

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P680/2013
PERMIT APPLICATION NO. PLN/2010/477

APPLICANTS	Yvonne von Hartel, Lynette Joan Hovey, Jenny Grounds & John Robert Bell
RESPONSIBLE AUTHORITY	Macedon Ranges Shire Council
REFERRAL AUTHORITIES	Country Fire Authority, VicRoads - Northern Region & Melbourne Water
RESPONDENT	Appinmere Pty Ltd
SUBJECT LAND	1-3 Station Street, Riddells Creek
WHERE HELD	Melbourne
BEFORE	Russell Byard, Senior Member Graeme David, Member
HEARING TYPE	Full Hearing
DATES OF HEARING	17, 18, 19 & 20 November 2014
DATE OF ORDER	19 December 2014
CITATION	

ORDERS

- 1 The decision of the responsible authority to grant a permit is affirmed and a permit is granted for the development of the land for a supermarket, shops and cafe buildings and works with outdoor advertising signage and a reduction in standard car parking requirement subject to the conditions set out in Appendix A of this document.
- 2 The responsible authority is directed to issue a permit in accordance with the above order.

Russell Byard
Senior Member

Graeme David
Member

APPEARANCES

For the Applicants	Ms Louise Hicks, barrister, appeared on the instructions of her client for the applicant/objectors. She presented written and oral submissions with supporting documents and called James Hampton Holdsworth, town planner as an expert witness. He gave oral evidence in the course of which he adopted the contents of a written report that had been circulated to parties prior to the hearing.
For the Responsible Authority	Mr Christo Crafford, town planner and officer of the Shire of Macedon Ranges appeared for the responsible authority. He presented written and oral submissions.
For the Referral Authorities	There was no appearance by or on behalf of the Country Fire Authority, VicRoads - Northern Region or Melbourne Water.
For the Respondent Permit Applicant	<p>Mr John Cicero, solicitor, of the firm of Best Hooper, solicitors, appeared for the respondent company. He presented written and oral submissions and called several witnesses to give expert evidence. Each of these witnesses gave oral evidence in the course of which a written report, circulated prior to the hearing, was adopted. Those witnesses were:</p> <p>Robert Cameron Galbraith, arboreal consultant; David Charles Crowder, town planner; John Kiriakidis, traffic engineer; and Stephen Schutt, landscape architect.</p> <p>Mr Cicero indicated a willingness to call M. Royce, occupation/damage and flooding consultant whose written report had also been circulated. However, no other party wished to cross examine him and his presence which was not otherwise required. His report was tendered.</p> <p>Various plans, photographs and other documents were tendered in evidence. The submissions and evidence in documentary form have been retained on the file of the Tribunal.</p>

INFORMATION

Nature of Proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> for a review of a decision of the responsible authority to grant a permit.
Proposal	Construction of three buildings to contain a supermarket, 16 shops and a cafe plus associated works, signage and reduced car parking provision.
Zone and Overlays	Commercial 1 Zone and, as to part, a land subject to Inundation Overlay under the Macedon Ranges Planning Scheme.
Planning Permissions Required	Permission under clauses 34.01-4 and 44.04-1 for buildings and works, clause 52.05 for outdoor advertising signs and under clause 52.06 for reduced car parking provisions.
Land Description	An irregularly shaped parcel of land with a frontage of 73.78 metres to the south side of Station Street (which actually runs approximately north west to south east but which, to simplify directions, was referred to in the course of the hearing as if it runs east to west) and having a total area of 16,040m ² .
Title Particulars	Lot 1 on Plan of Subdivision 307526A being the land in Certificate of Title Volume 10059 Folio 816, Lot 1 on Title Plan 886481X being the land in Certificate of Title Volume 10952 Folio 325, Lot 1 on Title Plan 84497W being the land in Certificate of Title Volume 6423 Folio 412, Lot 1 on Title Plan 844916A being the land in Certificate of Title Volume 10121 Folio 852, and Lot 1 on Title Plan 944810K being the land in Certificate of Title Volume 11184 Folio 281.

Amendment

At the commencement of the hearing Mr Cicero, who appeared on behalf of the respondent, pointed out that Bill Jacobs Pty Ltd, although it had lodged the original permit application, had done so as agent for Appinmere Pty Ltd. He applied to substitute that company's name for that of the agent. This amendment was granted by consent.

Inspection

The land and locality and the town of Riddells Creek more generally have been inspected.

REASONS

The proposal

- 1 This case concerns an application for permission for buildings and works to accommodate a 2,500m² supermarket, 16 specialty shops and a cafe on a Commercial 1 Zone in the township of Riddells Creek.

Scope of dispute

- 2 After receiving the permit application the responsible authority gave notice of it. It subsequently received some objections. In due course it made its determination. It decided to grant a permit subject to conditions.
- 3 Some objectors, the applicants in relation to the current proceeding, applied to this Tribunal for a review of that decision to grant a permit.
- 4 Because of the zoning of the land, and the controls that apply to the Commercial 1 Zone, no planning permission is required for any of the proposed uses of the land. A supermarket is a variety of shop, and shops are uses that can be conducted in the Commercial 1 Zone without the need to obtain planning permission. A cafe (or restaurant) is a variety of Retail premises. No permit is required to use land in the zone for that purpose.
- 5 Permission is, however, required for the construction of buildings and works. In the first place, that is a requirement of zone control provisions applicable to the Commercial 1 Zone.
- 6 Apart from the zoning the part of the land is subject to a Land Subject to Inundation Overlay under the planning scheme. Pursuant to the provisions relating to that overlay, permission is also required for buildings and works.
- 7 There are three relevant referral authorities in this case. They are the Country Fire Authority, VicRoads - Northern Region and Melbourne Water. None of those referral authorities object to the grant of the proposed permit subject to the incorporation of certain conditions. Melbourne Water is the relevant authority in relation to the Land Subject to Inundation Overlay. It is satisfied with the proposed development subject, as we have said, to the imposition of certain conditions.
- 8 Clause 52.06 of the planning scheme imposes certain standard requirements in relation to the provision of car parking. Permission is required, under this proposal, for a minor reduction from the standard parking requirement. That proposed reduction is not an issue in the present case.
- 9 The planning scheme also imposes requirements in relation to bicycle parking and loading bays. Those provisions do not raise any issues as the proposal satisfies the requirements.
- 10 All this leaves the main issue in this case as to whether planning permission should be granted for the proposed buildings and works.

The right of the Applicants to bring this proceeding

- 11 Last year a technical point was raised in relation to this proceeding. The permit applicant (that is the respondent to the proceeding) challenged the right of the objectors to bring this review proceeding under s 82 of the *Planning and Environment Act 1987 (PE Act)*. The planning scheme contains provisions which exempt applications of the sort involved here from being subject to objectors reviews under s 82. The point was taken that the objectors therefore could not bring or sustain this proceeding. However, that exemption is subject to several exceptions. One of them is if the land concerned is within 30m of land used as an 'Education centre'. The applicant company applied to the Tribunal for the proceeding to be summarily dismissed on the basis that the objectors lacked legal standing, that is, the legal right to bring the proceeding. That was on the basis that the exemption applied to deny the objectors standing.
- 12 The objectors resisted on the basis that a neighbourhood house is within 30m of the land. They argued that the neighbourhood house is an Education centre within the meaning of the planning scheme. The Tribunal rejected that submission and summarily dismissed the proceeding on the basis of the exemption from reviews brought under s 82 *PE Act*.
- 13 The objectors appealed against this ruling to the Supreme Court. The appeal was upheld and the summary dismissal was set aside on the basis that a mistaken interpretation of the definition of Education centre as defined in s 74 of the planning scheme had been applied. The Supreme Court did not determine whether or not the neighbourhood house was to be regarded as an Education centre within the meaning of the definition of that expression. That question, together with the case as a whole, was remitted to the Tribunal for determination by the Tribunal constituted differently from the member who had made the summary dismissal.
- 14 The Tribunal determination dismissing the proceeding is *Paulton v Macedon Ranges SC*¹. The appeal to the Supreme Court was taken by the current Applicant objectors in *von Hartel v Macedon Ranges SC*². Although N & J Paulton and D Mahmood – Mahomed were original objectors and applicants to this Tribunal for a review they were granted leave to withdraw shortly before the hearing conducted by ourselves which commenced on 17 November 2014. However, the application for review has been maintained by Yvonne von Hartel and her associated objectors.
- 15 Before us the exemption point was abandoned. The case proceeded before us as a contest on the merits of whether or not permission should be granted for the proposed buildings and works. Such a review also raises the issue of conditions in the event of our determining to grant a permit.

