

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. 995/2014
PERMIT APPLICATION NO. PLN/2013/404

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*. Macedon Ranges Planning Scheme. Commercial 1 Zone. Bushfire Management Overlay. Mixed use development. Policy context. Built form. Amenity impacts. Bushfire risk. Car parking.

APPLICANT	Macedon Property Developments Pty Ltd
RESPONSIBLE AUTHORITY	Macedon Ranges Shire Council
REFERRAL AUTHORITY	Country Fire Authority
RESPONDENTS	Helen Stott, P.J. Shaw, Rhonda Irving, Graham Smallwood, Geoff and Beverley Durham, Rolf Jinks, Susan Dain, Greg and Denise Triplett, Denis Nettle, M. D. Smits, Catherine Kean and John Tadd, Amanda Dettmann, Peter Sierocinski, Jeanette Sierocinski, Graeme Dettmann, Jill Scheider, H. F. Fitzpatrick, Luchena Smith, Reinhard Wocadlo, Noel Fitzpatrick, Kevin Carroll, Macedon and Mt. Macedon Business and Tourism Association Inc, Jill Cannon, Dora Rogan, Jim Noy, Macedon/Mt Macedon Community Planning Group, Peter Wilson, Anthony Dawkins, Ken Gregory, Linda Green, Joe Leonello, Julia Costelloe and Michael O'Donnell, Erna Fife, Pauline Tarrant, Janet Christine Buerckner, Ben Bush, Ronald N Fitt, Diane Fitt
SUBJECT LAND	19 Victoria Street, Macedon
WHERE HELD	Melbourne
BEFORE	Cindy Wilson, Presiding Member Ann Keddie, Member
HEARING TYPE	Hearing
DATE OF HEARING	1, 2, 3, 4 & 5 December 2014 and 16 & 17 February 2015
DATE OF ORDER	26 March 2015
CITATION	

ORDER

- 1 The decision of the Responsible Authority is affirmed.
- 2 In permit application PLN/2013/404 no permit is granted.

Cindy Wilson
Presiding Member

Ann Keddie
Member

APPEARANCES

For Applicant

Mr Mark Naughton, solicitor of Planning Property Partners

He called the following witnesses:

- Mr Mark Sheppard, urban designer and architect of David Lock & Associates (Australia) Pty Ltd
- Mr Robert Milner, town planner of 10 Consulting Group
- Mr Stephen Hunt, traffic engineer of Cardno
- Mr Tim Vernon, landscape architect of CDA Design Group Pty Ltd

For Responsible Authority

Mr Darren Wong, solicitor of Maddocks

He called the following witness:

- Mr John Glossop, town planner of Glossop & Associates Pty Ltd

For Country Fire Authority

Mr Stephen Foster, Land Use Planning Leader

For P.J. Shaw, Rhonda Irving, Geoff and Beverley Durham, Susan Dain, M. D. Smits, Amanda Dettmann, Peter Sierocinski, Jeanette Sierocinski, Graeme Dettmann, Jill Scheider, H. F. Fitzpatrick, Luchena Smith, Noel Fitzpatrick, Kevin Carroll, Jill

Ms Joanne Lardner of Counsel by direct brief

She called the following witnesses:

- Mr James Holdsworth, architect and urban designer of Planning Collaborative (Vic) Pty Ltd
- Ms Linda Green

Cannon, Jim Noy,
Macedon/Mt Macedon
Community Planning
Group, Peter Wilson,
Anthony Dawkins, Ken
Gregory, Linda Green,
Erna Fife, Ben Bush ,
Ronald N Fitt, Diane Fitt

For Denis Nettle	Mr Chris Banon, town planner of Banon Consultants He called the following witness: Mr Duncan Salter licensed surveyor of Eric Slater Pty Ltd
For Graham Smallwood	In person
For Joe Leonello	In person (days 4, 5, 6 & 7)

INFORMATION

Description of Proposal ¹	A mixed use development in two storey buildings comprising six retail tenancies and 17 dwellings. Parking for 28 cars are provided on site and the application seeks reduction in the car parking provision requirements and a waiver of onsite loading/unloading facilities.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act</i> 1987 – to review the failure to grant a permit.
Zone and Overlays	Commercial 1 Zone (C1Z) Bushfire Management Overlay (BMO) Restructure Overlay (RO)
Permit Requirements	Clause 34.04 -1 A permit is required for use of the land as a dwelling in C1Z (as the frontage at ground level exceeds 2m). Clause 34.01-4 A permit is required to construct a building or construct or carry out works in C1Z. Clause 44.06-1 A permit is required under BMO to

¹ As proposed in the amended plans substituted by the Tribunal in Order dated 8 December 2014.

construct a building or construct or carry out works associated with the use of the land for accommodation and retail premises.

