

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P1713/2007  
PERMIT APPLICATION NO. YR-2006/1619

**CATCHWORDS**

*Planning and Environment Act 1987 s77; Yarra Ranges Planning Scheme; proposed supermarket at Mt Evelyn; balancing broader zone purposes in Business 1 Zone with specific local objectives in Design and Development Overlay; consideration of planning context for site and character of Mt Evelyn.*

**APPLICANT** Woolworths Ltd

**RESPONSIBLE AUTHORITY** Yarra Ranges Shire Council

**RESPONDENTS** Mount Evelyn Environment Protection and Progress Association Inc. and Ors

**SUBJECT LAND** 25-29, 35-39, 41, 41A Wray Crescent, 16-18 Station Street and 3 Snowball Avenue, Mount Evelyn

**WHERE HELD** Melbourne

**BEFORE** Mark Dwyer, Deputy President  
Chris Harty, Member

**HEARING TYPE** Hearing

**DATES OF HEARING** 25 to 28 & 31 March 2008 , and 1 April 2008

**DATE OF ORDER** 5 May 2008

**CITATION**

**ORDER**

- 1 The amended plans TP01 to TP08 prepared by i2C Design & Management and dated 7 February 2008 are substituted as the application plans in permit application YR-2006/1619 and in this proceeding.
- 2 The decision of the Responsible Authority is affirmed.
- 3 In permit application YR 2006/1619 no permit is granted.

Mark Dwyer  
**Deputy President**

Chris Harty  
**Member**

## **APPEARANCES:**

For Woolworths Ltd	Mr Michael Wright QC (on the first 4 hearing days only) and Mr Chris Townshend of counsel, instructed by Mallesons Stephen Jacques, solicitors.  They called the following witnesses: Ms Cathy Heggen, Town Planner Mr Allan Wyatt, Landscape Architect Mr Stephen Hunt, Traffic Engineer.
For Yarra Ranges Shire Council	Ms Maria Marshall, solicitor, of Maddocks lawyers. She called the following witnesses: Mr Mark Waldon, Town Planner Mr Geoff Davis, Traffic Engineer
For Mount Evelyn Environment Protection and Progress Association Inc (MEEPPA)	Mr Francis M-Smith and Ms Claire Worsnop (authorised representatives of MEEPPA).  They called the following witness: Mr Angus Witherby, Town Planner.
For G & A Ingpen, and Mount Evelyn IGA Supermarket	Mr Paul Chiappi of counsel, instructed by DLA Phillips Fox, solicitors (except on 31 March 2008 when Mr Mark Bartley, solicitor, of DLA Phillips Fox appeared). They called the following witnesses: Ms Bronwyn Hamilton, Urban Designer Mr Chuck Wark, Landscape Architect
Objectors appearing in person	Mr Francis M-Smith, Ms Claire Worsnop, Mr Allan Stroud, Mr Jean Edwards, Mr Con Clavant, Mr John Stroud, Ms Robyn Taylor, Mr Ian James.
Supporter appearing in person	Mr Lawrence Mobsby.

## REASONS

### Introduction

- 1 Woolworths Ltd seeks to review the decision of the responsible authority, Yarra Ranges Shire Council (**the Council**), to refuse a permit for a development at 25-29, 35-39, 41,41A Wray Crescent, 16-18 Station Street, and 3 Snowball Avenue, Mount Evelyn. The development proposal comprises a supermarket and specialty shops, a partial dispensation of car parking requirements, and the removal of 15 trees.
- 2 The Council's grounds of refusal, dated 11 May 2007, were as follows:
  1. The proposal is inconsistent with State Planning Policy Clause 19.03 design and built form, which requires that design and built form reflect the particular characteristics of the area, whilst minimising detrimental impacts on neighbouring properties. The subject proposal does not adequately respond to design and built form of Snowball Avenue in that the building could crowd the streetscape through its excessive bulk and small setbacks.
  2. The proposal is inconsistent with Clauses 21.05 Townships – Large and Small and 22.04 Commercial Centre as it fails to achieve scale and design that would be compatible with the environmental and built form elements of the area.
  3. The proposal is an overdevelopment of the site, which could result in detriment to the amenity of the Snowball Avenue residential area particularly in terms of building bulk, scale, loss of privacy, commercial traffic, and noise and as such is inconsistent with Clause 22.04 Commercial Centre.
  4. The proposal does not sufficiently justify a reduction in the planning scheme car parking requirements contained under Clause 52.06 and would not be able to cater for reasonable parking requirements on site.
  5. The proposal would introduce undesirable heavy vehicle traffic into the residential and low scale commercial context of Mt Evelyn and onto a residential scale road network that would result in significant amenity impacts and long term infrastructure issues.
  6. The proposal is inconsistent with the Decision Guidelines set down under the Business 1 Zone (Clause 34.01) in that it does not adequately consider or respond to the interface with the adjoining zones, especially the relationship with residential areas and does not respond well to protecting active street frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, and the landscaping of land adjoining a road.
  7. The proposal contemplates a scale and magnitude of development that is beyond the scope of the original rezoning

for the land and is further more inconsistent with the purpose and objective of the Design and Development Overlay proposed by Council for the subject land.

8. It has not been suitably demonstrated that the proposal would result in a net community benefit and that it will not adversely impact on the existing businesses within the Mt Evelyn township.
- 3 Since the Council's refusal in May 2007, a number of important events have occurred:
- Woolworths Ltd was substituted as the permit applicant, in lieu of the original applicant Mr A Carswell;
  - On 17 January 2008, the Minister for Planning approved Amendment C56 to the Yarra Ranges Planning Scheme that had the effect of introducing a Design and Development Overlay – Schedule 2 over the Mount Evelyn town centre, including the land subject to this application. This DDO2 has proved critical to our decision;
  - Woolworths had, prior to the introduction of the DDO2, sought leave to substitute amended development plans. These were circulated on 7 February 2008 in accordance with the Tribunal's practice note and orders, and a further procedural order was made at the commencement of the hearing to formally substitute these amended plans.
- 4 At the hearing before us, the parties and their witnesses relied on both written and oral submissions. A number of photographs, plans and other documents were also tendered to the Tribunal. The Tribunal has carefully inspected the subject land and its environs.

#### **'Setting the context' – some general introductory comments**

- 5 At its most basic level, the matter before us is simply about whether this particular supermarket development proposal should be permitted, having regard to the relevant provisions of the Yarra Ranges Planning Scheme. We have come to the view that this *particular* proposal represents an overdevelopment of the site in terms of its mass and scale, it fails to achieve a satisfactory design outcome for the site and, specifically, it does not adequately respond to important elements of the recently introduced Design and Development Overlay.
- 6 At another level, this matter exposes some of the common conundrums and misunderstandings of the statutory planning framework. It is worth making a few introductory comments about such matters, as it 'sets the scene' for our reasons that follow, and may be relevant to the consideration of any further development proposal for the site.
- 7 Under the Yarra Ranges Planning Scheme, a permit is not required to 'use' the land in question for a supermarket. The land is in a Business 1 Zone where a 'shop' (including a large-format shop such as a supermarket) is

as-of-right. The matter before us only relates to the ‘buildings and works’ component of the supermarket proposal – i.e. the built form, and how it responds to its site constraints, design objectives, and the interface with surrounding land use.