Surrounds and locality

¹ [2013] VCAT 1639.

² [2014] VSC 215.

- 16 The site and its surrounds are quite complex and not susceptible of brief or simple description; not at least if justice is to be done to the issues raised in this case.
- 17 The township of Riddells Creek is a pleasant settlement with its main shopping centre based on Station Street. Although it, and some of its buildings, have clearly existed for many decades, it is also obvious that the town has grown considerably in recent decades, including over the last 20 years or so. Most of this growth has taken the form of residential development located to the north of a thoroughfare known locally as Main Road, which is also the Gisborne-Kilmore Road, as it runs generally from west to east through the town³. On its entry to the town from the west it runs parallel to the Melbourne to Bendigo railway line. The railway line also runs approximately east to west through the town but south of the town centre based on Station Street.
- 18 The waterway known as Riddells Creek crosses the Main Road and passes under the railway line a couple of blocks to the west of Station Street. A tributary, unnamed as far as we are aware, has its confluence with the left bank of Riddells Creek some distance south of the railway line. This tributary before it joins the main Riddells Creek is located to its east. It flows generally south through the town passing under Main Road, crossing Station Street and then running around part of the eastern boundary of the review site before passing under the railway line to its confluence with the main creek.
- 19 The location of these waterways gives some understanding of the topography in relation to the centre of the town and this review site which is located in that centre. Land in the centre of the town, constituted particularly by Station Street between its intersection with Main Road at its north western end and the railway line where the tributary passes under it, falls generally from north to south. However, in following that path the tributary runs through a gentle valley between higher land forming a watershed toward the main Riddells Creek and higher ground on the other side of the valley in the vicinity of the Riddells Creek station.
- 20 Station Street runs from its intersection with Main Road at its northern end in a south easterly direction to the station and its car park where it deviates to the east and changes its name to Hamilton Street. Over that course it falls from the intersection with Main Road to the low point where the tributary crosses it and then rises gently toward the railway station.
- 21 The intersection with Main Road is a 'T' intersection but it is complicated by the presence of Station Street's intersection with Sutherlands Road. It intersects within or very close to its intersection of Station Street with Main Road and leads off from it in a more easterly direction.

³ East to west is not the true bearing. It is actually more like south west to north east but we have sought to simplify directions for the purposes of these reasons.

- 22 The corner thus formed between Station Street and Sutherlands Road is an acute one. The land in that acute angle between those two streets is occupied by a modest supermarket with an area, as we were informed, of approximately 600m². This supermarket presents a frontage to both Station Street and Sutherlands Road. Its main pedestrian access is from Station Street but it also allows vehicle access to and from Sutherlands Road.
- 23 On the northern side of Sutherlands Road, opposite the supermarket and between the alignment of that road and Main Road there is a pleasant public park referred to as the Lions Park or reserve. 1991 has proved to be a significant date in relation to this case for reasons that we will discuss further. At that date, according to the evidence presented to us, there was a general store in a smaller building located on the site of the present supermarket. Since that time the building has been enlarged or reconstructed to create the present supermarket.
- 24 Riddells Creek does not have a large town centre but its main commercial axis is along Station Street. Most of the existing commercial properties are arranged along the present supermarket side of Station Street running down that side to Hamilton Street and the station. The station has an extensive commuter car park area. There are some vacant lots along this run but most of the Station Street businesses are on that side of the street. A number of them are cafes or restaurants.
- 25 On the opposite or south western side of Station Street, which is also the review site side, there are about four business premises. They include an attractive 19th century building. However, most of the land on this side of Station Street between the Station Street/Main Road intersection and the station itself is vacant. For various reasons it is unlikely, to the point of improbability, that these vacant lands will remain vacant into the future as Riddells Creek township continues to grow.
- 26 The present population is in the order of 2,500 to 3,000. Future planning for Riddells Creek, undertaken by the council as planning authority, and as represented in proposed planning scheme amendment C84 to the Macedon Planning Scheme, the Parsons Brinckerhoff study and proposed Riddells Creek Strategy Plan⁴ adopted by the council in 2013, contemplate a population in 2036 in the order of 6,000 to 6,100 people.
- 27 Of course no one can say at this stage what the population will be in 23 years time. That is contingent on some considerations that are not currently known. It might be a figure of less than 6,000 or more than 6,100 or something in between. Evidence tendered to us indicates that, before the Planning Panel in relation to Amendment C84, there was an attempt to reduce the original projection from 6,100 to 6,000 in the interests of having the town considered as being in a lesser classification under a hierarchy created for towns of various sizes and importance. This somewhat pedantic

⁴ Exhibit RA8.

argument is not really useful for any purpose confronting us. As it happens, 6,000 is the upper limit for the lower category and the lower limit for the upper category, so that persuading the Panel to adopt 6,000 in preference to 6,100 still leaves the town, as projected, in both categories. For our purposes that debate is irrelevant. We accept that the town has grown in recent decades and is, so far as reasonable projections can be made for town planning purposes, going to continue to grow to an unknowable extent. Nonetheless for planning purposes an approximate doubling in the next 20 to 25 years has been taken to be a reasonable projection.

- 28 The presence of the railway station on the Bendigo line was mentioned several times in this connection. Improvement in travel times by rail and road due to improvements in roads and rail services have quite obviously made Riddells Creek more attractive than it once was as a dormitory or commuter settlement accommodating people who work or have business in Melbourne. That is quite apart from other residents and potential future residents who might settle here because of its interactive environments.
- 29 The scale of commercial buildings along Station Street is single storey with only one or two instances of a second storey or second storey scale. Some of the buildings are novel and not all of them contribute positively to the streetscape, but that is the predominant scale.
- 30 Past and present planning notions that have guided the council include the notion of concentrating commercial development in Station Street. However, there is a not insignificant row of commercial premises in Main Road at about and to the east of the intersection with Market Street.
- 31 Main Road between the waterway of Riddells Creek and the Station Street intersection has a reserve of what we understand to be public land on its south eastern side. The southern approximately two thirds of this land is occupied by what was referred to as the Lake Reserve. This is a quiet parkland area containing a lake and some surrounding trees, including exotics which, in turn, include some ageing *Pinus Radiata*. We were informed that the lake is an artificial one, and this makes sense as it is on high ground forming one side of the valley of the tributary previously mentioned. From this high point, views can be obtained across the small valley to the station. There are buildings on each side of the railway line. Those on its northern side are brightly coloured but single storey and not so readily observable having regard to topography, vegetation and the like. On the southern side of the railway line there is a substantial grey stone railway building which, although probably single storey, is nevertheless double storey in scale. It can be discerned from the Lake Reserve vantage points although, in spite of its size, is not unduly intrusive having regard to distance and its colouring.
- 32 Access to the Lake Reserve is from the Main Road. There is an elaborate and recently constructed pedestrian entry and also a gap to admit vehicles.

If Country Fire Authority vehicles were to seek to enter the reserve to draw water from the lake they would use that entry. In fact, there is no other.

- 33 A northern triangle of land fronting that portion of Main Road and leading up to the Station Street/Main Road intersection contains a number of buildings used for social and community purposes. For example, this is the location of the neighbourhood house previously mentioned together with a men's shed, a toy library and other things.
- 34 Views to the south are dominated by what is a high railway embankment.
- 35 We have mentioned views from the Lake Reserve across the valley land towards the station. So far as the reverse view is concerned, from the environs of the station towards the Lake Reserve, the lake itself cannot be seen. All that can really be discerned from there and from other points along Station Street where views are presently uninterrupted, is the canopy of trees in the reserve that identify its location.

