

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2909/2010
PERMIT APPLICATION NO. 2010/263

CATCHWORDS

Proposal for building of community hall and associated car parking area; merits appeal, issues of interface with rear reserve and residential neighbour to the east; bushfire risks; permit granted.

APPLICANT

Peter Carey, Jane Carey and Michael Nudelman, Karen Gunter, Beecham and Chris Lloyd and Bronwyn Page

RESPONSIBLE AUTHORITY

Murrindindi Shire Council

PERMIT APPLICANT

Flowerdale Community House

INTERESTED PERSON

Country Fire Authority

SUBJECT LAND

36 Silver Creek Road, Hazeldene

WHERE HELD

Melbourne

BEFORE

Philip Martin, Member

HEARING TYPE

Hearing

DATE OF HEARING

17 December 2010 and 10 January 2011

DATE OF ORDER

24 January 2011

CITATION

Carey v Murrindindi SC [2011] VCAT 76

ORDER

- 1 The decision of the Responsible Authority is affirmed. A permit is granted and directed to be issued in relation to the land at 36 Silver Creek Road, Hazeldene. The permit shall allow the construction and use of a community building and a reduction in car parking, in accordance with the endorsed plans provided for and subject to the permit conditions set out in Annexure to this decision.

Philip Martin
Member

APPEARANCES:

For the Applicant for Review	At the first hearing Ms Karen Gunter and Ms Jane Carey appeared in person. At the second hearing Mr Peter Carey appeared in person.
For the Responsible Authority	At both hearings Council was represented by its officers Ms Claire Gibb and Mr Matt Parsons.
For the Permit Applicant	At both hearings the Permit Applicant was represented by Mr John McCaffrey (planning consultant).
For the CFA	Mr Andrew Andreou appeared initially, then Mr John Boal at the second hearing.

INFORMATION

Description of Proposal	Use and development of a community hall and associated car parking dispensation.
Nature of Proceeding	Section 82 of the <i>Planning and Environment Act</i> 1987 (merits review).
Zone and Overlays	Township Zone.
Permit Requirements	Both the “use” and “development” proposed require a permit under the Township Zone. Car parking dispensation is required pursuant to Clause 52.06 of the Planning Scheme.
Relevant Scheme policies and provisions.	SPPF – Clauses 11.03, 110.5, 13.05, 14.02 and 15.01. LPPF – Clauses 21.09 and 22.03. Also see the Clause 65 general decision making guidelines.
Land Description	The site is located on the north side of Silver Creek Road, has an area of about 0.3 hectares and forms part of a small township located not far from Yea.
Tribunal Inspection	The Tribunal inspected the site and surrounds in between the two hearing dates.

REASONS

[ORAL DECISION WITH MINOR EDITING AND ADDENDUM]

What does this application involve?

- 1 Hazeldene is a small rural town on the north east side of Melbourne, located on the road running from Whittlesea further north up to Yea. The subject land is located at 36 Silver Creek Road. This road runs roughly east-west and the appeal site lies on the north side of the road. Silver Creek Road lies on the western side of the main road running between Whittlesea and Yea further north, with a one-way bridge being located in between.
- 2 The subject land features two lots and it (along with the nearby residential properties in this locality) are zoned Township Zone under the Murrindindi Planning Scheme. There are residential lots on either side of the appeal site, and a scrubby crown reserve area on the far side of the rear boundary associated with the nearby Silver Creek. The overall area of the subject land is about 0.3 hectares. The large Kinglake National Park lies relatively close by, on the western side of Hazeldene.
- 3 It is common ground that the Hazeldene area (along with the Flowerdale township which lies about 8-10 kilometres further north up the main road) was badly burnt in the 7 February 2009 Black Saturday bush fires which led to 173 deaths across the State. I understand that 10 deaths occurred in this locality alone, and that over 200 local dwellings were burnt out (only a handful of local dwellings apparently survived). However there has been significant re-building of dwellings in this township since the Black Saturday bushfires, including along this section of Silver Creek Road. For example, the abutting property to the east of the subject land features a newly re-built dwelling, although the property to the west has been vacant for some time and remains so.
- 4 This bushfire damage included the burning down of the former Hazeldene Community Hall that was previously located in the western section of the subject land. I understand that the eastern section of the subject land was previously used as a playground area.
- 5 It is now proposed that a community group (the Flowerdale Community House) be granted planning approval to re-build a community hall in the western section of the appeal site, along with the associated car parking dispensation. The new hall would be in roughly the same location as the previous one, but with a larger footprint. The previous playground area on the eastern side of the site would instead be used for a dedicated 15 space car parking area, a septic treatment area, and a landscaping area. There would also be a total of four car parking spaces provided for in a front garage and in the front setback area.
- 6 The proposal requires both “use” and “buildings and works” permission under the Township Zone – a community hall is a form of “Place of

assembly” which is a subject-to-permit use in this zone. The Applicant has clarified that it does not rely on the existing use rights, but rather the proposal is being considered afresh. In terms of the other background features of the proposal, I refer to the “Information” section above and Council’s helpful written submission.

- 7 Five objections were received in response to the advertising of the proposal. Council has issued a Notice of Decision to Grant a Permit.
- 8 I understand from the comments of one of the objectors Mr Carey that Council’s degree of support for the proposal might have varied at different times over the period leading up to the point where Council issued its Notice of Decision to Grant a Permit (“NOD”) dated 23 September 2010. As I explained at the 17 December 2010 hearing, there is no value to the Tribunal in back-tracking over what Council’s views might have been at an earlier stage – the Tribunal’s role is simply to deal with the Application for Review and review afresh the proposal supported by Council as at 23 September 2010 ie this is the format which all Tribunal planning hearings of this type follow. Caution is also needed here because even if Council was less supportive of the proposal at an earlier stage, it is possible that some features of the proposal were varied along the way so that the application supported by Council in the NOD is no longer necessarily “apples and apples” with the proposal as it stood earlier on.
- 9 Council’s NOD has been appealed to the Tribunal on a joint basis by the Applicants for Review listed above.
- 10 In the lead up to the scheduled Tribunal hearing on 17 December 2010, the Tribunal received correspondence indicating that there is time pressure associated with the public funding that (if an approval is granted) would be utilised to carry out the relevant buildings and works. In particular, see the statement to this effect in a letter to the Tribunal dated 21 October 2010 from the Victorian Bushfire Reconstruction & Recovery Authority and an equivalent letter of the same date from the Federal Department of Education, Employment and Workplace Relations.
- 11 At the beginning of the Tribunal hearing before me on 17 December 2010, I confirmed that shortly before the hearing the Tribunal received a letter from the objectors Mr and Mrs Carey enclosing a letter dated 3 December 2010 from the Country Fire Authority (“CFA”) expressing concern about the fire risks aspects of the proposal, which the CFA indicated that it did not support. However this is in the context that the subject land presently is not affected by a Wildfire Management Overlay, and hence the CFA is not a formal referral authority.
- 12 There was a representative of the CFA present at the 17 December 2010 hearing, being Mr Andreou.
- 13 After some discussion regarding the potential role of the CFA at the hearing, I ruled that the CFA would be allowed to make submissions to the

Tribunal during the hearing as a 'interested person'. Noting that the CFA were not particularly pushing in any case to be joined as a formal party, I indicated that I was unconvinced there were sufficient grounds shown to me to justify the CFA being joined so late as a formal party.

