

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS. P722/2022 &
P733/2022
PERMIT APPLICATION NO. 210094

CATCHWORDS

Section 82(1) of the *Planning and Environment Act 1987* (Vic); Bass Coast Planning Scheme; Farming Zone; Proposed place of assembly (museum) and restaurant (café), removal of native vegetation, landscaping with associated buildings and works (including berms and car parking), construction and display of business identification signage, and creation of access to a Transport Road Zone 2; Strategic planning policy context; Agriculture; Tourism; Built form, height, bulk, scale, views and setbacks; Landscape character; Western Port Ramsar site and Fisher's Wetland; Stormwater drainage and water quality; Environmental impacts; Bushfire risk; Car parking and access.

APPLICANTS

P722/2022

Patricia Hosking

P733/2022

Van Diemans Land Investments Pty Ltd

RESPONSIBLE AUTHORITY

Bass Coast Shire Council

RESPONDENT

National Vietnam Veterans Museum Ltd

REFERRAL AUTHORITY

Department of Transport and Planning

SUBJECT LAND

24 Churchill Road
NEWHAVEN VIC 3925

HEARING TYPE

Hearing

DATE OF HEARING

13, 15, 16, 20, 21 & 22 February 2023

DATE OF ORDER

15 May 2023

CITATION

Hosking v Bass Coast SC [2023] VCAT
523

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998* (Vic), the permit application is amended by adding the following documents filed with the Tribunal:

Document 1

- Prepared by: Phillips Agribusiness
- Document name: Land Management Plan
- Dated: December 2022

Document 2

- Prepared by: TTW

- Document name: Amended Stormwater Strategy (Revision 7)
- Dated: 20 December 2022

Document 3

- Prepared by: Red River 7
- Document name: Amended Landscape Plan
- Dated: 23 December 2022

No permit granted

- 2 In application P722/2022 and P733/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application No. 210094 no permit is granted.

Peter Gaschk
Presiding Member

Christopher Harty
Member

APPEARANCES

For Patricia Hosking and Van
Diemans Land Investments
Pty Ltd:

Lucy Eastoe, Solicitor with Arnold Bloch
Liebler Lawyers

For Bass Coast Shire Council:

Maria Marshall, Solicitor with Maddocks
Lawyers

For Department of Transport
and Planning:

No appearance

For National Vietnam
Veterans Museum Ltd:

Barnaby McIlrath, Solicitor with PE Law.

He called the following witnesses:

- John Glossop, Town Planning, from
Glossop Town Planning Pty Ltd
- Neil Craigie, Drainage & Flooding,
Neil M Craigie Pty Ltd
- Brett Lane, Ecology, Nature
Advisory
- Andrew Partos, Urban Design and
Landscape, Hansen Partnership Pty
Ltd
- Ray Phillips, Agriculture, Phillips
Agribusiness

INFORMATION

Description of proposal	Use and development of the subject land for a place of assembly (museum) and restaurant (cafe), removal of native vegetation, landscaping with associated buildings and works (including berms and car parking), construction and display of business identification signage, and creation of access to a Transport Road Zone 2, on the subject land at 24 Churchill Road, Newhaven (review site).
Nature of proceeding	Application under section 82(1) of the <i>Planning and Environment Act 1987</i> (Vic) – to review the decision to grant a permit.
Planning scheme	Bass Coast Planning Scheme (Scheme)
Zone and overlays	Farming Zone, Schedule 1 (FZ) No overlays apply
Permit requirements	Clause 35.07-1: Use of the subject land for the purposes of a Museum and a Restaurant/Cafe. Clause 35.07-4: To construct a building or construct or carry out works associated with a use in section 2 of the Table of Uses at Clause 35.07-1. Clause 52.05-2: To construct or put up for display a sign in Section 2 (Category 4 – Sensitive Areas). Clause 52.17-1: A permit is required to remove, destroy, or lop native vegetation, including dead native vegetation. Clause 52.29-2: A permit is required to create access to a road in a Transport Road Zone 2 (TRZ2).

Key scheme policies and provisions

Clauses 02.03-1, 02.03-2, 02.03-4, 02.03-7, 02.03-9, 03.02-5, 11.01-1R, 11.01-1L-16, 11.03-3S, 11.03-4S, 11.03-5S, 12.01-1S, 12.01-1L, 12.01-2S, 12.02-1S, 12.05-2S, 12.05-2L-01, 12.05-2L-02, 13.02-1S, 14.01-1S, 14.01-2L, 14.01-2L-01, 14.01-2L-02, 15.01-1S, 15.01-1L-01, 15.01-1L-02, 15.01-1L-03, 15.01-2S, 15.01-2L, 15.01-5L, 15.01-6S, 17.04-1S, 17.04-1L, 17.04-2S, 19.03-3S, 19.03-3L, 35.07, 52.05, 52.06, 52.17, 52.29, 65.01 and 71.02

Land description

The review site is a corner location, on the outskirts of Newhaven township, being on the northern side of Phillip Island Road and eastern side of Churchill Road. The land is irregular in shape with a large site area of approximately 40.1ha. Including a 347.5m frontage to Churchill Road and a southern interface to Phillip Island Road of approximately 905.5m.

The site is presently developed with an outbuilding (hayshed) and has been used intermittently for cattle grazing/agricultural purposes. The land includes 17 patches of identified native vegetation, comprising a total area of approximately 2.7ha. The eastern portion of the site is relatively free of vegetation, with some mature planting located along both sides of the open drain that runs parallel in a north-south direction between the review site and 1 Samuel Amess Drive.

The subject land sits above a designated floodplain and Western Port estuary further to the north. The floodplain is identified as part of the Fisher's Wetland and the estuary forms part of the Western Port Ramsar site No. 267, which is an internationally protected environment and eco-system for migratory birds and other wildlife.

A large culvert exists under Phillip Island Road, immediately in front of the review site, created in association with new roundabout construction works. The culvert conveys drainage flows from the Cape Woolamai residential area, southwards through the land owned by the neighbouring flower farm (Van Diemens Land Investments Pty Ltd).

The land has three existing vehicular access points, being a formal access point from Phillip Island Road (next to the Telstra exchange) and two informal access points from Churchill Road.

The site is encumbered by a drainage and sewer easement running along the southern boundary and has an area of approximately 1.8ha at the south-east corner that is vested in the Roads Corporation (Department of Transport and

Tribunal inspection

An accompanied inspection was undertaken with the parties on 22 February 2023. This included a site visit of the existing National Vietnam Veterans Museum at 25 Veterans Drive and the flower farm adjacent to the review site at 1 Samuel Amess Drive. An unaccompanied inspection was also conducted of the review site and surrounds on the same date. To assist the Tribunal the applicant pegged out the approximate perimeters of the building envelope on site.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 These proceedings consist of two separate applications for review brought by Patricia Hosking and Van Diemens Land Investments Pty Ltd (collectively the **applicants/objectors**) under section 82(1) of the *Planning and Environment Act 1987* (Vic) (**the Act**)².
- 2 The applicants/objectors are seeking review of Bass Coast Shire Council's (**council**) decision to issue a Notice of Decision to Grant Permit No. 210094 (**NOD**) for the use and development of the subject land for a place of assembly (Museum) and restaurant (cafe), the removal of native vegetation, the construction and display of business identification signage, and the creation of access to a Transport Road Zone 2 (**TRZ2**) at 24 Churchill Road, Newhaven (**review site**).
- 3 The permit application lodged by the National Vietnam Veterans Museum Ltd (**respondent**) also sought approval for a staged development of the proposal. However, council's NOD removed references to any staged works from the permit preamble. At the hearing, the respondent advised it no longer wished to pursue a staged permission for the proposal as submitted.
- 4 Melbourne Water (**MW**) lodged a statement of grounds opposing the proposal. By Order dated 12 August 2022, the Tribunal granted leave to MW to withdraw its Statement of Grounds on the filing and service of a document indicating it was not a referral authority. MW subsequently confirmed and lodged the required documentation. In its Order the Tribunal noted MW:

.... no longer wishes to rely upon the Statement of Grounds, that it is not opposing the permit application and it confirms it is satisfied with conditions contained in the Notice of Decision to Grant a Permit.

MW is therefore no longer a party to the proceeding.
- 5 Council supports the proposal subject to conditions and submits that the proposal provides an acceptable planning outcome. It considers the proposal:

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² Prior to the scheduled hearing, two of four appellants (respondents) to this matter advised their intent to withdraw section 82(1) review appeals to the proposal. Bangalore Pastoral Pty Ltd (Tribunal Application P699/2022) was granted leave by the Tribunal to withdraw its review appeal on 31 January 2023. Phillip Island Conservation Society Inc. (Tribunal Application P748/2022) advised of its intent to withdraw its review appeal on 27 January 2023. An Order was made by the Tribunal withdrawing the appeal on 3 February 2023.

- Is acceptable in its strategic context;
 - Responds to the site context and will not result in unacceptable impact on the landscape character of the area;
 - Will not cause unreasonable impacts on flora and fauna subject to appropriate conditions;
 - Includes appropriate stormwater drainage design and stormwater management measures;
 - Is a significant development for the region that would grow the tourism and visitor economy; and
 - Will result in a net community benefit.
- 6 The applicants/objectors were represented at the hearing by Ms Eastoe, who spoke to a written submission that is now on the Tribunal's records.
- 7 Ms Hosking resides to the north of the review site and is a long term resident. Ms Hosking raised three key issues regarding the proposal that can be summarised as:
- Use of the land and loss of agricultural land.
 - Inappropriate built form.
 - Environmental and landscape impacts including impacts on the Ramsar Wetlands.
- These matters were expanded upon at the hearing.
- 8 Mr Vanderzwet is a director of and acts on behalf of Van Diemans Land Investments, which operates an intensive flower growing and distribution (horticulture) business adjoining the review site at 1 Samuel Amess Drive, Newhaven.
- 9 Mr Vanderzwet's Statement of Grounds raises concerns regarding:
- Drainage and potential flooding impacts.
 - Lack of security fencing between the two properties resulting in potential damage/loss of nursery stock.
 - Adverse impacts to an existing agricultural business that generates ongoing opportunities for local employment and support for rural communities.
 - The proposal does not enhance or support agricultural activities in the surrounding Farming Zone.
- These matters were expanded upon at the hearing.
- 10 The respondent does not agree with the applicants/objectors and relies on the expert witness statements addressing planning, drainage and flooding, ecology, landscape, urban design, and agriculture. Each of the experts provided their evidence-in-chief, as well as oral evidence at the hearing.