Clause 45.04-2 A permit is required under RO to construct a dwelling or other building.

Clause 52.06-1 A permit is required to reduce the number of car spaces required under Clause 52.06-5.

Clause 52.07 A permit is required to waive the provision of a loading bay.

Relevant Scheme, policies and provisions

Clauses 9, 11, 13, 15, 16, 17, 18, 21, 22.01, 22.02-9 and 22.10 of the State and Local Planning Policy Framework.

Clauses 34.04, 44.06, 45.04, 52.06, 52.07, 52.34, 55 and 65.

Land Description

The review site is located on the south west corner of Victoria and Margaret Streets, Macedon. It is rectangular with a frontage of 49.3 metres to Victoria Street and 60.35 metres to Margaret Street and has a site area of 2975 square metres. The land slopes up from Victoria Street, contains several trees and is vacant.

To the east, on the opposite side of Margaret Street, are five attached shops facing Victoria Street together with single storey dwellings facing Margaret Street. To the south is a dwelling set on a large lot. To the west is a single storey hotel setback from Victoria Street with the Macedon railway station further west. To the north, on the opposite side of Victoria Street are shops and dwellings.

Tribunal Inspection

An inspection of the site and surrounds, including a view from 26 Margaret Street, was undertaken on 8 January 2015.

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 A mixed use proposal comprising retail space, 17 dwellings and associated car parking in double storey buildings on a 2975 square metre corner site at 19 Victoria Street, Macedon was refused by Macedon Ranges Shire Council. The applicant seeks a review of that decision.
- 2 Council's refusal was primarily related to the failure of the development to acceptably respond to the physical and strategic context although concerns about landscaping, bushfire risk, interface with adjoining low density residential land, car parking, loading/unloading provision and public realm works were raised.
- 3 Respondent objectors support Council's decision and raise concerns about the intensity of the built form in a low density, landscaped township setting, failure to respond to strategic context and existing character, amenity impacts on residential properties, increased bushfire risk, inadequate parking and poor internal amenity for future residents.
- 4 The Country Fire Authority (CFA) submitted that, subject to bushfire mitigation measures relating to water supply and landscaping, the proposal can be supported in regard to fire safety.
- 5 The applicant submits the proposal responds positively to the existing character of the town, contributes to a vibrant town centre, achieves excellence in site planning and architectural composition, improves the public realm, will have no adverse impacts on its residential neighbour, will provide an appropriately vegetated setting, be appropriately protected from bushfire risk and will result in no adverse impacts arising from car parking, traffic or loading.
- 6 We consider the key issues in this proceeding can be addressed under the following questions:
 - Is the design response acceptable?
 - Is an acceptable standard of internal amenity achieved?
 - Are bushfire risks acceptably resolved?
 - Are there unreasonable external amenity impacts?
 - Are the public realm works appropriate?
 - Are the parking, access and loading arrangements satisfactory?

² We have considered the submissions of all the parties that appeared, all the written and oral evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. We do not recite or refer to all of the contents of those documents in these reasons.

- 7 Before turning to these questions we set out our assessment of the planning context under the existing Planning Scheme and the physical context which must inform our decision.
- 8 The Tribunal must decide if a permit should be granted. Having considered the submissions, statements of grounds, evidence, the applicable policies and provisions of the Macedon Ranges Planning Scheme and inspected the review site and surrounds, we have decided to affirm the Council decision and direct that no permit issue. We have reached this decision based on a combination of concerns about built form presentation to the street, inadequate provision of space and landscaping opportunities and poor internal amenity for some apartments. Our reasons follow.

WHAT IS THE CURRENT AND PROPOSED PLANNING CONTEXT?

Current planning context

- 9 The land is within a Commercial 1 Zone under which a permit is required for buildings and works and for a dwelling where the frontage at ground level exceeds 2 metres. The extent of the Commercial 1 Zone in Macedon is relatively confined and primarily comprises properties south and north of Victoria Street between Smith Street to the west and Bruce Street to the east. Land surrounding the commercially zoned land is within the Low Density Residential Zone (LDRZ), including the land to the immediate south.
- 10 Two overlays apply to the land. The Bushfire Management Overlay applies to the wider area of Macedon and Mt Macedon. A permit is required for buildings and works associated with use of land for accommodation and retail premises. The Restructure Overlay applies to the land and specifies a permit is required to construct a dwelling or other building and any permit granted must be in accordance with the restructure plan for the land listed in the Schedule. The Schedule includes the land in area 'RO10' which, under an Incorporated Document³, restricts dwellings on specific lots. The review site is not specifically referred to in the document and has no restriction on house numbers.⁴
- 11 There are a number of relevant policies in both the State Planning Policy Framework (SPPF) and the Local Planning Policy Framework (LPPF) and reading these as a whole, together with the Zone and Overlay provisions

³ Macedon Ranges Shire Restructure Area Plans (Macedon Ranges Shire Council 1999) referred to in the Schedule to the Restructure Overlay and included as an Incorporated Document in the Schedule to Clause 81.01.

