposed to occupy Building H. Buildings were designed with a contemporary design exhibiting flat roof forms, pitched elements, a varied palette of external colours and claddings. An existing jetty would be modified to a marina. A total of 389 car spaces were proposed with 292 to be allocated to residence. The remaining 97 were available for visitors, marina users and the convenience shop/café patrons.

45. Following notice 100 objections, and 65 supportive submissions were received. The Council failed to determine the application within the prescribed time, and an application was made to the Tribunal under Section 79 of the *Planning and Environment Act 1987*.
46. As provided for at Section 84(1) of the Act the Council, despite lodgement of the failure review, considered the application at its meeting in November 2004. Consistent with its officer's recommendations it decided it would have granted a permit subject to conditions that, among other things, required the deletion of the top or fourth level of Building H so as not to exceed 13.5 AHD, required a right turn ban at Liverpool Street to prevent access into Balmoral Crescent and deleted all rooftop terraces.
47. Matters considered and raised by objectors during the hearing were view sharing, compliance with the Urban Design Guidelines and Comprehensive Development Zone, views from the public realm, scale and building height, insufficient parking and increased traffic.
48. The VCAT determination gave considerable weight to the Planning and Advisory Committee report that considered Amend R245. The order determined that the proposal is viewed as 'entirely consistent with the outcomes recommended by the Panel.' and that the development 'represents a bold and exciting contribution to the surrounding area and for the Geelong community...' The order supported the development permit and directed a permit be issued, resulting in PP-647/2004. Plans were endorsed on the 15 May 2007.

Amendment history of the Planning Permit

49. On 22 October 2007 Amendment A, PP-647-2004/A was issued which sought changes to the layout of the harbour area, internal alterations to Building F and alterations to the balcony of Building K.

50. It is noted that through the course of the application, the applicant lodged an appeal to the Victorian Civil and Administrative Tribunal against Council's failure to decide on the application within 60 days. Council recommended that the application be supported, and the application to VCAT was withdrawn
51. On the 8 February 2008 Planning Permit 647/2004/A was extended for a further two years. Development was required to commence by the 28 February 2010 and be completed within six (6) years of the date of commencement.
52. An application was made pursuant to Clause 62 of the Victorian Civil and Administrative Tribunal Act 1998 to determine whether the permit holder had failed to make an application for an extension of time to Permit No 647/2004/A within months of the expiry of the permit on 28 February 2010. The decision of the responsible Authority was set aside. On the 2 November 2011 Planning Permit 647/2004/A was extended by the Victorian Civil and Administrative Tribunal for a further two (2) years. The development was required to commence by 28 February 2013 and be completed within six (6) years of the date of commencement.
53. On the 29 April 2016 Planning Permit 647/2004/A was extended by the City of Greater Geelong requiring development to be completed by:
- i. Stage 1 and 2 – 17 March 2020
 - ii. Stage 3 – 17 March 2023
 - iii. Stage 4 – 17 March 2025
54. It is noted that though the course of it's time with the City of Greater Geelong Planning Permit 647/2004/A was amended via Secondary consent for minor changes on at least six occasions. Due to the minor nature of these amendments changes sought via secondary consent have not been included in this submission. The most current Endorsed Plans have been provided to the Panel and parties to the Panel Hearing separately due to their file size.
- PP-647/2004/B**
55. On 30th March 2012 Amendment B, PP-647-2004/B was submitted to amend conditions on the permit, endorsed plans and more specifically to allow for subdivision of land into lots and/or super lots, replacing multi-storey buildings containing apartment/townhouse style dwellings. At the direction of the Victorian Civil & Administrative Tribunal in its Order dated 30 January 2013, (P980/2012) the amendment was refused. A copy of the VCAT order (reference P980-2012) is provided as Appendix 4 to this report.

Subdivisions

56. Subdivision permits were issued for Stages 1 and 2 as outlined below:

- i. Planning Permit Number 1046/2014 issued on the 29 September 2015 allow for the Multi lot staged subdivision for the property at 43 Liverpool Street, Rippleside.
 - i. The permit was amended (PP1046/2014/A) on the 24 June 2016 to allow the removal of carriageway easement E-1 on TP73266L, new conditions 1a and 1b and renumbering of subsequent permit conditions.
 - ii. The permit was amended (PP1046/2014/B) on the 7 February 2017 to reword conditions 7b, 7c and 7d.
 - iii. The permit was amended (PP1046/2014/C) on the 31 July 2017 to allow the staging of the permit with Stage 1A, Rewording of condition 7 to allow more time to enter into the Section 173 Agreement, include a new Condition 9 that relates to Stage 1A, rewording of conditions 13 and 37 and renumbering of conditions.
- ii. Planning Permit Number 857/2016 was issued on the 20 September 2016 to allow a Multi-Lot Subdivision for the property at 43 Liverpool Street, Rippleside. Endorsed plans were issued on the 20 September 2016 with the permit.

Current Planning Permit

57. The most current planning permit for the site is PP-647-2004/C which allows:

Use of the land for a convenience shop, restricted recreation facility, marina and more than 98 dwellings, construction of buildings and works, including buildings that exceed the heights shown on the Comprehensive Development Plan, and variation of loading bay requirements.

58. Amendment C to the planning Permit was issued on the 13 August 2020. The Amendment to the permit specifically was issued that sought to delete conditions on the planning permit and sought various minor changes to the plans. Deleted conditions were as follows, condition 2e, 2k, the last component of Condition 3, 7 d (i) and 28.

59. Specifically these conditions related to Stage 2 of the permit and read as follows:

- Delete Condition 2e Amended Plans to be provided showing: *A centrally located bin close to the central courtyard area.*

- Delete condition 2j - *The incorporation of the existing entry gates into the development.*
- Part of Condition 3 – *The landscape plan must indicate that an in-ground irrigation system is to be provided for all landscaped areas to be managed to the satisfaction of the Responsible Authority*
- Condition 7 (d) i) Correction of typographical error to correct the word 'elements':
The report must contain the following elements:
 - (i) *Elements of risk management through the preparation of and implementation of risk treatment...*
- Deletion of Condition 27 - *Signage must be provided along the shared pathway, particularly at the approaches to the swing bridge to indicate its location to the satisfaction of the Responsible Authority*

60. Changes were also included to the Stage 2 Development Plans as a part of this amendment as follows:

61. TP-02-01 – Ground Floor Plan

- Revised subdivision line and reduced POS to TH01, from 18.2m² to 18.1m²
- Revised subdivision line and reduced POS to TH07, from 36.2m² to 36.0m²
- Addition of fence and gate inside subdivision line to TH07 within POS
- Revised extent of East-facing façade glazing in TH10
- Revised extent of East-facing façade glazing in TH13
- Removal of courtyard planter in TH13
- Relocation stage 2 mailbox
- Removal of TH16 carport arbour structure
- Revised road alignment in accordance with updated landscape drawings

62. TP-02-02 – Level 1 Plan

- Revised road alignment in accordance with updated landscape drawings

63. TP-02-03 – Level 2 Plan

- Revised layout of roof services to TH01 to TH06 & TH10
- Revised internal layout of terrace access stair, including addition of lift to TH10
- Revised layout of roof services to TH11 – TH13
- Revised road alignment in accordance with updated landscape drawings

64. TP-02-04 – Roof Plan

- Revised layout of roof services to TH01 – TH07
- Revised layout of roof services to Apartment Block 09 including addition of roof access hatch and fall protection rail
- Revised layout of roof services to TH10 – TH13
- Revised layout of roof services to Apartment Block 14 including addition of roof access hatch and fall protection rail

- Revised layout of roof services to TH15 & TH16
- Revised layout of roof services to Apartment Block 17 including addition of roof access hatch and fall protection rail
- Revised road alignment in accordance with updated landscape drawings

65. TP-02-05 – Elevations 1

- Revised layout of roof services to TH01-TH07
- Revised fence line, height, and extent to TH07
- Revised layout of roof services to Apartment Block 09 including addition of roof access hatch and fall protection rail
- Revised layout of roof services to TH10-TH13
- Revised extent of East-facing façade glazing in TH13
- Revised layout of roof services to Apartment Block 14 including addition of roof access hatch and fall protection rail
- Revised layout of roof services to TH15
- Revised layout of roof services to TH16
- Revised layout of roof services to Apartment Block 17 including addition of roof access hatch and fall protection rail

66. TP-02-06 – Elevations 2

- Revised layout of roof services to TH01-TH07
- Revised fence line, height, and extent to TH07
- Revised layout of roof services to Apartment Block 09 including addition of roof access hatch and fall protection rail
- Revised layout of roof services to TH10-TH13
- Revised layout of roof services to Apartment Block 14 including addition of roof access hatch and fall protection rail
- Revised layout of roof services to TH15 & TH16
- Removal of TH16 carport arbour structure
- Revised layout of roof services to Apartment Block 17 including addition of roof access hatch and fall protection rail

67. Amended Stage 2 Landscape Interface Plans, prepared by Tract Consultants, amended to reflect the proposed amendments to the architectural drawings, with minor details on the plans updated.

68. Further the amendment extended the expiry of the planning permit as follows:

69. Permit Expiry:

The development for stage 1 and 2 must now be completed by 17 March 2021.

The development for Stage 3 must now be completed by 17 March 2023.

The development for Stage 4 must now be completed by 17 March 2025.

70. Subsequently an extension of time was issued on the 14 August 2023 changed the permit expiry as follows:

The development for Stage 3 must now be completed by 17 March 2024.

The development of Stage 4 must now be completed by 17 March 2026.

Secondary Consents

71. Over the last 20 years, secondary consents were issued for each stage with changes sought mostly under PP 6472004/A and more recently in 2022 under PP-647-2004/C. The Secondary Consents were issued as follows for Stages 1-4:

72. Stage 1 plans were endorsed on the 2 March 2018, with updated elevations issued on the 3 August 2018.

73. Stage 2 plans were endorsed on the 13 August 2020.

74. Stage 3 and 4 plans were endorsed on the 1 June 2022.

75. As the changes sought via secondary consent were minor and could be considered under officer delegation without re-advertising, the exact details of the changes have been generally identified above. Of note the most recent endorsed plans relating to the permit have been underlined, and provided separately to the Panel and parties to the Panel Hearing separately.

BARWON WATER PUMP STATION

City Records

76. Council officers have reviewed all the planning permit files associated with the permit ranging from PP647/2004 and its various amendments, to subdivision permits PP857/2016 and PP1046/2014 and associated amendments. No files contain any correspondence from Barwon Water with specific relation to the Barwon Water Pump Station.
77. The only reference to the pump station is as a requirement of Condition PP-647/2004A, Condition number 45 which requires: *A small pump station(s) constructed in accordance with BARWON Water requirements must be constructed at the cost of the developer to serve the development to the satisfaction of the responsible authority.*

Proponent Provided Information

78. The Barwon Water asset was completed before the current proponent took over the delivery of the project.
79. the proponent was verbally advised in 2017 by the then representative of Barwon Water, that there was no other feasible point to locate an asset of that size and infrastructure which met the following requirements:
- i. Easily accessible by the Authority for maintenance;
 - ii. Close to existing points of discharge and other Authority assets;
 - iii. The location was on solid land and not reclaimed / engineered land;
 - iv. The Authority required a large area of land to be reserved in favour of the Authority to enable safe access and manoeuvring in case the infrastructure needs servicing or replacement. Due to the size of the assets, a crane is required to lift out the tanks, and if necessary, haul them onto trucks, for servicing / replacement.
80. Barwon Water nominated the location on the site for the location of the asset, there was really no choice or appeal rights if the project was to proceed beyond Stage 1 of the project.
81. Refer to Figure 7 - Plan of Subdivision showing Barwon Water Pump Station which shows the full extent of the reserve in favour of Barwon Water and associated easements, thereby impacting the developable footprint of the subject site.

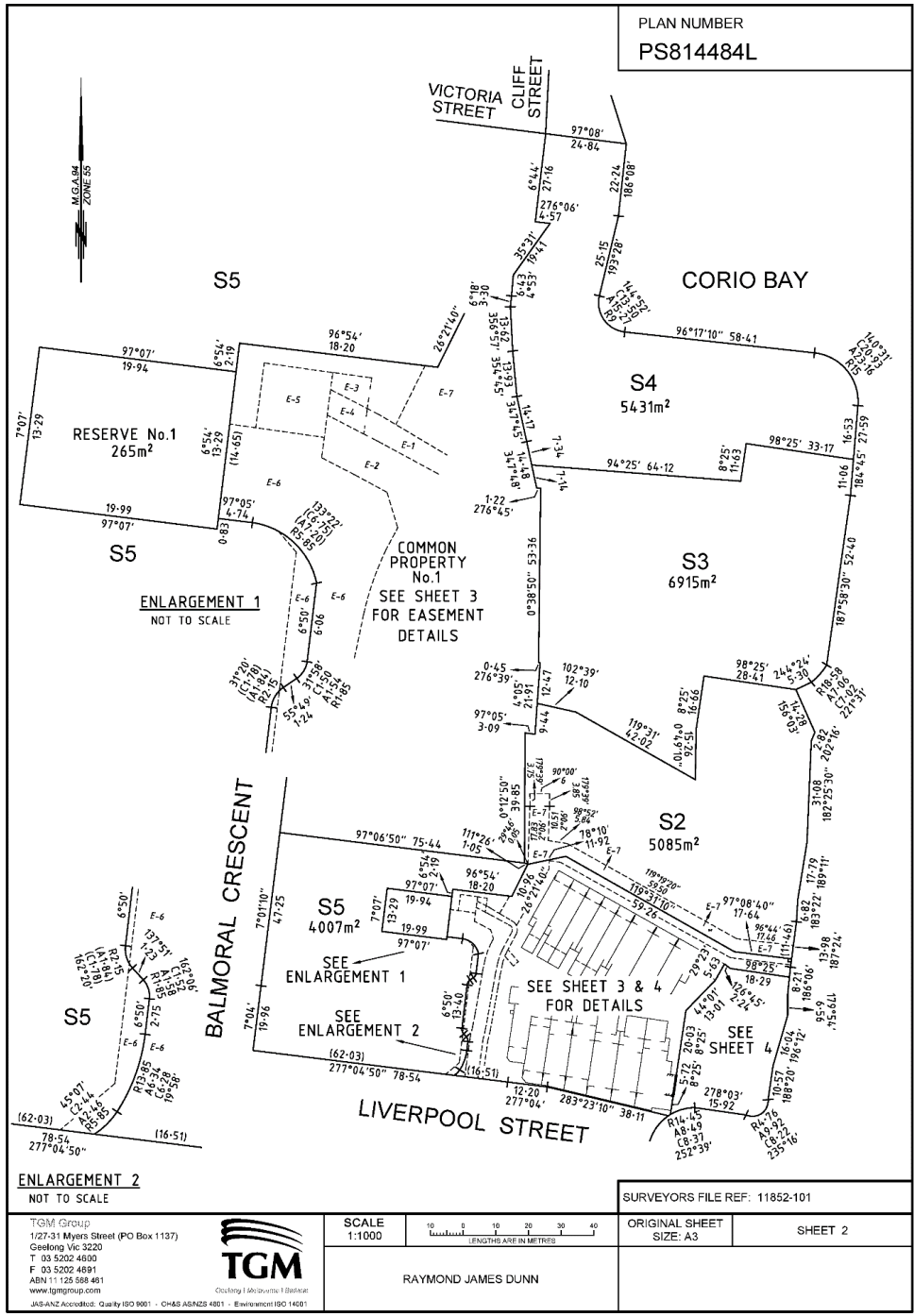


Figure 7 - Plan of Subdivision showing Barwon Water Pump Station

SUMMARY OF ISSUES RAISED IN SUBMISSIONS

82. The following is a summary of the submissions received for Amendment C436ggee.

83. As a result of public exhibition a total of 173 submissions were received. Of these 167 submissions objected to the amendment or permit, and 6 submissions either supported, did not object or provided comments only.