- 11 The respondent submits it is relevant the proposal has support from the State and Federal governments (monetary grants), the responsible authority, and the Department of Transport and Planning. It says:

The proposal will be a significant enhancement of the tourism offering on Phillip Island and will serve as a suitable legacy to Australian Vietnam Veterans in generations to come. Lest We Forget.

The development proposition will help to deliver a worthy legacy to their contribution and sacrifice. The development is of high architectural quality and has a considered and respectful landscape theme. It is likely to be a building of national significance. The current shed next to the airport is not.³

WHAT ARE THE KEY ISSUES?

- 12 In determining the key issues arising from this proposal, we must decide whether to grant a permit and, if so, what conditions should apply. We must address whether the proposal will produce an acceptable outcome, having regard to the relevant purposes, objectives and supporting policy provisions that apply under the Scheme.
- 13 Clause 71.02-3 also requires the decision-maker (in this case the Tribunal) to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 14 Based on the submissions and evidence of the parties we consider the key issues are as follows:
- The acceptability of the proposed use in the Farming Zone.
 - Is the proposal acceptable in its strategic context?
 - Will the proposal result in acceptable impacts on the landscape character?
 - Will the proposal result in acceptable impacts on flora and fauna?
 - Is stormwater drainage and water quality management acceptable?
- 15 Having considered the submissions and evidence of the parties, including our inspection of the review site and surrounds, we find the proposal is not consistent with the prevailing strategic planning policy context and FZ that applies to the subject land. We find the scale and size of the proposal in a FZ, located outside any precinct nominated under the Scheme for a large tourism development as proposed, is not an acceptable or orderly planning outcome.
- 16 We also find the proposal introduces a large building form and visually prominent berm mounding that is significant in scale and transformative in

³ Paragraphs 172 and 173 of the applicant's written submission.

character to the existing landscape setting. We consider the extent and size of the proposed berm treatments will be too obtrusive, in an area where the landscape is rural and subtle, with low lying landform rolling towards the north and to the Fisher's Wetland area and Western Port Bay beyond.

- 17 These are determinative matters and cannot be addressed by minor design changes to the proposal. It requires a major redesign of the scale, size and appearance of the proposed building and berms and their setting within the existing landscape.
- 18 As with all Tribunal decisions, this decision was not taken lightly by the Tribunal. We accept and acknowledge the important nature and intent of this proposal to provide an opportunity to enhance the work of the National Vietnam Veterans Museum Ltd, to inform and further educate Australians and others, on the Vietnam War.
- 19 The respondent provided a compelling community benefit submission along these lines. While acknowledging the continuing and important educative role of the respondent, we are also required to assess the proposal as it is put to us. Significantly, this requires assessing and balancing existing planning policy settings and FZ purposes and controls that apply to the site chosen by the applicant. This includes considering the existing land uses and associated buildings and works as proposed, on a parcel of land that is zoned and adjoins land actively used for farming purposes. The subject land is also located in a declared landscape environment that is sensitive to change, both physically and visually.
- 20 We have found the scale of the proposal and its specific space requirements, which includes the need for a purpose built building to store and display large museum exhibits, does not sit comfortably within the existing landscape setting on this side of Phillip Island Road. Rather than sitting within the existing landscape character and form, we find the proposal, if approved, would substantially and irrevocably transform the existing landscape setting and character of the area. We find this outcome is not one supported by the existing planning policies and strategies that currently apply to the subject land.
- 21 Our reasons follow under Key Issues below.

SUBSTITUTION OF AMENDED PLANS

- 22 At the commencement of the hearing the respondent sought leave to substitute amended plans in accordance with the statement of changes circulated by Tract on 23 December 2022. We were satisfied the amended plans/documents had been circulated to the other parties in accordance with the Tribunal's Practice Note (PNPE9).
- 23 The amended plans sought to be substituted comprised three documents (1-3):

- Document 1: Land Management Plan prepared by Phillips Agribusiness.
 - Document 2: Amended Stormwater Strategy prepared by TTW, Revision 7, dated 20 December 2022.
 - Document 3: Amended Landscape plan prepared by Tract dated 23 December 2022 (Revision 7).
- 24 Parties did not oppose the substitution of these documents and had prepared their respective submissions on the amended documents.
- 25 We provided oral consent to the substitution of these documents and the hearing proceeded on that basis. This order confirms the oral consent given by the Tribunal at the hearing.

THE AMENDED PROPOSAL

- 26 The amended proposal, including management of the proposed museum, is appropriately described in the council's written submission at paragraphs 17 to 33 inclusive and the respondent's written submission at paragraphs 33 to 47. The Tribunal does not intend to repeat these details in full.
- 27 Nevertheless, we think it is useful to provide the following summary of the proposed key buildings and works associated with the proposal, as described by the council:

Construction of a main building in the south-eastern section of the Subject Land with a total area of 4,206sqm containing exhibition areas, visitor services spaces and support area spaces:

- The exhibition areas will form approximately one half of the building and will include a central theme area, a supporting theme area and an indoor memorial space;
- The visitor services spaces and support spaces will approximately form the other half of the building, consisting of ticketing, retail, reception, a café, training, meeting and functions rooms and amenities; and
- The support spaces will consist of offices, archives, storage, a library and staff amenities;

The proposed main building has a height of 2-storey (with the second level including a mezzanine level and outdoor viewing deck) and 12.93m.

Construction of a carpark that includes 60 spaces and an overflow area with 30 car parking spaces and a bus parking area.

Landscape berms are proposed to the south of the proposed main building and carpark. The berms will reach a maximum height of 7m in front of the main building, and 4m in front of the carpark area.⁴

28 A table prepared by the council, showing minimum setbacks of key buildings and works proposed on the site is provided below. An informative site plan of the proposal, including location of the proposed landscape berms, carparking layout, vehicle access and existing roundabout to Phillip Island Road, together with some contours and building setbacks, is also provided.

Boundary	Minimum Setback (Buildings)	Minimum Setback (Works)
North	270m	70m to landscape works
East	160m	28.64m to overflow carpark and landscape berms
South (Phillip Island Road)	115m	2m to business identification sign 89.97m to carpark 47.86m to landscape berms
West (Churchill Road)	610m	10m to borrow pit

Figure 1a: Setback Table - Source: Council written submission



Figure 1b: Extract of the Proposed Site Context Plan – Source: Council written submission

29 As noted in the expert evidence statement of Mr Glossop, the proposed museum, if approved, is to be fully accredited by Museums Victoria. Mr

⁴ Paragraphs 18 to 21 of the council’s written submission.

Glossop opines the museum will be the *'largest museum of its kind in Australia and the largest Vietnam veterans' museum globally.'*

- 30 The following Artist's impression of the proposed museum building included with the planning application, as well as a design layout at ground level (noting the building also includes a mezzanine level and balcony area to its northern elevation), is also provided below:



Figure 2: Artists' Impression and Ground Floor Layout Plan – Source: John Glossop's Evidence Statement.

KEY ISSUES

The acceptability of the proposed use in the Farming Zone?

Overview

- 31 The respondent submits the proposal will retain a portion of the subject land for farming purposes and will not result in the adverse loss of productive agricultural land. The council supports this view.
- 32 The applicants/objectors do not agree and are concerned the proposal will remove viable farming land from ongoing agricultural production.

Policy Settings

33 As noted in the Information Section above, the review site is located within the FZ.

34 The FZ has the following purposes relevant to the proposal:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for the use of land for agriculture.
- To encourage the retention of productive agricultural land.
- To ensure that non-agricultural uses, including dwellings, do not adversely affect the use of land for agriculture.
- To encourage the retention of employment and population to support rural communities.
- To encourage use and development of land based on comprehensive and sustainable land management practices and infrastructure provision.

35 Under the FZ, a permit is required for the use and development of the review site and for development within 100m of a waterway. In addition, permit requirements are triggered under Clause 52.17 for the removal of identified native vegetation and under Clause 52.29 for the creation of access to Phillip Island Road which is in the TRZ2.⁵

36 Under Clause 35.07-6 of the FZ, there are a range of decision guidelines that are required to be considered. Relevantly, these are:

- General issues relating to the capability and suitability of the review site for the proposed use and development, including compatibility with adjoining and nearby land uses.
- Agricultural issues and the impacts from non-agricultural uses relating to whether the proposal supports and enhances agricultural production, has adverse impacts on soil quality or permanently removes land from agricultural production, limits the operation and expansion of adjoining and nearby agricultural uses and the benefits from an integrated land management plan for the review site.
- Environmental issues relating to impacts on natural physical features and resources of the area especially soil and water quality. Impacts on flora and fauna on the review site and its surrounds, the protection and enhancement of biodiversity including retention of vegetation and faunal habitat and revegetation works.

⁵ There is also a permit requirement triggered under Clause 52.05 for the construction and display of business identification signage. This is not a matter that is contested between the parties.