- 8 In cases concerning development considered controversial at a local level, objectors often mistakenly view the Tribunal as a forum to express their *general* opposition to a proposal, and express frustration when the Tribunal does not seem to have regard to issues that they consider important. It is understandable that many members of the community do not fully understand the complexities and nuances of the planning process. They do not deal with it on a day-to-day basis. However, the Tribunal is limited by its statutory jurisdiction. It can only decide a matter based on the actual application before it, and for the limited purpose or ‘trigger’ for which a permit is required, and having regard to the relevant provisions and decision guidelines in the *Planning and Environment Act 1987* and in the planning scheme that relate to that permit requirement.
- 9 To this extent, the many objections and the community petition presented in this case, arguing that Mount Evelyn does not need a second supermarket, or that there shouldn’t be a supermarket on this site, or that the community simply doesn’t want this type of development, are irrelevant to a proper consideration of the ‘buildings and works’ application before us. Our decision to refuse a permit in this case should not be seen as an endorsement of such arguments. Arguments of this nature tend to distract attention from the relevant and determinative planning issues, raise community anxiety and division, and potentially create false expectations of what might be a realistic planning outcome for the site. The views of the community are important, but within the confines of what are the relevant and determinative planning issues in a particular case. The Tribunal’s decision on a planning application is not determined as a popularity contest based on a general community petition, nor influenced by local politics, nor the identity or character of a particular developer. It is not simply a matter of what certain individuals like or don’t like, or what they want or don’t want. Some of the individual objections in this case fell into this category, and we have simply disregarded them. We have also disregarded objections raising other matters that we consider irrelevant to our decision. The Tribunal must objectively apply the provisions of the planning scheme, as it exists, to the application before it. Fortunately, most parties (including the main objector group MEEPPA) ultimately approached the matter on this basis.
- 10 The application of the provisions of the planning scheme is not, however, always straightforward. In a case such as this, it requires a considered judgement to be made in balancing the elements of the planning policy framework, zone provisions, and local overlay schedules.
- 11 This balancing judgement often requires us to consider the extent to which state-standard zone controls can be qualified by local policy and local

overlay schedules. The simple answer to this is that all relevant parts of the scheme apply, and an endeavour should be made to resolve any inconsistency<sup>1</sup>. Only in the event of inconsistency, a state provision prevails over a local provision, and a specific control prevails over a policy. In the present case, whilst the site is governed by a state-standard Business 1 Zone with a stated purpose to encourage ‘intensive’ retail development, we do not consider that development in all activity centres zoned Business 1 should necessarily be treated in the same way simply for this reason. The level of intensity that may be appropriate for a particular centre is capable of being qualified by clear and well-based local planning policy – in particular, where that policy has been implemented through the introduction of an overlay and schedule into the planning scheme, as with the DDO2 here. That DDO seeks to have development respect and enhance the unique character of Mount Evelyn.

- 12 As a corollary to this, the difficulty in balancing and applying policy and local overlay schedules is that many of the elements of these are ‘performance based’ objectives or guidelines, and it is not appropriate to apply each individually and literally as if it were a prescriptive control. Indeed, it is rarely possible to comply with all of them, and there is a temptation for all parties to focus only on those that suit their cause, and thereby to read into the objectives or guidelines the outcome they already favour. Those present for the duration of the hearing in this case would be well aware of the conundrums thrown up by the planning framework and the new design and development objectives for the Mount Evelyn town centre – some of which appear diametrically opposed to others. In this regard, the planning scheme sets us a goal of attempting “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”<sup>2</sup>. We have not found that task at all easy in this case.
- 13 Although we have affirmed the Council’s decision to refuse a permit in this instance, we believe Woolworths has suffered from ‘mixed messages’ from the Council in its planning for the Mount Evelyn town centre. Despite references in several Council documents over several years outlining the need for a structure plan for the Mount Evelyn town centre, none has eventuated. There has not been a clear planning ‘vision’ for this town centre. At the time the permit application was made, the site had only recently been re-zoned to a Business 1 Zone and there was then no DDO2 seeking to implement any particular local planning policy framework or design outcome. The land is within a neighbourhood activity centre – a level within the retail and activity centre hierarchy where supermarket development is generally supported – and opposite an area earmarked for medium-density housing. Woolworths had every reason to believe (and perhaps still has reason to believe) that the site might support a supermarket

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<sup>1</sup> *Planning and Environment Act 1987, s7(4)*

<sup>2</sup> See for example, Clause 11, State Planning Policy Framework

development, and is by no means the ‘big bad developer’ it has been made out to be. Indeed, we believe that Woolworths and its consultants have endeavoured in good faith (albeit unsuccessfully, in our view) to deal with the changing planning framework for this site - even after the belated introduction of the DDO2. A problem for the future is that the DDO2 seems to us to be clearer in indicating what sort of development it does not want (and thus operating as a constraint on development) rather than setting a clear vision to guide and facilitate future development and good design outcomes on an important site.

- 14 As a final introductory comment, we note that in deciding a matter such as this, the Tribunal must act fairly. A number of objectors expressed concern in this case that they had been disenfranchised in the process by changing parties, amendments to plans, ‘representative’ orders and limited access (in their view) to relevant information. There was a request by some objectors to adjourn the hearing, which we refused. The duty to act ‘fairly’ is a nebulous concept, but at its heart is the sense of a ‘fair go’ for all parties, having regard to the principles of natural justice as they apply in the circumstances of a particular case. This fairness to all parties itself involves a balancing judgement of competing interests, including those of the permit applicant entitled to have its application determined.
- 15 There comes a time in all matters when there is sufficient material ‘on the table’ to properly consider an application, and where additional layers of information or additional time will not materially affect the outcome. Woolworths had in this case complied with all relevant practice notes and procedural orders in the provision of documents and evidence. In the orders we made at the commencement of the hearing, refusing an adjournment, we indicated we were satisfied that MEEPPA and other objectors had been reasonably appraised of all relevant material and were capable of being ready to proceed. An indulgence was granted to MEEPPA and IGA to file ‘late’ expert reports. We do not believe any party was denied an opportunity to properly prepare and present their case, and this was ultimately self-evident from the detailed submissions and evidence before us.

## **PLANNING CONSIDERATIONS**

- 16 We turn now to our more detailed planning consideration of the particular proposal before us.

### The Site and Locality

- 17 The site is an irregularly shaped area of land of approximately 4,649 m<sup>2</sup> (according to Council) or 4,827m<sup>2</sup> (according to the applicant) in size and located on the south west side of Wray Crescent. The site has a small frontage to both Wray Crescent and Station Street (to the south west) with the majority of the site being located behind the existing shops fronting

Wray Crescent. The site consequently has a larger length of frontage onto Snowball Avenue to the west of approximately 125 metres.