The site

- 36 The review site is irregular in shape. It is sufficiently irregular so as to be quite difficult to describe. It occupies land between the Main Road/Station Street intersection to its north and the railway line to its south. Those two streets may not be exactly at right angles but that is approximately their relationship. The review site shares a wedge of land between them. On one side of this wedge there is the community facilities such as the neighbourhood house, the men's shed, the Montessori kindergarten etc and on the other by the review site. The community facilities land and the review site each projects an angle in the order of 45 degrees into the southern corner of the intersection formed by those two streets.
- 37 In fact, the western boundary of the review site runs in almost a straight line directly south to the railway line. There is a frontage of 73.78m to the south side of Station Street and approximately quadrilateral allotment there, (one of the five allotments constituting the parcel of land that is the review site) appears somewhat like the head of a very plump penguin viewed in profile. The nose of that head, located 73.78m to the south east from the intersection adjoins the other privately owned business premises fronting the south side of Station Street. At the western rear corner of that adjoining allotment the review site is narrowed to a 'neck' of approximately 30m. The boundary of the review site then runs behind the other properties facing the south side of Station Street until it curves to the south along the line of the tributary water course until it meets the railway line. This boundary outlines the belly of the plump penguin shape.
- 38 Although the total area is 16,040m² the whole land would be landlocked but for the frontage of 73.78m from the intersection to the 'nose' of the head. That northern allotment has an area of 2,895m² with an approximate total of 3,000m² above the narrow neck which is only 30m wide. What might be called the chest and abdomen of the plump penguin amounts to

approximately 13,000m² but its only access is that 73.78m frontage to Station Street between the ‘crown’ and ‘nose’ of the ‘head’.

- 39 The land falls from north to south along Station Street and from west to east from its western boundary which adjoins the Lake Reserve and the community buildings. The bottom of the valley runs across or under Station Street and around the ‘abdomen’ of the review site. As already noted, the land then rises further to the east in the vicinity of the station. However, the land east of the tributary is not part of the review site. It is, nevertheless, vacant land in private ownership.
- 40 There are further curious complications in relation to the review site and other land in the triangle of land formed by its western boundary, the southern boundary along the railway line and the alignment of the southern side of Station Street.
- 41 Some maps show the layout of some potential roads that have never been constructed or used as such. Some of these areas are indicated as ‘road’ and sometimes the expression ‘government road’ is used. However, all the land within what we have described as the triangle, whether forming part of the review site or not, is in private ownership.
- 42 We have mentioned Hamilton Street. It is an extension of Station Street although its direction is offset from the alignment of Station Street so that it runs parallel to the railway line in the vicinity of the railway station (and its extensive car park area). That part of Hamilton Street is developed and used as a street and, at law, we have no doubt, it is a public highway.
- 43 However, the unconstructed land marked as road or government road mentioned commences from the south side of Station Street and runs west, parallel to the railway line, as far as the tributary and then further west across the review site to its western boundary where it turns north the run up that western boundary as far as the neck, but not as far as the Main Road/Station Street intersection. Actually, behind the head, and on adjoining land there is another somewhat similar area which is marked on the survey plan⁵ as ‘GOVT. (UNUSED) ROAD’. That area is unconstructed and is not part of the review site. It is on adjoining land.
- 44 The so-called road or government road portion of the review site is in the shape of an ‘L’ with its stem running down the western boundary of the review site and then with the foot of the ‘L’ running east parallel to the railway and located approximately 45m north of it.
- 45 It appears that some people at present and in the past had assumed that this ‘L’ shaped area is in fact a government road although as far as we have been able to discern from the evidence it does not enjoy that status. It is clearly privately owned land. The Appinmere Pty Ltd (the company) has

⁵ Exhibit C18.

acquired the land from previous private owners and the title documents clearly indicate its status as private land.

- 46 We find all of this so called 'road' to be private land, not only in relation to the portion of the foot of the 'L' forming part of the review site, but also in relation to that portion of it which is to the east of the tributary. No roadway is constructed or formed on the land and there is no evidence to suggest that it has ever been used as or dedicated as a public highway. There is no bridge across the tributary and it is not possible, unless one was to be created, or some other form of crossing was to be provided, for a vehicle to pass from the portion of the foot of the 'L' that forms part of the review site onto the balance of that foot as it runs further east to the south side of Station Street.
- 47 Some plans tendered to us depict the name 'Hamilton Street' on the foot of the 'L'. As we have said, it is not a formed road or dedicated as a public highway. Furthermore, this area is not aligned with Hamilton Street but is displaced somewhat to its north. We attach no significance to the occasional application of the name Hamilton Street to this area.
- 48 However, there is a new concrete pathway running for a considerable distance along the south side of Station Street and at, or approximately at the point where this notional road would intersect with Station Street, there is a rollover kerb or crossing so that a vehicle can drive from Station Street onto the foot area.
- 49 Actually, adjacent to the eastern boundary of the review site, and between the foot and the railway line, there is an area of land accommodating a Western Water pumping station. There are marks on the eastern end of the foot and turning down to the pumping station indicating that, although unformed, such land is utilised by vehicles from time to time to service or to gain access to the pumping station.
- 50 Apart from that pumping station, and the several business or professional buildings on the southern side of Station Street, the entire triangle is vacant land supporting little or no vegetation apart from grass. In fact, our inspection and some of the photographs have the appearance of it having been recently cut for hay. That may have been merely to reduce fire hazards.
- 51 The whole of the review site slopes, fairly gently, down to the east and towards the tributary.
- 52 Along the southern side of Station Street there is a line of elm trees serving as street trees. They are fairly mature. Trees of their age, if not severely lopped and pruned as these have been, might be expected to be attractive in the stately manner of mature elm trees that have not been abused. These particular elm trees have had a very hard life and have undergone severe pruning or lopping that has rather mutilated their form. Whilst they have been severely cut so that their aesthetic qualities have been significantly

compromised, they are nevertheless an asset to the streetscape. Although not what they might otherwise have been, this row of trees renders Station Street and its streetscape a good deal more attractive than it would be in their absence.

- 53 The westernmost three of these trees are in the street where the head of the review site fronts its southern side. They received some attention, in the course of the hearing, because the proposed development envisages the vehicle crossing from the review site to be located between two of them.

Zoning

- 54 Except for the pumping station, the whole of the review site, indeed the whole of the triangle, all of Station Street including land on both sides of it and reaching as far to the east as Stephen Street is in a Commercial 1 Zone under the Macedon Ranges planning scheme. The pumping station and the small portion of land on which it stands is a Public Use Zone 1. The Lake Reserve and the land supporting the community facilities across the western boundary of the review site is in a Public Purpose Reserve Zone as is the Lions reserve area on the northern side of Sutherlands Road.

- 55 It is important to note that all of the review site, including the 13,000m² of chest and belly located behind private land along the south side of Station Street is in the Commercial 1 Zone. At the time of the permit application giving rise to these proceedings was lodged the zoning was Business 1 but Commercial 1 is the current equivalent thereof. As the present and past names of the zone imply, shop retailing is within the primary purpose for which the land is zoned. The second purpose specified in clause 34.01 in relation to the current Commercial zoning reads:

To create vibrant mixed use commercial centres for retail, office, business, entertainment and community uses.

- 56 The table of uses in clause 34.01-1 provides that ‘Shop (other than Adult sex bookshop)’ is a section 1 in the table so that no planning permit is required for that use. Although there is a condition specified in relation to the shop use, it imposes no restriction in the present case. The conditions reads:

The leasable floor area of all shops must not exceed any amount specified in the schedule to this zone.

- 57 There is a schedule but no land is specified in it and no maximum leasable floor areas are specified either.
- 58 In the course of the hearing we were frequently referred back to a strategy plan of 1991 of a previous responsible authority namely the Council of the Shire of Romsey. We have no evidence as to whether, at the time the 1991 strategy plan was under consideration, all of the review site was in a Business 1 Zone or its equivalent. It may be that such zoning only applied to properties fronting Station Street. There are some aspects of the 1991 strategy plan that make us wonder as to whether there has been a change in

zoning so far as the chest and body is concerned, but there is no doubt as to the zoning of the whole of the review site at this stage.

- 59 We will need to consider the 1991 strategy and planning documents further but, having regard to some contents, there is room to wonder whether the authors had a quite mistaken view as to the status of the 'L'.
- 60 It is apparent, both from its submissions and from its determination to grant the permit now sought, that the council as planning authority and responsible authority under the *Planning and Environment Act* regards the 1991 strategy plan as of no current relevance or, at best, of only very slight current relevance.
- 61 Notwithstanding that, the objectors in this case have sought to rely very heavily on the 1991 documents and have sought to do so in meticulous detail in spite of a number of serious problems about such an approach including material changes of circumstance that have occurred which render a number of aspects relied upon significantly obsolete.