- Design and siting issues relating to minimising the loss of productive agricultural land. Impacts on the character and appearance of the area from the siting, design, height, bulk, colours, and materials of the development on the natural environment, including natural scenic beauty or importance and on major roads, vistas and water features and measures to be undertaken to minimise any adverse impacts.
- 37 We note Clause 14.01-1S relating to '*Protection of agricultural land*' seeks to protect the state's agricultural base by preserving productive farmland. The policy includes strategies seeking, amongst others, to protect productive agricultural land from unplanned loss due to permanent changes in land use, prevent inappropriately dispersed urban activities in rural areas, consider the desirability and impacts of removing land from primary production, given its agricultural productivity and the compatibility between the proposal and existing use of surrounding land.
- 38 We have considered these matters, amongst others, in our assessment that follows.

What is the evidence?

- 39 Mr Phillip's evidence statement identifies the review site to have variable productivity. He says the eastern half of the review site is impaired by its low-lying nature, susceptibility to waterlogging and the presence of numerous wetland and drainage areas. He considered that the western portion of the review site was more productive due to its higher elevation.
- 40 Mr Phillips considered the western portion of the review site had good soils that could be used for pasture production. His evidence was that, although the land may be moderately productive, it would be responsive to further improvement, through raising soil fertility levels, controlled grazing, and introduction of new pasture species.
- 41 In support of his opinions above, a Land Management Plan was prepared by Mr Phillips. The plan provides for a weaner beef fattening enterprise which we were advised is common in the area. The infrastructure requirements outlined by Mr Phillips include sufficient paddocks to enable rotational grazing, reticulated water to each paddock and a set of stock yards for livestock handling.

Our discussion and findings

- 42 We accept Mr Phillip's evidence that the use of the eastern portion of the review site for agriculture is a positive element of the proposal, from the perspective of impacts on agricultural productive land more generally. We also accept Mr Phillip's view that the proposal will not result in excessive loss of agricultural productivity on the overall site, noting the physical context he describes in his evidence statement regarding the western portion of the subject land.

- 43 However, we express a word of caution to these findings. We have concerns that the introduction of a large scale tourism facility on the review site as proposed, could lead to further pressure for adjoining FZ land to be developed for non-agricultural related purposes along the northern side of Phillip Island Road. We consider the proliferation of larger non-agricultural based developments on the northern side of Phillip Island Road would not be consistent with the policy settings that currently apply under the Scheme and would not be consistent with the orderly and proper planning of the area.
- 44 As we have noted below, we find that existing policy settings in the Scheme currently encourage and identify consideration of larger scale tourism related proposals to the opposite (southern) side of Phillip Island Road, in particular the airport site and surrounds.

Is the proposal acceptable in its strategic context?

Overview

- 45 The parties provided detailed descriptions and context of relevant policy and zone provisions in their written submissions and evidence statements. We have considered these in our assessment of the proposal.
- 46 The proposal is for the use and development of a museum and restaurant located within a rural area (FZ) on the main tourist road in the eastern isthmus of Phillip Island. All parties accept the review site is located outside of the settlements of Newhaven and Cape Woolamai.
- 47 It is also accepted this is a large development that comprises a building with over 4,000sqm floor area, having a length of around 135m and width between 22m and 49m. The building also includes a combined single and two-storey form up to 12.9m in height (east elevation). We note Mr Glossop's evidence that the *'height is in part reduced by the building being cut into the ground/earth mounding around'*⁶. We make further comment on this matter under the Key Issue heading dealing with landscape character.
- 48 The proposed building is also acknowledged in the planning evidence of Mr Glossop, and the urban design and landscape evidence of Mr Partos, as having a *'strong contemporary architectural form'* and being a building of *'solidity and permanence befitting a public institution such as a museum'*.
- 49 The combined building and berm/mounding form would create a prominent presence in the existing landscape character of the area. We consider these characteristics of the proposal draws particular attention, under the Scheme, to the following strategic land use policy settings:

⁶ Paragraph 100, Glossop Evidence Statement.

- Agriculture.
- Tourism.
- Environment.

- 50 Included within the latter component is consideration of the proposal's response to landscape values, flora and fauna values and water quality through stormwater management. These were matters specifically addressed through the respondent's experts, council, and the applicants/objectors' submissions.
- 51 We also note the use already operates (albeit at a smaller scale) in the area on land diagonally to the south-west of the site, on part of the Phillip Island Airport site. The respondent's intention is to move to a new location, in a *purpose-built facility* that will have the capacity to display more of the larger items currently held in storage in a more engaging manner. This includes outdoor exhibitions of large planes and helicopters that require larger land space than the existing site allows.
- 52 We also acknowledge that the museum commemorates an historical conflict being the Vietnam War. As Mr Glossop noted in his evidence, *'the nature of the proposed use is to educate the community about the Vietnam war and the role that the nation played in that conflict'*. Mr Glossop also notes this war was a divisive part of Australia's modern history, and the proposed museum seeks to help current generations better understand this period. We accept these observations.
- 53 We also accept the proposal seeks to provide a stronger social connection to these important historical events through ongoing education and displays that would occur from the proposed museum building. We noted from our accompanied inspection of the existing museum facility, an evocative portrayal of the events of the war and Australia's involvement and experiences of veterans in this conflict.
- 54 Nevertheless, we must also balance and assess the merits of this proposal within the existing policy regime and zone provisions that currently apply to the site under the Scheme. As with all Tribunal decisions, this assessment requires weighting all relevant policy and zone purposes that apply. This is the approach we have taken here.

Policy Settings

- 55 The review site is to the west of the settlement of Newhaven, which is identified under Clause 02.03-1 as a *'District Town'* with moderate spatial growth capacity, where some potential growth and infill development is identified within defined settlement boundaries. The review site is also north and opposite the settlement of Cape Woolamai, which is identified as a *'Hamlet'* with low spatial growth capacity.

- 56 Relevant to the proposal, policy under Clause 02.03-1 relating to '*Settlement*' refers to council seeking, amongst other matters to:

Maintain a separation between townships.

Support agriculture and rural landscapes in maintaining distinct non-urban breaks between towns.

Discourage urban development that encroaches or impacts on significant environmental features.

Agriculture

- 57 Policy under Clause 02.03-4 relating to '*Agriculture*' recognises that most of the rural land in the municipality is considered productive agricultural land, distinguishing areas in the eastern part of the municipality as part of the nationally significant Gippsland dairy industry. Council seeks to retain productive agricultural land by restricting development in these areas. Policy seeks to prevent land use conflicts in agricultural areas by discouraging uses in rural areas that are not directly related to, or that have an adverse impact on, current and future agricultural opportunities. The policy also supports a mix of uses in the FZ that supports agricultural activities and facilitates the retention of productive agricultural land.
- 58 Policy relating to economic development and '*Agriculture*' under Clause 02.03-7 recognises that agriculture, particularly dairy and beef cattle farming, are significant to the local and regional economy. It is the main land use in the hinterland areas and creates an attractive landscape backdrop to the coastal areas. Council seeks to protect the economic viability of rural areas and support the diversification of the agricultural industry.
- 59 This intent is reinforced under Clause 14.01-1S relating to '*Protection of agricultural land*' which seeks to protect productive agricultural land and Clause 14.01-2L '*Sustainable agricultural land use in the Farming Zone*', which seeks to identify and support a preferred mix of land uses and to minimise conflict with existing agricultural uses. It includes a strategy that discourages non-agricultural uses, other than those that support agriculture and has policy guidelines to consider as relevant encouragement of tourism facilities that complement, or are associated with, the agricultural use of land such as wine tasting and farm gate sales.

Tourism

- 60 Regarding '*Tourism*', policy under Clause 02.03-7 recognises that it is the pillar of the municipality's economy with internationally recognised tourism destinations such as Phillip Island. The policy recognises that nature plays an important role in tourism and this role is broadening with a focus on the agricultural, environmental and landscape values of the rural hinterland. It also recognises that there is a growing demand for large-scale tourism development.

- 61 The policy identifies key tourist areas, referencing Newhaven specifically and Phillip Island more generally. The policy also identifies rural-based tourism areas. Significantly and importantly, we note the review site's location is not one of the areas listed in this context.
- 62 Importantly, we note the policy contains the following strategies:
- Support well-designed tourist development in identified locations, that respond to market demands, as well as the coastal and landscape character, and the environmental significance of the area.
 - Support tourism in rural areas provided it does not come at the expense of their landscape, amenity, liveability, environmental, social and agricultural values.
 - Encourage diversity in tourist accommodation and attractions.
- 63 Regional policy under Clause 11.01-1R relating to '*Settlement – Gippsland*' also identifies Phillip Island as a strategic tourism investment area. The policy refers to the *Gippsland Regional Growth Plan 2014 (Growth Plan 2014)* which supports improvements and developments that, enhance the tourist experience, are conducive to tourism development in the area and does not undermine the environmental values of the area.
- 64 More particularly, the Growth Plan 2014 encourages tourism development to locate within an existing urban settlement in identified strategic tourism investment areas, except where proposals:
- support nature-based tourism or are farm-based;
 - do not include a permanent residential component;
 - avoid or manage natural hazards;
 - are likely to be of regional significance;
 - are high quality and significantly add value to the tourism experience of the area; and
 - do not detract from the environmental or landscape values of the area in which they are located.

(Tribunal emphasis added)

Settlements

- 65 Clause 11.01-1L-6 relating to '*Newhaven*' applies to all land identified in the '*Newhaven Strategic Framework Plan*' and includes a strategy to prevent additional expansion of Newhaven, other than what is described in the Newhaven Strategic Framework Plan. The Newhaven Strategic Framework Plan refers to a '*Potential Tourism Precinct*' north of the Phillip Island Road, directly west of the existing urban area and within the settlement boundary for Newhaven. A '*Potential Tourism Related Rural Activity*' area is also identified on land directly adjoining to the east of the

review site. The review site is shown in part as a *'Rural Area/Farmland'* and as noted above, is not within either of the nominated tourism precincts.