84. There were a number of consistent themes that were reoccurring throughout submissions, with many submissions raising three key themes being traffic, character and building scale/ height. A breakdown of the key themes raised in submissions is as follows:

Key themes raised in submissions	No. of mentions
Traffic	155
- Parking	143
- Access arrangements/safety	146
Character	101
Building scale and height	103
Overshadowing	56
- To Rippleside Park	53
- To neighbouring properties	21
Overdevelopment	30
Infrastructure Strain	22
Views	15
Emergency Services	13
Construction	11

85. As noted in the above, the majority of submissions raised concerns around traffic, character and scale. These themes, as well as all others are addressed below. It is worth noting that few submissions raised only one issue, with the majority touching on various matters, but where distinctions have been made between themes, that is because a significant number of submitters differed on the concerns raised for these topics. Given the complexity of many of the submissions, the above should be taken only as a snapshot of the matters raised. Further it should be viewed in the context of this full report, which distinguishes the matters and expands in detail on the above.

Traffic

86. Traffic generally was a concern raised by almost every submitter, mentioned in 155 of 173 submissions. Concerns raised typically had a focus on the safety of access for

both vehicles and pedestrians, and parking was a key issue for many submitters. The overall increase of traffic was a matter raised in a general sense by most submitters. A breakdown of traffic related issues into sub issues is provided below.

Access

87. Many submissions raised concerns with the location of the access to the building off Balmoral Crescent. The proximity to the bend where Liverpool Street turns into Balmoral Crescent has been identified by many users of the area as a location of significant concern due to traffic cutting the corner, speed and the possibility of vehicles turning into the development causing queuing on the road. **Error! Reference source not found.** is a map of the location showing street names.



Figure 8 - Street names / site context

Parking

88. The majority of submitters raised car parking as a substantial concern. Concerns primarily were focused on the current car parking issues in the area, with many submitters noting that there is limited on-street car parking available making it difficult to navigate the street network, access driveways, cross the road safely, or park in proximity to their destination. Many believed that the increase in population and flow on effects to traffic and parking would exacerbate existing issues. Additionally existing issues were considered to be resulting from construction workers parking in the area as a result of construction of Stages 3 and 4. Some submitters also raised the

Rippleside Park refurbishment and expansion works, citing that there will be an even greater community demand for car parking in this location. Other submitters raised the reduction in car parking sought as unreasonable and that additional parking would need to be provided on site to address the demand of the apartments. Some submissions raised specific concerns with the sharing of the marina and visitor spaces at the development and the reduction to car parking sought. Finally, concerns were raised with existing residents parking their vehicles on a longer than temporary basis in the Council car park at the end of Yacht Approach.

Bicycle parking

89. Four submitters raised concerns with the reliance of bicycle parking on the site to justify the reduction in car parking. It was noted by various submitters that residents of the new building would likely be retirees, or holidaymakers from Melbourne who would rely on private vehicles to gain access to the site, and as such the provision of bicycle parking would not be utilised.

Increased traffic

90. Many submissions raised concerns with the increase in traffic for the surrounding street network. The proposal according to many submissions has not appropriately addressed both the existing traffic volumes and the anticipated traffic volumes. Request for updated traffic modelling was raised by a number of submitters.

91. Some submissions also raised secondary issues of the capability of the road network to handle the additional traffic volumes, as well as the public transport network.

Liverpool Street upgrade

92. As a part of the original planning permit for the site, the Department of Transport and Planning required improvement works to the intersection of Liverpool Street and Melbourne Road. Some submitters were aware of this and queried when these works would be undertaken. One mentioned the original permit requiring traffic lights at this intersection and requested timing on these works although it is noted that this was never a part of the approved plans.

Yacht Approach and Liverpool Street left turn only works

93. As a part of the original planning permit 647/2004 for the site, improvement works to Liverpool Street, adjacent to Yacht Approach were endorsed. The plans showed that Yacht Approach would be a left turn only, with a concrete median preventing traffic turning right onto Liverpool Street and continuing onto Balmoral Crescent. Various submitters have queried when these works will be undertaken.

BUILT FORM RELATED ISSUES

Character and architectural merit

94. Concerns for the development being 'out-of-character' for the area was a matter raised by 101 submissions. Most submissions made reference to the nearby residential area to the west of the site and the heritage overlay and controls that affect the land. Many felt that the development needed to be more responsive to the heritage character of the surrounding area, particularly the low scale and materials. A component of character was also the developments scale, although that is discussed as a separate issue in this report.

95. A handful of submissions also raised the developments lack of architectural merit as a concern.

Scale/height

96. The overall height of the proposed Stage 5 development was raised as a concern by 103 submissions. Many felt the development was unresponsive to the area and would be visually obtrusive, particularly when viewed from surrounding properties or Rippleside Park. The scale was likened to something more suitable in the CBD of Geelong, and considered by many uncharacteristic of the coastal setting of the site. Many identified the sites high visibility from public areas (including Corio Bay) as cause for concern. Some submissions referenced a preference for the original development that was 4 storeys and identified that it would be a better outcome and size more suited to the site. The matter of height/scale was often referenced in relation to many other concerns such as character and overshadowing, matters that have been addressed separately in this report.

Overdevelopment

97. Overdevelopment, or density was a matter raised by 30 Submissions. Of these many raised that the density was also incorrectly identified, as the site is not a 'medium density development' as directed by the proposed Rippleside Urban Design Guidelines (March 2023), but a 'high density development'.

Overshadowing to Rippleside Park and surrounding properties

98. Overshadowing was raised by 56 submitters. Two main overshadowing concerns arose, with 53 mentions of concern for the overshadowing of Rippleside Park, and 21 mentions of concern for overshadowing to neighbouring properties. The primary concern of overshadowing to Rippleside park was identified regardless of the time of year. Understandably submitters were concerned with the protection of the amenity of

the park and some identified that the height of the development may cause overshadowing that would reduce the amenity of use of Rippleside Park.

Infrastructure strain

99. Infrastructure strain was a matter referenced by various submitters. However the infrastructure referenced differed between submitters. Some submitters were concerned with the increase traffic on roads and use of public transportation, citing that the roads and public transport already operated at capacity or were too busy. Other submitters raised concerns with power, water and sewer an the strain on the infrastructure network an apartment building with 84 dwellings may cause.

Views

100. Fifteen submitters raised concerns with the impact of the development upon existing views, specifically the obstruction of views to Corio Bay from existing dwellings or publicly accessible areas and vantages. Further concerns were raised that the development would obstruct views or distract from more scenic outlooks due to its scale.

Development should rely on the existing permit

101. Quite a few submitters expressed that the existing permit was appropriate and for the most part met community expectations. Whilst there were some submitters that still opposed the original stage 5 design also, the majority who referenced the original permit referenced it as the preferable outcome.

Social Housing

102. A number of submissions made brief reference to the social housing contribution of a cash contribution of 2.2% being unsubstantial and not achieving appropriate outcomes. Another queried if Geelong Affordable Housing Trusts would be subject to the same obligations to share the owners corporations costs and fees. Another, objected to the provision of affordable housing within the development due to the potential safety issues arising from residents.

Noise

103. Submissions that raised noise as a concern raised three types of noise as an issue. Firstly, noise from the construction of the development. Secondly, noise from an increased number of residents, and finally noise from the increased number of vehicles anticipated from the proposal.

Concerns with extent of notice

104. Approximately 3 submissions raised concerns with the extent of notice of the amendment and permit not being substantial enough, and that not all affected properties were directly notified

105. of Yacht Approach were notified directly with a letter. The extent of notice must end at some point, and this point may not always be agreed with by the community.

Image on website

106. Two submitters raised the issue that the image on the Council website during exhibition was either misleading or an inaccurate representation of the development.

Reduction to amenity

107. Many submitters generally noted that the development would cause a 'reduction in amenity' although few specified exactly which amenity impacts are being impacted.

Privatisation of space

108. One submitter raised concern that without a roadway between Balmoral quay and Corio Bay this space would be privatised.

Street naming and issues with emergency services navigating the site

109. A number of submissions raised concerns with the existing street arrangement of the Balmoral Quay, Rippleside estate and the naming of the roads creating confusion for emergency services accessing the site. Various submissions recall a particular example where emergency services were unable to find a unit within the site.

Issues with road widths and Emergency Services accessing site and blocking access to residents

110. Two submitters raised issue with the road widths at the site and the ability of emergency services to access the site. Additionally, one raised that during an emergency event because of the single road access, residents would be unable to access their dwellings.

Risk of landslip/stability of land

111. Two submitters raised concerns as to the risk of landslip from the surrounding embankment, and the stability of the land.

Issues with Urban Design Guidelines

112. Six submitters raised issue with the consideration and changes to the Urban Design Guidelines March 2023. Some took specific issue with the interpretation by the officer that the existing development did not accord with the Urban Design guidelines, and that the updates reflect the emerging character of the area.

Lack of Electric Vehicle charging spaces

113. One submitter raised concern about the lack of Electric Vehicle charging spaces provided at the site, noting that the demand for electric vehicle spaces will increase in the future. It is noted that the plans provide two electric vehicle visitor car spaces for the development

Retail premise use

114. One submission queried what the proposed retail use would be.

Reduction in property values

115. Three submissions raised concerns with the developments impact on property values in the area, specifically that it would result in a lowering of property values for the surrounding area.

Precedent

116. A small number of submissions raised concerns about the precedent that an approval of seven-storey development would set in Geelong, particularly in locations close to the waterfront.

Mobility around the site

117. A number of submissions raised concerns with the existing infrastructure and proposed pedestrian paths and their limitations for people with limited mobility.

118. The G21 Geelong Regional Alliance, Committee for Geelong and Property Council of Australia all prepared submissions supporting the amendment and planning permit. Many focused on the increased housing demand and substantial growth of Geelong, and highlighted the site's location, nearby open space and public transportation, and connection to Central Geelong as key reasons why the City should support the proposal. More specifically that the amendment would facilitate urban infill at a strategically well located site.

119. All supportive submissions considered the built form to be of a high-quality design, and

120. Various servicing authorities were provided the opportunity comment on the amendment, including Barwon Water, the Corangamite Catchment Management

Authority (CCMA), Country Fire Authority (CFA), Department of Environment, Land, Water and Planning (previously DELWP, now Department of Energy, Environment and Climate Action or DEECA), Powercor, Wadawurrung Aboriginal Corporation. Of these authorities, only the CFA, Powercor and DEWLP/DEECA provided commentary, which was either supportive of the development with conditions, or raised no objection or concerns to the amendment or permit.

CONCLUSION

121. This completes Council's Part A submission.

APPENDICES

Appendix 1 - Response to Strategic Assessment Guidelines

Why is the amendment required?

The amendment is required to facilitate Planning Permit 573-2021 which seeks to develop 1 and 11 Harbourside Drive with 84 apartments, one office and one retail premises.

Currently the *Rippleside Comprehensive Development Plan February 2000* has a maximum permitted height of 13.5 metres AHD for 1 and 11 Harbourside Drive. The proposed building has an overall height of 27.0 metres AHD (28.2 metres to the top of services), and as such an amendment to the incorporated documents to reflect this change is required. Whilst there is a permit for the site (Stage 5), it cannot be enacted upon because of the establishment of the Barwon Water Pump Station on the Stage 5 site, which compromises the ability to build or development in accordance with the permit for the site.

The amendment is in accordance with state policy which seeks to promote opportunities for urban renewal and provide for sustainable and liveable urban areas in an integrated manner. It responds to the direction of the Greater Geelong Settlement Strategy to increase housing supply contribution of infill development to 50 per cent by 2047, as well as ensure housing diversity is achieved in existing communities.

Whilst the majority of development within the CDZ2 has either been completed or approved, this amendment will facilitate the final stage. Given the significant amount of time that has elapsed since the Rippleside Comprehensive Development Plan and Urban Design Guidelines were created and incorporated into the Greater Geelong Planning Scheme, these are out of date and not clearly reflective of the already approved and constructed development outcomes at the site. In particular the Urban Design guidelines reference open space areas and a 'village square' that were never realised. Similarly, heights, scale and the overall design of Stages 1-4 have changed significantly from what was originally envisaged at the site through interpreting the Urban Design Guidelines. In 20 years styles and design features changed, however the focus on permeability through the site for pedestrians, the grouping of buildings and other features remained, especially as these are still considered best practice today. The maps and redundant policy references within the Urban Design Guidelines need to be reflective of what is at the site, the long standing goals of the site, and current best practice outcomes. As such the maps will be updated and the redundant policy references removed.

How does the amendment implement the objectives of planning in Victoria?

The changes sought as part of this amendment will enable the development of the site in accordance with Section 4(1) of the Act. Specifically, the amendment gives effect to the following objectives:

- *To provide for the fair, orderly, economic and sustainable use, and development of land;*
- *To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria;*
- *To facilitate development in accordance with the objectives set out in the points above; and*
- *To balance the present and future interests of all Victorians.*

How does the amendment address any environmental, social and economic effects?

The amendment will provide for the following positive environmental, social and economic outcomes.

Environmental Effects

The amendment will facilitate the future development of the site which includes soil remediation and landscaping treatments. The Certificate of Environmental Audit Report prepared by Lane Piper concluded that the site is suitable for sensitive uses subject to additional works being completed which will be required to be undertaken in accordance with the relevant approval.

Of the existing trees proposed for removal, none were assessed as having high protection value in the accompanying Arboricultural Assessment. Ecological advice was provided to advise that the trees were planted and no permit to remove these trees is required in accordance with Clause 52.17 of the Greater Geelong Planning Scheme.

Social Effects

The development proposed on the site will contribute to achieving urban consolidation within the area and the environmental and social benefits of providing housing within proximity of existing residential and community infrastructure. The proposal will contribute a net community benefit to the broader Greater Geelong area with regard to investment in the region, employment during construction, and housing choice when complete.

Economic Effects

The amendment will allow for the development of the land for housing, providing for an increase in population in an area strategically located within proximity to the Geelong CBD. In turn, this will increase demand for shopping and services in the area, boosting the local economy.

The amendment will accommodate additional residents on the subject land, as well as some non-residential uses which will be limited to avoid significant economic impacts on existing nearby activity centres.

The development of the site will also generate construction employment in the short and medium term.

Does the amendment address relevant bushfire risk?

The amendment meets bushfire policy in Clause 13.02-1S of the Greater Geelong Planning Scheme, which seeks to strengthen the resilience of settlements and communities to bushfire and prioritising human life over all other policy considerations.

The site is not located within a 'Bushfire Prone Area' as declared by the Minister for Planning under the Building Regulations 2018. The site is not subject to a Bushfire Management Overlay at Clause 44.06 of the Greater Geelong Planning Scheme. Overall, it has been determined that there is no bushfire factor that would warrant a planning scheme amendment not proceeding.

Does the amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment complies with the requirements of the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the Act.

Ministerial Direction No. 1 – Potentially Contaminated Land

The amendment complies with this direction. The Certificate of Environmental Audit Report prepared by Lane Piper has concluded that the site is suitable for sensitive uses including high density residential, commercial and recreation/open space subject to conditions requiring additional works to be completed.

Ministerial Direction No. 11 – Strategic Assessment of Amendments

This explanatory report has been prepared in accordance with these assessment requirements.

Ministerial Direction No. 15 – Planning Scheme Amendment Process

This planning scheme amendment has been prepared in accordance with this direction.

Ministerial Direction No. 19 – EPA advice

The proposal has been referred to the EPA, which has advised that the proposed amendment is unlikely to represent a risk to the environment, amenity or human health as a result of pollution or waste and therefore EPA will not be providing a formal response.