- 18 The Mount Evelyn shopping centre, including the site, has a sloping topography, which contributes to its character. The site has a slope of approximately 9 metres from its north corner on Wray Crescent to its south west corner at the intersection of Snowball Avenue and Station Street including a 6.5 metre fall along its frontage to Snowball Avenue.
- 19 The site incorporates several parcels of land which are currently used for a variety of purposes including:
  - 16 Station Street – vacant and used as a temporary car park for shops located at or near the corner of Wray Crescent and Station Street.
  - 18 Station Street – occupied by a single storey dwelling at its northern end.
  - 3 Snowball Avenue – occupied by a single storey dwelling. This is the largest of the parcels and has the greatest interface with the adjoining residential area located on the west side of Snowball Avenue.
  - 41-41A Wray Crescent – occupied by two retail tenancies with a dwelling located to the rear. These shops would be replaced with the section of the development comprising the main supermarket entry for pedestrian access and specialty shops.
  - 35-39 Wray Crescent (part of) – is developed with three shops currently occupied by a pharmacy, the Bendigo Bank and a dress shop. A driveway is located along the northern side of the dress shop building providing vehicular access to a rear car park from Wray Crescent. The proposed development would be located on the land occupied by the driveway and carpark. The shops are proposed to be retained. This car park connects through to Station Street via a carriageway easement along the rear of the adjoining lots to the south.
- 20 The site also has a variety of vegetation consisting mainly of exotic and non-indigenous trees with some lower shrubs and garden species. Most of the trees on site are located to the rear of the property at 41-41A Wray Crescent and along the interface frontage of the site with Snowball Avenue. In general, these trees are proposed to be removed to accommodate the supermarket. They are described as being generally of moderate to low amenity with no indigenous trees being proposed for removal.
- 21 Wray Crescent and its shops, functions as the main retail spine of Mount Evelyn with retail and office uses fronting the street on its south west side and customer and staff parking located behind. Opposite the site in Wray Crescent are the public library, a café, Outlook Park, public car park, community building, former Mount Evelyn railway station platform and the Warburton Rail Trail. All of these uses and public spaces are located close to a ridgeline from which the land slopes to the south west towards the

Mount Evelyn Aquaduct Walk linear park, which is located south from the corner of Station Street and Snowball Avenue and which runs behind the residential properties facing the southern end of Snowball Avenue.

- 22 Opposite the site in Station Street is an, at grade, car park and an existing IGA supermarket that fronts onto York Road. Vehicle access is available from York Road through the IGA supermarket site and car park to Station Street.
- 23 A residential precinct is located on the west side of Snowball Avenue opposite the site. This area comprises mostly single and some two storey detached dwellings within established garden settings characterised by large setbacks. The building stock comprises a mix of brick, timber and cement sheet construction with conventional tile and metal painted pitched, skillion and flat roofs.
- 24 The Mount Evelyn commercial centre is recognised as a neighbourhood activity centre, as defined under *Melbourne 2030* and is a shopping centre that is broken into discrete patches separated by the Warburton Rail Trail and York Road. The centre comprises the Wray Crescent commercial centre, recognised as the focal point for commercial activity, an area north east of the Warburton Rail Trail and an area south east of York Road.
- 25 The site and surrounding area of Mount Evelyn is characterised by a prevailing sense of space and a distinctive hills village character. The existence of large canopy trees and space between buildings and combination of general low form and building bulk broken by these spaces contributes to the built form character of the town.

### The Proposal

- 26 Over the time since the planning application was lodged with Council and the application for the review, design aspects of the proposal have changed, while the description of the development has remained unaltered.
- 27 The proposal, based on the plans substituted at the hearing, involves buildings and works associated with the establishment of:
  - A supermarket totalling a floor area of 2,780m<sup>2</sup>;
  - A supermarket office totalling a floor area of 200m<sup>2</sup>;
  - Four (4) specialty shops totalling a floor area of 287m<sup>2</sup>;
  - A two storey retail and office building located on the corner of Station Street and Snowball Avenue comprising a combined floor area of 325m<sup>2</sup>;
  - A loading bay for the supermarket comprising an area of 90m<sup>2</sup>;
  - An underground car park contained in two levels (a lower and a mezzanine level) consisting of a total of 185 car parks.

- 28 We acknowledge that, in the evidence of Ms Heggen, some further recommended changes to the layout of the proposed development were made in an attempt to increase building setbacks for additional landscaping along the Snowball Avenue frontage and associated with the roof and associated services. We will comment on these changes later in these reasons.
- 29 The supermarket would require the removal of existing dwellings and vegetation located on the site and the incorporation of approximately 38 existing on site car parks within the development. Sixteen (16) of these existing car spaces are dedicated to an existing body corporate while the remaining 22 car spaces are for public use.
- 30 The development will have a single storey façade to Wray Crescent with pedestrian entry to a mall area containing the four specialty shops and travelator providing entry into the supermarket.
- 31 Vehicle access into the underground car park for the supermarket is provided off Station Street between the existing double storey Post Office building to the east and the proposed double storey retail/office building located on the corner of Station Street and Snowball Avenue to the west.
- 32 A loading bay is proposed to be located at the northern end of the site off Snowball Avenue near the change in direction along the street. A staggered screen fence alignment is proposed to be sited between 300mm and 1.4 metres from the Snowball Avenue property boundary. The screen fence comprises timber palings to a height of 3 metres with an additional 2 metres of post and wire lattice on top.
- 33 The proposed building will be setback from Snowball Avenue ranging between 2.2 to 5 metres.
- 34 The building height of the supermarket at the highest point of the land within the development site will be 10.05 metres while the overall height of the proposed building at or near the lowest point on the land within the site near the corner of Snowball Avenue and Station Street will be 11.85 metres.
- 35 The proposal uses the following treatments for the elevations:
- Wray Crescent – The building adopts a single storey form with its highest element being the awning over the front entry at 6 metres. Masonry walls, colourbond panels, aluminium louvres, and shop front glazing is proposed.
  - Station Street – The supermarket and car park element is located a minimum of 9 metres from the Station Street frontage and is sited behind the existing Station Street buildings and the proposed double storey corner building. The materials to be used for the corner building includes a selection of brick feature walls, painted masonry panels and full height window glazing on the corner ground level with smaller glazed panels above. The masonry panel system for the

supermarket behind is in a painted finish so that it backdrops the corner building.

- Snowball Avenue – a textured and painted masonry wall constructed for the length of the frontage to Snowball Avenue with a system of timber batten panels of varying horizontal calibrations are fixed to the façade wall. Glazing elements are set into the masonry panels as recessed blind windows. The timber battens are variously fixed at 300mm and 600mm set off from the masonry façade. The height of the masonry wall setback 5 metres from Snowball Avenue is generally 8 metres, although some of the timber battens extend the height to 8.8 metres in some locations. The building then steps in a further 3 metres where the wall height increases to between approximately 8.8 metres and 10.8 metres when measured from the ground level along the Snowball Avenue frontage.
- Colours proposed include muted tones with grey, dark green and stone with a grey colourbond roof.