- 66 Clause 11.01-1L-16 relating to *'Cape Woolamai'* applies to all land identified in the *'Cape Woolamai Strategic Framework Plan'* and includes the settlement strategy to prevent any additional expansion of Cape Woolamai, other than the potential redevelopment of the former Phillip Island Airport. The Cape Woolamai Strategic Framework Plan identifies the former Phillip Island Airport as an *'Investigation area once the airport's future has been determined'*. Again, the review site is identified as *'Rural Area/Farmland'* and is not within an area nominated specifically for tourism development.
- 67 Clause 17.04-1L relates specifically to *'Facilitating Tourism'* which, under *'Location Strategies'* refers to:
- Supporting the location of tourist development in the tourist areas identified under Clause 02.03.
 - Integrate tourism development with existing settlements and existing tourist and urban infrastructure.
 - Discourage tourist development from establishing intermittently along major tourist routes, unless identified as a tourist area.
 - Discourage tourist development on high quality or productive agricultural land and in areas of high environmental and landscape quality.
- 68 The policy also includes the following relevant diversification strategies:
- Encourage tourist facilities that are compatible with and add value to the existing built and natural attractions of the municipality.
 - Support tourist development that will contribute and reinforce the municipality as an all-year round tourist destination.
- 69 Regarding settlement breaks, both policies under Clause 11.03-3S relating to *'Peri-urban areas,'* and Clause 11.03-4S relating to *'Coastal settlement,'* include strategies providing for non-urban breaks between urban areas and protecting areas between settlements for non-urban use respectively.

Environment

- 70 Regarding the environment, policy under Clause 02.03-2 relating to *'Environmental and landscape values'* recognises the impacts from the fragmentation of indigenous vegetation and loss of biodiversity. It also recognises the value of coastal and hinterland landscapes as areas of visual and environmental qualities and for their agricultural productivity and biological significance.

- 71 Clause 02.03-5 relating to '*Built environment and heritage*' recognises that Phillip Island, amongst other locations, is a place where the rural farmed landscape and coastal views are key elements of the landscape character.
- 72 We note this is linked to Clause 02.03-2 under '*Significant environments and landscapes*,' which identifies the site within the Phillip Island Northern Coast Ecologically Distinct Character Area where landscape character requires protection. Under this policy, Council seeks to protect areas of environmental, landscape and agricultural significance such as rural, coastal and hinterland landscapes, locally significant views and vistas that contribute to the character of the region and protect the undeveloped character of the coastal strip.
- 73 Clause 11.03-5S relating to '*Distinctive areas and landscapes*' refers to recognising distinctive areas and landscapes and protecting and enhancing their values and attributes. Relevant strategies include recognising the important role they play as tourist destinations and supporting use and development where it enhances the valued characteristics of these areas and avoiding use and development that could undermine the long term natural or non-urban use of land in these areas.

Landscape

- 74 Similarly, Clause 12.05-2S relating to '*Landscapes*' seeks to protect and enhance significant landscapes that contribute to the character and identity of environments.
- 75 Clause 12.05-2L-01 also seeks to ensure development is subordinate and sympathetic to the natural, visual, and environmental landscape character and significance of an area. Strategies include retaining the undeveloped character of open rural areas and conceal buildings from view, by setting them back from roads and grouping buildings together among substantial landscaping.
- 76 Clause 12.05-2L-02 relating to '*Landscape Character Areas*' which includes the '*Phillip Island Northern Coast Strategies*' refers to retaining the open rolling rural landscape character.
- 77 In the policy setting and strategies outlined above we accept and acknowledge there is a consistent and clear policy theme that encourages and supports tourism uses and associated development, particularly on Phillip Island. Policy identifies that tourism is important to the local and wider economy.
- 78 However, this policy setting also establishes that tourism proposals should be appropriately located, demonstrate a nexus with agriculture and be designed in a manner to not adversely impact environmental and landscape values. One of the tourism related strategies associated with Clause 02.03-7 describes this in the following manner:

Support tourism in rural areas provided it does not come at the expense of their landscape, amenity, liveability, environmental, social and agricultural values.

- 79 We find this is an important distinction and separation of policy settings that apply to the review site and our assessment of this proposal.

Distinctive Area and Landscape Declaration 2019 (DAL)

- 80 In October 2019, the Bass Coast region was declared a Distinctive Area and Landscape (**DAL**)⁷ and redeclared on 16 September 2021. Under the DAL the area is identified for its distinctive rural and coastal landscapes, productive agricultural land and sensitive environments with significant biodiversity, Aboriginal cultural heritage, excellent beaches and recreation and tourism opportunities.
- 81 A draft Statement of Planning Policy (**SPP**) has also been prepared and several significant landscapes and associated Significant Landscape Overlays identified for further review. We note the review site would fall within the proposed '*Phillip Island North Coast and Hinterland*' landscape, which is identified as of *regional significance* and is proposed to be covered by the Significant Landscape Overlay Schedule 3 (**SLO3**), that specifically relates to '*Phillip Island Swan Bay Coast and Churchill Island*'.
- 82 In its written submission the council noted:

The Department of Environment, Land, Water and Planning (DELWP) prepared the draft SPP and proposed landscape planning controls. Submissions on the SPP have been referred to the Distinctive Areas and Landscapes Standing Advisory Committee.

The Distinctive Areas and Landscapes Standing Advisory Committee will run its Committee process and provide its report to the Minister for Planning. The draft SPP and the proposed landscape planning controls are not seriously entertained documents and carry no statutory weight currently.

We note and accept this strategic work does not carry statutory weight in the Scheme currently.

Bass Coast Rural Land Use Strategy, 2014

- 83 The '*Bass Coast Rural Land Use Strategy, 2014*' identified areas where the Rural Activity Zone (**RAZ**) could be applied to support diversified agricultural precincts and increase flexibility for non-agricultural use and development including tourism offerings. However, we note that some other areas, including a large area around Newhaven, including the review site, were not rezoned in this manner.

⁷ Under section 46AO of the *Planning and Environment Act 1987* (Vic).

- 84 We accept Mr Glossop's evidence that more flexibility within the FZ has broadened the discretion available for tourism development, thus allowing for a broader range of tourism offerings to be considered. We also accept this has made rural areas important in providing a tourism offer, particularly with regards to vineyards and function centres and the like.
- 85 However, as we noted above, these proposals remain subject to important environmental and sustainable design response considerations and assessment.

Bass Coast Unlocking Rural Tourism Strategy, Final Report, January 2023

- 86 We note the '*Bass Coast Unlocking Rural Tourism Strategy, Final Report, January 2023*' (**BURT**) as tendered by the respondent was adopted by council on 15 March 2023. This strategy was in draft form during the hearing and its final adoption was brought to our attention by the respondent following the hearing.
- 87 Although the BURT is now a council adopted strategy, we note its content, does not at this time, form any part of the Scheme. Hence, we have given the BURT limited weight in our policy considerations.
- 88 Nevertheless, in the context of our discussion and observations above, we note the BURT recognises that policy under Clause 17.04-1L highlights the need for investment in tourism but does not adequately address contemporary tourism land uses that need to be facilitated on larger rural allotments.
- 89 As Mr Glossop highlighted, some tourism offerings can only be facilitated in rural areas due to the need for larger land parcels, which may not be available within urban settlements.
- 90 What the BURT does recognise however, is that:
 In the locations where agricultural productivity is low, alternative uses that have no link with agriculture should be considered more favourably and this can be recognised in a future piece of strategic work such as an updated Rural Land Use Strategy.
- 91 We note the BURT recommends several preliminary investigation sites that have potential for rezoning to the Special Use Zone (**SUZ**). These include rural land on the south side of Phillip Island Road, west of Cape Woolamai and the Phillip Island Airport site. However, the BURT does not identify the review site in this manner.

What does the council say?

- 92 Council says the proposal is acceptable in its strategic context and is a significant development for the region that would help grow the tourism and visitor experience and economy. It says the proposal achieves an appropriate balance between local and regionally significant agriculture and

state significant tourism on Phillip Island. Noting the proposal does not occupy all the review site and will retain part for agricultural production.

- 93 Council considers the proposal therefore '*fits into*' the existing landscape and is proximate to the settlements of Newhaven and Cape Woolamai with access to a major road. It says the review site is not pristine farming land and that the proposed use does not contain habitation or accommodation that could undermine agricultural activity in the area.

What is the evidence?

- 94 We noted the agricultural evidence of Mr Phillips that the review site comprises around 40ha of farming land that has been used for grazing and hay production. He also advised the Tribunal that the proposal would remove around 23ha of the eastern portion of the review site, to be associated with the museum building, gardens, and wetlands. Leaving around 17ha in the western portion of the review site for agricultural purposes.
- 95 The evidence of Mr Phillips was that the eastern section of the review site is of lower agricultural quality, suited to the proposal where land forming, water management works, and revegetation can achieve significant environmental improvement to the condition of the land.
- 96 Mr Phillips therefore opined the combination of the proposal and its associated environmental improvements, together with the retention of part of the review site for continued agricultural production, was a '*progressive way of enhancing resource use*'.
- 97 Regarding policy under Clause 14.01-2L, the respondent and Mr Glossop say the policy setting is '*neutral*' with respect to the proposal and it does not expressly discourage a museum or place of assembly on the review site. In this context, Mr Glossop opines the proposal will encourage the retention of employment and population that can support the rural community. He says this demonstrates net community benefit.
- 98 Mr Glossop's conclusion is that the proposal satisfies locational policy under Clause 17.04-1L supporting tourist development in locations such as Newhaven and Phillip Island, which are identified in the Scheme as tourist areas. Mr Glossop refers to the dispersed nature of tourism activity across Phillip Island and that not all of it is associated with nature.