The proposal

- 62 This proposal envisages the construction of three buildings together with other works to utilise the review site for the intended purpose. The proposed buildings are designated on the plans as buildings 'A', 'B' and 'C'.
- 63 Building 'A' is the northernmost. It is proposed to occupy part of the frontage to Station Street. Indeed, its frontage is the very northernmost (or westernmost if Station Street is regarded as running east to west) portion of the site and of the frontage. The actual frontage to Station Street would be occupied by shops 1, 2 and 3. Shops 4, 5, 6, 7 and 8 will also be part of building 'A', situated behind the front three, and running down the western boundary of the site. Those shops would front into the site, rather than into Station Street.
- 64 Building 'B' will also have a frontage to Station Street. It would occupy the easternmost segment of the frontage of the site to Station Street. It would contain four shops arranged in a line running south from the frontage into the review site. The northernmost would have frontage and access from Station Street whilst the other three face west onto the access drive that we are about to describe. All four shops have their back walls against the western side boundary of the westernmost of the existing commercial premises fronting the south side of Station Street.
- 65 The only access to this otherwise land locked review site is from its 73.78m Station Street frontage. The purpose is to have buildings 'A' and 'B' respectively on either side of that frontage. Per force, the access way for vehicles and pedestrians must come through the gap between them. This is to be by means of a 6.4m wide driveway entering the review site from between two elm trees previously mentioned. The driveway would have car parking spaces set at 90 degrees along either of its sides as it runs back to the 'neck'.

- 66 Because of the width of the street frontage and the narrowness of the neck the site narrows as it runs to the south. This allows for a rhomboid shaped area between building 'A' and the driveway. That area, with frontage to Station Street, but narrowing toward the neck, is proposed to be a public plaza area.
- 67 A triangular garden area to the south of shop 8 can provide access to the Lake Reserve across the western boundary of the site. This might be by means of steps or a ramp or both (if necessary).
- 68 Below the neck and in the widest 'abdomen' portion of the site there would be building 'C'. This would be a larger rectangular (almost square) building to contain the supermarket, several shops and a cafe. It would be oriented to 'face' north to a car park layout occupying the approximately triangular 'chest' portion of the site. This car park area would have access aisles and car parking spaces but with delineated pedestrian paths including a path leading from the frontage of building 'C' to the pathway around and along building 'B' and thus to Station Street.
- 69 There would be a central entry to the supermarket building with a shop on either side and two more shops to the east. At the northwest corner would be the cafe.
- 70 Within the main supermarket there would be a staff and office area and, at the rear, loading bay facilities.
- 71 The driveway running from the street frontage between buildings 'A' and 'B' to the neck would there deviate to run due south right down the western side of the site with 90 degree car parking spaces along its western side running as far south as the northern end of building 'C'. There would be 90 degree car parking spaces along the northern front of the building and the western side thereof with some further spaces at 90 degrees to the rear or southern side of the building. Other spaces would face onto the southern boundary. The car spaces and driveways in this so called 'back of house' area, together with the loading bay and entry thereto would be unlikely to be used by customers but would be suitable for staff parking as well as loading access.
- 72 A landscaped garden area would be along the eastern side of building 'C' and between that building and the tributary curving around that part of the eastern boundary of the site. There is now no access across the tributary, and none is proposed.
- 73 Landscaping is proposed, not only for that area, but generally around the boundaries, scattered in the car park areas and for the village square.
- 74 Due to the topography, a retaining wall is planned for inside the eastern boundary providing a bed between the top of the wall and the boundary and separating the same from the driveway leading to the south. This would commence in the vicinity of the front of building 'C' rising to about 1m in

height at the rear. However, further north where access through to the Lake Reserve is proposed, the grades are conveniently even.

- 75 All buildings are proposed to be single storey. Although building 'C' is a substantial one in area, it does not really offend against the single storey scale of the centre of Riddells Creek, so far as height is concerned. The topography means that it is located on a lower part of the site and, except to the east, is lower than surrounding ground. It is somewhat cut into the natural ground level and even architectural features do not rise above 7m. These architectural features are limited in size and scale.
- 76 We find this to be a well thought out, indeed optimum layout for a development of this sort.
- 77 One of the difficulties about substantial supermarkets is that they are necessarily large buildings, whether or not they have specialty shops as are proposed for the northern side of this one. It is all too easy for thoughtless design to present large, long, boring and unattractive frontages to what might otherwise be active street frontages. There are many examples of this sort of failure. The presentation of the Safeway supermarket to Whitehorse Road in Balwyn is but one, but nevertheless quite a good, example of this.
- 78 Even the modest 600m² supermarket that currently exists opposite the site frontage and at the acute corner of the intersection between Station Street and Sutherlands Road, though much smaller, nevertheless suffers from this defect. Its presentation to both Station Street and Sutherlands Road is substantial bland, boring walls that do not contribute to the streetscape of either thoroughfare. Indeed they detract from each of them.
- 79 There is no opportunity for so substantial a supermarket as is now proposed to front Station Street and, in any event, such a layout would be vastly inferior for the one that is proposed. There would then be the difficult problem of how to enliven and render interesting and attractive a large supermarket frontage to the street.
- 80 In the present design the large building is not on Station Street, indeed it is rather tucked away behind the other privately owned land fronting Station Street. There are several active commercial or professional businesses in the building in that location and, although there are vacant allotments further to the south, their eventual development is to be anticipated. In any event, the supermarket is hidden away behind them whilst nevertheless being in close walking proximity to Station Street. The main customer parking for the site is along the access driveway and in the triangular car park area in front of the supermarket. That provides convenient short distance walking from the supermarket and the shops in building 'C' but also to the shops in buildings 'A' and 'B' and to Station Street with its various shops and commercial premises. None of this is to suggest that any of the buildings, and particularly not building 'C', will be so hidden away as not to be visible. So substantial a building will not be rendered invisible but, with a combination of use of topography, position and softening landscaping it can be presented

in a way that is not unduly obtrusive. That is certainly so in relation to Station Street and its streetscape, but also in relation to views on and from other land around about.

- 81 Having regard to the zoning of this land, and its consequent intended purpose, and bearing in mind the projected growth and development of Riddells Creek, there is justification for a substantial supermarket. We accept the proposition put forward at the hearing that this is the only available site for such a facility and we consider the layout and positioning of this site, as we have said, to be suitable. This site will not, and is not intended to remain a paddock, anymore than nearby currently vacant private land within the triangle and fronting Station Street will remain in that condition. This site and those ones are planned to be developed and used in accordance with their Commercial 1 zoning. This will mean buildings. The buildings will be able to be seen. The current layout maximises convenience, enables the present and future needs of the town to be served and, so far as practicable, avoids the town centre being dominated by large buildings with bland walls.

Grounds of objection

- 82 The application for review is supposed to indicate the grounds of review intended to be relied upon. In this instance the formulation of the ground or grounds is so general and unspecific as rather to disguise than disclose the grounds intended to be relied upon.
- 83 At the beginning of the hearing we sought from the representative of the applicant objectors a statement of the grounds to be relied upon with sufficient clarity and specificity to enable them to be understood. It was stated several times, before grounds were provided orally, and afterwards that this was necessary for the proper conduct of the hearing. In the first place it enables the other parties, and in particular the respondent company, to understand the case being brought against them and the case that they need to meet. Furthermore, it enables the Tribunal to understand what the case is to be about and what is going to be important in the submissions and evidence to be called. Indeed, it is the means by which the Tribunal can distinguish between the relevant and irrelevant and between matters that are in issue and matters that are not.
- 84 The representative of the objectors made an oral statement of the grounds to be relied upon and was afterwards asked several times as to whether there were any further grounds that would be relied upon. That opportunity to specify other grounds was declined.
- 85 We have considered the merits of this case on the basis of those grounds and the issues thereby raised. We consider that we will have fulfilled our task by dealing with those issues although, in the course of the hearing of a long case other things outside the scope of the grounds were mentioned from time to time. None of them were such as to persuade us that this proposal ought to be refused. They were matters of minor or slight

importance or relevance. The objectors' advocate did claim that further details of the grounds to be relied upon would be provided in the course of the hearing and in the submissions presented on behalf of the objectors. The advocate was not the author of the written submissions. In the event these submissions provided very little in the way of detail or justification of the grounds. There were many assertions of policy provisions, apparently with the implication that the proposal did not meet those policy values. Whilst often left to implication, sometimes it was specifically asserted that the proposal does not meet, or is contrary to a policy provision, nevertheless generally without appropriately explaining how or why.