- 14 I heard submissions from the parties and from the CFA and reserved my decision.
- 15 I then arranged for the hearing to be re-convened on 10 January 2011 to enable me to indicate to the parties the progress I had made in dealing with the proceeding and to obtain their further input on certain points which ideally should have been discussed at the first hearing but were not.
- 16 Between the first and the second hearing days I drove up to Hazeldene to inspect the site and surrounds. This included driving further north to inspect the Flowerdale township, including the Flowerdale Community Hall. In relation to my time spent in Hazeldene, apart from walking around the subject land, I also drove some distance further west along Silver Creek Road and also drove around Creek Side Drive which is located close by to the east.
- 17 During the follow up 10 January 2011 hearing I conveyed to the parties my main impressions from carrying out that site inspection.

Preliminary comments by Tribunal at 10 January 2011 hearing

- 18 At the re-convened hearing on 10 January 2011, I set out for the record the basic circumstances and key aspects of this proceeding. I then made certain preliminary comments to the parties, which can be summarised as follows.

"Community need" consideration

- 19 Firstly, I understand that soon after the Black Saturday bushfires in February 2009, the State Government of the day (with the support of the then Federal Government) made a public commitment that all home owners in the bushfire-affected areas who wish to rebuild their dwellings would have this outcome facilitated, noting that that it would appear that at least some of these areas are inherently prone to a significant level of bush fire risk¹.
- 20 Following this commitment, I also understand that an expedited approach has been taken to the planning approvals needed for new dwellings in rebuilding communities like Hazeldene, albeit with more rigorous standards being applied to the ability of the new dwellings to resist bushfire attack. This expedited approach can be seen for instance in the significant number of new dwellings that I could see in Hazeldene during my site inspection,

¹ In the "Introduction" section of the July 2010 Bushfire Royal Commission Final Report Volume 1 (The Fires and Fire Related Deaths) it is stated at page xxiv that "On the basis of the evidence presented, the Commission concludes that Victoria has a range of characteristics that predisposes it to bushfires generally and the occasional ferocious bushfire in particular. There are few other locations in the world with similar characteristics".

which includes the dwelling immediately east of the appeal site that I understand is owned/occupied by the objectors Mr and Mrs Carey.

- 21 In a situation where there are significant numbers of families moving back into Hazeldene as part of this re-building process, I agree with Council that common sense tells us that this creates a strong need for a community hall to enable this local community to meet together and re-establish itself. This is in the context of relevant planning policy framework promoting communities having good access to local services and facilities (see my comments below).
- 22 Furthermore, it is also appropriate that I give weight to Council's submission that if this Council-owned appeal site is not used for a replacement community hall, there is no other obvious location in Hazeldene for this facility. I do not see the existence of the community hall at Flowerdale about 8-10 kilometres further north as the answer to this problem, as in my view Flowerdale is far enough away as to not offer a convenient alternative option for Hazeldene residents who wish to meet and/or carry out community activities together.

Size of community hall type buildings

- 23 Secondly, I think it needs to be said that community halls tend by nature to be larger buildings that typically will be more visually imposing compared to dwelling buildings. For example, if one drives through rural towns in Victoria, it is common to see older community halls or "Mechanics Institute" type buildings that may be up to 100 years old and typically are quite prominent structures. In my view this points to a consistent long term pattern in rural towns of having larger buildings to enable the local community to meet and carry out activities together.
- 24 I am also conscious that local modern standards of amenity mean that both dwellings and community facilities on average tend to be larger than they were say 20 to 50 years ago. In my experience there is more demand now for different community groups to wish to share the one facility, sometimes on an overlapping basis. Modern community facilities also need to provide adequate computer and IT facilities, together with toilet and shower facilities at a modern standard.
- 25 In summary, I think it is beside the point for a local resident to object to a proposed community hall simply because it is a larger building compared to nearby dwellings. Similarly, given the changing expectations of the internal amenity to be offered by community facilities, I am struggling to see how a proposed larger replacement community hall on this appeal site should be refused simply because it is bigger than the hall which it would be replacing.
- 26 The more relevant and important benchmark here seems whether, as a matter of degree, the community hall proposed here will be a reasonable fit in its proposed location.

Playground area

27 Thirdly, I get the impression that a significant part of the concerns of the objectors is simply that the eastern section of the appeal site will no longer be used as a playground area, which I understand was the case before the bushfires in February 2009. As I indicated at the hearing, my role in the process is simply to assess the proposal that has been put forward. If some of the neighbours think that a different proposal should have been initiated on this council-owned land, then this is a local government issue which is beyond the scope of my role.

Tribunal's findings on non-bushfire related issues

28 At this next stage of the Tribunal hearing on 10 January 2011, I was able to provide the parties with an oral decision on the non-bushfire related aspects of the proposal. The five issues which I dealt with at this time were:

- the “community need” for the facility;
- the fact that the proposal is spread over two titles;
- whether or not the proposal would constitute an over-development of the appeal site, so as to be unreasonable neighbourhood character;
- the external amenity impacts of the proposal, especially in relation to the abutting dwellings to the east; and
- ordinary traffic and parking issues (i.e. excluding fire hazard concerns)

29 These findings with some minor editing are set out below.

“Community Need” considerations

30 I accept the submission of Council and the Permit Applicant that there is an important community need in Hazeldene for this type of community hall facility (see my comments above on this issue), and that it will be very problematic to find an alternative potential location for this type of facility if the subject land is not re-used for this purpose.

31 As I have indicated, the relevant planning policy framework includes a strong emphasis on the appropriate infrastructure being provided to facilitate the building of communities.

32 For example, one of the objectives of the Victorian planning scheme under section 4 of the *Planning and Environment Act 1987* (with my emphasis) is:

To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.