Our discussion and findings

- 99 We accept the proposal would not result in the complete loss of land on the review site for agricultural production. We also note the land management plan prepared by Mr Phillips would assist in ensuring the western section of the review site is productively used for agricultural purposes in line with the FZ. However, we find the proposal on the remainder of the review site

does not have any other connection with agricultural production that is a key purpose of the FZ.

- 100 Responding to the respondent's submission and Mr Glossop's evidence that existing policy appears neutral at it does not expressly discourage a museum or place of assembly on the review site. We also observe that existing policy is also neutral in directly supporting the nature of the proposal, as the proposal does not have a direct supporting relationship to agriculture.
- 101 Other than retaining some of the land area on the review site for agriculture, we find there is nothing in the nature of the proposal that actively supports or promotes agricultural production. The museum use is therefore distinctly separate and independent from agricultural use. The respondent acknowledges this in its submission, stating that *'the proposal is not driven by a nexus with agriculture'*.⁸
- 102 Given this, we find the proposal is a tourism offering that does not have a direct connection with agricultural values. While we accept some part of the review site allows for some continued agricultural production, it appears to us to only do so as a matter of convenience, in that this portion of the site is not required for the museum proposal.
- 103 This was perhaps best demonstrated by the proposal including part of the western portion of the review site as a potential *borrow pit* and a source of soil for the earthworks associated with the development. We accept that further submissions from the respondent and associated evidence from Mr Phillips, raised the possibility this part of the proposal required further investigation. Nevertheless, we do not consider the nature of the proposal is based primarily on rural or nature-based activity, or for natural landscape appreciation.
- 104 We acknowledge the design includes some important environmental protection and site improvements through the creation of engineered stormwater management wetlands and revegetation works, with walking paths which allow for appreciation of the revegetated and constructed wetland areas. This innovation is also demonstrated through the design of the building, which includes extensive glazing on the north side, which together with the upper-level mezzanine deck, seek to capitalise on views towards Western Port Bay and Churchill Island.
- 105 However, we consider these design and environmental features of the proposal are a necessary means of transforming the site into a condition capable of accommodating the scale of the proposed development. In our view, these design elements do not have a fundamental link with the

⁸ Paragraph 113 of the respondent's submission.

primary purpose of the proposal, which is that of a museum commemorating a war conflict.

- 106 We accept Mr Glossop's assessment that Phillip Island is recognised in the Scheme as a significant tourist area. However, we also observe that many of the tourism activities appear to pre-date the strategic framework plans that now apply under the Scheme or have been specifically zoned to facilitate and support the larger scale tourism activities such as the SUZ for the Phillip Island Motorcycle Grand Prix circuit.
- 107 We also observe that any reference to Newhaven as a tourist area, includes consideration of the tourism precincts designated in both the Newhaven and Cape Woolamai Strategic Framework Plans, which provide more specific direction for the location of tourism activity in the area.
- 108 While we accept Mr Glossop's premise that some tourism developments are large and require large sites that often cannot be accommodated in township areas, this should not be at the expense of appropriately satisfying other relevant policy settings. Significantly in our view, the proposal is not within these identified tourism activity locations. The review site is in an area identified by policy as a *rural area/farmland*.
- 109 Mr Glossop's opinion was that tourism development on Phillip Island is fluid and should not be seen from a perspective as being limited to one or two areas. We accept that this may be the case for smaller scale tourism related development, where landscape and environmental impacts can be managed. However, the review site is located within a settlement break where, although the proposal does not include accommodation, remains of a significant scale where changes to the landscape will be significant.
- 110 In terms of adjoining land use compatibility, we note the applicant/objector to the immediate east is an operating flower farm, reliant on biosecurity conditions which he submits may be jeopardised by contamination from stormwater runoff from the proposal. Although we consider this issue more specifically later in our reasons, we are satisfied that appropriate measures to protect water quality are proposed as part of the design of the development.
- 111 Nevertheless, we find the proposed museum will be a large built form on a site that is also within an open rural farming hinterland landscape setting. The views north into the review site from Phillip Island Road are generally uninterrupted by vegetation or significant built form structures. We note the recent roadworks associated with the new roundabout from which the proposal will obtain vehicular access, has resulted in the removal of roadside vegetation that we observed to the west of Churchill Road. Consequently, we find the review site is now exposed to these views, which are also elevated, allowing views beyond and across the review site.

- 112 In this physical setting, we find the combined length and height of the proposed building, set behind the proposed construction of an earthen berm up to 7 metres in height and exceeding the length of the building (up to 135 metres), together with the addition of a slightly lower berm proposed in front of the eastern car park, would result a significant and unacceptable landscape change. In our view, the scale and size of the built form and associated buildings and works will transform the existing landform and landscape character.
- 113 We do not agree with Mr Partos that the view of the new building from Phillip Island Road will be limited due to the proposed setback distances and fall of the land. To the contrary, we find the existing fall of the land and the construction of the roundabout in Phillip Island Road and lack of road reserve planting, now increases one's perception of the views to the north of the review site, including some longer range views of Churchill Island and water beyond.
- 114 We find, the proposal is a change that is simply too much for this open landscape setting. In our view, the proposal introduces visually prominent built form and berm mounding of a scale that is both significant and transformative to the character of this area. We also note this mounding would be the first berm of this height, scale and length in this immediate area.
- 115 The council and respondent say the main berm is important to the design theme and grassed roof treatment of the proposed building. We also acknowledge the respondent offered to remove some of the berm treatment associated with the car park area and lower the building height between 300-400mm.
- 116 However, we do not consider these design changes go far enough. Our key concern remains. We find the proposed scale of built form and landform change in a location outside of any precinct nominated under the Scheme for tourism purposes (which Mr Glossop opined could be said to give the proposal a 'leg up') means, that from a strategic planning perspective, the proposal is not an acceptable planning outcome in this location.

Will the proposal result in acceptable impacts on the landscape character?

Overview

- 117 The review site has frontage to both Churchill Road to the west and Phillip Island Road to the south. It comprises rural land opposite the settlement of Cape Woolamai. It consists of gently undulating land that generally falls towards the north, with a higher area to the west that falls to the south and south-east.

- 118 The review site has been used for agricultural purposes. This is evident with constructed wetlands/dams, defined water courses and generally north-south and east-west planted windbreaks that delineate paddock areas. In this regard, we note that the agricultural use of the review site would be generally consistent with the properties to the north and west that are also used for agricultural purposes associated with grazing. Noting the more intensive horticultural activity to the east associated with the flower farm (refer to Figure 3).
- 119 The land also rises notably towards Phillip Island Road, to a level of approximately 10.5m (Australian Height Datum) contour at a point near the newly constructed roundabout that provides access to Cape Woolamai. However, there are lower lying areas on the review site that show signs of wet conditions with areas of standing water, extensive works associated with wetlands/dams and drainage channels and areas of waterlogged land, with evidence of poor vegetation coverage and comprising saltmarsh vegetation with saline conditions. The evidence of Mr Partos and Mr Lane is generally consistent with this description.



Figure 3: Location of the review site and surrounds. Sourced from Place Values from Mr Partos' Evidence Statement.

Policy Settings

- 120 Regarding the proposal and the review site, we have referred earlier to policy relating to landscape. Further policy relating to building design associated with this key issue is also relevant and includes:

- Clause 15.01-1S relating to '*Urban design*' which requires development to respond to its context in terms of character, natural features, and surrounding landscape.
- Clause 15.01-1L-01 relating to '*Urban Design in Bass Coast*' which seeks development to be designed to reflect the coastal setting through built form and materiality and that view lines and vistas are protected and shared between the public and private realms.
- Clause 15.01-1L-02 relating to '*Landscape design*' which seeks a high-quality landscape setting and includes strategies seeking minimising of earthworks and vegetation removal, the use of local native plants and integrated design with landscaping and development.
- Clause 15.01-2S relating to '*Building design*' which seeks to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development. Supporting strategies refer to minimising detrimental impact of development on neighbouring properties, the public realm and the natural environment, energy performance, minimising stormwater discharge that include on-site infiltration and reuse, protects, and enhances valued landmarks, views, and vistas.
- Clause 15.01-2L relating to '*Building design*' which requires the incorporation of design elements and a variety of materials that add visual interest and articulation to all visible facades especially when visible from main traffic routes, avoids long expanses of solid walls and is energy efficient.
- Clause 15.01-6S relating to '*Design for rural areas*' which seeks to ensure development respects valued areas of rural character. It includes strategies to ensure the siting, scale and appearance of development protects and enhances rural character. It looks to protect visual amenity of valued rural landscapes and character areas along township approaches and sensitive tourist routes by ensuring development is sympathetically located and site and design development to minimise impacts on surrounding natural scenery and landscape features including wetlands and waterways.

What does the council say?

- 121 Council says that, although the review site is located within the Phillip Island Northern Coastal landscape character, it is not close to the coast, nor is it affected by any overlay including the SLO. Council says the review site is close to areas of non-rural development such as Cape Woolamai and the Phillip Island airport site. In this context council does not consider the review site is in a pristine rural landscape.

- 122 Council says the proposal is acceptable because it is well screened by the berms, is to set back approximately 115m from the Phillip Island Road, is proposed to be constructed with appropriately muted tone materials and proposes extensive Swamp Paperbark revegetation. It submits these design elements will maintain a natural environment and result in an improvement to the condition and appearance of the subject land.

What do the applicants/objectors say?

- 123 The applicants/objectors say this open rural landscape will be changed forever by the proposal.
- 124 They say the fact the proposal includes major earthworks for the construction of the berms to help screen the proposed building and car park, is testimony of the review site's visual exposure and sensitivity and that the extent of earthworks is a source of potential environmental impact.