### The Planning Scheme

- 36 As we have indicated, the site falls within the Business 1 Zone (B1Z) and is affected by the recently introduced Design and Development Overlay - Schedule 2 – “Mount Evelyn Town Centre” (DDO2).
- 37 Under Clause 34.01- “Business 1 Zone”, the use of the site for the purposes of a shop (supermarket) is as of right. Accordingly, no planning permit is required for the use of the land for retail purposes.
- 38 A planning permit is required under Clause 34.01-4 for the construction of buildings and works associated with the supermarket. The exemption provision from notification and third party participation in respect to such planning permit applications does not apply because the site is within 30 metres of a residential zone (Snowball Avenue).
- 39 A planning permit is triggered under Clause 43.02 – “Design and Development Overlay” for the construction of buildings and works for the development of a supermarket. The Clause also requires that buildings and works must comply with the requirements of any Schedule to the Overlay.
- 40 A planning permit is triggered under Clause 52.06 – “Car Parking” for a dispensation under Clause 52.06-1 from having to provide the car parking required in accordance with the Car Parking Table under Clause 52.06-5.
- 41 A planning permit is also triggered under the Particular Provision contained in Clause 53.01-1 – “Upper Yarra Valley and Dandenong Ranges Region”, for the removal of any vegetation. The site is not included in any exemption from the need for such a permit under the provisions of Clause 53.
- 42 The B1Z provisions include the following purposes:

- To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- To encourage the intensive development of business centres for retailing and other complementary commercial, entertainment and community uses.

The zone provisions also include the following relevant decision guidelines:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The movement of pedestrians and cyclists, and vehicles providing for supplies, waste removal, emergency services and public transport.
- The provision of car parking.
- The interface with adjoining zones, especially the relationship with residential areas.
- The streetscape, including the conservation of buildings, the design of verandahs, access from the street front, protecting active frontages to pedestrian areas, the treatment of the fronts and backs of buildings and their appurtenances, illumination of buildings or their immediate spaces and the landscaping of land adjoining a road.
- The storage of rubbish and materials for recycling.
- Defining the responsibility for the maintenance of buildings, landscaping and paved areas.

43 Under the DDO2 the provisions include:

Design objectives

General design objectives for whole town centre

- To reinforce and strengthen the distinctive character of the Mt Evelyn town centre.
- To maintain the pedestrian scale and fine grained rhythm of the streetscape of the existing shopping streets.
- To maintain the low rise character of the town centre.
- To protect key views from within the town centre to the Dandenong Ranges and surrounding areas.
- To protect the bushland character of the centre.
- To promote Wray Crescent and Station Street as the hub of the Mt Evelyn town centre and the main focus of pedestrian activity.
- To encourage a continuity of active frontages to Wray Crescent and Station Street.

- To ensure that development on the eastern side of Snowball Avenue is consistent with the residential character of the street.
- To ensure that buildings with visible roof form make a positive contribution to the character of the centre.
- To ensure that the design of buildings responds to the site slope.
- To encourage medium density residential development including shop top housing on sites within and adjoining the established commercial area.

#### Buildings and works

- Development should maintain a low rise character and should not exceed two storeys (up to 8 metres) above natural ground level. A third storey may be considered where it is setback or recessed.
- Development should not obscure views to the Dandenong Ranges (and maintain a view of middle distance vegetation within these views) from Outlook Park, the Warburton Trail and from the elevated northern end of Wray Crescent.
- Development should avoid visible expanses of flat roof and support a varied and interesting roof form.
- Plant and equipment of roofs should generally not be visible.
- Development should be stepped with slope so that changes in natural ground level do not result in built form with a visual bulk that undermines the low-rise and fine-grained character of the centre.
- Buildings should be constructed to the street frontage along Station Street and Wray Crescent except where a setback is required to enable retention of significant vegetation.
- Development should provide a stronger physical and pedestrian connection between the hub of the town centre in Wray Crescent and Station Street and sites to the rear of the town centre including the supermarket development in the south - east corner of the town centre.
- Building canopies or awnings giving continuous all weather protection must be provided along the street frontage to Wray Crescent, Station Street, York Road and Birmingham Road .
- Development (including corner sites) should provide active frontages to Wray and Station Streets.
- Development on the east side of Snowball Avenue should respect the residential character of the street by the following:
  - Avoid the presentation of blank walls to the streetscape.
  - The use of landscaping, setbacks and building articulation to address the visual balance of the street.

- Development on public land should retain and extend indigenous vegetation and protect fauna habitat.
- Development on land adjoining the Warburton Trail or open space areas in Birmingham Road should be designed to protect the bushland character of the open spaces areas.
- Car parking and vehicle access ways within road reserves along York Road and Birmingham Road should retain and extend areas of indigenous vegetation.

44 As you would expect, this mix of permit triggers is supported by a comprehensive planning policy framework<sup>3</sup>. It is not our intention to set these provisions out here. In many respects, these policies reflect the ideas and strategies implemented through the zone and overlay provisions set out above.

## **Basis for Decision**

### Key Questions for Assessment

45 The responsible authority and the objectors argued that the proposal to build a supermarket in Mount Evelyn was contrary to the design objectives and buildings and works guidelines for the Mount Evelyn Township listed in the recently introduced DDO2. They also argued that the development did not satisfy the general policy directions of the Yarra Ranges Planning Scheme, which seeks to ensure that new built form is in keeping with the character of Mount Evelyn and appropriate for the character of its setting.

46 Mr Wright stated that the key questions for us are:

Is the proposed layout and built form outcome acceptable in the context of the character and identity of the Mt Evelyn Town Centre and the specific built form objectives set out in the Schedule 2 to the DDO?

Is the car parking provision adequate?

Are there any unreasonable amenity impacts on nearby residential areas which cannot reasonably be managed by permit conditions on the operation of the supermarket?

47 Mr Wright argued that this case requires a judgement, to be determined within the context of land use policies which encourage intensive development of the Mount Evelyn town centre and design objectives which seek to manage the image of the centre.

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<sup>3</sup> Clause 12.01-2 – Strategies for Neighbourhood Activity Centres Clause 12.05-2 – Strategies for Urban Design Clause 15.05 – Noise Abatement Clause 17.01 – Activity Centres Clause 18.02 - Car Parking and Public Transport Access to development Clause 19.03 - Design and Built Form Clause 21.05 - Townships – Large and Small Clause 22.01 – Residential Areas Clause 22.04 - Commercial Centres Clause 52.06 - Car Parking Clause 52.07 - Loading and Unloading of Vehicles Clause 52.34 - Bicycle Facilities Clause 65 - Decision Guidelines Clause 53 - Upper Yarra Valley and Dandenong Ranges Region

- 48 The position of Council was also somewhat similar with the following questions put to us by Ms Marshall:

Is the built form and landscaping proposed for the site with the supermarket development appropriate for Mount Evelyn having regard to the State and Local planning policy, zoning, Design and Development Overlay and the particular characteristics of the site?