33 Clause 19.02 of the State Policies include the relevant objective “To provide fairer distribution of and access to social and cultural infrastructure”. The relevant strategies pursuant to this objective include to:

Identify and address gaps and deficiencies in social and cultural infrastructure

- 34 It has been put to me by both Council and the Permit Applicant that due to the burning down of the previous community hall on the appeal site, the absence of such a community hall in Hazeldene is precisely the type of “gap” which this strategy is referring to.
- 35 In relation to local policies, clause 21.02 of the planning scheme sets out the “Vision for Murrindindi”. Part of this stated vision is to “Support the rebuilding of communities devastated by the 7 February 2009 bushfires”. Indeed, there are several other places in the MSS/local policies in the Murrindindi planning scheme where the February 2009 bushfires are referred to.
- 36 I have referred above to a letter dated 21 October 2010 from the Victoria Bushfire Reconstruction & Recovery Authority, which includes the following statements.

The State Government supports this project as an important part of the Flowerdale and Hazeldene community’s recovery after the 2009 Victorian bushfires.

The development of the Flowerdale Community Hall is identified as a high priority in the Flowerdale/Hazeldene Community Recovery Plan prepared by the local community.

- 37 In summary, I accept that a very strong positive feature of the proposal is the “community need” aspect to it. In particular we have the quite unusual situation here of a local rural community rebuilding itself after a terrible bushfire, but currently not having any community hall meeting place.

Two titles not one in question

- 38 The objectors have expressed concern that the appeal site is spread over two titles not one. This line of thinking appears to involve the assumption that the whole proposal should be capable of being self-sufficient on any one title area.
- 39 In my experience after seven years as a Tribunal member, I confirm that it is relatively common for proposals before the Tribunal to be spread over more than one title area. The planning system would fairly quickly become unworkable if the requirement was that any one proposed project always needed to be quarantined to the one title area.
- 40 The more relevant concern of the Tribunal is that, where a proposal involves over-lapping or inter-mingling planning elements which cross over more than one title, then usually the Tribunal will require that a title consolidation must occur before any approved use of this type commences. In the facts before me here, the proposed Condition 7 in Council’s Notice of Decision provides for this.

41 With this type of condition in place, I see this “two rather than one title” point as a non-issue which does not require any further consideration by the Tribunal.

Overdevelopment/neighbourhood character

42 Having considered the competing submissions and with the benefit of a site inspection, I am satisfied that the proposal would not constitute an overdevelopment and that it would be a reasonable neighbourhood character outcome.

43 In considering this issue, I have utilised the general approach which I have already outlined above. That is, the relevant issue is not the simple fact that this would be a larger building compared to nearby dwellings, but rather I have considered whether (as a matter of degree) the size and appearance of the new building and car park will be a reasonable neighbourhood character outcome (which I am satisfied is the case).

44 Some of the factors I have relied upon in reaching this finding are set out below.

45 In relation to the proposed new community hall and associated car parking, it has been the benefit of there being two lots worth of space available to accommodate these features, as well as the new septic system and landscaping area. In my view it cannot be said that these various features have been squashed onto the combined site.

46 In terms of how the new hall will present to Silver Creek Road, I rely on the following positive features of the proposal:

- The width of the new building facing towards the road has been kept no wider than the width of the western lot.
- The new building is set back from the front boundary.
- Compared to the earlier architectural plans that I understand were considered by Council prior to it issuing its Notice of Decision, the plans dated August 2010 which Council supported in issuing its Notice of Decision show a lower roof line², which will reduce its visual bulk when viewed from the public realm.
- In terms of the proposed materials and finishes, the southern elevation of the new building facing Silver Creek Road will feature a mix of recycled brick veneer, corrugated metal cladding and a fairly low roof pitch using corrugated metal. I am satisfied that this is a sympathetic and appropriate design response in terms of how the new building will present to Silver Creek Road. Similarly I see the mix of materials for the other three elevations as being appropriate for this type of rural setting i.e. tiles, sheeting and corrugated metal cladding.

² The height of the revised roof line will be 5.6 metres.

- 47 Where the proposal involves the use of the eastern section of the site for a 15 space car park, a septic treatment area and a “Wildflower park” I consider this to be a logical and reasonable neighbourhood character outcome. In a situation where one would expect many patrons of the community hall to drive to it and where there is no reticulated sewerage in Hazeldene, I think the average person living in this township would hardly be surprised by the proposal including a dedicated car parking area and a septic treatment area. The Wildflower park should provide further landscaping benefits, noting that the dedicated car parking area only occupies about half of the eastern lot.
- 48 In summary, I am satisfied that the proposal can sit quite comfortably in its neighbourhood character setting and will not be unduly visually intrusive. To the extent that the objectors argued that the proposal constitutes an over-development, this argument is rejected.

External amenity impacts

- 49 In terms of how the appeal site interfaces with the neighbouring properties, there is a public creek reserve at the rear. The property to the west I understand is privately owned but has been vacant for some time and remains vacant today. To the south is Silver Creek Road.
- 50 Hence the only interface I see as raising any material external amenity impact issues is the interface to the east with the Carey residential property. As mentioned, they have recently re-build their dwelling. During my site inspection I took particular note of the interface between the Carey property and the appeal site.
- 51 My finding is that any amenity impacts on the proposal of the Carey property will be modest and acceptable.
- 52 It is a plus in this regard that when the appeal site is viewed from the Carey property, Mr and Mrs Carey will have more a east-west view of the new community hall, which is its narrow section.
- 53 I also rely here on the fact that:
- The new hall will be constructed with what I regard as quite sympathetic and appropriate materials, which should help blend in with its setting when viewed from the Carey property.
 - The closest edge of the Carey property is about 40-50 metres away from the closest wall of the new community hall. In the circumstances, I regard this as a significant and very reasonable buffer distance.
 - The new hall has been designed so that its main day to day focus is to the rear or north, rather than having an easterly orientation towards the Carey property.

- 54 Where the Careys have raised concerns about the operation of the 15 new car parking spaces in the eastern section of the appeal site, I see any amenity consequences here as being within acceptable parameters. The proposed condition 15 in the NOD requires the car park to be sealed, which should minimise any dust impacts. Whilst there may be some degree of traffic noise, this noise will be tempered by the fact that the car park has been kept within that part of the eastern lot closer to the new hall and further away from the Carey property. This in turn creates the benefit that there will be a buffer area of about 20 metres width between the common boundary and the closest section of the car park, with the septic treatment area and the Wildflower park to occupy this buffer area. I see this as a quite acceptable outcome.
- 55 To the extent that Mr and Mrs Carey appear to be disappointed that the eastern lot will now longer be used as a playground, as I have mentioned these type of choices are beyond the scope of my role in this proceeding.
- 56 The one proviso to my findings on this issue is that I agree with Mr and Mrs Carey that it was an oversight that the application plans are silent regarding the treatment of the fencing in the common boundary. My understanding from submissions made at the 17 December 2010 hearing is that the Careys would prefer (assuming for the moment that the proposal goes ahead) that there be a new solid fence constructed on this common boundary, with a height of about 2.1 metres and that the other parties have no problem with this approach. I agree that this would be a sensible outcome.
- 57 Mr Carey was also pursuing a modification where the new septic treatment area would be flipped with the Wildflower area, so that the former is further away from Silver Creek. On reflection, I am content to leave the existing arrangement alone. I rely here on my understanding that the relevant Septic Code allows (with the right specification of treatment) for a reduction in the buffer distance to the creek – Council and the Permit Applicant advised me that the proposed treatment method allowed for this reduced buffer distance. It also seems preferable in terms of the interface with the streetscape for the new wildflower area to be located closer to frontage rather than the rear boundary.