What is the evidence?

- 125 It is the urban design and landscape evidence of Mr Partos that the proposal has been '*holistically prepared*' and is an '*integrated landscape*'. He considers the site planning associated with the proposal has produced an effective and appropriate response to the site and broader local context.
- 126 Mr Partos considers the built form is confined to a single building located at the base of the small rise near Phillip Island Road, approximately 100 metres north of the existing roundabout. He says the proposal maintains the existing rural character, albeit revisioning it, to become a restored landscape consistent with the Fisher's Wetland and Phillip Island Nature Park located to the site's north.
- 127 He notes the proposal also includes extensive revegetation works with close connections with remnant native vegetation through the planting of Swamp Paperbark vegetation (see Figure 4 below)



Figure 4: Amended landscape plan western portion of the review site. Sourced from Partos's Evidence Statement.

- 128 Mr Partos says the proposal replaces the rural grazing landscape with a revegetated rural recreational and natural landscape, which will allow visitors to access and engage with the area and local fauna. He considers the built form represents a contemporary style that comprises pre-cast concrete panels, with brown earthy tones and clear glazing generally facing north. To the south, he notes the proposed building is screened behind a vegetated berm which extends to screen the associated parking areas. This vegetation extends itself to a green roof on the museum building. Mr Partos considers this roof treatment using a camouflage theme will reduce the proposal's visual presence from the south and provides a sense of interest with the nature of the proposal (see Figure 5).



Figure 5: Aerial 3D image of proposal looking south-west. Sourced from Architectus plans.

- 129 Mr Partos says views across the open rural character towards the Fisher's Wetland and Western Port Bay to the north will be largely retained. It is his evidence that:

The proposed museum, where it extends to 2 storeys is mostly below 10.5m AHD at its highest point. Near the roundabout, the highest point of the natural land is similarly approximate 10.5m AHD. Consequently a person (with an eye level at approximately 12m AHD) will experience a view over the roof of the museum building.

- 130 Mr Partos opines the two storey section of the roof represents an area of approximately 80m across the field of view of the review site from Phillip Island Road. He says this is 50% less than the distance (approximately 160m) between the building and the eastern boundary, which aligns with the primary view from the roundabout.

- 131 The respondent also took us to some 3D photomontage images of the proposed building and berm forms prepared by Tract Consultants. The images were provided as part of the lodged application material and sought to demonstrate the views of the proposed building from the roundabout in Phillip Island Road. The images were added to by updated views taken directly from the roundabout that were subsequently tabled during the proceeding.
- 132 We have considered these 3D photomontage images as presented, noting they were not provided and evaluated as part of evidence. Consequently, we have given these images limited weight in our findings.

Our discussions and findings

- 133 We note that Mr Partos accepts the proposal and its associated landscaping treatment, *'reflects a departure from the existing open rural character'* of the review site. However, it was his evidence the subject land was:
.... one that falls in a drainage catchment area that has already been modified and one that continues to evolve in response to changing land use needs.
- 134 His opinion was based on the combination of the landscaped berms and garden roof form of the proposed building. It was his view this would assist in integrating the museum building into what he identified as a *'modified'* landscape.
- 135 We accept the existing landscape character of the review site has been modified by past agricultural practices. We also agree with Mr Partos that the proposal has some positive landscape outcomes including the proposed improvements and revegetation of parts of the review site.
- 136 However, we were not persuaded by Mr Partos that the existing landscape has been modified to the extent that it can readily absorb the significant scale and size of the proposal.
- 137 Mr Partos considered the proposed landscape treatment should be viewed as a *'revisioning of the existing landscape'*. We do not agree that existing landscape character policy setting seeks to revision the existing landscape here. The proposal, would in our view, substantially and irrevocably transform the existing landscape setting and character of the area and the review site. The existing landscape character form is low and subtle and enables open and uninterrupted views down towards Western Port Bay to the north. The proposal would significantly interrupt these existing views by introducing significant height and built form into what is essentially a low, open and rolling rural landscape form.
- 138 Mr Partos also conceded that the eastern berm associated with screening the car park would contrast with the existing natural grades across the review site. We accept he did not consider the car park berm to be an unacceptable landscape response. Nevertheless, he accepted the proposition that some of

that berm could be replaced with Swamp Paperbark planting at natural ground level, which would help preserve views beyond the review site to the north (Fisher's Wetland).

- 139 We would welcome this design outcome. However, we consider it does not go far enough to reduce the visual impacts created by the main berm and building height behind in what is currently an open landscape setting.
- 140 We accept Mr Partos's assessment, that some longer distance views towards Western Port Bay will still be possible over the proposed Museum building and berms, when viewed directly from the roundabout.
- 141 However, we remain concerned that oblique views obtained as one enters the roundabout, will be diminished, including those important longer range views of the waters of Western Port Bay located beyond the review site to the north. Equally, we are also concerned regarding the visual impact the proposed building form and height and berm treatment will have on the foreground views across the site. Including those views moving into and from the roundabout itself. We find these visual impacts cannot be mitigated by simply providing a 115m building setback proposed to Phillip Island Road.
- 142 We consider these views of the landscape setting are fundamental and critical to how one currently experiences and appreciates the existing landscape character of the review site and surrounds. We say this as the proposed Museum building, at a height up to 12.9m, is oriented for a length of 135m across the review site, in an east west configuration. This combination of building orientation, scale, height and associated mounding treatment, will introduce an entirely new landscape form immediately into the foreground and midground views of the existing low and rolling landscape form.
- 143 We were not persuaded by the respondent's submission that the travelling speed of vehicles along this section of Phillip Island Road will reduce opportunities to view this landscape setting by glimpses only of the built form. The entrance into the new roundabout slows traffic flow in front of the review site. This was our experience when travelling along this section of road into the new roundabout. We also noted that pedestrians using bus services and stops near the roundabout in front of the review site, will also be impacted by this proposal.
- 144 For the reasons outlined above, we consider the proposal is an unacceptable planning outcome for the site. The proposal is not consistent with the Scheme directions and strategies for its declared landscape character areas. We find the proposed design response falls short of the relevant landscape character strategies and objectives we have outlined and described above. This includes policy settings contained at Clauses 02.03-2, 02.03-7, 11.03-5S, 12.05-2L-02, 15.01-1S, 15.01-2s and 15.01-6S of the Scheme.

- 145 In the physical setting we have described above, we find the combined scale, height and size of the proposal will result in an unacceptable impact on the existing landscape character.

Will the proposal result in acceptable impacts on flora and fauna?

Overview

- 146 The review site is relatively cleared farming land, approximately one kilometre south of the Western Port Bay Ramsar site and approximately 800m south of the eastern section of the Phillip Island Nature Park.
- 147 The ecological evidence from Mr Lane describes that, historically, the review site has been cultivated with some improved pasture grasses and remnant native grasses on higher slopes. He notes several wetlands/dams have also been constructed centrally and within the northern half of the review site. Planted vegetation comprising Drooping She-oak (*Allocasuarina verticillata*) and Swamp Gum (*Eucalyptus ovata*) are present as wind breaks along fence lines and roadside areas with Swamp Paperbark (*Melaleuca ericifolia*) vegetation located in wetter areas and along drainage lines and around dams.
- 148 We accept Mr Lane's overview description and physical context of the site.

What is the evidence?

- 149 It is Mr Lane's evidence that much of the vegetation described above is either planted or regrowth and does not trigger a permit requirement under Clause 52.17 relating to 'Native Vegetation'.
- 150 It was also noted by Mr Lane that the Swamp Paperbark vegetation is actively regenerating due to the absence of grazing pressure. He also noted that within the low-lying areas of the review site, coastal saltmarsh vegetation is present.
- 151 His evidence also confirmed the review site contains 17 patches of native vegetation or habitat zones, totalling an area of approximately 2.7ha of native vegetation, with no large trees present. His evidence identified these patches comprised Ecological Vegetation Class (EVC)⁹ of native vegetation communities associated with Coastal Saltmarsh EVC9 located in a northern low-lying area, Estuarine Swamp Scrub EVC 53_62 located along roadsides and fence lines, Estuarine Wetland EVC10 associated with wetlands/dams and scattered patches of Plains Grassy Woodland EVC 55 across the eastern portion of the review site.
- 152 The proposal will result in the removal of approximately 0.207ha of this native vegetation associated with a patch of Plains Grass Woodland that is

⁹ Ecological Vegetation Class refers to a native vegetation type classified on the basis of a combination of its floristics, lifeforms, and ecological characteristics.

located within the footprint of the proposed museum building and cannot be avoided (refer to Figure 6). Mr Lane considers this patch of vegetation is a highly degraded version of the original Plains Grassy Woodland EVC which is lacking most ground cover species and trees and, in his opinion, is of low quality.

- 153 Mr Lane considers most significant areas of native vegetation have been avoided and are proposed to be retained on the review site. Nevertheless, he accepts some areas of planted vegetation and regrowth vegetation will need to be removed by the proposed development.
- 154 Regarding fauna habitat, the evidence of Mr Lane was that areas suitable for habitat for fauna species will remain on the review site. This includes habitat associated with the coastal saltmarsh, planted native vegetation, aquatic habitat associated with the drainage lines, wetlands, and dams and low-lying wetter areas of the review site and with the grassland areas. Mr Lane's evidence was that no fauna species or important habitat will be significantly affected by the proposal.



Figure 6: Extent of native vegetation removal. Sourced from Figure 2 in Lane's Evidence Statement.

Policy settings

- 155 The Scheme recognises the need for environmental protection, including minimising the decline and fragmentation of native vegetation and degradation of coastal areas and areas of high habitat value (Clause 02.03-2 relating to '*Biodiversity and habitat conservation*').