How does the amendment support or implement the Planning Policy Framework and any adopted State policy?

The amendment supports and implements numerous policies within the Planning Policy Framework and State Policy. The most relevant policies are listed below:

- **Clause 11.01-1S (Settlement)** looks to develop sustainable communities through a settlement framework offering convenient access to jobs, services, infrastructure and community facilities. It also seeks to plan for development and investment opportunities along existing and planned transport infrastructure and limit urban sprawl by directing growth into existing settlements. The amendment is considered to align as it is situated within a walking catchment of the North Geelong Train Station, and will assist with providing a high quality amenity outcome for residents in a desirable location within the existing settlement boundary, assisting with limiting urban sprawl.
- **Clause 11.011R (Settlement – Geelong G21)** supports the role of Central Geelong as a major regional city and revitalise and strengthen its role as Victoria's second city. By having the status of Victoria's second city, density, particularly within the settlement boundary and in desirable locations will need to increase to cater for additional population volumes. The proposed amendment allows this, building
- **Clause 11.01-1L (Settlement – Greater Geelong)** directs the majority of future housing to urban Geelong and that the share of housing on the Bellarine Peninsula is reduced. The application is directly in line with this policy and will assist in alleviating development pressures on the Bellarine by delivering a high quality outcome in a desirable coastal location close to services and infrastructure.
- **Clause 11.02-1S (Supply of Urban Land)** plans to accommodate projected population growth over at least a 15-year period and provide clear direction on locations where growth should occur. Residential land supply will be considered on a municipal basis, rather than a town-by-town basis. Planning for urban growth should consider opportunities for the consolidation, redevelopment and intensification of existing urban areas.
- **Clause 15.01-1S (Urban Design)** looks to ensure development supports public realm amenity and safe access to walking and cycling environments and public transport. Additionally, it seeks to promote good urban design along and abutting transport corridors. The site will be highly visible from public space areas such as Rippleside Park and Corio Bay from some vantages. Therefore the development needs to demonstrate excellence in its form and presentation. Currently Council's Urban Design team are largely supportive of the built form outcome.

- **Clause 15.01-2S (Building Design)** seeks to ensure a comprehensive site analysis forms the starting point of the design process and provides the basis for the consideration of height, scale and massing of new development. It looks at ensuring development responds and contributes to the strategic and cultural context of its location. The development is considered to achieve this as a site analysis has been provided which shows justification for the proposal and its elements.
- **Clause 15.01-2L (Environmentally Sustainable Development)** seeks to achieve best practice in ESD from the design stage through to construction and operation. The development has been considered by Councils ESD officers who are supportive of the permit application.
- **Clause 16.01-1S (Housing Supply)** seeks to ensure that appropriate housing quantity, quality and typology is provided to cater for a wide range of the community through increasing the proportion of housing in established urban areas (including under-utilised urban land). Policy seeks diverse housing that offers choice and meets changing household needs by widening housing diversity through a mix of housing types. It is considered that the site is unique in that whilst a part of the surrounding area, its siting and location lends itself to a greater density, providing for a true mix of housing typologies in an established area that can cater for future resident needs.
- **Clause 16.01-1R (Infill housing – Geelong G21)** facilitates infill development in Central Geelong and around activity areas within urban Geelong. The site is well located to be an infill housing site, with reasonable proximity to central Geelong, and good access to roads, public transport, and pedestrian infrastructure.
- **Clause 16.01-2S (Housing Affordability)** seeks to provide housing affordability by increase choice in housing type, tenure and cost to meet the needs of housing as they move through the life cycle to support diverse communities. The proposal achieves this by contributing one dwelling for the purposes of social housing, which is considered to be a desirable outcome in this location.
- **Clause 18.02-1S (Walking)** facilitates an efficient and safe walking network and to increase the proportion of trips made by walking. The sites proximity to current infrastructure and particularly pedestrian infrastructure which has been improved along the foreshore as a result of previous site permits lends itself favourable to this policy. It is noted that there are issues with some established infrastructure not being mobility friendly, however as no new infrastructure is proposed, it has been recommended that these issues be addressed through separate Council avenues in the Part B (response to submissions) component of Councils submission.
- **Clause 18.02-3S (Cycling)** facilitates an efficient and safe bicycle network and increase the proportion of trips made by cycling. Additional cycling spaces have been provided as a part of the permit application to offset the reduction of car parking sought. Bicycle parking has been provided in a range of convenient locations and can reasonable be utilised by residents and visitors if desired.

How does the amendment support or implement the Municipal Planning Strategy?

The amendment supports and implements numerous policies within the Municipal Planning Strategy. The most relevant are listed below:

- **Clause 02.02 (Vision)** highlights key land use and development aspirations for Geelong including:
 - Sustainable development that supports population growth and protects the natural environment.
 - An inclusive, diverse, healthy and socially connected community.
- **Clause 02.03 (Strategic Directions)** includes key strategy with respect to settlement that outlines the predicted growth of Geelong that will create a demand for in excess of 73,000 new dwellings that are to be delivered via a combination of greenfield and infill development, with the share of infill development to increase over time.
- **Clause 02.03-5 (Building Environment and sustainability)** outlines directions that seek to ensure that development enhances Geelong's sense of place and identity, support the design and provision of health, walkable neighbourhoods, encourages environmentally sustainable design in all development and provide high quality urban design and landscaping.
- **Clause 02.03-6 (Housing)** outline areas for increased housing diversity and also directs the facilitation of infill development to increase its housing supply contribution and increase housing

diversity in established communities.

Does the amendment make proper use of the Victoria Planning Provisions?

The amendment makes proper use of the Victoria Planning Provisions. The Comprehensive Development Zone continues to be the appropriate mechanism to control development outcomes on this unique site, and the amendment is reflective of this by amending the relevant incorporated documents of the Comprehensive Development Zone.

As such it is considered that the amendment utilises the most effective controls available from the Victoria Planning Provisions in the form of the gazetted Greater Geelong Planning Scheme.

How does the amendment address the views of any relevant agency?

The views of the EPA, Barwon Water, Corangamite CMA, Department of Transport and Planning, Country Fire Authority, Department of Energy, Environment and Climate Action, Powercor and the Wadawurrung Traditional Owners Aboriginal Corporation were sought as part of the consideration of this application. The authorities did not object to the approval of an amendment, and relevant conditions were supplied to be included on any future permit which have been included in the draft planning permit being exhibited.

Does the amendment address relevant requirements of the *Transport Integration Act 2010*?

The amendment is consistent with the objectives and decision-making principles in the *Transport Integration Act 2010*. The surrounding road network is capable of accommodating the proposed use and associated user requirements. The Department of Transport and Planning offered no objection to the proposal.

Appendix 2 – Authorisation for C436 from the Minister’s delegate



Department of Transport
and Planning

GPO Box 2392
Melbourne, VIC 3001 Australia
www.dtp.vic.gov.au

Ms Kaarina Phyland
Acting Chief Executive Officer
City of Greater Geelong
PO Box 104
GEELONG VIC 3220

Email: lkrausas@geelongcity.vic.gov.au

Dear Ms Phyland

PROPOSED COMBINED AMENDMENT C436ggee TO THE GREATER GEELONG PLANNING SCHEME AND PLANNING PEERMIT APPLICATION PP-573-2021

I refer to the council’s application for authorisation to prepare a combined Amendment C436ggee to the Greater Geelong Planning Scheme and planning permit application PP-573-2021. The amendment proposes to amend the Comprehensive Development Zone Schedule 2 (CDZ2) and the Ripplside Comprehensive Development Plan and Urban Design Guidelines incorporated documents to facilitate the Balmoral Quay Stage 5 development in Ripplside.

Under delegation from the Minister for Planning, in accordance with section 8A of the *Planning and Environment Act 1987* (the Act), I authorise the council as planning authority to prepare the amendment subject to conditions, as follows:

- Amend the CDZ2 schedule to ensure consistency with the precinct terminology, land uses, and number of dwellings shown in the revised Ripplside Comprehensive Development Plan.
- Amend the Explanatory Report to delete reference to superseded Clause 15.02-1S and correct Clauses 18.02-1S and 18.02-2S, which were amended by Amendment VC204.

These conditions have been discussed with council officers.

The amendment must be submitted to the Minister for approval.

The authorisation to prepare the amendment is not an indication of whether or not the amendment will ultimately be supported.

Please note that [Ministerial Direction No. 15](#) sets times for completing steps in the planning scheme amendment process. This includes the council:

- giving notice of the amendment within 40 business days of receiving authorisation; and
- before notice of the amendment is given, setting directions hearing and panel hearing dates with the agreement of Planning Panels Victoria. These dates should be included in the Explanatory Report.

The direction also sets out times for subsequent steps of the process following exhibition of the amendment.

The Minister may grant an exemption from requirements of this direction. Each exemption request will be considered on its merits. Circumstances in which an exemption may be appropriate are outlined in [Advisory Note 48: Ministerial Direction No.15 – the planning scheme amendment process](#).

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to foi.unit@delwp.vic.gov.au or FOI Unit, Department of Transport and Planning, GPO Box 3292, East Melbourne, Victoria 3001.



OFFICIAL

In accordance with sections 17(3) and (4) of the Act, the amendment must be submitted to the Minister at least 10 business days before council first gives notice of the amendment.

Notice of the amendment, application and permit must be in accordance with section 96C of the Act.

Please submit the amendment electronically using the Amendment Tracking System (ATS).

If you would like further information, please contact Jorgen Peeters, Senior Regional Planner, Department of Transport and Planning, via email jorgen.peeters@delwp.vic.gov.au.

Yours sincerely



Kim McGough
Manager-Barwon South West, Regional Planning Services

25/07/2023

**Appendix 3 – VCAT Order – Trendcorp Pty Ltd V City of Greater Geelong
and others P2386/2004 Date 28 February 2005**

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2386/2004
PERMIT APPLICATION NO. 647/2004

CATCHWORDS

Application under Section 79 of the Planning and Environment Act 1987 to review Responsible Authority's failure to grant a permit within the prescribed time; Greater Geelong Planning Scheme; Comprehensive Development Zone – Schedule 2 Rippleside Comprehensive Development Plan; 178 dwellings in an integrated development including a reclaimed coastal walkway and a 160 berth marina; Difference between expressions *generally consistent* or *generally in accordance with* CDP and *in accordance with* Urban Design Guidelines; Guidelines by definition are not rules; Guidelines are intended to guide development and assist decision making; What should be a reasonable expectation for views having regard to the benchmark set by the Comprehensive Development Plan; Do the Guidelines serve to cut back the CPD or does the CPD incorporate the outcomes sought by the Guidelines; Traffic generated by dwellings over and above the 98 'as of right' number of dwellings in the zone; Relevant to have regard to the fact that the office component of the CDP is not taken up and would have generated its own traffic.

APPLICANT	Trendcorp Pty Ltd
RESPONDENTS	Greater Geelong City Council, Rippleside Action Group Inc, Raewyn Hansen, David White, Mayard McKane, John Mole and others
SUBJECT LAND	Rippleside Shipyard and Pier, Liverpool Street, Rippleside
WHERE HELD	Melbourne
BEFORE	Jane Monk, Senior Member and Jeanette Rickards, Member
HEARING TYPE	Hearing
DATE OF HEARING	Monday 7 February to 18 February 2005
DATE OF ORDER	28 February 2005
CITATION	

ORDER

A permit is granted and directed to be issued in relation to Permit Application No. 647/2004 for the land at Rippleside. The permit will allow:

Use of the land for a convenience shop, restricted recreation facility, marina and more than 98 dwellings, construction of buildings and works, including buildings

that exceed the heights shown on the Comprehensive Development Plan), and variation of loading bay requirements, in accordance with the endorsed plans.

The permit must contain the following conditions:

- 1) Before the development starts, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the *Planning and Environment Act 1987* to provide for the following:
 - (a) The staging construction and maintenance of the pedestrian waterside link, including the rock revetment and other public works authorised by this permit. The pedestrian link must be constructed generally in accordance with the link shown on the Landscape Concept Plan Drawing No. RCTTPLP00 submitted with the application and dated February 2004.
 - (b) An appropriate contribution towards the cost of the construction of road, drainage and other infrastructure to the land as required by the Responsible Authority and other relevant statutory authorities to implement the requirements of the conditions of this permit.
 - (c) An appropriate contribution towards the cost of construction of road facilities to accommodate traffic requirements resulting from the approved development.
 - (d) A contribution to cover the reasonable cost of the design and construction of a left turn at the intersection of Melbourne Road and Liverpool Street to provide for left turning vehicles travelling south along Melbourne Road to enter Liverpool Street and make their way to the development site.
 - (e) The permit holder/owner shall be responsible for the maintenance of the swing bridge for the life of this infrastructure. The agreement shall be worded such that this obligation transfers to the body corporate for the development site at the completion of all development works.
 - (f) Maintenance arrangements for private and public areas within the development.

Before works commence on site application must be made to the Registrar of Titles to register the Section 173 agreement on the title to the land under Section 181 of the Act. The owner under this permit must pay the reasonable costs of the preparation, execution and registration of the Section 173 agreement.

- 2) Before the development starts, 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 provided. The plans must be generally in accordance with the plans submitted with the application, but modified to show:
 - (g) The re-design of Building H as shown on the attached plans prepared by Williams Boag Architects dated 24 March 2002 Revision F Sheets TPH01, TPH02, TPH03 and TPH04.
 - (h) The provision of bicycle parking facilities within the development.
 - (i) Storage areas and site facilities for dwellings.
 - (j) Colour codes which clearly delineate proposed body corporate areas and areas to be maintained by Council.

- (k) A centrally located bin close to the central courtyard area.
 - (l) The provision of sewer pump out facilities, power and water, fire protection, in the boat harbour area.
 - (m) Lighting in all public and communal open space areas provided within the site.
 - (n) Details of privacy screens for dwellings abutting the *Uppercourt* in Building H.
 - (o) Details of the landscaping and fencing treatment along the frontage of Building H adjacent to Balmoral Crescent.
 - (p) The staging for development works to be undertaken.
 - (q) The incorporation of the existing entry gates into the development.
- 3) Before the development starts, a landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the planning permit. The plan must be drawn to scale with dimensions, and three copies provided, the landscaping plan must be generally in accordance with the landscape plans submitted with the application, except that the plans must show:
- (r) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant.
 - (s) No more than five tall evergreen trees to the west side of Building B.
 - (t) Confirmation that the mature height of species proposed for the escarpment will not extend more than 500mm above the top of the escarpment.
 - (u) Delineation of areas of planting the City will be responsible for maintaining.
 - (v) As well as geotextile matting there must be soil stabilising plants included in cliff planting. This planting should incorporate *Dianella Revoluta* and *Acena Novazealandiae*. The *Leptosperum Laevigatum* must be deleted from the cliff planting.
 - (w) The foreshore grasslands planting must be replaced with *Dianella Revoluta* or *Facinia Nodosa*.
 - (x) The incorporation of deciduous trees in areas that need summer shelter from sun and winter solar access.
 - (y) Clearer documentation of the court areas associated with Building H which has consideration of wind and heat. This area must include details of planting, weather protection and street furniture.
 - (z) The planting of a number of semi-mature trees on the site.
 - (aa) Location of street and park furniture, this should include benches and bike racks.
 - (bb) At least 20 percent of the site shall be set aside for permeable surfaces. All species selected must be to the satisfaction of the Responsible Authority.
- The landscaping plan must indicate that an in-ground irrigation system is to be provided for all landscaped areas to be managed to the satisfaction of the Responsible Authority.