⁴ The Incorporated Document states that where land is not specifically referred to in Schedules A and B, the number of lots created by a subdivision shall not exceed the number of parcels existing prior to the subdivision. As subdivision is not proposed in the application we do not make findings on whether the provisions prohibit subdivision of the land.

and strategic documents⁵, a number of themes emerge that must inform our decision. These include:

- Identifying Macedon as a distinctive and attractive village with relatively easy access to Melbourne due to railway station and the importance of protecting the character and natural environment that contributes to that attraction for residents and tourists.⁶
- Recognising limits to growth in smaller centres, including Macedon, to ensure protection of landscape and environmental values and to minimise level of fire risk and at the same time encourage consolidation of existing township areas.⁷
- Maintaining the attractiveness and enhancing the character of small towns, encouraging high quality urban design and architecture, ensuring development responds to context, enhances the public realm and respects scenic amenity and landscape features.⁸
- Ensuring new development is located and designed to minimise risk to life and property from bushfire, that bushfire protection measures can be managed within the property and prioritise the protection of human life over other policy considerations in decision making in areas at risk from bushfire.⁹
- Supporting land use and development that is consistent with efficient use of energy and minimisation of greenhouse gas emissions, including support for settlement density that supports sustainable transport.¹⁰
- Increasing the diversity of housing especially in locations with access to transport, commercial and community services, including activity centres.¹¹
- Supporting the ongoing role of the region's small towns through investment and diversification of their economies, location of commercial facilities in existing activity centres and encouraging tourism development.¹²
- Supporting the role and function of activity centres according to its classification including housing intensification and mixed use near railway stations.¹³

⁵ Including Statement of Planning Policy No.8 (Macedon Ranges and Surrounds) and the replacement document Macedon Ranges Localised Planning Statement endorsed by Council on 24 September 2014 and forwarded to the Minister.

⁶ At Clauses 21.02, 21.04, 21.06, 21.07-2 and 22.02-9.

⁷ At Clauses 21.03, 21.06, 21.07, 22.02 and 45.05.

⁸ In Plan Melbourne referred to in Clause 9 and at Clauses 11.05-2, 11.05-4, 15.01, 21.07, 22.23 and 34.01-8.

⁹ At Clauses 11.05-2, 11.05-4, 13.05, 21.03, 21.07-1, 44.06, 52.47 and 65.01.

¹⁰ At Clauses 11.05-4, 15.02 and 21.07.

¹¹ At Clauses 11.01-2, 11.05-4, 16.01, 21.07-1 and 22.02-1.

¹² At Clause 11.12-1, 17.0-1, 17.03 and 21.07-5.

¹³ At Clauses 11.01, 18.01-2 and 34.01.

- Considering amenity impacts and interfaces with adjoining zones.¹⁴
- Ensuring an adequate supply of car parking and loading/unloading facilities that are appropriately designed and located.¹⁵

Proposed planning context

- 12 There are a number of adopted policy documents and Planning Scheme Amendments that are relevant to this proceeding, in particular Amendment C84 . We address each of these in turn as they set out the future direction Council is seeking for the Shire and in particular for Macedon township.
- 13 The Macedon Ranges Small Towns Study¹⁶ is one of the strategic documents that underpins Amendment C84 and in relation to Macedon township seeks a future character that provides a viable and sustainable township which protects and builds upon its village character. The study recommends that a plan be prepared for the town centre.
- 14 The Macedon Ranges Settlement Strategy (Settlement Strategy)¹⁷ provides direction for urban growth until 2036 and Amendment C84, amongst other things, seeks to implement this strategy. The Settlement Strategy establishes a hierarchy of settlements and identifies Macedon as a Small Town with a population of 1,400 in 2006. Due to environmental constraints and hazards, no increase in the population of Macedon is recommended to 2036, representing a ‘no growth’ scenario.

Proposed amendments to the scheme

- 15 Amendment C84, as adopted by Council¹⁸, proposes a revised Municipal Strategic Statement (MSS) and indicates a settlement hierarchy which is to inform the overall direction for urban growth in the municipality up to 2036. Policy identifies that high bushfire risk and other environmental constraints affect the potential for growth in Macedon¹⁹ and specifies that there will be no change in town population to 2036. A new clause relating to bushfire reflects State policy that seeks to prioritise fire risk in planning decisions and there are provisions to ensure development enhances existing character of towns and to provide a diversity of housing types. Specific provisions²⁰ relating to Macedon include objectives that aim to maintain the landscape character, ensure orderly infill development that respects the development constraints, including encouraging the location of

¹⁴ At Clauses 34.01-8 and 65.1.