156 Clause 12.01-1S relating to '*Protection of Biodiversity*' seeks to avoid impacts of land use and development on important areas of biodiversity. Similarly, at a local level Clause 12.01-1L includes strategies that seek to:

- Prioritise habitat protection and enhancement, including by minimising changes in drainage, minimising soil disturbance, retaining top-soil and retaining habitat trees with hollows, fallen logs and branches.
- Avoid impacts of land use and development on identified significant flora and fauna habitats and remnant indigenous vegetation, including roadside vegetation.
- Site and design development to enhance surrounding environmental values and avoid damage to environmentally sensitive areas.
- Site, design, and construct development to retain existing vegetation (when indigenous) and incorporated revegetation where possible.
- Support the development of an extensive network of natural bushland reserves, wildlife corridors and vegetation areas, both on private and public land.

157 Clauses 12.01-2S and 52.17 both recognise the importance of achieving a *no net loss* to biodiversity from the loss of native vegetation and requires the application of the *three-step approach* to managing native vegetation of avoiding and minimising its removal and then offsetting to compensate for the biodiversity impact from loss.

What do the applicants/objectors say?

158 The applicants/objectors are concerned with the introduction of new built form and extent of land transformation required by the scale of the proposal. They are also concerned with the proposed increase in human presence into the area, being close to important bird habitat associated with Fisher's Wetland and the Western Port Bay Ramsar site.

159 They also say the loss of farmland in this area, which acts as a form of protection from the interruptions to bird activity associated with human activity, will be lost if this proposal proceeds. They submit that local bird habitats will be adversely disturbed, not only because of increased human activity, but also from the use of the event space proposed in the eastern end of the review site and from associated introduction of lighting associated with the proposed use and development. The applicants/objectors submit the increased presence of lighting has the potential to dis-orientate nocturnal birdlife, such as the Short-tailed Shearwaters (*Ardenna tenuirostris*) and reduce foraging areas for Eastern-barred Bandicoots (*Perameles gunnii*).

What does the council say?

160 Council does not agree with the applicants/objectors and considers the proposal achieves the policy intent of the Scheme. Council considers the extent of native vegetation loss is small and of low condition and any biodiversity loss is an acceptable planning outcome. The council also notes environmental impacts arising from the removal of native vegetation on the review site will be appropriately minimised by:

- New plantings to create a Swamp Paperbark scrub woodland area.
- Preservation and enhancement of existing wetlands on site, and integration with the proposed Swamp Paperbark revegetation.
- Revegetation around the footprint area of the proposal with a suite of plantings using species from appropriate ECVs.

Our discussions and findings

161 We accept Mr Lane's evidence that the loss of native vegetation associated with the proposal that triggers a permit requirement under Clause 52.17, is relatively small, is of low quality and offers little habitat value due to its size and location.

162 We are satisfied the respondent has demonstrated the appropriate application and consideration to the removal of native vegetation by using the *three-step approach* of:

- Avoiding and minimising loss of native vegetation.
- Placement and design of the proposed development; and
- Demonstrating that an offset requirement can be achieved.

163 We also note the extensive revegetation planned as part of the proposal. We consider this is a positive element associated with the proposal.

164 However, we are concerned with the amount and location of proposed lighting and the outdoor events area operating at night in association with the museum building. We consider this introduces additional activity into areas of the site which we consider is inappropriate, given the environmental sensitivity of the area. This is part of the proposal that we find is not an acceptable planning outcome on the site.

165 The area surrounding the review site north of Phillip Island Road is used predominantly for farming or nature conservation purposes. Though we accept evidence that outdoor lighting could be minimised and carefully managed through design and baffling, we do not consider the unfettered use of an outdoor area for events with up to 300 people at night, an acceptable planning proposition on this sensitive site.

166 We acknowledge that there may be select commemorative events such as ANZAC Day and other key events associated with the Vietnam conflict,

which may be appropriate to commemorate. However, we consider the number of events would need to be carefully considered and limited in frequency and should avoid excessive night time operating hours. Suitably baffled lighting techniques also are required.

- 167 Similarly, we consider the extent of walking trails associated with landscaping extend too far north into the site and will be too close to more sensitive environments such as Fisher's Wetland and Churchill Island. We find these pathways should be of lesser extent and restricted closer to the proposed building. This would avoid unnecessary human activity extending across the review site and reduce the effects of disturbance on fauna and birdlife arising from use of the proposal.
- 168 We accept this could be achieved through some minor redesign and was an approach supported by Mr Lane. This proposition was put to Mr Lane during cross-examination. We also note some additional comments and recommendations from Mr Glossop on this matter and have also considered these in our assessment.
- 169 Apart from changes to the use and location of some of the walking trails and restrictions on the use and timing of the outdoor events area and management of lighting, we find the impacts of the proposal on flora and fauna could be appropriately managed.

Is stormwater drainage and water quality management acceptable?

Overview

- 170 Evidence from Mr Partos and Mr Craigie indicates that there are several open drainage channels that have been constructed on and around the review site (refer to Figures 7 and 8). The two main drainage channels constructed on the review site are referred to as:
- The *west drain*, which conveys flows from the major catchment area located to the south¹⁰ and which enters the review site approximately 175m west of the development footprint. These flows together with internal flows from the western portion of the review site flow into the west drain, which discharges into an existing wetland located in the north west of the review site and then onwards towards the north and eventually into Fisher's Wetland.
 - The *north drain*, which collects internal flows and directs them through the review site to the north eventually joining with flows from the west drain and towards the Fisher's Wetland.

¹⁰ This catchment area is approximately 46ha in area and includes the former Phillip Island Airport site located on the south side of Phillip Island Road.



Figure 7: Review site and external catchments. Sourced from Figure 1 of Craigie's Evidence Statement.

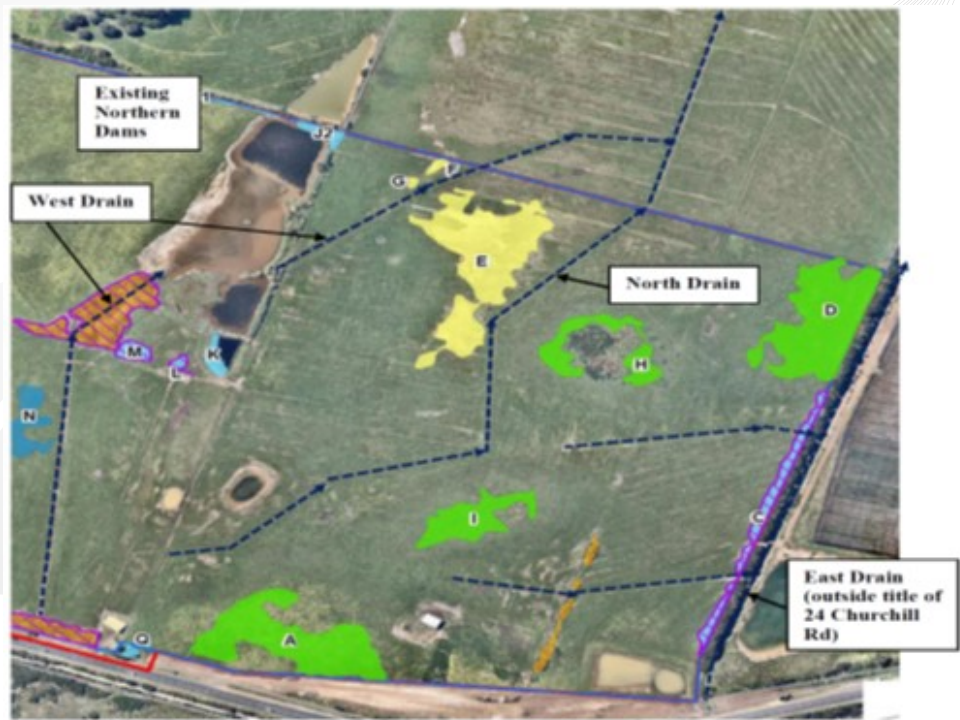


Figure 8: Review site showing existing drainage and direction of flows. Sourced from Figure 2 of Craigie's Evidence Statement.

171 There is another main drain referred to by the experts as the *east drain*. This has been constructed just over the eastern boundary of the review site on the adjoining flower farm property, which primarily conveys flows from

a major catchment area located to the south from the Cape Woolamai township area.¹¹ This drain also receives some internal flows collected from the eastern area of the review site.

- 172 We note according to the expert evidence, the review site is subject to waterlogging and poor drainage, with parts subject to flooding. Yet we also note the site is not affected by any flood related overlays.
- 173 A Stormwater Management Strategy version 7 dated 20 December 2022 prepared by TTW has been substituted by the Tribunal. This Strategy describes how the review site was highly saturated with high runoff. We accept these conditions present some challenges for managing the waterlogged condition of the ground and stormwater runoff flows.

Policy Settings

- 174 The Scheme recognises stormwater management as an important issue under policy in Clause 02.03-9 relating to '*Stormwater management*' to water quality issues from stormwater into coastal and inland waterways and on flora and fauna habitats. The policy seeks to protect the amenity and environmental values of waters in the municipality.
- 175 In addition, Clause 19.03-3S relating to '*Integrated water management*' seeks to sustainably manage drainage and stormwater through an integrated management approach. Under '*Strategies*', this includes taking a co-ordinated approach to water management, protection of downstream environments including bays, minimising flood risks, and being more resilient to the effects of climate change.
- 176 The policy requires integration of water into the landscape, including provision of local habitats and opens spaces, use of water for farming irrigation and protecting waterway health. The impacts from the quality and quantity of stormwater are also to be minimised and for this to be done at a scale that provides net community benefit through a mix of on-site measures.
- 177 Clause 19.03-3L also seeks to maintain stormwater flows and discharges at a maximum of the pre-development flow level and managing flooding and drainage to minimise risks to the community and the environment. The policy also encourages the minimisation of off-site stormwater discharge through porous pavements, on-site collection and retention of stormwater, re-use and treatment of stormwater.