- 4) Before the development starts a staging plan for the detailed design and construction of the pedestrian waterside link must be submitted to and approved by the Responsible Authority. All stages of the construction of the pedestrian waterside link must be completed to the satisfaction of the Responsible Authority in accordance with the approved staging plan.
- 5) Before the development starts, a plan of consolidation incorporating the titles comprising the development site shall be submitted to Council. Upon certification, the consolidation plans shall be lodged with the Land Registry for processing and must not be withdrawn to the satisfaction of the Responsible Authority.
- 6) Before the development starts, an environmental management plan must be prepared to the satisfaction of the Responsible Authority. The environmental management plan must contain appropriate provisions for the environmental management of the development of the land, including:
 - (cc) Management of land disturbance.
 - (dd) Storage, minimisation, handling and disposal of waste, dangerous substances and industrial infrastructure on the land.
 - (ee) Noise and dust management.
 - (ff) Contingency and emergency response plan.All buildings and works must be carried out in accordance with the environmental management plan to the satisfaction of the Responsible Authority.
- 7) Before the development starts, a geotechnical investigation in relation to Landslide Risk Assessment (LRA) of the subject site is required in accordance with the following criterion:
 - (gg) Consultant Qualifications
 - (i) The LRA report must be prepared by an appropriate professionally qualified geotechnical practitioner in accordance with the definition provided in the Australian Building Code Board guidelines as follows: A specialist geotechnical engineer or engineering geologist who is degree qualified, is a member of a professional institute and who has achieved chartered status – being either Chartered Professional Engineer (CPEng) within the Institution of Engineers Australia, Chartered Professional Geologist (CPGeo) within the Australian Institute of Mining and Metallurgy or Registered Professional Geoscientist (RPGeo) within the Australian Institute of Geoscientists – specifically with Landslide Risk Management as a core competency.
 - (hh) Report details must be in accordance with the following requirements:
 - (i) Plans and sections of the site to a minimum scale of 1:200 and related survey and field measurements with contours and spot levels to AHD. Key features are to be identified, including the locations of the proposed development, buildings, structures, retaining walls, roads, driveways, parking bays, landscaping features, stormwater drainage, subsurface drainage, water supply and sewerage pipes on both the subject site and adjoining sites.

- (ii) Descriptions of the physical features of the site including geology, geomorphology, physiography including slope and topography, signs of past instabilities erosion, outcrops, existing vegetation.
- (iii) Details of all site inspections and site investigations and any other appropriate information. A site inspection is required in all cases. Site investigation may require subsurface investigation involving bore holes, test pits or other methods necessary to adequately assess the geotechnical/geological model or the site. As such subsoil profiles, geological mapping and groundwater conditions are to be presented where available.
- (iv) Photographs and drawings of the site and the related land adequately showing all geotechnical features referred to in the LRA report.
- (v) Presentation of a geological/geotechnical model of the site and related lands showing the proposed development, including an assessment of subsurface conditions taking into account different soil units including thickness of topsoil, residual soils, colluvium, landslide debris, depth to rock.
- (vi) Checking the stability of the existing escarpment by bore hole testing and include appropriate remedial and protection works.
- (vii) All elements of landslide risk analysis including identification of all potential hazards which may impact on the development and hazards the development may produce, estimation of frequency of landsliding, estimation of the consequence of landsliding should it occur, estimation of the calculation or risk to property and life.
- (ii) Risk assessment via risk evaluation should be in accordance with the following:
 - (i) Undertaking of risk assessment through comparison of the calculated based on a semi-quantitative approach including a statement of the source of evaluation criteria, justification for the use of the adopted criteria and a statement of whether the site is suitable for the proposed development.
- (jj) The report must contain the following elements:
 - (i) Elements of risk management through the preparation of and implementation of risk treatment and risk mitigation plans to manage risk and monitor and maintain the development throughout the entire construction process.
 - (ii) Recommendations on design elements including footings, surface and subsurface drainage, access roads, driveways, parking bays, excavations, cuts, fills, retaining walls, vegetation, effluent disposal and on-going site maintenance.
 - (iii) Clear presentation of all subsurface information including borelogs, groundwater levels and any general notes and information provided to the client as part of the overall report recommendations.

All to the satisfaction of the Responsible Authority.

Design and development and all construction works must comply with recommendations of Geotechnical Investigation to the satisfaction of the Responsible Authority.

The endorsed plans must incorporate all the recommendations of the Geotechnical Investigation unless otherwise approved by the Responsible Authority. All works carried out pursuant to this permit must be undertaken in accordance with the recommendations of the Geotechnical report, unless alternate specific directions are provided in writing by the Responsible Authority.

- 8) Before the development starts, a certificate of environmental audit must be issued for the land in accordance with Part IXD of the *Environment Protection Act 1970*, or an environmental auditor appointed under the *Environment Protection Act 1970* must make a statement in accordance with Part IXD of that Act that the environmental conditions of the land are suitable for the sensitive use.
- 9) Before the development starts, functional layout plans for the access point onto Liverpool Street must be submitted to and approved by the Responsible Authority. The plans must provide design and construction details for the access point, including details of mitigating works required on Liverpool Street, but specifically:
 - (kk) A LATM plan for Liverpool Street.
 - (ll) Scoping, concept design and full engineering design.
 - (mm) Restrictions and traffic devices required as a consequence of the development.
 - (nn) A TMP for movements within the curtilage of the site.Upon the approval of formal plans as herein required all specified works shall be undertaken to the satisfaction of the Responsible Authority, and the reasonable costs of such works and the scoping, concept and full engineering design required by this condition shall be borne by the permit holder.
- 10) Before the development starts, the developer must submit a stormwater management plan to, and be approved by the Responsible Authority. The plan approved shall form part of this permit. The plan shall show how the stormwater is collected on site and discharged to Council's stormwater system and/or Corio Bay. The plan must also address the control of run-off, erosion, litter and sediment into the local drainage system and Corio Bay and shall incorporate water recycling systems and/or other appropriate water sensitive urban design initiatives on the site to the satisfaction of the Responsible Authority.
- 11) Before the development starts, engineer designed drainage plans prepared at the developer's expense showing pits and pipe sizes, computations, finished surface and existing surface levels, creation of appropriate easements and connection to the existing Council drainage network for the disposal of stormwater from all roofed and sealed areas, including the use of an on-site detention system (if required) are to be submitted to and approved by the Responsible Authority. An appropriate fee for checking of the engineering designs must be paid to the Council to the satisfaction of the Responsible Authority.
- 12) Before the development starts, the permit holder must construct, at no cost to Council, drainage works between the subject site and the Council nominated

legal point of discharge. Such drainage works must be designed by a qualified engineer and submitted to and approved by the Responsible Authority. Computations must be provided to demonstrate that the drainage system will not be overloaded by the new development.

- 13) Drainage must be constructed in accordance with the endorsed drainage plan to the satisfaction of the Responsible Authority at the full cost of the permit holder in accordance with staging agreed with the Responsible Authority.
- 14) Construction of the road works and drainage is to be supervised by Council representatives at various stages. An appropriate fee for the supervision must be paid to the Council to the satisfaction of the Responsible Authority. Arrangements for the maintenance of the completed road and drainage works to be vested with Council must be to the satisfaction of the Responsible Authority.
- 15) Before the buildings are occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
 - (oo) Constructed to the satisfaction of the Responsible Authority.
 - (pp) Properly formed to such levels that they can be used in accordance with the plans.
 - (qq) Surfaced with fully sealed material, such as asphalt, porous road pavement, coloured concrete, coloured patterned concrete, interlocking paving, bricks or other material to the satisfaction of the Responsible Authority.
 - (rr) Drained and maintained to the satisfaction of the Responsible Authority.
 - (ss) Line marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
 - (tt) Parking spaces for visitors allocated and marked.Parking areas and access lanes must be kept available for these purposes at all times.
- 16) Before the development starts, the permit holder must prepare and have approved by the Responsible Authority a management plan detailing how the management and allocation of accommodation for bicycles and car parking is to be carried out within the site. The approved management plan must be implemented to the satisfaction of the Responsible Authority.
- 17) Before the development starts, details of the methods and design to be adopted to address flooding within the lower ground car parks must be submitted to and approved by the Responsible Authority.
- 18) Before the development starts, the permit holder must submit a construction management plan for approval to the Responsible Authority. The management plan must provide details of:
 - (uu) Hours during which construction activity will take place.
 - (vv) Measures to control noise, dust and run-off.
 - (ww) The location of where building materials are to be kept during construction.
 - (xx) Site security.
 - (yy) A staging plan for all construction phases including indicative dates for commencement and completion.
 - (zz) Intended access for construction vehicles.
 - (aaa) Details of where construction personnel shall park.

- (bbb) Phone numbers of on-site personnel or other supervisory staff to be contactable in the event of issues arising on the site.
- (ccc) Details of site cleanliness and clean up regimes.
- (ddd) Measures taken to avoid pollution of waterways or drains including the collection/control of run-off, trapping of sediments and control of litter/rubbish.

When approved this construction management plan shall form part of this permit.

- 19) Before the development starts, an access report prepared by a suitably qualified person, demonstrating compliance with Clause 55.5-1 shall be submitted to and approved by the Responsible Authority.
Any reasonable recommendations for access to comply with Clause 55.01-1 must be incorporated into revised designs submitted for endorsement as part of this planning permit, and thereafter shall be constructed as part of the approved development to the satisfaction of the Responsible Authority.
- 20) Before the development starts, a schedule of construction materials, external finishes and colours, incorporating samples, must be submitted to and approved by the Responsible Authority. Roof colours should be selected to address the potential for glare and various colours should be used to avoid the appearance of an homogenous colour scheme to the satisfaction of the Responsible Authority.
When approved, the schedule will be endorsed and will then form part of the permit.
- 21) Before the dwellings are occupied within a stage of the development, the landscaping works within that stage shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
- 22) The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority.
- 23) All shared walking/cycling paths must conform with the guidelines set out in the *Guide to Traffic Engineering Practices – Bicycles* document to the satisfaction of the Responsible Authority.
- 24) Any trees planted alongside the shared pathway must be clearly visible, with reflective bollards placed on either side of the trees to the satisfaction of the Responsible Authority.
- 25) A 1m high handrail must be provided on the western side of the path on the approach to the northern boat harbour to the satisfaction of the Responsible Authority.
- 26) A kickboard or wheelstop must be provided on the eastern side of the path to the satisfaction of the Responsible Authority.
- 27) Signage must be provided along the shared pathway, particularly at the approaches to the swing bridge to indicate its location to the satisfaction of the Responsible Authority.
- 28) Not less than 20% of berths within each stage of the boat harbour must be made available to the general public at all times to the satisfaction of the Responsible Authority.

- 29) No plant, equipment or services, satellite dishes or TV aerials, other than as shown on the endorsed plans may project above the roofline of the buildings without the further written consent of the Responsible Authority.
- 30) Except with the further permission of the Responsible Authority no structures including shade screens or pergolas may be constructed on or above any roof terrace shown on the endorsed plans.
- 31) Provision must be made on the land for the storage and collection of rubbish and other solid waste associated with the commercial elements of the development to the satisfaction of the Responsible Authority. This area must be graded and screened from public view to the satisfaction of the Responsible Authority. All waste material not required for further on-site processing must be regularly removed from the site to the satisfaction of the Responsible Authority.
- 32) Except with the further approval of the Responsible Authority, the recreational area shown on the endorsed plans must not operate on a commercial basis for people who do not live within the approved development.
- 33) The loading and unloading of commercial goods from vehicles associated with commercial premises within the development must only be carried out on the land within the designated loading bay to the satisfaction of the Responsible Authority.
- 34) Exterior lights shall be installed in such positions so as to illuminate public areas to the satisfaction of the Responsible Authority.
- 35) Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse impact on adjoining land.
- 36) No more than 10 seats shall be provided in the café without the further consent of the Responsible Authority.
- 37) All advertising signs shall be in accordance with the Greater Geelong Planning Scheme.
- 38) Water supply services must be provided to all dwellings in accordance with Barwon Water's requirements and Victorian plumbing regulations to the satisfaction of Barwon Water. Individual meters to serve the proposed dwellings are to be installed and inspected to the satisfaction of Barwon Water. Appropriate containment backflow devices are required to the satisfaction of Barwon Water.
- 39) A developer charge for water supply for the approved development must be paid to the satisfaction of Barwon Water.
- 40) A dimensioned plan showing the existing meter number and the location of the meter relative to the existing boundaries of the land must be submitted to Barwon Water. Private water service pipes are not permitted to cross allotment boundaries and must be plugged and abandoned at the boundaries of such allotments to the satisfaction of Barwon Water.
- 41) The water main must be extended back to a nearby larger main together with an alternative connection to provide a dual feed into the development to the satisfaction of Barwon Water.
- 42) Sewerage services must be provided to all dwellings in accordance with Barwon Water's requirements and Victorian plumbing regulations to the satisfaction of

- Barwon Water. Individual allotment connection branches are to be provided and extended into each dwelling to the satisfaction of Barwon Water.
- 43) A developer charge must be paid for sewerage services to the approved development to the satisfaction of Barwon Water.
 - 44) A separate sewer point to all dwellings must be provided in accordance with Barwon Water's requirements, Victorian plumbing regulations, and all relative statutory regulations to the satisfaction of Barwon Water.
 - 45) A small pump station(s) constructed in accordance with Barwon Water requirements must be constructed at the cost of the developer to serve the development to the satisfaction of the Responsible Authority.
 - 46) The dredged areas approved by this permit must be maintained to the satisfaction of the Responsible Authority and the VRCA.
 - 47) Navigation aids on the pier wave screens and pontoons must be provided to the satisfaction of the VRCA.
 - 48) The permit holder must provide an electricity supply to all dwellings in accordance with Powercor's requirements and standards to the satisfaction of Powercor.
 - 49) The permit holder must rearrange, to the satisfaction of Powercor Australia Ltd, any existing private electric lines supplying installations within the subdivision. Such lines shall be constructed with underground cables.
 - 50) Contamination soils removed from the site including dredging material must be disposed of at a site licensed to accept contaminated soil to the satisfaction of the EPA.
 - 51) Only soils that meet the adopted site criteria must be used in the construction of the public walkway between Rippledside Park and St Helens's beach to the satisfaction of the EPA.
 - 52) An Environment Management Plan for approval for handling and drying of dredge material at the site must be approved by the EPA.
 - 53) All soils which do not meet the adopted site criteria must be removed, capped or treated before works are commenced at the site in accordance with the recommendations of the Environmental Auditor and to the satisfaction of the EPA.
 - 54) The permit holder must determine the presence or absence of acid sulphate soils prior to any works at the site. The Responsible Authority must be provided with an Environment Management Plan in accordance with EPA's Industrial Waste Management Policy should acid sulphate soils be identified at the site.
 - 55) The permit holder must provide the Responsible Authority with a management plan for erosion and sediment control during works at the site in accordance with Environmental Guidelines for Major Construction sites EPA Publication 480, 1995.
 - 56) There must be a hydrant within 120m from the edge of the approved buildings (including obstructions) to the satisfaction of the CFA.
 - 57) Appropriate signage and compliance under the *Marine Act* 1988, particularly in relation to the use of the beach areas must be erected to the satisfaction of Parks Victoria.
 - 58) The development as shown on the endorsed plan(s) must not be altered without the written consent of the Responsible Authority.

- 59) This permit will expire if one of the following circumstances applies:
- (eee) The development is not started within three years of the date of this permit.
 - (fff) The development is not completed within six years of the date of commencement.

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.