86 The grounds were put forward on the basis that it was said that the proposal does not accord with the 1991 structure plan. There are four ways in which this suggested lack of accord was put:

- a. The structure plan looks for support and enhancement of the role of Station Street as the main shopping centre and commercial heart of the town. It was said that to put the supermarket building in a paddock remote from Station Street and with only four of the other proposed shops fronting Station Street does not comply with that policy approach.
- b. It was said that the structure plan contemplates replacing the existing main entry to the Lake Reserve by placing an entry parallel to where a supermarket was indicated and the area currently proposed for building 'A' with a pedestrian link to Station Street and with a relationship to the lake.
- c. Car park and pedestrian access to Station Street with pedestrian links to the station and the Lake Reserve.
- d. Threat to the elm trees on either side of the now proposed entry is disapproved on the basis that the strategy plan looks to the preservation of the elm trees.

87 In relation to point 'd' above it was pointed out that the overhead powerlines suspended from poles now stop to the east and west of the entry elm trees with the gap in between being connected with underground cabling. This underground arrangement removes any future occasion for further lopping of elm trees situated in the gap where power cables have been put underground. We do not question the merit of this new arrangement. It can be regretted that such arrangements were not implemented before the presence of pre-existing overhead cables occasioned the lopping and distortion of the elm trees that has somewhat sadly damaged their shapes and beauty.

88 Points (a) to (d) referred to in relation to the 1991 structure plan were repeated in relation to proposed planning scheme amendment C84. That proposed amendment has been considered by and reported on by a planning panel, adopted by the council as planning authority and forwarded to the

Minister for Planning with a request for approval. It was said that this amendment is longer than but similar to the 1991 structure plan in relation to points a to d.

- 89 The council as planning authority and responsible authority apparently does not share the view that the 1991 structure plan is important and any inconsistency with it would warrant refusal. Its very approval of the current proposal significantly disavows the 1991 structure plan and its specific submissions in its reply make it clear that it regards that document as substantially an obsolete dead letter.
- 90 Pursuant to proposed planning scheme amendment C81 a proposed new structure plan has been prepared and adopted by the council in December 2013. It was said that this document, so far as relevant, is similar to proposed amendment C84 and the 1991 structure plan. However, it was said, on behalf of the objectors, that they put little weight on this proposed new structure plan.

Municipal Strategic Statement

91 The Municipal Strategic Statement for the Shire of Macedon Ranges is found in clause 21 of its planning scheme. The idea is such a statement is not to be set out or lay down policy but to give a descriptive view of the municipality and the planning authority's vision for it.

92 Clause 21.02 is headed 'Municipal snapshot'. Amongst other things it contains a table in relation to Settlement Structures and Roles. It denotes Riddells Creek as a service centre with a population in 1996 of 1,378. Its role is noted as:

Compact commuter township servicing immediate areas. The range of services is limited. A railway station is located in the town.

93 Clause 21.06 deals with municipal vision and strategic framework. It contains the notion that:

Urban growth will be contained within the major centres of Gisbon, Woodend, Kydon, Romsey and Riddells Creek.

94 In relation to strategic directions, in 21.07-1 dealing with management of urban growth and development the following is included:

It is anticipated that the majority of population growth will continue to occur in the south and eastern parts of the Shire. In and around the townships of Gisbon and New Gisbon, Woodend, Riddells Creek and Romsey.

Local policy

95 Clause 22 contains local policy and clause 22.02-5 contains such policy in relation to the township of Riddells Creek. It commences with this sentence:

This policy applies to the use and development of land within the Riddells Creek township and environs as shown on the Riddells Creek Township Structure Plan attached to this clause.

96 Further down, under a subheading 'Policy Reference Documents' several documents are mentioned including 'Riddells Creek Township Structure Plan'.

97 It needs to be appreciated that, although available for reference, a document by virtue of having the status of a reference document does not become part of the planning scheme. It has to be an incorporated document to enjoy that status.

98 Clause 22.02 includes a map that bears the name 'Riddells Creek Township Structure Plan'. It appears to have been reduced in size from a larger map to fit into the planning scheme. In fact, the map is so small as to be unable to be read in many respects. However, it includes the following notation:

Town Centre

- Promote compact town centre.
- Ensure sensitive development of exposed sites.
- Retain town centre features.
- Improve pedestrian connections within the town centre.

99 Clause 22.02-5 includes the following objectives:

To protect the township's landscape character and setting by confining development to within established boundaries, especially to the west and north.

To reinforce Station Street as the primary focus of the town centre and promote its landscape qualities and character.

To protect prominent view lines to the surrounding hills.

To integrate tourism and recreation with the town centre's retail role.

To facilitate development of Riddells Creek's weekly shopping role.

To utilise existing features at the southern town entrance to create a stronger entry statement.

100 Several policy statements are set out, the most relevant of which reads:

- Development proposals within the town centre are to be consistent with the general strategic directions set out in Riddells Creek Town Centre Structure Plan 1991 and the Riddells Creek Township Structure Plan.

101 It is noted that this policy statement refers to two documents, being the Riddells Creek Town Centre Structure Plan 1991 and the Riddells Creek Township Structure Plan. It is less than ideal to have two documents with such similar names. As it has been explained to us, the latter is a plan

document whereas the former one is a 1991 document containing at least 11 pages of script and some maps.⁶ It is dated 23 years ago and was prepared for the previous planning authority which was the council of the previous municipality, the Shire of Romsey.

102 It also needs to be noted that the above quotation, though it is a statement of policy, does not make either document policy as such. What it does is to say that it is policy for the town centre to be **consistent** with the **general strategic directions** set out in those documents.

103 Policy itself is not prescriptive or binding generally, much less in detail. It is intended as a guide to guide the exercise of planning discretions. It is policy to be consistent with the general strategic directions. It must mean so far as still relevant. That does not mean meticulous compliance with every jot and tiddle therein.

Riddells Creek Town Centre Structure Plan, May 1991

104 The 11 page document is brief, even scant, by the standards of modern planning documents. Nevertheless, it does contain some propositions that are probably as relevant today as they were in 1991. These include:

Riddells Creek town centre will evolve from a primarily daily or convenience role to one of convenience and weekly shopping.⁷

105 Amongst the opportunities noted in part 3⁸ the following appears:

proximity of major open space network and in particular the Lake Reserve.

106 Conversely constraints in the same place include:

lack of existing traffic management, lack of identifiable town centre, difficulty involved in car parking access to rear of existing shops.

107 On page 5 there is a list of town centre functions. The first reads:

1. Retail Core

That the retail core be consolidated as the social and economic hub of the town centre and that every attempt should be made to reinforce the retail core as a mixed use activity centre and entry point for all retail, social, recreational and entertainment activities.

108 The third function reads:

3. Lake Precinct

That the Lake Reserve be better integrated with the retail core and that its access be rationalised in order to maximise the benefits of its

⁶ It is attachment 1 to the written submissions presented on behalf of the objectors.

⁷ Part 2, page 3.

⁸ Page 4.

environmental amenity and in order to firmly reinforce the rural character of further development in the town centre.

109 Part 2 of the documents refers to the second plan as recommending, amongst other things:

- that a high activity pedestrian network be completed linking the Lake Reserve with the Lions Memorial Park.

110 In terms of the objectives in map 3 it is recommended to:

- Create a 'Riddells Town Square' reinforcing a civic and activity focus.

111 So far so good, but once reference is made to map 3⁹ the very serious difficulties of the Riddells Creek Town Centre Structure Plan become apparent.

112 It is not apparent why 'high activity' a pedestrian way from the lake to the Lions club reserve is desirable in that it is hard to envisage that any or more than very few people would ever wish to pass from one of those destinations to the other. Perhaps more to the point, the relevance of having a pedestrian link from the western end of Station Street to each of these reserves makes more sense.

113 Actually, even without such links, there are easy, pleasant and short works between Station Street and both destinations in any event. One can walk from Station Street to either destination via its intersection with Sutherlands Road and Main Road respectively.