Ordinary traffic and parking issues (i.e. excluding bushfire aspects)

- 58 My finding on this traffic and parking issue (excluding for the moment any bushfire safety aspects) the traffic and parking aspects of the proposal are acceptable, including the necessary car parking dispensation. Clause 52.06 of the Planning Scheme tells us that 85 vehicle spaces prima face should be provided on the site as part of the proposal. However that clause also provides for the potential reduction of on site car parking, taking into account various criteria and the local conditions.
- 59 Excluding bushfire safety issues, I am satisfied that the lower on-site parking provision proposed is reasonable i.e. that 15 dedicated on-site car

parking spaces in the eastern area is a reasonable outcome. I see the proposed two additional garage spaces and the two spaces in the south-west corner of the site as being more a bonus rather than a necessity.

60 I consider that this level of parking dispensation pursuant to clause 52.06 is reasonable when one takes into account the following factors:

- My inspection confirms that there is what I would regard as plenty of spare space for on-street parking in front of or near the subject land.
- I accept that a significant number of local residents are likely to walk rather than drive to this facility.
- Not all components of the community hall will necessarily be operating at the one time.

61 I am satisfied that the location and layout of the 15 space car parking area is appropriate. In relation to there being a single-lane with bridge that needs to be driven across to get from the main road to the appeal site, putting to one side for the moment bushfire safety issues, I do not see this as a particular concern (single width lane bridges are a more common feature per se in rural areas).

62 I am otherwise satisfied (putting to one side any bushfire safety issues) that Silver Creek Road can generally accommodate the additional traffic generated by the proposal. My site inspection for example confirms that not only this is a sealed road, but the quality of the sealing is of a high standard.

Tribunal's preliminary views on bushfire risk issues as discussed at 10 January 2011 hearing

63 Having dealt with these various non-bushfire related issues, I confirmed to the parties at this point in the 10 January 2011 hearing that the upshot was that the Tribunal is otherwise supportive of the proposal, but still needs to reach a view regarding whether or not the proposal will be acceptable in terms of the bushfire risks involved (which was one of the grounds raised in the Application for Review).

64 I then made some general observations and comments about these bushfire risk issues, which are summarised below.

Difference of position of Council and CFA on bushfire risk issues

65 We know that both the appeal site and the crown land creek reserve behind it are not affected by any Wildfire Management Overlay ("WMO"). However it was common ground at the hearing that:

- the Council is preparing expanded WMO maps; and
- the appeal site and creek reserve will probably fall within this expanded WMO area.

66 During my site inspection, I could see the appeal site has the benefit that it falls within a somewhat flatter and more open section of Silver Creek Road. However it still needs to be said that the appeal site (like most if not all other lots in Hazeldene) is still located relatively close to the nearest scrub area. In this case, the key risk area is the scrubby creek reserve which is on the far side of the rear boundary of the appeal site.

67 In relation to the position taken on this fire risk issue by Council and the Permit Applicant, they submitted as follows.

- It was accepted that pursuant to the relevant Ministerial Guideline and Australian Standard, this type of proposed publicly funded building needs to have a Bushfire Attack Level (“BAL”) assessment done up-front.
- The relevant council building inspector had done this BAL assessment for the proposed building and concluded that the new building would have to be built to a BAL29 level (which is what the application plans provide for).
- This relevant council building inspector who had done this BAL assessment had attended the relevant CFA training sessions for the purposes of doing BAL assessments.
- In assessing the vegetation type of the scrub in the creek reserve on the other side of the rear boundary of the subject land, this Council building inspector had been guided by the “as-is” condition of this scrub.
- If there was a fresh bushfire burning through the scrub area in the creek reserve, this Council building inspector’s view was that the new building is already sufficiently far away from the creek reserve to be out of the relevant direct flame zone.

68 At an overall level, both the Permit Applicant and Council put to me that the level of bushfire risk proposed by the scrub area to the north of the appeal site is manageable and the new community hall will be built to an appropriate bushfire safety standard.

69 We know that shortly before the 17 December 2010 hearing, the CFA became involved. The key concerns which it has raised are as follows.

- The CFA has assessed the scrub in the creek reserve as having the highest fire risk of “tall forest”, and in turn considers the direct flame zone arising from that creek reserve as having a 24 metre area.
- The closest section of the new community hall building to the creek reserve (ie the northern edge) will infringe within this direct flame zone by about 3 metres.

- The appeal site has an inherently high bushfire risk and in the CFA's view the proposed community hall will not be built to a high enough safety level ie BAL 29 is insufficient.

- 70 The CFA has taken a more conservative view of the vegetation type in the creek reserve compared to Council. In particular, the CFA has appraised the scrub in the creek reserve having regard to its likely condition in another 5-10 years, rather than giving weight to the "as-is" condition of the scrub.
- 71 The 3 December 2010 letter indicates that the CFA's bottom line is that the CFA does not support the proposal. The last section of this letter states that the proposal "...would not satisfy fire protection objectives and would significantly increase the threat to life and surrounding property from the threat of wildfire".

Risk of property damage compared to risk of loss of life

- 72 The State policy dealing with wildfire risk is Clause 13.05, with the objective of this policy being:

To assist the minimisation of risk to life, property, the natural environment and community infrastructure from wildfire.

- 73 Hence it is appropriate for the Tribunal to consider both the "property" and "loss of life" aspects of any bushfire risks associated with the proposal.
- 74 The importance of considering the bushfire risks of proposals was highlighted by the Tribunal's refusal of a subdivision proposal in *Masten Bennett & Associates v Nillumbik SC* [2010] VCAT 900, involving a site in St Andrews where the Tribunal found that the bushfire risks had not been adequately resolved.
- 75 One of the key findings of the recent Bushfire Royal Commission Report is that there needs to be a greater emphasis in bushfire management on avoiding loss of human life.
- 76 In the "Introduction" section of the July 2010 Royal Commission Final Report Volume 1 (The Fires and the Fire Related Deaths) at page xxviii, the following statement is made (with my emphasis).