Does the development offer a suitable level of off site amenity to the residents of Snowball Avenue and is the interface relationship with the residential zone to the west of the site acceptable; and whether the car parking provision and traffic impacts acceptable including the provision of loading and unloading to the site?

Whether the economic impact achieves a net community benefit based on policy contained in Clause 17.02?

- 49 We consider that the questions asked of us by both the permit applicant and responsible authority above sufficiently summarise the key matters for determination of this matter.

#### Is the Development and its Design an Acceptable Outcome?

- 50 As we have indicated through our introductory comments, the development of a supermarket on a site such as the one at Mount Evelyn would, under normal circumstances, seem relatively straightforward. It is under-developed land, zoned Business 1, within the main commercial and shopping centre of the town. The Business 1 zone contains the purpose to encourage the *intensive* development of business centres for retailing. This purpose is reinforced by the fact that the ‘use’ of the site for a supermarket does not need a planning permit. It is to be expected that, if retailing were to go anywhere, it would go within a shopping centre zoned for business purposes. The State and Local Planning Policy Framework also strongly supports commercial land use locating and occurring within commercial centres or activity centres, including neighbourhood activity centres such as Mount Evelyn.
- 51 Mr Wright suggested that first impressions such as these are often the best impressions. With respect to this proceeding, if the application had been considered by us last year when the site was only covered by the Business 1 Zone, we may well have authorised the grant of a permit on such a premise.
- 52 However, the planning controls applicable to this site changed on 17 January 2008 with the introduction of the DDO2, and we are obliged to apply these new provisions. The DDO2 establishes a set of guidelines that require us to consider the design aspects of the supermarket development in more detail – in particular by having regard to Mount Evelyn’s built form character.
- 53 Ms Heggen’s evidence was to the effect that the combination of policy background, objectives and strategic directions within the Yarra Ranges Planning Scheme leads to an interpretation that the commercial centre of

Mount Evelyn is appropriate for more intensive commercial land use and development. We agree that the policy intent is certainly supportive of encouraging commercial land use to concentrate within activity centres including Mount Evelyn, as a neighbourhood activity centre. This is evident under Clause 21.05-2 “Key Issues” which states:

The identification and effective management of activity centres is a key element of the State Government’s Melbourne 2030 strategy for the future sustainable use and development of metropolitan Melbourne. They represent the major nodes of business, employment and transport infrastructure throughout Melbourne’s suburbs. These centres are seen as providing major opportunities for the further clustering of activities to minimise dependency on motor vehicle transport and to maximise public transport use.

54 However, as we have indicated, the level of intensity that the Business 1 Zone or this policy may generally contemplate is capable of being qualified for a particular activity centre – for example, through the implementation of specific local policy objectives via an overlay and schedule, as with the DDO2 here.

55 In this case, there is a strong counter-balance evident from the local policy framework and the DDO2. For example, Clause 21.05 which identifies Mount Evelyn as one of the foothills townships around Mt Dandenong and its role as a neighbourhood activity centre:

The Shire also contains a range of neighbourhood and other activity centres that serve as hubs of community activity for the various suburbs and townships. These neighbourhood activity centres also make a major contribution to the overall appearance and image of the Shire to both the local community and visitors.

There is considerable scope to upgrade and enhance the visual and physical amenity of many of these centres and to reinforce their main roles, image and identity.

56 The key point we draw from this is the importance to be placed on matters such as visual and physical amenity, role, image and identity. What then are these supposed to be for the Mount Evelyn town centre? We consider that the DDO2 represents, albeit belatedly, the establishment of a set of planning guidelines for identifying what role, image and level of amenity Mount Evelyn town centre is intended to have, and what new development needs to aim for to be considered to have achieved an acceptable outcome.

57 Our view is also supported by the policy “Objective 2” under Clause 21.05-3:

To establish sustainable and attractive townships which can support a range of commercial, retail, community and recreational facilities and services.

And the strategies:

- Encourage activities which reinforce the character and function of each centre whilst catering for local and visitor needs.
- Promote good design and a high quality level of amenity which helps to define and enhance the individual character of each town.

58 We understand that the policy also seeks as a strategy to:

Provide for quality retail, commercial and community facilities which cater for consumer needs.

59 The policy aim is to encourage commercial centres like Mount Evelyn to provide adequate services for its community. However, we are not convinced that *any* new commercial or retail development in Mount Evelyn ought to be viewed automatically as ‘good’ development. Development should also ensure a level of scale and design that ensures adequate amenity, supports an attractive centre, and reinforces its character. Clause 22.04 “Commercial Centres” reiterates that new development needs to recognise and enhance the character of commercial centres:

Each commercial centre in the Shire contains distinctive characteristics which contribute to the identity of the local community. These characteristics need to be recognised and opportunities to enhance the appearance and effectiveness of each centre need to be identified.

60 Although the policy under the Clause support commercial land use within the existing centres in the Shire, the policy also counters this desire under Clause 22.04-5 “Buildings and Works” with the following relevant objectives, which look to new development being compatible with the established character and built form:

- Design new development to be compatible with the established character and built form, or with of the surrounding commercial development.
- Ensure that there is adequate provision for car parking to meet peak needs and provide convenient access to the centre and minimise impacts on adjoining areas.
- Minimise the intrusion of traffic movements associated with the centre into adjoining residential streets.

61 And the following relevant supporting strategies:

- The building setbacks, height, site coverage, design and scale of the proposed use and development be responsive to any established environmental and built form character of the centre and streetscape characteristics, and protect the amenity of the nearby residents.
- New development on sites adjoining residential areas protect established residential amenity through the provision of appropriate building design, setbacks and landscaping which are compatible with the scale of nearby residential development.

- Buildings and works aim to improve pedestrian and shopper amenity in centres wherever possible by providing pedestrian paths throughout the centre, pedestrian links to car parks, sheltered rest areas and pedestrian weather protection facilities.
- Landscaping be provided where appropriate to reinforce any established image or identity for the area, or the landscaping theme characteristic of the centre.
- Established mature trees and other vegetation which contribute to the identity of any centre, if practicable, be retained and incorporated within any new development.
- New development be designed to provide convenient and safe pedestrian access for people with disabilities.
- Car parking areas be located and designed to provide safe and convenient pedestrian links to core retail areas and to enable efficient traffic circulation within the centre.