114 At the time of the 1991 Structure Plan, we are informed, there was a general store on the site of the now existing 600m² supermarket. The pedestrian way envisaged a path behind that building to give access to the Lions reserve.

115 That option has long since been foreclosed by the building or extension of the 600m² supermarket. A pedestrian can still make it to the Lions reserve but must now divert for a few metres to go around the end of the supermarket at the intersection (although one could go through the shop itself).

116 The plan contemplates a pedestrian path to the Lake Reserve through the current review site, but the current proposal includes the provision of such a pedestrian connection.

117 The Structure Plan contemplates a new supermarket occupying the whole of the frontage of the review site to Station Street (apart from the pedestrian way). That would be smaller than the one now proposed. Although it may or may not be bigger than the 600m² supermarket that in fact exists, it

⁹ Also exhibit H11.

would close off all vehicle access to the review site. All the west of the land below and behind the other properties along the southern side of Station Street would become land locked, so far as vehicle access is concerned.

- 118 The idea of a supermarket on that site and of that scale has become obsolete by the transformation of the one time general store on the other side of Station Street.
- 119 Whoever drew the structure plan appears to have proceeded on the basis of some fundamental mistakes whereby its notions for the southern part of the current review site could not be realised. It seems to have been thought that the foot of the 'L' represented a public way or government road or something of that sort. There is a notation on plan 3 reading 'road easement'. It is now clear that it is not a road easement and none of the 'L' is public land, nor ever was.
- 120 Plan 3 contemplates vehicle entry over private land along the foot of the 'L' and over the tributary sufficient to carry vehicles.
- 121 This would appear to need both the interest and the finance of some authority, such as the council, being prepared to acquire privately owned land and to construct such a way, including such a bridge. Whatever might have been the attitude of the previous municipality 23 years ago, it is more than abundantly clear that the current council, in its capacities as planning authority and responsible authority, has no interest in any such undertakings. It has made it clear that it regards these aspects of the structure plan as obsolete and redundant.
- 122 Such a vehicle way, on the structure plan, leads through a so called shared car park for 120 cars behind the properties fronting the south side of Station Street. Further to the south, between that area (and the foot of the 'L') and the railway line, the planner may have run out of ideas as there is merely a note there reading 'long term commercial'.
- 123 The current proposal now intends to use that area, together with the shared car park, for the supermarket, the cafe, several shops and a much better and more workable car park layout.
- 124 Plan 3 contemplates a vista up and down Station Street from the vicinity of the station to the intersection with Main Road. That remains available. There is a notion of a vista from the vicinity of the station towards the Lake Reserve. That too remains notwithstanding that a single storey building will occupy lower ground in between. Views of skylines will remain and any reasonable use and development of the land will involve the construction of buildings. The same is true in relation to the vacant land on the south side of Station Street.
- 125 Apart from apparently being based on mistaken assumptions, and having been superseded by subsequent events, this plan is hopelessly difficult to read and understand. The only available copies are very poor quality photocopies that, in some respects, are illegible. There are notations

intended to illuminate certain points or illuminate certain points indicated by arrows but the arrows are discontinuous and it becomes mere guesswork as to what is intended. There are arrows that enter from the left or western side pointing to features but where the notations to which the arrows relate are simply missing off the edge of the plan.

- 126 One particularly odd feature is what has been thought to be the town square. It is, or at least the guess is, that it is indicated by rectangle located near the western intersections of Station Street. The notional pedestrian connection from the Lake Reserve would pass by the notional supermarket and enter a rectangle of land which is set right across Station Street but incorporating some private land on either side of it. The pedestrian link passes through that area and effectively the 'town square' to then pass behind the general store, across Sutherlands Road to the Lions club reserve.
- 127 Is this square intended to be pedestrians only? Are cars to be excluded? Is that consistent with the notion of making Station Street the focal centre of a country town of this scale?
- 128 It seems hardly credible that this is the notion and yet what is the indistinct rectangle that appears right across Station Street and into private land on either side? Is this meant to be a pedestrian town square with a two way thoroughfare running through the middle of it? It all makes very little sense.
- 129 The current proposal is to use part of the area of the notional supermarket for building 'A' and the rest of it for a much more realistic, useful and, for that matter, safe town square. This would be on private land but dedicated, free of charge to the council and the community, as a public square.
- 130 It is apparent from all this that the shortcomings of the structure plan are multiple and not limited to the mere fact that it is so old.
- 131 Clearly the 1991 strategy plan emerges as partly mistaken, partly based on misapprehensions, partly obsolete and superseded by subsequent events, partly ineligible and partly missing. It is little wonder, in the circumstances, that the council as planning authority and responsible authority regards it as of little or no importance and has in hand the creation of replacements with planning scheme amendment C84 and a proposed new strategy plan. Nevertheless, it contains some useful notions including the concentrating retail development on Station Street as the commercial centre of the township. We find that this proposal accords with planning scheme policy in clause 22.02-5 in that it is consistent with this general strategic directions.

Grounds of review

- 132 To return then to the grounds of review based on the structure plan, it emerges that they have little or no validity.
- 133 This proposal does support the central role of Station Street. It does not fail to do so because there are only four shops actually fronting that street. The

new supermarket will not be put in a paddock remote from those four shops. There is a suitable relationship between the three buildings, the various shops, the car parking and pedestrian access ways and Station Street.

- 134 Although not within the Applicant's grounds, some complaint was suggested on the basis of the distance from the supermarket to the station. If people wish to make that journey, with or without visiting cars in the station commuter car park or in the review site car park, the distance is within a convenient walking distance. If the council or someone someday acquires private land and constructs a bridge further south, no doubt the length of such by alternative route would be shorter. In the meantime, the current route is quite acceptable.
- 135 The main vehicle and pedestrian entries to the Lake Reserve are and clearly will remain from Main Road. There has been recent work to construct the elaborate pedestrian entry on that side. A pedestrian access from the review site will also be provided.
- 136 There was some discussion as to whether there would be or should be vehicle access to the eastern side of the Lake Reserve over the review land into Station Street at or near its intersection with Main Road.
- 137 That is not feasible and, in any event, would be a most unsatisfactory addition to an already difficult intersection arrangement. We are confident that the traffic engineer called to give evidence was correct in saying that VicRoads would never allow it. We note too that this expert witness expressed the view that the roundabout (or, as it was called, 'eggabout') at this intersection as shown on the structure plan, is quite unfeasible. The area is simply insufficient to accommodate it. We accept that the evidence on this point is correct.
- 138 That really leaves the last ground namely, as it was put to us, that 'the two elms will go'. This refers to the elm trees on either side of the proposed vehicle entry to the review site from Station Street. The evidence before us, which we accept, is that this is not the case at all. The space between the trees is sufficient to accommodate the crossing and vehicle way; not only for cars and vans but trucks and semitrailers that might need to service the supermarket and other business premises. We consider it obvious that such commercial vehicles will approach and depart via Main Road rather than the eastern end of Station Street but we are satisfied that if, for some eccentric reason, the alternative route was used, it would work. Road markings are called for to assist traffic, including large vehicles.
- 139 The expert evidence in relation to the trees is to the effect that they can be expected to survive in that their roots will not be inappropriately interfered with. The suggestion that a van or truck might brush some foliage on the way out is unlikely but unimportant, even if it should occur.

140 We find that the grounds relied upon by the objectors who have applied for this review are not sustained. On the contrary, we find that the decision of the responsible authority to grant a permit is justified and we will affirm it, subject to conditions.

Conditions

141 The question of conditions was debated at the end of the hearing on the basis of the conditions set out in the notice of decision to grant a permit issued by the responsible authority. However, we hold ourselves free to amend or modify these conditions or make deletions and additions to them as appropriate. In some instances we have sought to improve the setting out or English expression. Some condition appearing on the draft have been retained as they were consented to. That does not mean they would necessarily have been included in the absence of such consent.