Jane Monk
Senior Member

Jeanette Rickards
Member

APPEARANCES:

For Applicant

Mr Adrian Finanzio, of Counsel, instructed by Mr Phillip Bissett of Minter Ellison Lawyers. They called the following persons to give evidence:

- Mr Andrew Cook, Urban Planner with ERM Consultants;
- Mr Chris Goss, Architect and computer imaging expert with Orbit solutions;
- Mr Laurence Blyton, Landscape Architect;
- Mr Andrew Hutson, Architect;
- Mr Stephen Hunt, Traffic Engineer with Grogan Richards;
- Mr Chris Carboon, Maritime Engineer with SKM;
- Mr Michael Broise, Geomechanical Engineer with Douglas Partners; and
- Mr David Whitney, Urban Planner.

Project architects, Ms Clare McAlister and Ms Karen Alcock, were also called to describe the development and its design process.

For Responsible Authority

Mr Warwick Nelson, Solicitor with Harwood Andrews Lawyers.

For Respondent Objectors

Mr John McMullen, Solicitor, appeared for a number of residents of Rippleside and nearby, as set out in a list appended to his submission. He also co-ordinated the submissions of and the giving of evidence by the following persons:

Mr John Mole, Mr David Stevens, Mr Graham Hart, Ms Jan Winstanley, Ms Helen Lyth, Mr Rob Roder, Mr Brian Marshal and Mr Ray Abikhair.

Mr Mc Mullen also tabled written submissions from the following persons:

Mr Neil Alford, Dr Karen White and Ms Maureen Kewitz.

Mr John Cicero, Solicitor with Best Hooper Lawyers appeared for and was assisted by Ms Raewyn Hansen.

Ms Pauline Seitz, Chairperson of the Rippleside Action Group Inc. appeared for the Group and was assisted by Ms Pam McGrath, Secretary and Mr Peter Jager.

Mr David White and Mr Mac McKane appeared in person.

Leave was given for Ms Jean Lucas, of 21 Parvo Street, Belmont, to make a brief submission, despite not being an original objector to the application and Mr Ian McGrath, a Vietnam War Veteran with responsibilities in relation to the Korean War Memorial in Rippleside Park, was given leave to make submissions and to cross-examine witnesses.

REASONS

INTRODUCTION

This was an application that focussed primarily on the issue of views, traffic and parking. In relation to views and as will become clear in due course, this was a battle fought and lost with the gazettal of Amendment R245 to the Greater Geelong Planning Scheme.

The Rippleside Shipyard which is the subject of this application for review occupies a 2.8 hectare parcel of reclaimed land that extends out from the escarpment or cliff below Balmoral Crescent and between the beaches of St Helen's Park to the north and Rippleside Park to the south.

The site is some 4.5km north of the Geelong Central Business District 500m east of the Princes Highway (Geelong Road) and the North Geelong shopping strip and 750m from the North Geelong Railway Station.

With the advent of the shipyards in the 1950s the 11 large, clifftop residential allotments on the southern side of Balmoral Crescent gained a new element in their already extensive range of coastal and seaviews. That is to say they gained views to the shipyards and to the reclaimed land below and with that, views to the yard's industrial style buildings, its slipway and perhaps most particularly its associated jetty now used – and still to be used – by the Port of Geelong's tug boats.

In recent years a number of the residential allotments across the clifftop have been redeveloped, going invariably from one to two storey in height. To varying degrees, the clifftop dwellings – the new ones in particular – have been designed to take advantage of the views albeit, at the same time, having to have regard to the exposed nature of their clifftop location.

We made a very detailed inspection of the Balmoral Crescent dwellings, including three on the western or landward side of the road. We have to acknowledge that in the case of the clifftop dwellings and Mr Jager's property on the corner of Balmoral Crescent and Liverpool Street, views from these properties are indeed delightful.

In the 1990s the Port of Geelong Authority determined that the shipyard, other than as a berth for its tug boats, was surplus to its needs. The land and jetty have been sold to the permit applicant. The permit applicant has also obtained a lease over the Crown land of the seabed under the jetty. The resultant site, which is the subject of this application, includes these elements as well as the foreshore over which a walkway linking Rippleside and St Helen's beaches is to be constructed, and adjacent to which a boat harbour and marina are to be introduced.

Following the gazettal of Amendment R245 to the Greater Geelong Planning Scheme - and an extensive Panel and Advisory Committee Hearing in relation to that amendment - the permit applicant's land, other than the jetty which is retained in its former Special Use Port Zone and the coastal foreshore which is zoned Public Park and Recreation, has been re-zoned from Special Use – Ports to a Comprehensive Development Zone (CDZ). An Environmental Audit overlay

also covers the land. The applicable CDZ schedule is Schedule 2 entitled Rippleside Comprehensive Development Plan (CDP). The stated purpose of the schedule is as follows:

To facilitate the use, development and design of an urban environment that complements and enhances the area and provides linkages with the surrounding residential, community and open space networks.

To provide for residential, recreational and boating facilities and activities in conjunction with small scale commercial and tourism development.

To provide for the integrated subdivision and redevelopment of the Rippleside Shipyard generally in accordance with the Rippleside Comprehensive Development Plan.

To provide for development that is sympathetic to the surrounding residential and recreational environment, utilising the waterfront location and harbour infrastructure.

The permit application was lodged with the Greater Geelong City Council in May 2004. Following the giving of notice of the application 100 objections and 65 submissions in support of the application were received. The application was referred to a number of external agencies or authorities, including VicRoads, the EPA, the Department of Sustainability and Environment, Parks Victoria and the Victorian Regional Channels Authority. None of these bodies objected to the application. The DSE has also provided consent for the development under the *Coastal Management Act 1995*.

Because the Council failed to decide the application within the prescribed time the permit applicant made application to this Tribunal under Section 79 of the *Planning and Environment Act 1987* (the Act). It now falls to this Tribunal to decide the application, standing as it does in the shoes of the Responsible Authority.

PROPOSAL

The permit application seeks approval for an integrated residential development comprising some 178 apartments and townhouse or terrace style dwellings within discrete building clusters or rows. Each cluster or row has been designed by one of three well known and respected architectural firms. The buildings range in height between two and four levels over ground or semi-basement car parking. A small convenience shop and café would occupy part of one of the buildings, Building H.

The buildings are overtly contemporary in design exhibiting mostly flat roofs with generous eaves, although some pitched elements are incorporated. A varied palette of external materials is used including moulded, coloured and textured finish pre-cast concrete, metal and timber cladding, other light-weight cladding, timber louvred screens and face brickwork. Despite being designed by three different architectural firms the architects have collaborated to produce buildings or clusters that are respectful of each other, enabling we think, diversity without monotony.

The buildings are arranged in groups around open space plazas of a primarily pedestrian nature as well as along shared pedestrian and motor vehicle access courts. For the most part the latter extend at right angles from a principal access spine that runs north-south along the base of the escarpment.

It is also proposed that the coastal edge of the reclaimed former shipyard land will be further reclaimed to provide a public walkway within a reserve ranging in width between 20.4m and 10.9m linking St Helen's Park beach to the north with Rippleside Park beach and the city to the south. Part of this walkway system would enclose a small boat harbour at the northern end of the site. At this point the walkway would narrow to make way for an openable pedestrian bridge enabling small boat access into the northern boat harbour.

The existing jetty would be modified to accommodate a marina which, not including the 13 berths in the northern boat harbour, would provide berths for up to 160 vessels. Of these, 20% (32) would be available to the public – a requirement of the Department of Sustainability and Environment.

The development as a whole would comprise 22 one bedroom dwellings, 51 two bedroom dwellings and 105 three or more bedroom dwellings. A total of 389 car spaces are proposed to be provided on the site with 292 to be allocated to residents. The remaining 97 would be variously available for residents visitors, marina users and convenience shops/café patrons. It was Mr Hunt's evidence that Building H, which can accommodate 125 car spaces will include a pool of 75 spaces to be made available for public use – including for marina and café users and resident visitors.

The development will necessitate a re-engineering of parts of the escarpment in order to stabilise its slope which according to the geotechnical evidence shows signs of surface instability but no sign of global instability. The survey plan submitted with the application shows the clifftop having an average height of 14.7 AHD – decreasing towards the south and with the clifftop dwellings having their ground floor ranging between 16.2 and 15.4 AHD. Mr Roder's at the southern end being 13.3 AHD.

The general height of the proposed development is about 13.5 AHD although within each attached row of dwellings and between one row or terrace and another, the height of the buildings step up and down thereby breaking their uniformity and giving interest or articulation to the structures. The lowest elements are at 10.7 and 11.5 AHD closest to the foreshore. The highest structure is Building H, located in the south-west corner of the site where the cliff has been excavated back, in line with Balmoral Crescent. Building H ranges between 16.5 and 15.8 AHD with elements at 10 and 13.5 AHD.

ISSUES FOR CONSIDERATION

Having regard to the submissions and evidence presented to us, the principal questions for us to decide in this proceeding are whether, having regard to the relevant planning controls and guidelines, the development will cause an unreasonable loss of views for residents of Balmoral Crescent or will generate unreasonable

levels of traffic and spillover parking in nearby residential streets or in Rippleside Park. The latter contains a popular restaurant, a popular adventure playground and other well used community facilities, as well as a Korean War Memorial. A curvilinear road extends across the park, linking Bell Parade to the south with Liverpool Street. The sole vehicular access into the shipyard, is via an extension at the eastern end of Liverpool Street near the entry to Balmoral Crescent. This road also provides access to one of Rippleside Park's public car parking areas.

THE COUNCIL'S DECISION

As provided for at Section 84(1) of the Act the Council, despite lodgement of the failure review, considered the application at its meeting in November 2004. Consistent with its officer's recommendations it decided it would have granted a permit subject to conditions that, among other things, required the deletion of the top or fourth level of Building H so as not to exceed 13.5 AHD, required a right turn ban at Liverpool Street to prevent access into Balmoral Crescent and deleted all rooftop terraces.

As noted at paragraph 26 of Mr Nelson's written submission the Planning officer also recommended construction of a new road reserve at the western end of Rippleside Park to connect Liverpool Street and Bell Parade, as well as the signalisation of that new road with Bell Parade. Among other things this could have impacted on the Korean War Memorial and would result in a loss of parkland.

The Council reframed this condition to something more open ended, requiring the permit holder to make amendments and contributions to road facilities to accommodate traffic requirements resulting from the development. It also resolved that the nature of those amendments should be informed by a detailed community consultation.

At the hearing Mr Nelson advised that his most recent instructions were that the Responsible Authority would not support any modification to the road network which saw further encroachments into Rippleside Park and specifically would not countenance a new road reserve, whether at the western extremity of the park or elsewhere. As became clear during the hearing, the permit applicant does not support any changes to the road in Rippleside Park either. Instead it has approached VicRoads with a view to modifying the Geelong Road entry into Liverpool Street to include a left turn in – in addition to an existing left turn out – and to introduce a new U-turn in Geelong Road at Bell Parade. The latter would enable left turn vehicles exiting Liverpool Street to then head north away from Geelong. Mr Nelson's instructions in relation to this change of road layout were that the Council now sought the full signalisation of the Liverpool Street/Geelong Road intersection. This however has been rejected by VicRoads as being unwarranted and likely to slow traffic movements on what is otherwise a major arterial road.

Also contrary to its officer's recommendations the Responsible Authority decided to include an additional condition aimed at further reducing the built form mass of the proposed development. The condition requires amended plans showing:

The terracing of the development from the western boundary of the property (escarpment) to the water's edge generally in accordance with the adopted Rippleside Urban Design Guidelines.

ESTABLISHING A BENCHMARK FOR VIEW SHARING

Before setting out our conclusions in relation to the impact on views and on the other matters in contention, we think it necessary to first establish what Mr Cook termed the appropriate *benchmark* or reasonable expectation for views on the part of the Balmoral Crescent residents. To this end we turn first to the applicable Planning Scheme context. In doing so we should say also that our focus will be on the Comprehensive Development Zone provisions. To varying degrees permission is also required for aspects of the proposal development by virtue of the Special Use and Public Park and Recreation Zone provisions. These however were not aired to any significant extent before us and we see little value in referring to them.

The Comprehensive Development Zone at Clause 37.02-4 of the Scheme provides that a permit is required to construct buildings and works unless a schedule to the zone specifies otherwise – which is not the case here. It also provides that any *requirement* in the Schedule must be met.

Relevantly, as stressed by Mr Finanzio, the clause goes on to provide that an application for buildings and works is exempt from the third party notice and review rights of the Act if the application is *generally consistent* with the Rippleside Comprehensive Development Plan (CDP), which is an incorporated document of the Scheme.

We agree with Mr Finanzio that an implication arising from this is that if the proposal before us had adopted the exact heights, setbacks and envelopes shown on the CDP, or had even not quite exactly adopted them but was *generally consistent* with them, the respondent objectors in this proceeding - to the extent that they sought to argue an unreasonable loss of views – would have been denied the opportunity to present that argument to us, unless perhaps called to give evidence by the Responsible Authority. Authority for this proposition is set out in a number of Tribunal decisions. The most recent is a decision of Deputy President Gibson in *West Valentine Pty Ltd v Stonnington City Council* [2005] VCAT 243 (9 February 2005).

As it happens Building H is not being put forward by the proponent as being *generally consistent* with the Comprehensive Development Plan. The CDP refers to heights of around 13.5 AHD with discrete elements of 12.7 and 11.8 AHD. As noted already the application plans show the building extending to 16.5 AHD with elements at 15.8, 13.5 and even 10 AHD.

The remainder of the development, in terms of height, setbacks and envelopes is, we accept, generally consistent with the Comprehensive Development Plan,

adopting, as we do, the reasoning of the Tribunal in the various cases referred to us by the parties. Indeed it was not really suggested to us that the development, apart from Building H, was not otherwise generally consistent with the Comprehensive Development Plan.

We have not chosen to make a finding - and neither were we asked to as to the right of the respondent objectors to have made submissions to us in relation to their views over those parts of the development that are *generally consistent with* the Comprehensive Development Plan. We do however accept the argument put by Mr Finanzio that considerable weight should be given to the Comprehensive Development Plan envelopes as a primary measure or benchmark for determining the extent of built form that the respondent objectors should reasonably expect to have constructed within the *view shed* of their dwellings.

COMPLIANCE WITH THE GUIDELINES AND THE CDP

We now go to the Schedule to the Comprehensive Development Zone. We have noted already that despite being able to the Schedule does not exclude, the construction of any particular type of building or work from the need for a permit under Clause 37.02-4. Indeed somewhat repetitively, the Schedule restates the primary zone provision that a permit is required for all buildings and works – excluding of course the as of right development listed at Clause 62.02.

As provided for in the primary zone control the Schedule also sets out *requirements* which, as we have again already noted, *must be met*. In relation to buildings and works, one requirement is that all buildings and works must be *generally in accordance* with the Rippleside Comprehensive Development Plan and the Rippleside Urban Design Guidelines (UDG), to the satisfaction of the Responsible Authority. The latter is also an incorporated document in the Scheme.

Among other things the Schedule includes requirements for a Section 173 agreement in relation to roads and a pedestrian link, a requirement for a site history interpretation proposal and for an Environmental Management Plan. Relevantly for the issues in this proceeding, the Schedule also contains requirements in relation to the Rippleside Urban Design Guidelines and the height *for any particular site* as shown on the Comprehensive Development Plan.

In relation to the Urban Design Guidelines and notwithstanding the other requirement to be *generally in accordance* with them and the CDP, the Schedule goes on to require that:

The construction of any building or the carrying out of any works or the subdivision of the land must be undertaken in accordance with the Rippleside Urban Design Guidelines incorporated into this Planning Scheme. (Emphasis added)

In relation to building height the Schedule provides:

Except with a permit, the height of any building must not exceed the height above the Australian Height Datum for any particular site as shown on the

Rippleside Comprehensive Development Plan incorporated into this Planning Scheme.

It was contended by the respondent parties – in relation to the Rippleside Urban Design Guidelines – that the requirement for a development to be *in accordance with* the guidelines is a stronger or higher order requirement than one seeking general accordance or general compliance. To this end it was their submission, in effect, that every aspect or matter or suggestion in the guidelines would need to be met if a permit was to be granted by this Tribunal.