THE PROTECTION OF HUMAN LIFE

The great loss of life and the widespread destruction of property were what prompted the Premier Brumby to establish the Commission. It is fitting therefore that the protection of human life is paramount in all the Commission's recommendations. This notion of protection of human life being paramount has implications for the balance that is struck between competing community objectives. In the context of bushfires, ensuring the protection of human life means that sometimes compromises need to be made with people's freedom to choose where they want to live or the existence of pristine environments close to townships.

- 77 Following this approach, whilst the loss of physical infrastructure/dwellings in the Black Saturday bushfires was no doubt devastating for the individuals involved, I think most people would say that the real tragedy was the loss of 173 lives. Certainly my experience as someone living and working in metropolitan Melbourne is that it was such a high level of bushfire fatalities that was the most shocking aspect of the fires.
- 78 With this in mind, I think it is reasonable from a planning perspective to distinguish between:
- the “risk of property damage” if there were another major bushfire event affecting this locality; compared to
 - the risks involved in terms of the potential further loss of life if in theory there were people using the new community hall who become caught up in another major bushfire event affecting Hazeldene.

Tribunal’s preliminary impressions regarding property damage risks

- 79 If one focuses just on the “risk of property damage” aspect of the proposal, I advised the parties at this point of the 10 January 2011 hearing that (while I had not yet made any final decision) it was not as obvious to me that this “risk of property damage” was fatal to the proposal, for the following reasons.
- 80 Firstly, it is important that there is no other abutting building to the south, north or west side of the proposed location of the new community hall. Whilst the new Carey dwelling lies at least 40-50 metres further east from the closet wall of the new community hall, I am satisfied that this is a large enough buffer distance that the new hall should not in itself pose any particular fire hazard to the Carey dwelling and vice-versa.
- 81 I accept that from a “risk of property damage” perspective there is still a less than ideal interface between the new community hall building and the creek reserve on the far side of the rear boundary, even if the new building is moved 3 metres further away from that boundary to avoid being in the CFA’s assessment of the direct flame zone.
- 82 However this residual risk needs to be balanced against the strong “community need” positive aspect of the proposal which I have discussed above. Part of this “community need” consideration is that it seems fair to place some weight on the advice of Council that if the replacement community hall is not built on the subject land, then it would be very problematic to find any other alternative site within Hazeldene for this replacement facility. Furthermore, my site inspection confirms that even if an alternative site could be found, my impression is that most if not all other sites in Hazeldene similarly have a fairly close proximity to scrubby reserve areas.
- 83 At a broader level, I am also very conscious (as alluded to above) that a Government decision was made soon after the Black Saturday bushfires

that home owners in areas like Hazeldene who wish to rebuild their dwellings would have this facilitated, noting that it would appear some of these areas are prone to a significant level of bushfire risk. Hence the reality is that in an area like Hazeldene there has already been a significant level of domestic rebuilding in the intervening period of almost two years. In a situation where a significant number of families have through this process moved back into Hazeldene and there is then a strong community need for this type of community hall, there seems a real argument that (within reasonable limits) it would run against the grain of this rebuilding process for the planning decision maker (be it Council or the Tribunal) to refuse this proposal merely based on the risk of property damage.

- 84 Indeed, if the planning decision maker took a quite strict approach in terms of the “risk of property damage” to allowing the rebuilding of dwellings or this type of community facility in the various townships across the area affected by the Black Saturday bushfires, I suspect that such a strict approach might in reality sterilise a number of the relevant townships from any rebuilding/development³. In a situation where a Government decision was made soon after the Black Saturday bushfires to facilitate home owners being able to rebuild burnt down dwellings if this was their preference, this points to the need for a pragmatic approach with this type of proposal in balancing the “community need” factor against the “risk of property damage” factor.

Tribunal’s preliminary views regarding “loss of life” risks arising from the proposal

- 85 In the next part of the 10 January 2011 hearing I confirmed that I had not yet made any decision regarding the “risk of loss of life” aspects of the bushfire risks, but I was in a position to indicate my preliminary views on this issue. A summary of my comments on this issue is set out below.
- 86 The CFA at the 17 December 2010 hearing expressed concern about the potential for larger groups to be using the new community hall, if a bushfire came through this local area at the same time. Whilst Council estimated that in practice no more than 40 people were likely to be using their new community hall at any one time, it also conceded that under the relevant building regulations, up to about 160 persons could legally be inside the facility at any one time.

³ In the Royal Commission’s July 2010 Final Report Volume 2 Part 2 the view is expressed that “...there is considerable scope to substantially restrict development in areas that are known to pose an unacceptably high bushfire risk”. The Commission’s Recommendation 46 also proposes that “The State develop and implement a retreat and resettlement strategy for existing developments in areas of unacceptably high bushfire risk, including a scheme for non-compulsory acquisition by the State of land in these areas”. Whilst these potential measures have been raised by the Commission for consideration, I have not given this any material weight, as this debate is at its early stages and needs to be resolved at a policy level. At this stage there are no corresponding “retreat and resettlement” provisions in the Murrindindi Planning Scheme, nor were these points raised by the CFA in the hearing before me.

- 87 It concerns me that whilst the appeal site is currently outside of the WMO map areas at this point, it is common ground that is very likely that the subject land will fall within the revised expanded WMO map areas in the near future. This in itself points to a significant level of bushfire risk in terms of “loss of life” risks. My concerns about this risk is reinforced by the fact that during the Black Saturday bushfires 10 people were killed in this local area alone.
- 88 The objectors also emphasised their concern that if a group of people using the new hall were trying to escape a bushfire, it would complicate this situation that the people wishing to escape may be on-street parking on the edge of Silver Creek Road, and would need to be able to drive over the one-way bridge to get to the main road. We also know that there is only one main road allowing escape from Hazeldene in either a north or south direction, and that the balance of Silver Creek Road is a dead-end road. I understand that on Black Saturday a significant number of people in the various bushfire areas were killed in vehicles trying to escape the fires.
- 89 In summary then, I have real concerns that the proposal as it stands involves a significant level of risk that a group of people using the community hall could be caught in a bushfire situation and find it difficult to escape in the type of more extreme conditions seen in the Black Saturday bushfires. Putting this another way, even where there is a strong community need for this new community hall facility, common sense suggests that it would be “one step forward but two steps back” if the construction and use of this new facility involved an unacceptable on-going level of bushfire risk to human safety.

Opportunity for parties and CFA to provide further submissions on potential “loss of life” bushfire management measures

- 90 At this final stage of the 10 January 2011 hearing, I indicated that in summary:
- I had confirmed the main background features to the proposal;
 - (for the reasons provided) I supported the proposal in relation to the key planning issues excluding bushfire risks;
 - in relation to the bushfire risks, I had not yet made any findings. However my preliminary view was that it was the “loss of life” aspect of the bushfire risks that more stood as out as being the unresolved aspect of the proposal; and
 - hence I was seeking the comments of the parties and the CFA on some potential “loss of life” risk management measures that ideally should have been discussed at the 17 December 2010 hearing but were not.
- 91 The potential alterations to the proposal which might assist with this “loss of life” bushfire risk management which I then outlined to the parties and the CFA were as follows.