62 The overall ‘flavour’ of these policies is that new development within the Mount Evelyn town centre needs to recognise the character of Mount Evelyn and enhance this character. The objectives and strategies outlined under Clause 22.04 go further, and require that key aspects of the character of a commercial centre such as Mount Evelyn are to be supported. The policy also identifies that the amenity of adjoining residential areas needs to be protected through appropriate building design, setbacks and landscaping which are compatible with the scale of nearby residential development. This is important with respect to the character of the existing residential area along the west side of Snowball Avenue.

63 So, what is the character of Mount Evelyn? We were provided with a copy of the Panel Report for Amendment C56, which reviewed the draft DDO2 and made recommendations in relation to it. In submissions from the Council and other parties including MEEPP and IGA, our attention was drawn to what the Panel had outlined as the character of Mount Evelyn. Indeed, the Panel itself described the purpose of the DDO2 (on page 3 of its report) as follows:

The aim of the proposal is straightforward: to protect the special characteristics of Mount Evelyn.

64 The environmental setting of Mount Evelyn on a ridgeline, with vegetated ridges, slopes and drainage lines, represents a character consisting of built form sitting within a vegetated landscape. The theme of Mount Evelyn’s character is one of buildings set within a vegetated landscape rather than vegetation set around buildings. This was evident from the description in the C56 Panel Report, from submissions made by MEEPPA, and from our own detailed inspections of the site and the town environs.

65 The Panel’s description of the elements that contribute to the character and image of Mount Evelyn were aptly summarised by Mr Chiappi for IGA:

The setting – The Panel found that the particular environmental setting of Mount Evelyn sets it apart from other townships within the Yarra Ranges and the metropolitan area. The Panel identified the attributes of slope or topographical condition; village feel; canopy; ridge views and intermediate views; and linkages.

The built form – The Panel identified attributes of village scale; stepped buildings; vertical grain; roof diversity; and heritage.

- 66 We also note the Panel’s comments that Mount Evelyn has capacity to absorb additional development contained within its town centre, but that any consolidation should occur in a sympathetic manner and in a way that does not compromise the very features that sets Mount Evelyn apart from others. We generally agree with the Panel’s conclusions in this regard.
- 67 What Ms Marshall stated to us on behalf of the Council is that, overall, the Yarra Ranges Planning Scheme contemplates change, but this is tempered by the planning scheme such that large-scale change to built form will not dominate. Fundamentally, we consider that the premise of the planning scheme as it now stands is that - yes, change can occur, as long as it is in keeping with the character of Mount Evelyn.
- 68 Ms Heggen suggested that the character of Mount Evelyn is and will change. She saw this as evident in recent approvals for first floor development at 37 and 39 Wray Crescent that demonstrate a new and taller built form outcome for the character for the town. Consequently, she was of the view that the design of the supermarket, with its building structure ranging from two to three storeys in height, would not conflict with the changing character of built form in Mount Evelyn. Ms Heggen produced evidence to demonstrate that existing buildings around Mount Evelyn are already high and bulky. She highlighted, as examples of this, the two storey Post Office building in Station Street and the existing IGA supermarket building - particularly when viewed at the rear from Aquaduct Park. Her evidence suggested that the supermarket building would not be at significant variance from the size, height and bulk of existing buildings in Mount Evelyn.
- 69 In looking at what DDO2 seeks to achieve, as we have indicated, we believe that the key outcome sought is to reinforce and strengthen the distinctive character of Mount Evelyn. With regard to the proposed supermarket, there is a balance to be achieved between encouraging commercial development of land zoned Business 1, but in a form which protects, reinforces and strengthens the image and character that Mount Evelyn currently has.
- 70 We consider the proposal for a supermarket on the site fails to satisfy the policy and provisions of DDO2, and does not achieve an acceptable outcome with regard to the built form on the site. Mount Evelyn is characterised strongly by a leafy vegetated appearance. The site contains large numbers of trees, some of which are substantial in size. Individually,

they offer little in the way of conservation significance. However, collectively they do provide a backdrop within which buildings are situated. We noticed during our inspection how important these trees act in providing a leafy character for the shopping centre in Wray Crescent. We noted that this leafy appearance acted in conjunction with the vegetated linear areas associated with both Outlook Park/Warburton Rail Trail and Aquaduct Park to provide an attractive and pleasant vegetated character to Mount Evelyn.

- 71 The supermarket will result in the loss of the trees on the site, the impact of which is proposed to be minimised through the landscaping proposed along Snowball Avenue. However, the scale of vegetation loss is significant in terms of dramatically altering the leafy vegetated feel of the centre. We consider that the extent of this vegetation loss, and the scale of change to the vegetated appearance of the centre, particularly along the Snowball Avenue frontage of the site, is too severe. The landscaping proposed will only be effective in screening a high and bulky building comprising the proposed supermarket. The proposed development will result in a solid mass of buildings and impermeable surfaces covering virtually the whole of the site resulting in little retention of the bushland backdrop appearance of the Wray Crescent section of the Mount Evelyn shopping centre. Under normal circumstances, the level of site coverage would be expected to be high in areas zoned Business 1. However, for Mount Evelyn, its character is not a reflection of a highly urbanised commercial centre. Accordingly, we consider that the supermarket does not fit in with this low density character evident in Mount Evelyn.
- 72 We would not wish these comments on vegetation to be seen as a barrier to a good future form of development. As we have indicated, considered individually, the on-site vegetation is of little significance. It is the loss of all trees, together with the mass, scale and design of the proposed built form that in combination causes us concern. The loss of some or all of the on-site trees in a future development proposal may well be acceptable if compensated by an outstanding design that reflects Mount Evelyn's character and that incorporates sufficient replacement landscaping. That is however a matter for judgement in the consideration of any future proposal on its merits.
- 73 The built form design of the supermarket building fronting Wray Crescent presents as acceptable, because the structure is single storey and does not dominate its surroundings. It is also appropriate that this Wray Crescent frontage is promoted as the main pedestrian entry into the supermarket. We also consider that the proposal to provide car access and entry into the supermarket building from Station Street is acceptable, and offers some synergy with the existing focus of vehicle movements into and out of the IGA supermarket car park across the road.
- 74 However, we consider that this is pretty much where the appropriateness of this development stops. The two-storey office building proposed on the corner of Station Street and Snowball Avenue achieves some sense of

balance as a site 'anchor', and might be said to respond to the DDO2 objective to ensure some focus of pedestrian activity and active frontage to Station Street. However, we are not sure that it achieves this outcome, with the car park access on one side and no continuation of commercial activity on the other. Moreover, whilst the introduction of some more modern design elements into the Mount Evelyn town centre may be appropriate, we are not convinced the exterior design of this office building reflects the Mount Evelyn character we have described above. We do not consider that it responds well to its surroundings, nor does it 'wrap around' the corner to present a link and interface to Snowball Avenue. Quite frankly, we believe the juxtaposition of this two storey office building presents in its location simply for what it is - a building intended to buffer a side wall of the supermarket.