We accept that on its face or in isolation the direction to be *in accordance* is a higher order test or direction than *general accordance* or *general compliance*. However, we agree with Mr Finanzio – and as pointed out also by Mr Whitney – that it is necessary to take account of the fact that the document, which the development is required to be in accordance with is in fact a set of guidelines and not rules or regulations. That is to say, and as stated in the introduction to the guidelines, the purpose of the guidelines is to *guide* the development of the former shipyards and to *assist* the Responsible Authority in determining the application. It is not to confine or limit the development or to direct the Responsible Authority.

By definition guidelines are not rules. Rather, the guidelines in this case set out a recommended design framework based on strategic considerations and go on to include objectives and more detailed suggestions to meet those objectives. Indeed in some ways, to apply the objectors' interpretation would result in inconsistency between elements of the guidelines. For example Ms Hansen suggested that in order to maintain views the guidelines must be interpreted as requiring single storey development at the water's edge. This would be inconsistent with the guideline at page 26 which refer to a development outcome that comprises inner urban dwelling types such as townhouses and apartments *in two to four storey terrace forms, achieving higher densities and a resultant sense of vitality*.

That said, we have not been able to be persuaded in any case that in respect of the references in the guidelines to; stepping the buildings down towards the foreshore, incorporating slots and providing a combination of longer and closer water views for everyone - which were the principal areas of alleged non-compliance - the proposed development is other than *in accordance with* the guidelines.

In coming to this conclusion we accept Mr Finanzio's contention that the orange and yellow coloured blocks on the plan at page 23 of the guidelines are intended to represent the CDP envelopes, with the higher structures – for which a permit would be required - represented in red.

In their cross-examination of the proponents' planning and design witnesses, Mr McMullen and Ms Hansen sought to suggest that the guidelines must be read and applied as requiring a further cutting back of the built form envelope depicted on the Comprehensive Development Plan, in order to achieve the stepping down, slots and views for everyone referred to in the guidelines and as illustrated at pages 23, 26 and 30. The inference was that the Comprehensive Development Plan on its own did not provide for these things meaning that a role for the guidelines was to cut back the CDP envelope to achieve the slots, stepping and views referred to.

Taken together however the evidence of the design and planning witnesses was that the Comprehensive Development Plan does provide for slots, does provide for close and longer views for everyone – depending on one's definition of close – does provide for stepping and, even more to the point, would provide for greater stepping and a sense of slots if permission was granted to exceed the Comprehensive Development Plan envelopes within the location coloured red at page 23 of the guidelines.

We think there is a logic in Mr Finanzio's approach to the interpretation of the relationship between the Comprehensive Development Plan and the guidelines which was missed by the respondent parties. This approach also gives meaning, as we have noted already, to the lack of third party notice and review rights in relation to development that is *generally consistent* with the Comprehensive Development Plan. By reinstating these rights in relation to development that exceeds the Comprehensive Development Plan heights the CDP can be taken as establishing a benchmark for views, slots and stepping down, among other things.

We are not saying here that if a development closely follows the Comprehensive Development Plan envelope a permit should automatically issue. There is still plenty for the guidelines to do. However, in the absence of an argument about views, the need for third party involvement is less direct. The focus becomes more on making the development work for itself, its future occupants and the community at large.

In any case the development before us requires a permit to exceed the Comprehensive Development Plan heights as well as a permit for the buildings and works as a whole. Permission is also required under the Comprehensive Development Zone

provisions to use the land both for a convenience shop and more particularly, having regard to the issues in this case, for more than 98 dwellings – 98 being the *as of right* limit for dwellings in Section 1 of the Schedule's Table of Uses. For anything beyond 98 dwellings a permit is required for *use* as opposed to simply buildings and works.

In relation to the convenience shop use, a permit is required by virtue of it being in a different, although not significantly different location, to that shown on the Comprehensive Development Plan. We record here that little or no concern was expressed in relation to the convenience shop's location.

By contrast, the increase in dwelling numbers was hotly contested, both in relation to its consequences for building bulk and therefore views, and in relation to parking and traffic generation.

On the matter of car parking the number of spaces exceeds that required under Clause 52.06 of the Scheme for the dwellings and convenience shop. Clause 52.06 makes no specific requirement for a marina - other than that provision be made to the satisfaction of the Responsible Authority. It was the evidence of Mr Hunt that the development can provide parking at a ratio of 0.5 car spaces per publicly available marina berth ie 16 car spaces. The adequacy of this ratio was questioned by the respondent parties. We think however that this was *put to bed* by the fact that the ratio equates with that set out in the applicant and recently reviewed Australian Standard. We also note that a marina can be distinguished from a yacht club which would appear to be the model from which the respondent objectors drew their conclusions in relation to adequacy of the marina parking.

Greater issue was taken with the *robustness* of the non-resident parking to cater to changing demands into the future. The concern was that if residents of the development failed to utilise their own private berth and either transferred them into public use or leased them privately, the demand for public parking at a ratio of 0.5 spaces per berth would increase. The Department of Sustainability and Environment had required that at least 20% of the marina berths be made available for public use. However the Department did not proposed an upper limit.

Having described the principal issues and contention in this proceeding we now turn to our conclusions in respect of each, commencing with that of views.

VIEWS FROM NEARBY DWELLINGS

We have already acknowledged that in terms of views the residents of Balmoral Crescent currently enjoy magnificent and extensive views. In all cases these include at least 90° and often wider angle views of the coastal horizon comprising Point Henry, and beyond that the Bellarine Peninsula to one side and Points Liliias and Wilson to the other.

To the front of these there are the broad, middle distant water views of Corio Bay and its associated shipping channel. These water views terminate to the south at the

City foreshore with its buildings, jetties and botanic garden and to the north at the Alcoa complex.

Closer still most dwellings have a view to the tug boat jetty and to varying degrees, to the reclaimed shipyard land, its scattered vegetation, industrial buildings and the timber *dolphins* marking the edge to the slipway.

In all respects views to the shipyard's current water's edge would be lost by the proposed development. Depending also on a viewer's position in relation to the *slots* between the proposed buildings and the open space or gaps at the foreshore, some residents would still maintain a view to elements of the retained jetty and/or its tugs or to the arms of the proposed outer marina pontoon.

Except for Ms Simmons and Messrs Jager and Alford on the west side of Balmoral Crescent, all will maintain their horizon views plus a not insubstantial strip of middle water views including (except for Mr Roder), the city skyline - where this can be seen at present.

The Urban Design Guidelines document is divided into three parts; Context Analysis, Urban Design Framework and Detailed Guidelines. In the section, Detailed Guidelines, it is stated that these address issues of detailed design within the parameters established by the urban design framework and are directed towards ensuring that any development does not have unreasonable detrimental impacts on the surrounding community, will be functional and safe, is of a high urban and architectural quality and addresses existing site conditions. We regard this section of the guidelines as the most specific as it adopts more of the schema of a planning code. That is, it incorporates objectives and then guidelines directed towards meeting those objectives. The other sections of the document, whilst also including specific suggestions can be described as more of an analysis or design framework that underpins the more detailed suggestions.

In relation to the detailed design guideline entitled *interface issues: views*, the objective at page 30 is:

To ensure a reasonable sharing of views of Corio Bay between existing and new dwellings.

The specific guidelines in relation to this objective are:

- G2.1 Allow views of the majority of Corio Bay from the eastern face of the dwellings of the residential properties above the site.
- G2.3(sic) Design the built form to offer framed water views from all residential properties adjoining the site to the west.

It is our conclusion that with the exception of Building H, the proposed development achieves the objective and accords with the guidelines as well as the CPD. If one was to be extremely technical, and having regard to the View Impact Analysis 2004 document prepared by Orbit Solutions, a *majority* of Corio Bay will remain in view. We accept however, as demonstrated by Mr Moles' analysis, that in a true visual sense, ie what you see, the Bay view is foreshortened when seen at the viewing angle of the clifftop. However, as confirmed by our inspection, the significant views from these dwellings are not confined to the one or two frames

per dwelling provided by either Mr Moles or Mr Goss' analyses. By moving one's head and moving around the dwellings in question the views that remain will be, on any measure, extensive. We acknowledge that they constitute a substantial change from what exists now but for the most part this change is the inevitable outcome of Amendment R245.

In relation to Building H we agree with the Council and with Mr Cook that this building requires amendment. We prefer Mr Cook's solution of stepping the building down towards the park as opposed to the Council Officer's suggestion of removing the entire fourth floor. In relation to Mr Roder's dwelling at No. 5 Balmoral Crescent the stepping down will maintain more of his outlook to the CBD which is otherwise cut off by the originally proposed design. In relation to Mr Jaeger's dwelling at the corner of Liverpool Street opposite the park, it will maintain a better quality of sea view from his first floor living room balcony. In the latter case we also note that the change provides a better response in relation to the detailed guideline, interface issue for *visual appearance*, at page 31, which has as an objective:

To integrate the development layout with the neighbourhood and abutting development.

In relation to views from Ms Simmons and Mr Alford's properties on the west side of Balmoral Crescent, we find their existing views to be primarily fortuitous having regard to their *second tier back* location from the park and clifftop.

We are not persuaded that the guidelines have been drafted to maintain these fortuitous views. Indeed, having regard to the built form block diagram at page 23 of the guidelines, we believe a higher built form could reasonably be expected at this corner.

We also agree with Messrs Cook and Hutson that a building to 13.5 AHD, which is what would be required to preserve those views, would fail to *integrate with the neighbourhood and abutting development* as required in the detailed guideline for visual appearance. Such a structure would be too diminutive in the streetscape. Indeed it would barely protrude above the existing street level which is at 12.1 AHD.

Before leaving the issue of residential views we need to refer to the impacts of landscaping and roof terraces. We deal with roof terraces under the heading *views* although there was some suggestion that the roof terraces could also have privacy implications. To deal briefly with this latter issue, the distances are so much in excess of the 9.0m ResCode standard that we consider an argument in relation to privacy to be unsustainable. This is especially so given the existing levels of viewing between the clifftop residences.

In relation to view blocking by roof terraces, we note first of all that not all of the building groups have such features on their roofs. None are proposed for Buildings C, E, G, J(1, 2, 3) and H5. Buildings A and B have them fairly consistently across their roofline and in relation to the other building groups, they are distributed more randomly. The closest a rooftop terrace comes to any dwelling are those on Building A which are at 24m and more from the Abikhair

dwelling at No. 29 Balmoral Crescent through to the Cliftons at No. 25. The decks are all below the level of the escarpment and in the case of Building A are cut into the roofline with the roof sheeting in effect providing a 1m balustrade. As a result of an agreement between the applicant and Bencorp Pty Ltd (owners of No. 21 Balmoral Crescent) a permit condition would prevent the construction of any structure such as sails or pergolas without the permission of the council.

The visibility of furniture and people upon the terraces may add a degree of vitality, compared to passive views of roof and sea. which may or may not be welcomed by observers from the clifftop above. However, the fracturing of the roof to sea interface is certainly within the parameters of the guidelines. We have not been able to be persuaded that these rooftop terraces would have so dramatic an effect on views from the cliff top dwellings as to warrant their deletion, especially given the benefit to the residents of the proposed dwellings who otherwise will have only limited access to private outdoor open space.

The effect of landscaping on views is more problematic. The detailed guidelines at G16, referring to the *quality* of the development outcome in relation to soft landscape and character, has as its objective at page 44:

To ensure an attractive, distinctive, cohesive, legible and comfortable public realm.

To provide an attractive edge to the development when viewed from surrounding properties, parks and Corio Bay.

The associated guidelines seem directed primarily towards ensuring a variety of landscape characters across the site. Almost without exception the guidelines refer to trees with a height and canopy width of 6 to 10m. Mr Blyton's landscape plan suggests the use in some places of trees having a height at maturity of 15 to 20m, in the case of the Lemon Scented Gums (*Corymbia Citriodora*) and 25m in the case of the Hoop Pines (*Araucaria Cunninghamii*).

It was submitted by Mr McMullen in particular that these trees would further block or break-up his clients' clifftop views – in particular the row of *Corymbia* to the rear or landward side of Building B, but also the rows of Hoop Pines proposed within the park adjacent to the access road and along the pedestrian path near to the corner of Building D.

It was Mr Blyton's evidence that these species, the *Corymbia* in particular have a very open and lightweight structure and would rise above not only the roofline of the proposed buildings but above the horizon line of the Balmoral Crescent residents' views. In their case this would allow for views of the sea to be framed and enhanced, in effect giving an added natural element to their outlook. By comparison, trees with a canopy height and width of 6 to 10m would block or fill in the *slots* required to be provided between the buildings to enable view variation. At the same time such trees would have the effect of shading the public areas, blocking the outlook from the proposed dwellings and giving the development a more horizontal form rather than one punctuated by higher elements – an outcome specifically recommended by the guidelines.

Having studied examples of the trees in question at coastal locations on the Mornington Peninsula, as well as the similarly open structured – although not as narrow canopied Eucalypts within Rippleside Park, we accept the evidence of Mr Blyton that a more open structured, tall and narrow canopied tree species is to be preferred. In respect to Mr McMullen’s submissions about the wall effect in relation to the closest specimens proposed to the rear of Building B we accept the further suggestion by Mr Blyton that the spacing between these trees could be increased with no loss of landscape quality but with less of a veiling effect on sea views.

We accept also that care will need to be taken in relation to the species selected for the escarpment. We agree that it is important that the mature height of the specimens not be significantly higher than the clifftop.

VIEWS FROM THE PUBLIC REALM

It was suggested by the Rippleside Park Action Group members in particular – but also by Ms Hansen – that by virtue of its height and arrangement across the site the development fails to achieve the outcome sought at Detailed Design Guideline G3 Interface Issues – Visual Appearance (page 31). The objective to integrate with the neighbourhood and abutting development has already been set out. Other objectives are:

To ensure an appropriate interface with adjoining public spaces and attract the public into the development.

To enhance views towards the site.

Among the relevant guidelines associated with these objectives are the following:

G3.1 Articulate the building and eave lines of each dwelling to break-up the building mass into attractive and interesting facades by creating areas of light and shade, avoiding uninteresting blank facades.

G3.2 Vary the building height to reflect the underlying land form and create an interesting skyline.

G3.4 Use landscape where appropriate to soften its visual impact.

G3.5 Design the buildings adjacent to Balmoral Crescent with regard to the existing built character of the street, maintaining the predominant scale and setbacks of the existing residential dwellings from the street.

G3.6 Views into the site from the bay and both parks should be visually interesting and enhance the experience of these environments.

We are entirely persuaded, especially with the added stepping of Building H, proposed by Mr Cook, that the development represents an admirable outcome in relation to these objectives and guidelines. In relation to its response to the site topography, a matter pressed by Ms Hansen, and in relation to views from the nearby parks, jetties etc, we think Mr Goss’ animation and his other visual aids were proof enough of this. So too was Mr Moles’ *blow-up* of the Orbit montage showing the development from the south. It is clear that the guidelines envisage a very different built form character for this site compared to that which exists at the top of the escarpment and along Liverpool Street. The height of the development,

viewed from the south, sits very well against the scale of structures in Liverpool Street – especially with the Cook changes to Building H.

While the topography of the escarpment will be more pronounced within views from the north, we are nevertheless persuaded, from our reading of the plans and montages, that the escarpment will be legible also from the south. The primary view opportunity will be along the spine road towards the base of the escarpment. The retained views of the clifftop dwellings will further reinforce this topographic difference and add to the desired outcome of a development that steps down towards the foreshore.