- 92 Firstly, whether a permit condition could be included that the hall building cannot be used on specific designated high risk bushfire days, noting for example that under the new bushfire risk ranking system the highest level of risk is “code red” days, followed by “extreme” risk days etc. Query whether the trigger here could be merely designated code red days, as compared to both designated code red and extreme risk days.
- 93 Secondly, whether the building could be moved closer to the front boundary by 3 metres, with the aim of dealing with the concern of the CFA that currently the closest edge of the new building would overlap by 3 metres with what the CFA regards as the “direct flame zone area” in the event of another bushfire in this locality. The new building is currently to be set back from the front boundary by in the order of 8-9 metres.
- 94 Thirdly, whether there could be a cap on the number of people using the facility, either over the whole year or otherwise during the bushfire season.
- 95 Lastly, whether a permit condition can be imposed confirming that the facility cannot be used as a “Neighbourhood safer place”, and also providing that the lobby/entrance area in the new community hall building must include appropriate notice/signage confirming where the public should go to find the nearest “Neighbourhood safer place” in a bushfire situation. Presently I understand the nearest Neighbourhood safer place to be the community hall at Flowerdale, noting that this building has the benefit of a substantial cleared area around it and survived the Black Saturday bushfires.
- 96 After standing the hearing down for a short period, I gave all parties and the CFA the opportunity to make verbal submissions on these potential modifications. It seems fair to say that there was a fairly high level of support for some form of restriction on the capacity to use the building on designated high risk days, and for the measures listed above in relation to flagging the nearest neighbourhood safer place.
- 97 In relation to potentially moving the building three metres closer to the front boundary, there was some discussion whether this could be avoided by instead having the authority controlling the creek reserve area (apparently the Department of Sustainability and Environment or DSE) agree to alternative vegetation management measures in the creek reserve area so as to address this direct flame zone issue.
- 98 There was close to a consensus that enforcing a cap on numbers of people using the facility would be likely to be quite difficult in practice to enforce, given the likelihood of persons fairly casually moving in and out of the building at any one time.
- 99 There was also some discussion regarding a potential permit condition requirement that there must be an Emergency Management Plan prepared for the operation of the facility, before it is occupied. This could deal with the day to day operational measures aimed at dealing with the bushfire risk,

including what designated high risk days the community hall facility must be shut down.

- 100 At the end of the hearing, it was left that if any party or the CFA wanted to make any final written comments on these potential risk management measures, they would need to circulate same over the following few days.
- 101 I then received a written submission from Mr Peter Carey dated 13 January 2010 which included certain comments going well beyond the parameters I had provided for with this follow up process. As I had not provided any party with leave to make supplementary written comments beyond these potential mitigation measures, I have disregarded any further such broader comments made by Mr Carey.
- 102 I have also received various other written submissions from the other parties that were within the parameters that I set out, and I have taken these further written submissions into account in my findings set out below regarding the bushfire risk aspects of the proposal.

Tribunal's findings regarding "risk of property damage" aspect to bushfire risks

- 103 With the benefit of the further written submissions and some further consideration since the 10 January 2011 hearing, my finding is that I am satisfied that it would be inappropriate to refuse the proposal simply due to the "risk of property damage" aspect of the bushfire risks.
- 104 In reaching this finding, I refer to and rely on my preliminary views set out above, which I affirm.
- 105 In particular, I rely on the strong "community need" aspect of the proposal, and the reality that the process since the Black Saturday bushfires has allowed a significant number of Hazeldene home owners to re-build and move back into the township. We know that the new community hall has been designed with the bushfire risk in mind, to a BAL29 level.
- 106 In my view (within sensible limits) it goes against common sense for there to be a quite facilitative planning process to allow local residents including Mr and Mrs Carey to re-build their homes in Hazeldene but then refuse this type of proposal purely on the "risk of property damage". If such a refusal was issued, then on one view this would throw a long shadow over the decision to allow other buildings in Hazeldene such as the new Carey residence to be re-built relatively close to the nearby scrubby public reserve areas common to this location.
- 107 If one compares the operation of a community hall to that of a dwelling in a bushfire-prone area, I also see a major difference in that the community hall is an institutional building which (recognising it is not a Community safer place) I would expect to simply be evacuated if a major bushfire event arises. In other words, I would not expect anyone to be taking a "stay and defend" approach to this community hall, whereas the current bushfire

management strategies leave open the possibility of residents staying and defending their dwellings in a major bushfire event.

- 108 Where dwelling occupants still have the option of taking a “stay and defend” approach, this means they may end up trying to survive a major bushfire event inside of their dwelling. In this scenario the two bushfire risks of “loss of property damage” and “loss of life” start blurring. This “blurring” situation does not arise with the proposal before me for this community hall building.

Tribunal’s findings regarding “risk of loss of life” aspect to bushfire risk

- 109 For the reasons set out above, it seems reasonable in assessing the proposal for the Tribunal to give the most emphasis to the “loss of life” risks posed by the proposal.
- 110 I am satisfied that the proposal as supported by Council in its NOD involves an unacceptable level of bushfire risk of potential further loss of life. In a situation where Council and the CFA have taken different positions whether the new building would fall within the requisite direct flame zone area, I prefer the more conservative analysis of the CFA that the northern edge of the new building would overlap with the direct flame zone area by 3 metres. For example, my planning instinct is that where a choice needs to be made between assessing the vegetation type of nearby scrub by its current condition compared to its likely condition in another 5-10 years as is the CFA’s practice, the latter approach seems a more realistic and appropriate approach.
- 111 Some particular shortcomings I see with the permit conditions in the NOD are that they say nothing about the use of the new building potentially by a substantial number of people vis-à-vis high bushfire risk days, plus there is no requirement for any Emergency Management Plan (“EMP”) to be prepared. The conditions are silent as to whether this community hall constitutes a “Community safer place” or not.
- 112 In light of these problems, I do not see the fact that the new building has been designed to a BAL29 fire rating as in itself a “silver bullet” to dealing with these problems.
- 113 However with the benefit of the further hearing on 10 January 2011 and taking into account those follow up written submissions provided within the parameters set, I am satisfied that if the proposal is varied to:
- move the new building 3 metres further south, so as to place it outside of what the CFA regards as the direct flame zone area;
 - require the preparation of an EMP to the satisfaction of the Responsible Authority (including consultation with the CFA and the DSE);
 - provide that the new hall building cannot be used on high bushfire risk days;

- include the requirement that the community hall cannot be used as a “Community safer place” without prior Council and CFA approval; and
- provide that there must be entrance lobby signage highlighting this and also where the nearest such place is located

then I am satisfied that there will be an acceptable planning outcome.