- 75 We are not convinced that the design measures, setbacks and landscaping of the supermarket to Snowball Avenue are compatible enough with its scale. The height of the wall, despite the various attempts at articulation, colour scheme, setback and landscaping treatment, remains too high and presents a high structure close to the street, which is clearly at odds with the current character of the residential area. The extent of the wall, again despite some attempts at articulation, reinforces the mass of the structure behind.
- 76 There is a contradiction for the architects and urban designers in having the development essentially 'turning its back' on Snowball Avenue. Unfortunately, the DDO2 does not provide any guidance on whether Snowball Avenue should have any pedestrian or commercial focus because of the desire to protect residential amenity. These types of conflicts with the DDO2 provisions highlight to us that the DDO2 has come out of a process where there has been insufficient recognition of the zone interface along Snowball Avenue and no clear vision for its future.
- 77 With the DDO2 seemingly preferring pedestrian and commercial activity in Wray Crescent and Station Street, and attempting to protect residential amenity in Snowball Avenue, Woolworths has taken the view (not wholly unreasonably) that the easiest and best way to achieve this is to have no interface between the supermarket and Snowball Avenue. Woolworths has simply masked the long unbroken building line with a level of articulation and landscaping. We do not believe this is appropriate. The interface needs to be managed, not ignored. The Council's policy preference for future medium density housing on the west side of Snowball Avenue implicitly recognises its nexus to the adjoining activity centre. It therefore seems to us to be inappropriate, as a matter of good design, that there be no openings at all in the unbroken wall of the development along Snowball Avenue, or no attempt to provide some modest level of activity.
- 78 It is not for us to re-design the development, but there are many options available to meet the planning challenge that this interface represents – from a simple pedestrian link connecting Snowball Avenue to Wray Crescent through the development, to shop-top housing or low-intensity

commercial development fronting Snowball Avenue. Interestingly, of all the objectors before us, it was the potentially most affected (Mr Clavant, who lives opposite the site in Snowball Avenue) who seemed to best acknowledge this need for some modest level of transition and activity at the zone interface, rather than the development simply ‘turning its back’ on Snowball Avenue. We comment further on the amenity implications of this, below.

- 79 We acknowledge that there is little in the way of commercial land use in Snowball Avenue at present. The proposal to establish a loading bay in Snowball Avenue contributes to the lack of compatibility with the residential character of Snowball Avenue, and reinforces the lack of any appropriate transition at the zone interface. We say this even though the loading bay is proposed to be located towards the northern end of Snowball Avenue in an attempt to minimise through traffic within Snowball Avenue from commercial vehicles. We agree with the Amendment C56 Panel Report that there is no absolute impediment to siting some loading facilities in Snowball Avenue if there is a strong preference for commercial activity to be focussed on Wray Crescent and Station Street, although there may be other alternatives. However, the present design and function of this loading bay within the overall development proposal is in our view inappropriate.
- 80 There was much discussion at the hearing of the height of the development compared to other existing development in the centre. The DDO2 allows two storey development, with a third level contemplated if appropriately setback to avoid undue impact. We do not consider that height *per se* is really the issue in this case, nor its impact on particular viewlines. It is the height across the mass and length of the development, having regard to the sloping site, that we consider in an overall sense to be inappropriate and reflective of an overdevelopment of this site.
- 81 We indicated earlier that Ms Heggen had proposed a number of design changes, all of which were generally supported by the other planners called as expert witnesses by various parties as being an improvement to the external design embodied in the amended plans should the development be approved. Primarily, these related to a change in the canopy of the office building, and a further setback of the wall along Snowball Avenue to allow for greater landscaping. As we have indicated, we do not consider a landscape buffer, however wide, to be a complete answer to the Snowball Avenue interface. We also believe that the changes recommended by Ms Heggen, whilst well intended, expose an element of ‘planning on the run’ coming as they did only a couple of weeks after the amended plans had themselves been filed. Improvements to the exterior and setbacks have been made at the expense of internal amenity within the development – car spaces have been deleted, others in our view made less usable, at least one trolley bay has been deleted, and access aisle widths have been reduced in an already relatively tight space. We are not convinced that these internal impacts are acceptable, and they were somewhat ‘glossed-over’ at the

hearing. They are again reflective to us that, in an overall sense, too many compromises are being made to fit *this* development on *this* site. This is not to say that a slightly smaller supermarket or retail development might not ultimately be capable of being accommodated on the site. However, we consider that the development proposal before us, in the way that it has been designed, is just too big for the site.

- 82 Taken as a whole we consider that the supermarket building fails to satisfy the policy directions of Clause 21.05, 22.04 and DDO2 to design a building that satisfies the objective of protecting, reinforcing and strengthening the character of Mount Evelyn.

#### Are there Unreasonable Amenity Impacts on Residential Areas?

- 83 Given the site's boundaries to the north, south and east are all to land in the Business 1 Zone, it is the west side of Snowball Avenue that represents the residential area primarily affected by the proposed development. Snowball Avenue lies directly at the interface with Business 1 to the east, with the zone boundary running down the centre of the street. Mr Wright alerted us to the interface impacts on amenity between the supermarket and the residential area in Snowball Avenue. He reminded us that:

The Tribunal has commented on numerous occasions that amenity expectation at zone edges are to be moderated in the context of what is encouraged in the adjacent zone, or indeed in both zones. The proposal achieves a more than acceptable outcome. The operation of the loading bay can be the subject of an appropriate management plan required as a permit condition, including a reasonable restriction on hours of operation.

- 84 As indicated, the residential area of Snowball Avenue is promoted under Clause 22.01 "Residential Areas" as an area where medium density development is preferred. The future character of Snowball Avenue area is therefore expected to change, based on what Clause 22.01 seeks to achieve. This is relevant to our consideration of this issue, but we must also consider what exists there now. The imposition of a high wall, irrespective of treatments and articulation, and a loading bay used for deliveries and storage for a supermarket, is not considered by us to be appropriate.
- 85 Under more 'normal' planning conditions in an urban environment, this issue may not be significant, and the amenity impacts may be easier to manage. However, our concern is heightened in this case because of Mount Evelyn's low key, low scale character that the DDO2 seeks to protect, with intimate interfaces with adjoining residential and recreational environments. The moderation of amenity, given the expectations of potential development opportunities due to the zoning and land use policy framework is noted. However, we consider that the level of amenity expected for existing residents in Snowball Avenue remains relevant and important, and we consider that the development as currently proposed will create

unreasonable impacts on the amenity of the residential area of Snowball Avenue.