PARKING

We now turn to the issue of parking. The principal criticism was that of the provision made for marina users. We have already said we accept the ratio in the relevant Australian Standard and acknowledge a difference between a marina and a yacht club in terms of parking generation characteristics. The marina, although it will be required to provide sewer pump out, power, water and fire protection facilities, it will not include maintenance facilities or other services. Neither will it be a venue for races or other events and functions.

It was the evidence of Mr Hunt that the pool of 75 non-resident spaces – to be located within Building H at the entry to the development and opposite the parkland - is sufficient to allow for future changes to the balance between public and private marina berths. Applying his empirical assessment of visitor parking associated with the dwellings (a ratio of 0.12 per dwelling compared with the ResCode standard of 0.2 per dwelling) a pool of 76 spaces for other visitors is left over. If six are allocated to the convenience shop/café (based on his empirical analysis also) then at a ratio of 0.5 spaces per berth, up to 140 berths could ultimately be transferred to public use. Even at a more conservative level, using the ResCode visitor standard of 0.2 spaces per dwelling and adopting 292 car spaces for residents (which is in excess in any case of the ResCode provision) a pool of 61 public spaces results. With six allocated to the convenience shop and café this would leave 55 for the marina which at 0.5 spaces per berth gives an upper limit of 110 marina berths for public usage.

We think on any measure the provision for parking is robust and sustainable into the longer term. It is certainly sufficient for the currently intended use of 32 public berths. We are also persuaded that it is most unlikely to result in any spillover car parking into the adjacent parkland. Indeed we think it likely to prove the other way round. We nevertheless accept Mr Hunt's evidence that it will be important for there to be a condition on permit requiring a car parking management plan and intend to provide for such.

TRAFFIC

In relation to traffic management, the concern expressed by the respondent objectors was that the proposed development constituted an almost 100% increase in household numbers over and above that of the existing Rippleside neighbourhood bounded by Balmoral Crescent, Victoria Street, Geelong Road and Liverpool Street. In their submission parts of this neighbourhood already

suffer unacceptable levels of through traffic – Balmoral Crescent in particular. By constituting an almost 70% increase in the number of households permitted *as of right* within the zone the proposed development must, it was submitted, result in excessive levels of vehicle movement on local streets – including along the Rippleside Park road – to the detriment of local amenity and safety, especially adjacent to the adventure playground in the park.

The Detailed Guideline G4, at page 32 of the Guidelines refers to the interface issues: *traffic* and has as its objectives:

To avoid parking and traffic difficulties in the neighbourhood.

To minimise potential impacts on existing traffic network.

The guidelines relevant to these objectives are as follows:

- G4.1 Provide sufficient car parking to meet the needs of the development entirely within the site (ref G6 car parking).
- G4.2 Install measures to discourage traffic accessing the site from using Balmoral Crescent, such as traffic calming mechanisms and directional signs, following the development of a shared vision for the area in conjunction with the Council and community.
- G4.3 Design vehicle access arrangements into the site to minimise conflicts with vehicles accessing the Rippleside car park and people walking between the park and development.

The evidence of Mr Hunt was to the effect that the proposed development could be anticipated to result in a net increase of 216 vehicle movements per hour during the morning and afternoon commuter peak and total daily increases of 1,900 vehicle movements per day. In coming to these conclusions Mr Hunt had adopted what can only be described as a very conservative estimation of vehicle movements associated with these dwellings. He adopted a figure of 10 vehicle movements per dwelling per day which can be compared with the VicCode 2 (predecessor of the Good Design Code and ResCode) suggested ratio of six to seven vehicle trips per day for townhouses and apartments. Ten vehicle movements per dwelling for a development that includes one and two bedroom dwellings with only one car space allocated to them is conservative indeed. It is almost 50% in excess of the VicCode 2 range.

We find it relevant to have regard also to the fact that the proposed development does not include the office component which the Comprehensive Development Plan otherwise makes provision for. The Comprehensive Development Zone provides for an office component within the development of up to 1,000 sq m *as of right*. It also provides for a restaurant of up to 200 sq m. It had been the advice of Mr Hunt, relayed via Mr Bissett to the Council's Planning Committee Meeting, that the likely equivalent traffic generation figure associated with offices, and a restaurant of this magnitude would equate to 44 dwellings. Added to the 98 *as of right* dwellings this gives rise to traffic levels equivalent to 142 dwellings, adopting the conservative rate of 10 trips per dwelling.

Having regard to Mr Hunt's evidence as to the environmental capacity of Rippleside's local road network, including the Rippleside Park road we are more than satisfied that the proposed development will not constitute an unreasonable impost. The right turn ban out of the site to prevent north bound movements to Balmoral Crescent will address the Detailed Guideline G4.2 in relation to that street. As for the suggested U-turn at Bell Parade, despite VicRoads' agreement to such a measure we do not believe the evidence in this case supported it. While there may indeed be gaps in the traffic due to traffic light changes at Victoria Street we doubt that the number of persons likely to be turning right warrants such an impost on the otherwise majority of persons likely to be turning left at the Geelong Road/Liverpool Street intersection. Indeed we were not entirely persuaded of the need for a new left turn slip lane from Geelong Road into Liverpool Street. We acknowledge Mr Hunt's observation however that this will be of benefit not just to the subject land but to the Rippleside neighbourhood as a whole.

The application before us is not inextricably linked to the introduction of these traffic management measures. As we stated in the hearing they are works which the Council in conjunction with VicRoads is at liberty to introduce in its capacity as the local municipal council rather than as Responsible Authority under the *Planning and Environment Act*. It is not for this Tribunal to interfere with that role although we take note of the fact that both the Council and the permit applicant would agree to a condition on permit that provided for a contribution towards such works, in the event of the Council deeming them to be necessary.

Similar observations can be made in respect of the Rippleside Park road. In this regard however the evidence pointed to even less need for changes to the Rippleside Park road compared to the Geelong Road/Liverpool Street intersection. It was clear from the submissions of the Rippleside Park Action Group, and of Mr White and Mr McGrath, that considerable anxiety exists in relation to the prospect of introducing a new road through the park. Having regard to the Council's recent resolution in relation to this matter and its instructions to Mr Nelson we think it highly unlikely that such action would be taken. We place it on record however that the evidence in this case demonstrated no warrant for such work.

CONCLUSION

The hearing of this application for review occupied some nine hearing days and a full day of inspections. A considerable amount of the hearing was spent in a meticulous analysis of the report of the Planning and Advisory Committee that considered Amendment R245 to the Greater Geelong Planning Scheme. As noted by Mr Finanzio in his closing submission, it is never appropriate to attempt to read a decision of an earlier Panel or Tribunal as though it were a statute and in any case the Tribunal must principally and fundamentally be concerned with the interpretation and application of the approved planning framework as it now exists within the Planning Scheme. Whatever the panel may have had to say, it is against the resultant provisions of the Scheme that we must assess the proposal. Speculation as to what a Panel may have meant to say is of no assistance.

As we pointed out to Ms Hansen in the course of the hearing the Tribunal would fall into error if, for example, it was to determine that a permit should not be granted because the Comprehensive Development Plan or the Urban Design Guidelines as now incorporated in the Scheme did not reflect the Panel's decision making process.

In any case, having been provided with a detailed review of the Planning Advisory Committee's report we are not persuaded that the proposed development is anything other than entirely consistent with the outcomes recommended by the Panel. Indeed we think we need go no further than the concluding remarks in Mr Finanzio's closing submission where he commended the application to this Tribunal as being thoughtful and thorough in its approach to site planning, as being innovative if not outright extraordinary in its approach to detailed design, and as responding at all levels to the State and Local Planning Policy Framework for a site where everyone accepts, the land needs to be developed. We also agree with him that, having regard to the minutia of the relevant planning guidelines, this proposal *gets a tick in every box*. And to sum up, we accept that above and beyond all of this, the development represents a bold and exciting contribution to the surrounding area and for the Geelong community and is demonstrative of an extensive commitment upon the part of the proponent. In such circumstances we find it appropriate to direct that a permit issue.

Jane Monk
Senior Member

Jeanette Rickards
Member

JSM:RB

**Appendix 4 – VCAT Order – P 980/2012 – Amendment to PP647/2004/A
Refused**

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO.P 980/2012
PERMIT NO. 647/2004/A

APPLICANT	Trendcorp Pty Ltd
RESPONSIBLE AUTHORITY	Greater Geelong City Council
RESPONDENTS	Pam McGrath, Margaret Huber, Helen Lyth, Julie and Raewyn Hansen, Keith and Heather Fagg, Alfred and Susan Hoevenaars, Pam and Greame Hart, Barwon Regional Water Authority
SUBJECT LAND	Rippleside Quay
WHERE HELD	Melbourne
BEFORE	S. R. Cimino, Member
HEARING TYPE	Hearing
DATE OF HEARING	23, 24 and 25 July 2012
DATE OF ORDER	30 January 2013
CITATION	

ORDER

- 1 The application to amend planning permit no. 647/2004/A relating to land known as Rippleside Quay, Liverpool Street, Rippleside is disallowed. The amendments to the permit are refused.

S.R. Cimino
Member

APPEARANCES

For Applicant	Mr S Morris QC, instructed by Minter Ellison Lawyers.
	<u>Witnesses</u>
	Ms S Emons, Planning Consultant, Urbis.
	Mr S Hunt, Traffic Engineer, Cardno.
	Ms L Holt, Real Estate Agent.
	Mr J Jorrison, Senior Coastal Engineer, BMT WBM.
For Responsible Authority	Mr G Tobin, Solicitor, Harwood Andrews Solicitors.
For Barwon Region Water Authority	Mr W Bartley, Solicitor, Russell Kennedy Solicitors.
For Respondents	Ms P McGrath, Ms M Huber and Ms H Lyth appeared in person.

INFORMATION

Description of Proposal	Request to amend permit to allow for subdivision of land into lots and/or super lots replacing multi-storey buildings containing apartment/townhouse style dwellings.
Nature of Proceeding	Application under Section 87A of the <i>Planning and Environment Act</i> 1987.
Zone and Overlays	Comprehensive Development Zone – Schedule 2 [CDZ2] Environmental Audit Overlay
Permit Requirements	Clause 37.02-2: Use of land in CDZ2 Clause 37.02-3: Subdivision of land in CDZ2 Clause 37.02-4: Buildings and works in CDZ2
Relevant Scheme policies and provisions.	10.04, 11, 13.01, 13.03, 15.01, 15.02, 16.01, 21.06, 56 and 65.
Land Description	The land comprises a 2.8 hectare parcel of reclaimed land, located about 3.5 km south of Geelong’s CBD. The land fronts onto the Corio Bay foreshore, stretching from St Helens Park to the north and Rippleside Park to the south. The land is largely vacant with the vast majority of buildings associated with the former shipyards removed
Cases referred to	<u>Trendcorp Pty Ltd v Greater Geelong City Council [2005] VCAT 370</u> <u>City of South Melbourne v Raftopoulos (unreported App no 1989/ 34936</u> <u>Canet v Brimbank CC [2003] VCAT 13</u> <u>Australian Slate-Crete Supplies v Casey CC [2008] VCAT 6</u>
Inspection	24 July 2013

REASONS

- 1 Planning Permit No 647/2004/A was issued in February 2005 at the direction of the tribunal¹ for the use and development of a large parcel of land known as the former Rippleside Shipyard and Pier site for a comprehensive mixed use development. The approved development comprises apartment style dwellings within various buildings, a marina, convenience shop and recreational facility. The approved development, which is based on the '*Rippleside Comprehensive Development Plan, February 2000*' [RCDP] comprises various 'blocks', each of which contain predominantly apartment style dwellings within multi-storey buildings with communal car parking.
- 2 The construction of residential development allowed under the permit has not commenced.
- 3 The owner of the land, Trendcorp Pty Ltd, has lodged this application with the tribunal under Section 87A of the *Planning and Environment Act 1987* seeking to amend the permit. The application seeks amendments to the description of what the permit allows, conditions and endorsed plans. Conceptually, the application filed with the tribunal seeks amendments that will replace the apartment buildings on all but 2 blocks (Buildings A and H which remain as approved) with a series of super lots with each super lot then subdivided into smaller lots suitable for a dwelling.
- 4 The amendments sought represent a fundamental shift in the approach taken by Trendcorp from one involving the redevelopment of several apartment buildings, to one that retains some of the approved apartments, but envisages the majority of the land subdivided into small residential lots capable of being developed by individual lot owners. Trendcorp asserts that the residential product provided under the permit is not financially feasible, demonstrated by the lack of sufficient investment interest despite extensive advertising and promotion². Accordingly, Trendcorp is seeking to amend the development to a form that it suggests would be more in tune with Geelong's residential market.
- 5 The site comprises a 2.8 hectare parcel of reclaimed land, located about 3.5 km south of Geelong's CBD. The land fronts onto the Corio Bay foreshore, stretching from St Helens Park to the north and Rippleside Park to the south. The land is largely vacant with the vast majority of buildings associated with the former shipyards removed. Aside from the demolition of buildings, other works undertaken include the removal of a slipway facility, remediation works to remove contamination, construction of a

¹ Trendcorp Pty Ltd v Greater Geelong City Council [2005] VCAT 370

² These conclusions are reached having regard to the evidence of Ms Holt.

small docking platform and the storage of rocks to be used for the construction of the marina and walkway.

- 6 Most of the land is set on relatively flat terrain to the west of a steep escarpment which runs adjacent to the west boundary. Land to the west, beyond the top of the escarpment, is used and developed for residential purposes, comprising a mix of single and double storey dwellings fronting Balmoral Crescent. Given their elevation, these dwellings offer their residents extensive views across Corio Bay.
- 7 The 2005 tribunal described the proposal for which it ultimately gave its approval as follows:
 11. The permit application seeks approval for an integrated residential development comprising some 178 apartments and townhouse or terrace style dwellings within discrete building clusters or rows. Each cluster or row has been designed by one of three well known and respected architectural firms. The buildings range in height between two and four levels over ground or semi-basement car parking. A small convenience shop and café would occupy part of one of the buildings, Building H.
 12. The buildings are overtly contemporary in design exhibiting mostly flat roofs with generous eaves, although some pitched elements are incorporated. A varied palette of external materials is used including moulded, coloured and textured finish pre-cast concrete, metal and timber cladding, other light-weight cladding, timber louvred screens and face brickwork. Despite being designed by three different architectural firms the architects have collaborated to produce buildings or clusters that are respectful of each other, enabling we think, diversity without monotony.
 13. The buildings are arranged in groups around open space plazas of a primarily pedestrian nature as well as along shared pedestrian and motor vehicle access courts. For the most part the latter extend at right angles from a principal access spine that runs north-south along the base of the escarpment.
- 8 Under the amended proposal submitted with the application, two of the approved residential buildings (Buildings A and H), which contain apartment and multi-level townhouse dwellings, are retained. However, other residential buildings are deleted and replaced with a two stage subdivision process that involves the creation of a number of super lots³, varying in size from 824 square metres⁴ to 2893 square metres⁵, and the subsequent subdivision of each super lot into a smaller lots (all under 300 square metres) capable of being purchased and developed independently. A

³ These are identified as 'Blocks' on 'Concept Massing Plan' by Orbit Architecture, Drawing No A-DA-MP-002B dated 9 March 2012.

⁴ Block B

⁵ Block D

schedule⁶ sets out the minimum and maximum number of lots which can be achieved from each super lot. The schedule also sets out various standards for the subdivision of each super lot including lot frontages varying from 5.5 metres to 9.5 metres in width.

9 Other changes to the permit sought include:

- The footprint and layout of dwellings deleted from the plans and replaced with indicative building blocks;
- The maximum number of dwellings reduced from the permitted 178 down to 124, and
- The inclusion of a condition requiring dwellings to be constructed in accordance with restrictions to set out on a Plan of Subdivision, with plans for individual dwellings to be subject to further approval.