114 In other words, relying on the strong “community need” positive aspect of the proposal, I am satisfied with these modifications that the “loss of life” risks are reduced to a manageable level and that there are no fatal bushfire risks pointing to a permit refusal. In particular, a key thrust of these modifications is to seek to achieve a result where:

- on the key high bushfire risk days, there will be no one in the community hall building because it will not be operating. In this regard, I see a cautious approach as appropriate in terms of what constitutes a “high level of risk”. Hence I have required that the EMP provide as a minimum requirement that the community hall building must be closed on designated “code red” and “extreme” bushfire risk days. This reflects the preferred position of both the CFA and Mr Carey. I am not suggesting that this situation need be set in stone forever – it might be that this situation can be reviewed at some later stage. However I am conscious that a prudent approach is needed and that the climate change predictions at this point suggest that Victoria will get more extreme fire danger days as time goes on, not less;
- if there is a major bushfire event on a day where the hall building is allowed to operate, there will be an EMP in place which should hopefully provide for an orderly and efficient emergency response; and
- because the required signage should make it clear that this community hall is not a Community safer place and also confirm where the nearest one is, users of the hall in a major bushfire event should hopefully be clear where they need to go elsewhere to find safe refuge in a major bushfire event. Consequently in the event of another major bushfire affecting Hazeldene, I would not expect there to be a “stay and defend” situation with this new hall because the hall will either be closed (if it is a designated code red or extreme bushfire risk day) or because users of the new hall will be aware that they need to go elsewhere to find a Community safe place (presumably Flowerdale Community Hall).

115 I accept that a potential permit condition seeking to put a cap on the number of persons using the community hall building would be quite problematic, and hence I have not pursued same.

116 If there was another major bushfire event affecting Hazeldene and (with the above measures in place) this community hall was successfully fully

evacuated but later was burnt down, this would be very unfortunate but in my view would still be the type of “avoiding loss of human life” outcome that the Bushfire Royal Commission Report is telling us is the key imperative – see the quote I have set out above.

Should the new community hall have a BAL40 or a BAL29 rating?

117 As mentioned, the design of the new community hall provides that it be built to a BAL29 specification, consistent with how the relevant Council building inspector assessed the level of bushfire risk. The CFA advised me on the first hearing day that it considered BAL29 to be inadequate and that even if the direct flame zone issue was resolved, its assessment was that the new hall should still be built to the more rigorous BAL40 specification. This was opposed by both Council and the Permit Applicant.

118 The follow up correspondence since the 10 January 2011 hearing confirms that this “BAL29 or BAL40” issue is still in debate.

119 There are a number of complications for the Tribunal to grapple with in this regard, including:

- the risk assessment process apparently being open to different exercises of judgment on particular points, even where two different assessors have had the same training and are working from the same code or standard. The Council letter of 14 January 2011 includes the following statement:

“Council remains concerned about the level of inconsistency that exists with the BAL assessment since the introduction of AS3959-2009. Council also believes that these matters need to be resolved between the CFA and the Building Commission to avoid debate of this nature in the future”;
- the fact that there was no independent expert evidence before the Tribunal on this issue;
- the prospect that this “level of building specification” issue may play out at the building permit stage as well as the initial planning assessment;
- the absence of any purpose-built bushfire code or standard dealing with the necessary specification where institutional buildings such as this are proposed to be built in higher bushfire risk areas;
- one of the grounds on which the Permit Applicant opposes the BAL40 requirement being that it has apparently (with assistance from the Victorian Bushfire Reconstruction & Recovery Authority) procured two separate BAL assessments, and they both confirmed a BAL29 requirement⁴;

⁴ See the Permit Applicant’s letter dated 14 January 2011.

- the Permit Applicant also expressing concern that the potential need to re-design the new building from BAL29 to BAL40 would have both delay and budget implications which "...will potentially put the project beyond budget"⁵.

120 A further variable at play is that:

- the application plans show the creek reserve area near the subject land as being cleared and effectively an extended part of the new playground area; but
- the creek reserve is crown land and is controlled by a separate authority, being the DSE. The DSE were not a party or involved in the hearing of this proceeding, which in hindsight was unfortunate.

121 However in my view some weight can still be given to the fact that both the subject land and the abutting creek reserve are both owned/controlled by public authorities. In a situation where the public sector is being expected to play its role as part of the wider response to the Black Saturday bushfires which led to 173 deaths, it seems reasonable in this context (and where a consultation process is put in place) to assume that there will be sensible discussions between neighbouring public authorities.

122 I note from recent correspondence from the CFA that there has been last minute discussions between the CFA and DSE regarding:

- the management of the vegetation in the creek reserve area behind the appeal site; and
- the DSE apparently being open to the scope of the on-going Emergency Management Plan including consideration of this issue.

The last part of this letter indicates that on this basis the CFA is now open to the new hall building having a BAL29 rating.

123 In all the circumstances, I see a reasonable outcome as being that the new hall building can remain designed to a BAL29 specification. In particular I rely upon:

- my comments above that I would not expect there to be a "stay and defend" situation in relation to the new hall building;
- the ability to include the DSE (being another public authority) in the consultation process as part of the preparation and annual updating of the Emergency Management Plan that must be prepared before the new building is occupied;
- the fact that the latest advice from the CFA is that it is no longer pursuing a BAL40 rating for the new building.

⁵ See the second page of this 14 January 2011 letter.

- 124 However it goes without saying that this should not be taken as a wider endorsement of BAL29 compared to BAL40 – each case turns on its own facts and merits.
- 125 In terms of what assists the Tribunal in grappling with these issues, it would be helpful if as far as practicable:
- the framework within which these bushfire risk assessments are made are tightened up in relation to institutional buildings; and
 - a consistent approach taken by the different public authorities in how the framework is interpreted in practice.
- 126 It is clear from Council’s submissions to me that the current differences of interpretation are causing frustration, and certainly the Tribunal’s findings in this proceeding were not made any easier by the different positions taken by Council compared to the CFA.

Conclusion

- 127 For the reasons set out above, my ultimate finding is that the proposal is acceptable, but with a revised permit conditions set out in the Annexure to this decision.

Philip Martin
Member

APPENDIX 1 – PERMIT CONDITIONS

WHAT WILL THE PERMIT ALLOW?

Construction and use of a community building and a reduction in carparking.

WHAT WILL THE CONDITIONS OF THE PERMIT BE?