Russell Byard
Senior Member

Graeme David
Member

APPENDIX A

PERMIT APPLICATION NO:	PLN/2010/477
LAND:	1-3 Station Street, Riddells Creek
WHAT THE PERMIT ALLOWS:	Development of land for a supermarket, shops and a cafe with outdoor advertising signage and a reduction in standard car parking requirement

CONDITIONS

1. Prior to the commencement of any works amended plans must be submitted to and approved by the responsible authority. Such plans are to be drawn to scale with dimensions and three copies are to be provided. When approved, such plans will be endorsed as evidence of their approval and will thereby be the endorsed plans in connection with this permit. The plans are to be generally in accordance with the plans tendered as exhibit RA5 to the Victorian Civil and Administrative Tribunal in planning review proceeding P680/2013 but modified to show:
 - a. location of all external lighting;
 - b. screening of air conditioning units on roofs to be depicted on all drawings of elevations;
 - c. the west to east pedestrian link from the Lake Reserve to the town square area beside building A to be not less than 1.5m in width;
 - d. changes to car parking layout to accord with appendices F and G attached to the written report of John Kiriakidis tendered at the said hearing before the Victorian Civil and Administrative Tribunal; and
 - e. a landscaping/revegetation plan to be in general accordance with the Hansen plan LCD-001 dated 05/09/13 which plan is to show:
 - i. location of planting;
 - ii. number of species to be planted;
 - iii. type of species to be planted including botanical name and species should be indigenous and native to the locality;
 - iv. completion date of works;
 - v. maintenance of the works;
 - vi. appropriate screening to the adjacent reserve to the west;

- vii. Advanced trees with the ability grow to high height are to be shown on the landscaping strip on the southern boundary such trees are to be chosen from the following species list:
 - messmate (*Eucalyptus oblique*)
 - candle Bark (*Eucalyptus rubida*)
 - narrow-leaved peppermint (*Eucalyptus radiata*)
 - yellow Box (*Eucalyptus melliodora*) and
 - viii. Landscaping behind building A.
- 2. External lighting is to be located and baffled to the satisfaction of the responsible authority to prevent adverse affect on adjoining land.
- 3. Unless with the written consent of the Responsible Authority, the landscaping shown on the endorsed plans must be undertaken prior to the occupation of the building(s) and thereafter maintained to the satisfaction of the responsible authority.
- 4. Prior to the commencement of the development Lot I PS 307526A, Lot I TP886481X, Lot I TP 844997W, Lot I TP 844916A and Lot I TP944810K must be consolidated and a copy of the Plan of Consolidation and proof of its registration must be submitted to the Responsible Authority.
- 5. The following ongoing requirements must at all times be met, to the satisfaction of the Responsible Authority:
 - a. noise generated from air conditioners or mechanical plant or such equipment must comply with the relevant State Environment Protection Policies;
 - b. all external lighting must be designed, located and fitted with suitable baffles or otherwise to prevent the emission of direct light onto adjoining properties and the road;
 - c. no goods or materials are to be stored or left exposed outside the building(s) so that they are visible from any public road or thoroughfare; and
 - d. except with the consent of the Responsible Authority the loading and unloading of goods must only be carried out on the land.
- 6. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 7. Sediment discharges from any construction sites within the property must be restricted in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Sites (EPA 1995).
- 8. The development is to be constructed to the satisfaction of the Responsible Authority in accordance with standards and requirements contained within the Policy “Macedon Ranges Engineering Requirements

for Infrastructure Construction” applicable at the time of lodgement of the engineering plans.

9. The access and exit to the development from Station Street is to be constructed to the satisfaction of the Responsible Authority generally in accordance with the concepts provided in GTA Report dated September 2013 Issue A.
10. All works to Station Street, Kilmore Gisborne Road and Sutherland Road and related modifications to road surfaces including the establishment of pedestrian islands/crossings required by Macedon Ranges Shire Council and VicRoads are to be undertaken at the applicant’s cost.
11. Prior to any works commencing the applicant is to provide Engineering Plans which demonstrate that the internal roadways are adequate for the circulation of all vehicles intended to access the site.
12. Not less than 179 car parking spaces are to be provided of which four are to be the dimensioned for and designated for the use of disabled motorists.
13. The shopping centre parking bays are to be limited to a maximum of 2 hour parking duration with the exception of car spaces located in vicinity of the supermarket loading dock.
14. Prior to the occupation of the development a sign to the satisfaction of the Responsible Authority is provided at the south end of the supermarket restricting the use of car spaces beyond it to staff only.
15. Prior to the occupation of the development all vehicle crossings must be constructed in accordance with the Macedon Ranges Shire Council’s industrial standards to the satisfaction of the responsible authority. Crossings are to be a minimum of 10.0m from any intersection, 1.0m from any power pole, sign or service pit and a minimum of 3.0m from any street tree. The crossing must be sealed.
16. Prior to the occupation of the development all car parks and access ways are to be completed with a sealed construction and the line marking of the bays to the satisfaction of the Responsible Authority to conform to the Macedon Ranges Shire Council planning scheme dimensions.
17. Prior to the commencement of any works, a “Storm Water Drainage Plan” is to be submitted and approved by the Responsible Authority. The design is to also show how the development is to be provided with an underground drainage system within its own boundaries and such that:
 - a. all buildings and paved areas including car parking area are provided with underground drainage and Gross Pollutant Traps;
 - b. the drainage system must be designed to limit downstream flow to predevelopment levels;
 - c. the development as a whole is provided with a legal point of discharge approved by the Responsible Authority and any other

- statutory authority from which approval must be received for the discharge of drainage and all new drainage is to be connected via underground piping into Council's existing drainage network;
- d. all drainage courses within the development must pass through easements;
 - e. all drainage courses or outfall drainage lines required to the legal point of discharge and which pass through lands other than those within the boundaries of the development must be constructed at the cost of the applicant and the applicant must secure adequate easements for such drainage to be constructed within;
 - f. the flow paths of a 1% annual exceedance probability storm need to be determined and the development designed such that no private property is inundated by such a storm;
 - g. flow paths must be indicated on the plans; and
 - h. the quality of the water discharged is to be in accordance with the Water Sensitive Urban Design principles.
18. A fee of 3.25% of the value of the drainage works and civil works outside the site are to be paid prior to approval of the engineering plans.
19. Prior to occupation, the development is to be provided with a drainage system to the design approved by the Responsible Authority.
20. Works on the road reserve or drainage assets of the council are to be undertaken and completed to the satisfaction of the responsible authority in relation to which the Responsible Authority will take into consideration in deciding whether prior asset protection permission was obtained from the council.
21. Prior to the occupation of the development the existing footpath in Station Street is to be reinstated and a pedestrian crossing established.
22. Prior to the occupation of the development remedial upgrade works to Station Street for the length of the property boundary are to be completed and all car spaces are to be line marked.

VicRoads

23. Vehicle access to and from the development is to be only via the access crossing to Station Street as depicted on the endorsed plans.
24. A type "CHR(S)" intersection treatment must be provided at the Gisborne-Kilmore Road/Station Street intersection in accordance with the 2009 edition of the Austroads publication, "Guide to Road Design — Part 4A: Unsignalised and Signalised Intersections". The treatment must incorporate retaining the two 3.5 (mm.) metre wide sealed through lanes and include a 3.2 (mm.) metre wide right turn lane based on Fig. 7.18 of the above publication.

25. The existing left turn pavement on Gisborne-Kilmore Road at Merrifield Street intersection must be retained and the intersection works must be constructed prior to the development coming into use.
26. The development must not proceed until a functional layout plan detailing the above intersection treatment is approved in writing by VicRoads. The limits of the functional layout must be to 100m north and 200m south from Station Street in Gisborne-Kilmore Road and to just east of Sutherlands Road in Station Street.
27. The detailed design drawings and specifications for the above required roadworks must be prepared, and the works carried out to the satisfaction of and at no cost to VicRoads.
28. The proponent must not commence any works in, on, under or over the Gisborne-Kilmore Road reserve without having first applied for and received written consent from VicRoads for those works in accordance with Section 63 of the Road Management Act 2004.