10 The restrictions proposed on the Plan of Subdivision include:

- maximum building heights and minimum floor levels,
- requirements that any new dwellings be generally in accordance with the *Rippleside Urban Design Guidelines 2000*; and
- Materials and finishes of new dwellings to be to the satisfaction of the Responsible Authority.

11 Further, Trendcorp adopts Ms Emon's recommendation that additional restrictions be placed on the Plan of Subdivision to 'strengthen' future design control around detailed siting and design of dwellings. These include the identification of building envelopes on each lot to confirm specific front and rear setbacks, potential encroachments into setbacks as well as design requirements that dwellings display a coastal character, garages integrated with the architectural form and, where applicable, to respond to both front and side streets on corner lots.

12 Some aspects of the approved development are not proposed to be changed in a substantial way. These include building heights, the marina, construction of a walkway along the waterside, elements of the road and open space network and delineation of body corporate and public areas.

13 The planning provisions relating to the subject land were implemented via Amendment C245 to the planning scheme. Under this amendment, the land was rezoned from Special Use – Ports to a Comprehensive Development Zone (CDZ). An Environmental Audit overlay also covers the land. The applicable CDZ schedule is Schedule 2 entitled '*Rippleside Comprehensive Development Plan*'. The stated purpose of the schedule is as follows:

To facilitate the use, development and design of an urban environment that complements and enhances the area and provides linkages with the surrounding residential, community and open space networks.

To provide for residential, recreational and boating facilities and activities in conjunction with small scale commercial and tourism development.

To provide for the integrated subdivision and redevelopment of the Rippleside Shipyard generally in accordance with the Rippleside Comprehensive Development Plan.

To provide for development that is sympathetic to the surrounding residential and recreational environment, utilising the waterfront location and harbour infrastructure.

- 14 Under Clause 37.02-3 to the CDZ, any requirement relating to the subdivision of land in the schedule must be met. Further, under this clause, an application to subdivide land must meet the requirements of Clause 56. In subdivisions of 60 lots or more such as proposed in this case, all the objectives except for the objective specified in clause 56.03-5 must be met.
- 15 Under clause 2.0 of the schedule to the zone, a permit is required to subdivide land and *'any subdivision must be generally in accordance with the Rippleside Comprehensive Development Plan'*. Clause 3.0 of the schedule specifies that a permit is required to construct buildings and works and that they must be *'generally be in accordance with the Rippleside Comprehensive Development Plan and Rippleside Urban Design Guidelines to the satisfaction of the Responsible Authority [RUDG].'* The RCDP and the RUDG are incorporated documents in the planning scheme.
- 16 In considering the merits of the proposed amendments to the permit, it is useful to revisit the conclusions of the tribunal in 2005 when it directed the grant of the permit. Specifically, the tribunal said (at paragraph 91):

In any case, having been provided with a detailed review of the Planning Advisory Committee's report⁷ we are not persuaded that the proposed development is anything other than entirely consistent with the outcomes recommended by the Panel. Indeed we think we need go no further than the concluding remarks in Mr Finanzio's closing submission where he commended the application to this Tribunal as being thoughtful and thorough in its approach to site planning, as being innovative if not outright extraordinary in its approach to detailed design, and as responding at all levels to the State and Local Planning Policy Framework for a site where everyone accepts, the land needs to be developed. We also agree with him that, having regard to the minutia of the relevant planning guidelines, this proposal *gets a tick in every box*. And to sum up, we accept that above and beyond all of this, the development represents a bold and exciting contribution to the surrounding area and for the Geelong community and is demonstrative of an extensive commitment upon the part of the proponent. In such circumstances we find it appropriate to direct that a permit issue

- 17 It is clear that the permit, as it exists, meets the requirements of the scheme, producing an acceptable outcome having regard to planning policy, the provisions of the CDZ, its associated schedule, the RCDP and RUDG.
- 18 Since the grant of the permit, two important matters remain largely unchanged.
- 19 Firstly, there is no dispute between the parties that the subject land continues to present itself as a significant opportunity site suited to accommodating a substantial residential development. The subject land is large and not subject to insurmountable constraints. It is clearly underutilised. It is well located within an existing urban area and offers a unique opportunity for an integrated development that will add to the diversity of housing in Geelong.
- 20 Secondly, it is also clear that there has been no substantive change to the planning scheme to suggest that the redevelopment of the land for intensive residential purposes is no longer appropriate. Ms Emons notes that the statutory provisions in the planning scheme set out in the CDZ and the relevant schedule have not changed. I agree with her assessment that while the MSS and local policies within the planning scheme have been amended since the grant of the permit, by and large, the outcomes envisaged by policy such as protecting the coastline from the impacts of urban development, consolidation of existing urban areas, providing for a mix of housing at a range of densities and community infrastructure remain the unchanged.
- 21 Despite the site's suitability for development and the clear support for this in planning policy, the proposal allowed under the permit granted by the tribunal has not proceeded. Trendcorp submits that in such circumstances, it is appropriate to seek amendments to the permit that would allow it to provide for a residential product suited to Geelong's residential market. In support of the proposition that a staged subdivision which ultimately results in the provision of small lots that could be sold to individuals who would then be able to construct of their choice is appropriate, Trendcorp submits that the proposal represents an equally legitimate model for the development of the site compared to what has been approved.
- 22 Subject to some changes, Ms Emons supports the small lot model and concludes that it delivers the desired 'integrated development' outcome envisaged by the regime of policies and controls that apply to the land. Ms Emons expresses the view that the proposal maintains larger buildings blocks which allow for dwellings to be constructed in locations consistent with the general building zones, footprints and view corridors consistent with the RDCP as well as building heights consistent with those approved by the tribunal.
- 23 Ms Emons also says that the integrated subdivision and redevelopment of the land sought by the purpose of the schedule is achieved by requiring all

dwelling designs be in accordance with the RUDGs so that the built form character evolves in response to a common palette of materials. To bring increased certainty to the form of the amended permit, Ms Emons recommends that the initial lot schedule master plan approach be replaced with '*a defined plan of subdivision that identifies the specific configuration and dimensions of all proposed lots*' as well as further restrictions '*to establish tighter design direction on the siting and design of future dwellings*'. These restrictions include the identification of building envelopes for each lot to confirm setbacks as well as other design parameters.

- 24 The approach which Ms Emons recommends poses problems for Trendcorp. Essentially, the approach results in the land being subdivided into well over 60 small lots suitable for individual dwellings. I accept that the provisions of the RCDP do not restrict the future form of development so as to preclude this type of land subdivision. However, the provisions of the CDZ, at Clause 37.02-3, make it clear that an application to subdivide the land into more than 60 lots must meet all but one of the objectives set out in Clause 56 of the planning scheme.
- 25 Clause 56 sets out a series of objectives and standards to be met with respect to the subdivision of land. Matters to be considered include lot design, lot areas and building envelopes, solar orientation, street orientation, and the provision of public open space. The requirements of Clause 37.02-3 pose problems for the approach advanced by Trendcorp, firstly, because a plan of subdivision which includes the additional restrictions which Ms Emons calls for, such as building envelopes, has not been developed, and secondly, because an assessment demonstrating that the required objectives of Clause 56 are met has not been undertaken.
- 26 It seems to me that it has been assumed that meeting the requirements of the RCDP is enough to demonstrate compliance with Clause 56 or, alternatively, such assessment can be undertaken at a later stage. I do not accept that this is correct. The provisions of Clause 37.02-3 are clear enough. For a permit to be granted, or a permit amended to allow for this form of subdivision, it is necessary to demonstrate that the relevant objectives at Clause 56 are met. Trendcorp has not presented evidence to show that the proposal achieves compliance with clause 56. Further, the permission is sought now for the small lot subdivision. As such, it is not appropriate to demonstrate compliance after the permit is amended.
- 27 This problem could be overcome if I exercise discretion under Clause 62 in schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* to disregard Trendcorp's failure to demonstrate compliance with Clause 56. I could also rely on my own expertise to carry out the assessment. However, neither of these actions is appropriate in this case. Demonstrating compliance with Clause 56 is a fundamental requirement of the planning

scheme and, as such, it is inappropriate to disregard the failure to do so in the case of a major redevelopment like this.

- 28 It is also inappropriate for the tribunal to embark on the task of assessing a major redevelopment proposal independently from the parties. In any event, the task of assessing the subdivision against Clause 56 is made difficult by the absence of important information such as the building envelopes which Ms Emons says should be shown on the plan of subdivision. For example, the objective at Clause 56.04-2 is:

To provide lots with areas and dimensions that enable the appropriate siting and construction of a dwelling, solar access, private open space, vehicle access and parking, water management, easements and the retention of significant vegetation and site features.

- 29 Standard C8 under this objective requires that in cases where lots less than 300 square metres are created, building envelopes assist in defining the location of buildings, how a dwelling addresses the street, setbacks and provides for car parking be specified. This assessment cannot be undertaken in the appropriate way without the building envelope being defined.
- 30 The difficulties which I outline above were raised with Trendcorp at the hearing. After some consideration, Trendcorp now seeks to step away from the final small lot form of the subdivision and instead proposes that the permit be amended to allow for the land to be subdivided into the super lots only, with either the redevelopment of an individual super lot or its further subdivision to be subject to a subsequent planning approvals process. In response to this change, the applicant was also given leave to revisit the permit conditions and for these to be circulated. The Council was given leave to make further submissions about the implications of allowing a super lot subdivision and the suggested conditions.
- 31 Trendcorp submits that this approach is appropriate as the super lots provide for a development form that is generally in accordance with the RCDP. According to Ms Emons, the footprints of these super lots, shown as 'blocks' on the plans, *'are generally in accordance with the building footprint approved pursuant to the current permit both in terms of location, setbacks and maintenance of view lines'*. Further, Ms Emons says that it is not proposed to amend building heights as approved. Trendcorp urges the amendment of the permit to allow for the super lot subdivision to enable the redevelopment of this site to proceed as contemplated by the planning scheme.
- 32 Under the provisions for the CDZ, for subdivision, any requirement in the relevant schedule must be met. The relevant schedule for the subject land requires that any subdivision *'must be generally in accordance'* with the RCDP. The same requirement applies to all buildings and works.
- 33 The question which arises is whether the layout of the proposed super lots is *'generally in accordance'* with the RCDP. The RCDP provides a concept

layout plan for the redevelopment of the subject land. The RDCP sets out the internal street layout, the location of buildings and maximum building height, the use of each building, private open space, the location of courts and parking as well as the location of a waterside link between the parks to the north and south that is to run across the land's foreshore frontage. Although conceptual, the RDCP provides sufficient detail to outline what is contemplated for the subject land

34 On examining the endorsed plans under the permit, it is apparent that the approved development follows the layout shown in the RDCP in a faithful way. Although not identical in every respect with the RDCP, the approved development includes buildings which are positioned and are of a form and shape that can be readily recognised and related to the concept shown on the RDCP as can the layout of internal streets and open spaces.

35 The proposed super lot layout is clearly less faithful to the RDCP. The super lots take on a different form to the building envelopes. They are positioned differently occupying areas intended to be used for access and open space. Areas for access and open space are shown where buildings lie in the RDCP.

36 The term '*generally in accordance*' does not require absolute adherence to a plan. However, as noted by the tribunal in City of South Melbourne v Raftopoulos⁸:

The line between general accordance and with non-general accordance may be hazy in some circumstances, and reasonable people may differ as to the correct classification in some instances.

37 In response to questions on behalf of the Council, Ms Emons agrees that two different professional planners could reach a different view as to whether a proposal is generally in accordance with a plan.

38 In Canet v Brimbank CC⁹, the tribunal came to the conclusion that:

I agree with the Respondent's submission that the authorities establish that the following principles must be applied to determine whether a development is generally in accordance with a permit or plans.

(a) General accordance is a question of fact to be judged on the facts and circumstances of each case, and

(b) The less detail and precision there is in the primary document or documents, the more flexibility is given by the phrase '*generally in accordance with*'.

39 I accept that, conceptually, the proposal provides for a residential development, as envisaged by the RDCP, but ultimately conclude that the degree to which the road and open space layout and super lot position varies from the RDCP goes beyond the notion of '*generally in accordance*'. The

RDCP was developed following an extensive strategic planning process. It has been implemented through the planning scheme. It provides substantial guidance in terms of the layout envisaged for the development of the subject land. The shape, size and location of the proposed super lots bear some, but insufficient relationship with the RCDP. Development will occur in different locations to that shown on the RCDP and the plans currently endorsed under the permit. The internal road layout is altered as are the locations of open space areas.

- 40 Another consequence of repositioning building is the impact on views, a matter of considerable analysis by the tribunal when it granted the permit. While there is nothing specific in the planning scheme itself about the impact of development on views, nonetheless, it is a matter dealt with by the RUDGs. This is relevant given that the provisions of the schedule to the CDZ require buildings and works to be generally in accordance with the RUDGs. Although the change contemplated under this application relates to subdivision and not buildings and works, the decision guidelines at Clause 65.02 require, amongst other things, consideration to be given to the future development of the land that is the subject of the subdivision.
- 41 The approach taken by Trendcorp is that building heights over and above those set out in the RCDP have been approved and, therefore, development at the same height can be relocated without undue problem with respect to the impact on views. Based on the evidence of Ms Emons, Trendcorp contends that the *'essential alignment of view corridors established through the permit'* is preserved. It is difficult to see how this could be so if the position of development is shifted.
- 42 A further matter relates to whether the application results in a transformation of the approved proposal. I accept that the eventual outcome arising from the development of subdivided land, should this application be approved, would be an inner urban type residential environment comprising multi-storey dwellings. However, the permission granted by the permit is largely for development. The development, in terms of the location of buildings, height, appearance, layout of dwellings, car parking and open space are all known factors that underpin the original approval granted by the tribunal. There is a high degree of certainty in terms of what has been approved.
- 43 While two buildings are retained, the application seeks to change the nature of what the permit allows to predominantly subdivision, whether in the form of super lots or small lots as originally envisaged. The development of each lot would be the subject of a separate permission. The form of the development is unknown.
- 44 I see a fundamental difference between a proposal that involves development, with the subsequent subdivision of the development, compared to the subdivision of land, where the development outcome has not been developed and remains unknown. Moreover, this application seeks

to change a substantial part of the development form, from buildings to subdivision, allowed under the permit. The change could be regarded as radical.

- 45 The nature of the changes is so substantial that the form of the permit conditions alters considerably. As it stands, the permit relies on endorsed plans to demonstrate the development for which permission is granted. It is a permit that shows the end product. The change to subdivision, as now proposed, requires the insertion of a suite of new conditions which seek to restrict the development potential on each lot. Buildings are no longer proposed on much of the land with the development form being subject to further permission under the planning scheme. The nature of the permissions is different and this is reflected in the substantial changes and somewhat complex requirements of new permit conditions.
- 46 In Australian Slate-Crete Supplies v Casey CC¹⁰ the tribunal noted that the *'process of amending a permit would stop short of allowing a transformation'*. If amended as proposed by Trendcorp, the permit would not retain significant elements of what it originally allowed with only Buildings A and H remaining. The permit would be transformed from one which allows a building development, to one which is predominantly about subdivision. It is not appropriate to amend the permit in this way.
- 47 The subject land offers a wonderful and unique opportunity for a high quality residential development. There is no doubt that the redevelopment of the land in this way achieves a desirable planning outcome. The permit, as granted by the tribunal, permits a form of development and use that responds appropriately to the land, its context, policy, the CDZ, RCDP and RUDGs.
- 48 For the reasons given above, it is not appropriate to amend the permit, either as originally requested for small lots, or subsequently sought for super lots.
- 49 The application is disallowed. No amendments to the permit are granted.

S.R. Cimino
Member