1. Prior to the commencement of any buildings or works three (3) copies of a plan or plans shall be submitted and approved by the Responsible Authority. The plans must be to scale and suitably dimensioned. The plans must be generally in accordance with the application plans but modified to show:
 - a the nature of all external materials and finishes;
 - b any proposed excavations;
 - c provision for at least five bicycle parking spaces;
 - d the new building having a northern setback which is 3 metres greater than is currently shown in the application plans, including any consequential changes to the building. These consequential changes may include moving the new building 3 metres closer to the southern boundary and deleting some or all of the 4 parking spaces which the application plans show in the front setback area.
 - e a solid fence (with a notation confirming it is to be built at the expense of the permit holder) along the eastern boundary, to a height of 2.1 metres.

All plans must be to the satisfaction of the Responsible Authority and when approved these plans shall be endorsed and form part of this permit.

No alteration or modification will be permitted without the written consent of the Responsible Authority.

- 2 This permit shall expire if the development hereby permitted is not completed and the use commenced within two (2) years of the date hereof, or any extension of such period the Responsible Authority may allow in writing, on an application made before or within three months after such expiry.
- 3 The new hall permitted by this permit must not be occupied until the new fence provided for in Condition 1(e) above is constructed.
- 4 Notwithstanding the requirement in Condition 1(d) above that the new building must be set back an additional 3 metres from the northern boundary of the land, this requirement shall be deemed to have been alternatively satisfied if prior to the occupation of the new community hall permitted by this permit:

- the owner of the land enters into a Section 173 Agreement with the authority responsible for the creek reserve behind the land. This 173 Agreement must provide that for so long as the community hall permitted by this permit exists on the land, the relevant vegetation within this creek reserve must be managed so as to avoid the new hall building infringing within what the Country Fire Authority considers to be the relevant direct flame zone area;
 - the Country Fire Authority provides its written consent to this form of Section 173 Agreement; and
 - the Section 173 Agreement is then executed and lodged for registration with the Victorian Land Titles Office.
- 5 The community hall permitted by this permit cannot be occupied until an Emergency Management Plan (“EMP”) has been prepared by the permit holder to the satisfaction of the Responsible Authority (which in exercising this role must consult with the Country Fire Authority and with the Department of Sustainability and Environment). This EMP must deal with the operational aspects of the new community hall and include appropriate measures/requirements to provide for the safest practicable response to any relevant potential emergency response situation (notably a possible major bushfire event), including the evacuation arrangements. It must also deal with relevant vegetation management in relation to the land and the desirable management of vegetation in the creek reserve to the north. Without limitation to the potential contents of this EMP, it must provide that in terms of what high bushfire risk days the community hall building cannot operate, as a minimum position the building cannot be used on designated “code red” or “extreme” days of bushfire risk. If the current system of bushfire ranking is replaced, then the new hall cannot be used on the equivalent highest and 2nd highest level of designated bushfire risk. Once approved, this EMP will form part of this permit. The EMP must be reviewed and where appropriate updated annually.
- 6 The community hall permitted by this permit cannot be utilised as a “Community safer place” unless this is authorised in writing by both the Responsible Authority and the Country Fire Authority.
- 7 The entrance area/lobby to the new community hall must to the satisfaction of the Responsible Authority include a notice board which prominently advises any person using the hall:
- (a) that the hall is not a designated Community safer place (this requirement will be deemed to be void if this hall at any future time is constituted a “Community safer place” pursuant to Condition 6 above);
 - (b) where the nearest designated Community safer place is; and

- (c) any other appropriate safety information, having regard to the approved EMP and to any other broader community safety signage requirements for this type of facility.
- 8 The emission of noise from the premises including the surrounding environment and carpark areas either during or immediately after the hours permitted, must not cause annoyance to persons beyond the site.
- 9 The subject land must be kept neat and tidy at all times and its appearance must not, in the opinion of the Responsible Authority, adversely affect the amenity of the locality.
- 10 Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority such that no direct light is emitted outside the boundaries of the subject land.
- 11 Prior to the commencement of the use allowed by this permit, the titles to Lots 49 and 50 LP: 68766 which make up the land must be consolidated.
- 12 As part of the construction of the building permitted by this permit, a combined water system shall be provided to accommodate a total minimum of 55,000 litres, of which 45,000 litres shall be for domestic purposes and 10,000 litres for fire fighting purposes, the latter being in the lower portion of the tank. All outlets from the lower tank shall be fitted with 63mm 3 thread, 25mm CFA round thread male coupling.

Environmental Health

- 13 Prior to the commencement of any works, including site works, the applicant shall obtain a septic tank permit from Council. Sewerage treatment must be by package treatment plant to the satisfaction of the Responsible Authority.

Engineering

- 14 **Vehicle manoeuvring**
All car parking spaces must be designed to allow all vehicles to drive forwards both when entering and leaving the property and designed with levels and set out dimensions complying with the Off Street car parking code AS 2890.1 —2004
- 15 **Parking signs**
A sign/signs to the satisfaction of the Responsible Authority must be provided directing drivers to the area(s) set aside for disabled car parking and must be located and maintained to the satisfaction of the Responsible Authority. The area of each sign must not exceed 0.3 square metres.
- 16 **Vehicular crossings**
A vehicular crossing(s) must be constructed or adjusted to the road to suit the proposed car parking to the satisfaction of the Responsible Authority. Consent to work on the Road Reserve must be obtained in accordance with

Road Management Act 2004 and associated regulations prior to construction commencing.

17 Drainage Works

All stormwater and surface water discharging from the building and works must be conveyed to the legal point of discharge, approved by the relevant authority. No stormwater discharge from downpipes or overflow from storage tank and surface water shall be directed or caused to be directed in a concentrated form that will cause erosion and or adverse affects within the site or to adjoining land or properties. The stormwater for the development must be designed and documented in accordance with AS 3500 3— 2003.

18 Detailed construction plans

Before any works associated with the carparking start, detailed construction plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided.

All works constructed or carried out must be in accordance with those plans.

19 Car parking, and access

Before the use or occupation of the development starts, the area(s) set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:

- a Constructed of fine crushed rock pavement of a minimum depth of 150mm (depth subject to soil conditions)
- b Properly formed to such levels that they can be used in accordance with the plans
- c Surfaced with an all-weather-seal coat for all driveway and parking areas as shown on the endorsed plan
- d Drained in accordance with the approved drainage plan
- e Line marked to indicate each car space and all access lanes
- f Clearly marked to show the direction of traffic along access lanes and driveways to the satisfaction of the Responsible Authority.
Car spaces, access lanes and driveways must be kept available for these purposes at all times.

NOTATIONS

- (1) This permit does not authorise the commencement of any building construction works. Before any such development may commence, the applicant must apply for and obtain appropriate building approval.