Western Water

29. Payment of new customer contributions for each separately metered property created by the development, such amount being determined by Western Water at the time of payment.
30. The owner/applicant must fund a feasibility study for the proposed water supply and sewerage services needed to serve the development.
31. During construction the existing sewer mains within the development site are to be marked and fenced to prevent damage by heavy vehicles. Crossing points over the sewer mains are to be kept to a minimum and must have a mounding treatment over the sewer mains.
32. Prior to development commencing the owner/developer is to arrange with Western Water to have the sewer mains within the development site checked with a CC TV to determine the condition of the sewer mains. Once the development is complete the sewer mains are to be checked again with a CC TV to determine if the construction works have caused any damage. The before and after CC TV work is to be carried out at the cost of the owner/developer and any damage that may have been caused to the sewer by the construction works is to be repaired or replaced at the owner/developers cost.
33. Provision of easements in favour of Western Water over all existing and proposed sewer mains located within private property. The easement must be 3.0 metres wide for combined sewer and drainage easements and 2.5m wide for a dedicated sewerage easement.
34. A Build Over Agreement is required to be entered into with Western Water for all paved concrete areas built over the sewer mains. All buildings must be located outside of the easement widths as requested.

35. Western Water requires full details of all drainage crossings and of other drainage works around Western Water's sewer mains. Western Water is to be contacted prior to drainage crossings taking place and is to be provided with a reasonable opportunity to witness the construction of the crossings.
36. All fire services and hydrant reels are to be fitted with a check meter.
37. The operator under this permit must enter into an Agreement with Western Water relating to the design and construction of any sewerage or water works required. The form of such Agreement must be to the satisfaction of Western Water. The owner/applicant must make a written request to Western Water for the terms and conditions of the agreement.

Melbourne Water

38. No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
39. Finished floor levels of proposed buildings must be a minimum of 600mm above the applicable flood level.
40. Any proposed roads or vehicle parking areas must have finished surface levels no lower than 350mm below the applicable flood level.
41. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
42. Any vehicular and/or pedestrian access must be designed and constructed to comply with the following safety criteria associated with the applicable flood level. (A) Depth of flow does not exceed 0.35m; (B) Velocity of flow does not exceed 1.5m/s; (C) The Depth x Velocity product does not exceed 0.35 m²/s.
43. Any earthworks must be done such that the volume of cutting within the floodplain is equivalent to or greater than the volume of filling. Prior to the commencement of works, volume calculations must be submitted to Melbourne Water demonstrating that the volume of filling does not exceed the volume of cutting.
44. Prior to the commencement of works separate application, direct to Melbourne Water, must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses. Prior to accepting an application, evidence must be provided demonstrating that Council considers that it is not feasible to connect to the local drainage system. (Note: contact Asset Services on telephone 9235 1414 for Melbourne Water's connection requirements, including payment of appropriate fees).
45. Prior to the commencement of works, the Owner must enter into and comply with an agreement with Melbourne Water Corporation for the

acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water's drainage systems and waterways, the provision of drainage works and other matters in accordance with the statutory powers of Melbourne Water Corporation.

46. Prior to undertaking any works on or near a Melbourne Water asset (including waterways), the contractor must be in receipt of a Melbourne Water Permit to Work. Any individual carrying out works on Melbourne Water's assets must be recipient trained.
48. Prior to commencement of construction a Site Environmental Management Plan (SEMP) must be submitted to Melbourne Water for approval, specifying relevant actions in a practical way to ensure that they are implemented effectively.

The SEMP must include a site map detailing the location and design of all measures including the following:

- a. silt fencing;
 - b. access tracks;
 - c. spoil stockpiling;
 - d. tenching locations; and
 - e. machinery/Plan Locations.
49. No buildings, works, car parking, filling or paving is permitted within 10 metres setback from the top of bank on either side of the tributary to Riddells Creek that passes by part of the eastern boundary of the land.
 50. No public access to the 10 metre riparian zone on either side of the tributary to Riddells Creek that passes by part of the eastern boundary of the land.
 51. Maintenance tracks a minimum of 5 metres in width must be included within the 10 metre riparian setback.
 52. Prior to the development plans being endorsed and the commencement of works, a detailed landscape plan must be submitted to and approved by Melbourne Water. The plans must show:
 - a. title boundaries;
 - b. drawing description (e.g. for planning approval only, for cost estimation only, for construction);
 - c. toe of bank and top of bank of the tributary to Riddells Creek that passes by part of the eastern boundary of the land established by a registered licensed surveyor;
 - d. a survey (including botanical names) of all existing vegetation to be retained and/or removed including weed species;

- e. details of surface finishes of any pathways, car parking and driveways;
 - f. proposed grading and drainage design including any new or modified stormwater connections to the tributary to Riddells Creek that passes by part of the eastern boundary of the land;
 - g. details for the proposed bank treatment including a minimum of three cross sections which extend from the toe of the bank of the tributary to Riddells Creek that passes by part of the eastern boundary of the land to the proposed, building envelope;
 - h. details of any new and existing fencing within the floodplain;
 - i. a planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, sizes at maturity, and quantities to be planted on the land and along the riverbank with several mature trees and shrubs to be planted adjacent to the tributary to Riddells Creek that passes by part of the eastern boundary of the land to provide additional visual screening of the new development from the Waterway;
 - j. all species should be consistent with Melbourne Water's flood valley grasses forest Ecological Vegetation Class; and
 - k. the plans must show no new structures, impervious surfaces or non-indigenous garden beds within 10 metres from the top of the bank as specified by Melbourne Water.
53. Prior to construction commencing, a draft maintenance agreement must be submitted to and accepted by Melbourne Water for the creek corridor defining the responsibilities of Land Owner and Melbourne Water regarding maintenance.
54. Prior to the development plans being endorsed and the commencement of works, a detailed landscape management plan for the tributary to Riddells Creek that passes by part of the eastern boundary of the land embankment and the 10 metre vegetated buffer above the top of must be submitted and approved by Melbourne Water. The management plan must specify the timeframe for the proposed landscape works (specifically outlining the staged progressive restoration of the river bank) and the proposed maintenance regime, scope of responsibility and schedule for the works.

Note: The applicable flood level for the property is 363.1 metres to Australian Height Datum (AHD).

CFA

Hydrants

55. Operable hydrants, above or below ground must be provided to the satisfaction of the Country Fire Authority.

56. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of the building envelope, the rear of all lots) must be 90m and hydrants must be no more than 120m apart.
57. Hydrants must be identified as specified in 'Identification of Street Hydrants for Firefighting purposes' available under publications on the Country Fire Authority web site (www.cfa.vic.ciov.au)

Access Roads

58. Driveways/roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
59. The average grade must be no more than 1 in 7 (14.4%) (8.1 degrees) with a maximum of no more than 1 in 5 (20%) (11.3 degrees) for no more than 50 metres. Dips must have no more than a 1 in 8 (12%) (7.1 degree) entry and exit angle.
60. Roads must have a minimum trafficable width of 6.4m to allow for suitable access for emergency fire fighting vehicles.
61. Driveways/roads on the site more than 60m in length must have a turning circle with a minimum radius of 10m.
62. The traffic island treatment in Station Street adjacent to the entry to the proposed development (both the centre section and the section across Station Street from the entry point) must be designed in such a way so as not to impede the passage of emergency fire fighting vehicles. The trafficable width between these two traffic island treatments must not be less than 4m and the turning curve must have a minimum radius of 7m.
63. Traffic islands provided in Station Street are to be paint only and able to be driven over.
64. Street trees in Station Street are not to be pruned, lopped or altered except with the prior consent of the responsible authority.

VicTrack

65. No drainage or effluent is to enter or be directed to railway land, unless prior approval from VicTrack has been obtained and subject to conditions set by it.
66. Prior to the commencement of works, the Applicant/Developer must submit to VicTrack, drainage design plans and specifications for the review and approval of VicTrack.
67. No waste, soil or other materials resulting from the works are to be stored or deposited on railway land.
68. Entry onto railway land is at the discretion of V/Line, the Rail Operator, and is subject to any conditions imposed by it.

69. No excavation, filling or construction is to take place on or near the common boundary with railway land without the prior approval of the Rail Operator and then on conditions set by it.
70. No works are to interfere with railway infrastructure.
71. No lighting is to be erected that throws light onto the railway tracks or interfere with the sight of train drivers.

Note: These conditions are requested to ensure that the proposed development will not disrupt rail infrastructure or services both during the construction period and on an ongoing basis. It is necessary to mitigate all risks to rail operations or assets arising from the construction of the development.

Expiry

72. This permit will expire if one of the following circumstances applies:
 - a. The development is not commenced within three years of the date of this permit.
 - b. The development is not completed within five years of the date of this permit.

In accordance with Section 69 of *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.