- 86 The design of the supermarket interface with the residential area in Snowball Avenue represents a dramatic change with essentially no transition between commercial and residential built form. We consider that the outlook of the residents in Snowball Avenue to the rear of the supermarket and the loading bay area with screens and high walls, irrespective of treatments, will unreasonably impact on their amenity associated with the streetscape. Indeed, as we have indicated in our comments on design issues, we believe some low-level commercial activity along part of Snowball Avenue or access through the development from Snowball Avenue (despite its potential amenity implications, which would need to be managed) represents a better overall amenity outcome for Snowball Avenue and its residents, both existing and in the future.
- 87 A key issue for us, in terms of assessing the likely amenity impacts on the residential area, is the proposal to locate the loading bay in Snowball Avenue. We consider that this choice is a poor one and that the design of the loading bay, irrespective of the use of screens, fails to have proper regard to the amenity of the residents of Snowball Avenue.
- 88 The loading bay will attract substantially more commercial traffic including large trucks (14 metre long vehicles) into Snowball Avenue, which does not occur now. We are aware that the existing premises fronting the corner of Wray Crescent and Birmingham Road attracts delivery and staff vehicles, but we consider the scale of such traffic movements between the two land uses to be quite different both in terms of the nature of movement and its regularity. As we have indicated, there is no absolute impediment to siting some loading facilities in Snowball Avenue if there is a strong preference for commercial activity to be focussed on Wray Crescent and Station Street, although there may be other, better alternatives. In many respects, we consider a design improvement would be for the loading bay to be more closely aligned with the car park entry and exit point in Station Street, away from the residents in Snowball Avenue, or at the Station Street end of Snowball Avenue.

#### Is the Traffic and Car Parking Satisfactory and Adequate?

- 89 With regard to parking and traffic issues, we note that the evidence of both Mr Davis and Mr Hunt were close to agreement regarding impacts. Although there are some issues in relation to the layout of the underground parking, particularly with regard to pedestrian movement and safety, we consider that these issues are marginal in the overall scheme of things. We consider an underground car park is appropriate for a development such as this, in making efficient use of the site. Given the slope of the land, and general traffic movement in the area, we think the access off Station Street would have been appropriate, and capable of adequate management. We also think any consequential impact on traffic movement through the

Station Street and Wray Crescent intersection could be adequately managed.

- 90 We consider that the car parking is sufficient and, if the development was otherwise worthy of support, we would have granted the car parking dispensation sought by Woolworths. We are satisfied with the surveys of the existing at-grade on and off street car parking around the Mount Evelyn town centre that reveal a significant under utilisation of car spaces during peak periods. Mr Hunt's evidence was that existing car parking around Mount Evelyn was substantially under utilised with a range of unoccupied parking spaces of 45% to 55%.

Does the proposed development achieve a Net Community Benefit?

- 91 For all of the foregoing reasons, it will be apparent that we believe the proposal should not be supported. The Council and some objectors raised an additional issue in relation to our broader consideration of 'net community benefit'; namely that of possible economic impact and need.
- 92 The issue relates to the policy objective under Clause 17.02:
- To encourage developments which meet community's needs for retail, entertainment, office and other commercial services and provide net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.
- 93 The Council argued that we should consider whether the proposed development of the supermarket meets the strategic 'use' requirements of Clause 17.02 and the local policy and, in particular, ask whether:
- The proposed supermarket meets the community needs for retail services;
  - The proposed supermarket provides a net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities; and
  - Whether the proposed supermarket will have an adverse impact on existing businesses in Mt Evelyn.
- 94 Although Ms Marshall raised the issue of economic impact, the Council did not call any evidence to support this ground. Ms Marshall referred us to authority she suggested supported the relevance of these matters<sup>4</sup>, but did not elaborate. In the absence of evidence or argument arising from these authorities, we find it difficult to consider the matter. We agree with Mr Wright that the *Burns Bridge* decision stands for the proposition that economic factors are not necessarily irrelevant in a 'buildings and works' application if they relate, for example, to the functionality of a centre. This does not mean they will always be relevant. The decision in *Fabcot* would

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<sup>4</sup> *Burns Bridge Services Pty Ltd v Greater Bendigo CCI & Ors* [2005] VSC 422; *Fabcot Pty Ltd v Latrobe CC* [2007] VCAT 354; and *Morgan & Griffin Pty Ltd v Bass Coast SC* [2006] VCAT 1961

seem to suggest a similar view. Indeed, the refusal of a permit for a supermarket in that case was partly on the basis that it was to be located away from the core of the activity centre, and may therefore threaten the functionality and viability of the centre. The exact opposite prevails here, with a supermarket proposed to be located in the very centre of the activity centre, and in a location that one might expect to reinforce and enhance the functionality and viability of the Mount Evelyn town centre. A second supermarket in Mount Evelyn in this location would potentially achieve an improvement in the level of retail services for the community, through additional competition and range of services. It would also potentially improve the efficient use of infrastructure, and aggregate retail services within the commercial centre of the town. In the absence of evidence, we do not decide these issues, nor do we need to. We consider the potential for economic impact to be largely irrelevant, given the nature of the application before us, and in a case overwhelmingly concerned with scale and design.

## **Conclusion**

- 95 It follows from the above that the decision of the Council should be affirmed. A permit should not be granted for this development, based on the plans before us. We consider that the built form and design of this supermarket development is not appropriate for Mount Evelyn, due to the impact it will have on the prevailing village character of the town. The scale suggests an overdevelopment, having regard to the attributes and constraints of the site.
- 96 We believe that simply tinkering with design elements such as articulation, roof treatments and design, use of mock window glazing, timber battens and screening walls, would not be sufficient to mask the overall size, height and bulk of the proposed building for this site. This is not therefore a matter where we might have considered seeking further amended plans as a basis for approval. The whole proposal in our view needs a complete re-think.
- 97 During the course of the hearing, we repeatedly asked questions of parties about alternative options or visions for the site. As we indicated, this was not because we have any jurisdiction to consider such alternatives; rather, we wished to get a sense of the scale of development that was within the reasonable expectation of the various parties – particularly how the site may best interface with Snowball Avenue and the residential area. As we have indicated, we believe that the DDO2 is not helpful in setting a vision for the town centre and the difficulty is exacerbated by the absence of a structure plan.
- 98 We are concerned that several objectors seem to be of the view that the recently introduced DDO means that there will now be very limited scale development on the site, and that it might revert to a medium density residential use without any significant retail development. This is in our view naïve, and we believe many objectors have an unrealistic expectation of the likely change that needs to be managed in this area (in planning

terms) in coming years, and the type and scale of development that might ultimately be approved – including perhaps a smaller scale supermarket. It is not apparent to us that the Council has yet addressed these expectations.

- 99 Just as an overdevelopment of the site ought to be avoided, as in this case, so too should good planning prevent the underdevelopment of this important site. The land is in a Business 1 Zone, and represents a substantial undeveloped part of a relatively small town centre. Traffic and parking, and site vegetation and landscaping, are all capable of being resolved, and in our view should not represent primary grounds for refusal. If this site is not developed to its reasonable planning potential, we believe it would represent a lost opportunity for Mount Evelyn. It could lead to further fragmentation of the activity centre, possible further rezoning or commercial incursion into other surrounding areas, and thus affect the longer-term vitality and viability of the balance of the centre.
- 100 The key planning challenge, as evident in our discussion of the planning application before us, lies in appropriate scale and good design.

Mark Dwyer  
**Deputy President**

Chris Harty  
**Member**