Physical setting and context

- 178 We have noted above that the review site is located close to a range of sensitive environments, including the Western Port Bay Ramsar site, which

¹¹ This catchment has an area of approximately 105 hectares.

is an internationally recognised wetland environment for its use by migratory shorebirds and other waterfowl. Fisher's Wetland is also located close to the north of the review site and currently receives drainage from the site and the adjoining flower farm to the east and which, in turn, is connected by drainage to the Ramsar site.

What do the applicants/objectors say?

- 179 The applicants/objectors submit the wetland environments are extremely important for their habitat values for birdlife and threatened species and as carbon sinks, which the applicants/objectors say are already under stress due to climate change, poor management, and human influences such as development and population growth and activity. The applicants/objectors submit these factors would be placed under further pressure if the proposal proceeded.
- 180 The applicant/objector operating the adjoining flower farm business, is particularly concerned about potential stormwater flows entering the flower farm to the east and aggravating flood liability to his existing open drain, located just over the eastern boundary of the review site. We noted elsewhere this drain currently conveys flows from the urban area of Cape Woolamai.
- 181 The applicant/objector expressed concerns that this drain is already at capacity and any additional stormwater runoff flows directed into it, will exceed its capacity and result in both flooding and diminution of water quality of land used for horticultural production occurring on his property.

Our discussion and findings

- 182 We have considered the substituted Stormwater Management Strategy (Stormwater Strategy) for the proposal and the drainage evidence of Mr Craigie. We have also noted that MW supports the draft conditions relating to this matter as prepared and circulated by the council.
- 183 In response to the policy and physical drainage context affecting the review site, we note the proposal includes a stormwater management system that:
- Collects roof water from the building for toilet flushing.
 - Re-uses stormwater runoff collected in the wetlands for irrigation of farmland over summer.
 - Provides a series of cut off drains and wetlands around the development footprint that can collect and retain internal stormwater flows from the development footprint.
 - Discharges low flows from the central wetland back into the north drain via a small pipe and allow higher flows to initially flow eastwards via overland flow and then re-directed to the north drain with the events area acting as a retention basin.

- Avoids works on the west drain and allow it to remain functioning as is.
- Avoids discharge into the east drain to avoid impacts on water quality and any flood risk from the review site and the proposal on the adjoining flower farm site.



Figure 9: The proposed stormwater management system. Sourced from The Stormwater Management Strategy - Appendix A.

- 184 What makes the review site more susceptible to peak storm events, however, is its low-lying landform and susceptibility to flooding. We note and accept evidence of this from the recurring comments from parties and witnesses, noting how wet the ground on the review site was during the various inspections conducted in preparing for the hearing and how water was ponding on the site. We note, of course, that 2022 was a wetter year by usually rainfall standards for this area.
- 185 Nevertheless, what the submissions and evidence highlight to us, is the ongoing challenges the site presents with regards to best practice stormwater management.
- 186 The proposal involves significant earthworks for not only the construction of a large building, but also with respect to the berms. We note that significant land transformation is required to manage stormwater through direction of flows to channels and both through existing and proposed wetlands to capture, direct, treat and retains and eventually to allow

discharge from the review site to the north and towards both Fisher's Wetland and Western Port Bay.

- 187 It was Mr Craigie's evidence that stormwater quality will be improved through retention of flows internally generated from the proposed development. He opined the water holding capacity of the constructed wetlands can be modelled and designed to hold flows from a 1% AEP flood event flows, resulting in an appropriate response to mitigating flood risk. Mr Craigie was also satisfied that predevelopment mean flow volumes can be maintained in both the west and east drains, while pollutant loads can also be reduced below those under existing conditions that are generated from the review site and its catchment beyond.
- 188 Based on the evidence of Mr Craigie and his recommendations, we are satisfied the proposal will not adversely impact the continued functioning of the west drain, including water quality and runoff flows. We also note that Melbourne Water has consented to the proposal, albeit with conditions.
- 189 Regarding potential detrimental impacts on downstream environments including Fisher's Wetland and the Western Port Ramsar site, it is the opinion of Mr Craigie that there will be no adverse environmental impacts. He opines this on the basis that the proposed stormwater management system for the proposal will:
- Maintain existing runoff volumes to both the North and South Drains and avoid any hydrologic impact on the West Drain.
 - Exceed best practice environment water quality treatment objectives and reduce pollutant loads discharged to both Drains compared with existing conditions.
- 190 While we acknowledge the concerns of the applicant/objector, in the absence of any alternative and tested evidence on these matters, we find the proposed management of stormwater associated with the proposal, will result in an appropriate planning response.
- 191 We conclude the proposed stormwater strategy appropriately seeks to address and minimise significant risk to downstream environments, or to adjoining properties from water quality, flow volumes and peak flow rates and overland flooding. We are satisfied the proposal would achieve an acceptable outcome regarding stormwater drainage and water quality management.

ARE THERE ANY OTHER ISSUES?

Bushfire

- 192 We note the review site is not affected by the Bushfire Management Overlay (**BMO**). However, it is within an area designated as a Bushfire Prone Area (**BPA**). Accordingly, no permit requirement is specifically triggered in relation to bushfire.

- 193 However, policy under Clause 13.02-1S relating to 'Bushfire planning' asks that bushfire risk should be considered when assessing planning applications that involve places of assembly or may result in people congregating in large numbers.
- 194 It further states that when assessing permit applications for these types of uses and development, proposals should:
- Consider the risk of bushfire to people, property and community infrastructure.
 - Require the implementation of appropriate bushfire protection measures to address the identified bushfire risk.
 - Ensure new development can implement bushfire protection measures without unacceptable biodiversity impacts.
- 195 We were taken by the respondent to a letter dated 27 January 2023, from XWB Consulting Town Planning and Bushfire Consultants. The consultants advise that the review site is wholly within a BPA and the review site is within 150.0m of open paddocks containing grassland with gentle slopes.
- 196 In the consultant's view, to achieve a Bushfire Attack Level (**BAL**) rating of BAL12.5, a defendable space area of 22.0 metres would be required to the north, west and east of the proposed building with a minimal fuel condition. The advice identifies the presence of the Phillip Island Road and Cape Woolamai settlement reduces the bushfire risk from the south. Although the Phillip Island Nature Park is in proximity and contains coastal scrub vegetation to the review site, the advice highlights it is in a generally south eastern direction which is a low-risk direction for a bushfire approach.
- 197 We note that Mr Glossop agrees with the advice of XWB Consulting Town Planning on this matter.
- 198 Having considered the advice and evidence submitted, we find that bushfire risk can be appropriately mitigated and managed for the proposal through BAL 12.5 construction and provision of recommended defendable space. We find this design approach and fire management would satisfy the requirements sought for sensitive land uses under a BPA.

Car parking and access

- 199 The proposal includes 60 spaces and an overflow area of 30 car parking spaces, including a bus parking area. The proposed main site access will be from the recently constructed Phillip Island Road and Woolamai Beach Road roundabout, through the creation of a fourth leg extending north into the review site. A two-directional entry road is proposed to extend approximately 110.0m into the site, leading to the central forecourt and car

parking area. A proposed service road will also connect the waste collection and service areas of the proposed building to the entry road.

- 200 As previously noted, landscape berms are proposed to the south of the proposed main building and carpark. The berms will reach a maximum height of 7.0m in front of the main building and sited 4.0m in front of the carpark area.
- 201 It is Mr Glossop's view that the proposed car park is well setback from Phillip Island Road and will be appropriately screened by landscape and berm treatment within and around the car park. He is also satisfied the car park layout satisfies the design layout and safety standards sought under Clause 52.06-9.
- 202 We accept and agree with Mr Glossop regarding his views on the design layout and proposed access arrangements for the car park area and loading/unloading.
- 203 However, given our concerns and comments regarding the scale and height of the two landscape berms to be sited across the site in front of the proposed building and car park, we do not support the berm treatment to screen the car park area. If a permit were to issue, we would prefer the suggestion from Mr Partos, that the landscape berm around the car park be replaced with suitable tree planting treatment that would help filter views of this area, while ensuring longer range views through the site to the north remain open and unhindered.

Signage

- 204 The proposal also seeks approval for the installation and display of a business identification sign to the east of the proposed site access. The proposed sign measures 3.0m high by 1.0m wide, with a display area of 2.5m high by 1.0m wide (2.5sqm).
- 205 Signage within the FZ falls within Category 4 – Sensitive Areas (Clause 52.05 – Signs). We note that business signage in the FZ is limited to a maximum of 3sqm in advertising area.
- 206 The proposed signage is not contested between the parties.
- 207 It is Mr Glossop's opinion that the signage is modest and would satisfy the objectives sought under Clauses 52.05 and 15.01-1L-03.
- 208 We agree with Mr Glossop's assessment of the sign and would have been satisfied with the location and detail of the signage as proposed if a permit were to issue.
- 209 We note that Mr Glossop also referenced that three flags are proposed on the review site, being an Australian, Aboriginal and Vietnam Veterans' flags. It is Mr Glossop's view that the Australian and Aboriginal flags are flags that would be exempt under the provisions of Clause 52.05-10.

However, it is his view this exemption does not apply to the Vietnam Veterans' flag, and it would be prohibited under the FZ.

- 210 Given our findings and decision not to issue a permit for the proposal, we do not make any findings on the location and placement of flags on the review site.

CONCLUSION

- 211 For the detailed reasons given above, the decision of the responsible authority is set aside. No permit is granted.

Peter Gaschk
Member

Christopher Harty
Member