¹⁵ At Clauses 18.02-5, 52.06 and 52.07.

¹⁶ Final Report July 2006 adopted by Council 26 July 2006.

¹⁷ July 2011 adopted by Council on 27 July 2011.

¹⁸ On 28 May 2014.

¹⁹ Clause 21.03-3 includes Macedon in a Small Town category as it has a population of between 500 and 2000 and refers to village as a settlement with a population less than 500. Confusingly Clause 21.04 includes Macedon as a Village with a population greater than 500 and designates a small town as one with a population of more than 2000.

²⁰ At Clause 21.13-6 noting the Strategies under Objective 4 incorrectly refers to east of Bruce Street rather than ‘west’.

development within the township boundary, minimise development due to the high bushfire risk and provide for limited commercial development. The review site is referred to as a key site where development must protect the rural village atmosphere though the use of appropriate scale, materials and building setbacks.

- 16 Amendment C84 has been the subject of review by a Panel with Interim and Final Reports released. The Panel supported the ‘no growth’ intent in the Settlement Strategy for Macedon but noted that some infill and redevelopment is appropriate. In the interim report the nomination of a static recommended population was considered inconsistent with other proposed provisions of the MSS and that some growth through infill and more intensive development on sewerred land may be contemplated for Macedon supporting a limited growth objective. The final report of the Panel was satisfied that the revised version of the MSS included provisions that addressed this inconsistency.
- 17 Council also referred to Amendment C92 that proposes to amend the current restructure provisions on 15 properties within the Macedon township and effectively allow an additional 16 dwellings. A Panel report recommended that the amendment be abandoned based on the view that no proper strategic fire analysis had been undertaken that would support the amendment and adding households to a township in an area of extreme fire hazard does not prioritise the protection of human life over other policy considerations. Contrary to the Panel recommendation, Council has adopted a version of this amendment that proposes to alter the existing restructure plans to allow additional lots with potential for 11 new dwellings in the township.
- 18 There was discussion at the hearing as to what ‘no growth’ referred to in the proposed policy means. Council’s position was that it means no population growth but allows for some development based on declining household size. It was Mr Glossop’s evidence that whilst a no growth position in policy is unusual, it is a direction for the town to remain within existing boundaries and to identify its place in the hierarchy of settlements but that it cannot mean no development. The Panel on C84 stated that some infill and more intensive development for Macedon is appropriate. By contrast, the Panel on C92 said the 16 additional houses site, which might potentially be developed if the Amendment were approved, would not represent ‘no growth’ in the township as any growth is significant in the context of the extreme fire risk of the area.
- 19 It was Mr Milner’s evidence that the amendment documentation for C84 is not properly resolved and sometimes contradictory. It is his view that the reference to population numbers for the town in Amendment C84 is an aspiration and does not require the town to be ‘snap frozen’ especially given there is no control in the Scheme to limit population. This aspiration should be considered in context of the hierarchy of settlements with major

growth directed elsewhere. It is important, in his evidence, to recognize that there is potential for growth in land zoned residential and commercial and such growth is consistent for the role of the town in the hierarchy of settlements.

- 20 We find mixed messages in the proposed planning policy relating to growth for Macedon. In the adopted MSS under Amendment C84, there is a specific reference to ‘no change’ in population for Macedon up to 2036 and an objective that seeks to minimise development due to the high fire risk. At the same time, there is also clear direction to provide for infill development within the township boundaries with specific reference to the review land as a key site. We consider the population target of ‘no change’ in policy would be difficult to implement in dealing with applications for development. The policy appears unaccompanied by analysis of existing and potential future household size, vacant lots, redevelopment opportunities and other matters that would be necessary to understand capacity. There are no apparent strategies that could limit population growth such as preferred densities or overall development plans.
- 21 Amendment C84 is a seriously entertained Planning Scheme document having gone through exhibition, panel assessment and adoption by Council and as such is relevant. Ultimately, however, we must give the most weight to the current policy and provisions of the Scheme in reaching a decision on this proposal.

Adopted Strategy

- 22 Of relevance to the planning context is the Macedon Village Centre Study (MVCS), recently adopted by Council²¹. Although not part of the Planning Scheme or a proposed amendment all parties agreed that it reflects the most specific strategic planning undertaken for the Macedon town centre. In the MVCS the review site is identified as a key development site and actions include to strengthen the retail role of the Village centre with commercial development on infill sites to serve local catchment, encourage diversity of building design, support siting and land use which respects the traditional qualities and rural village character, encourage use of verandahs and parapets along commercial frontages with zero setbacks to Victoria Street and encourage use of pitched roofs to complement the rural character of the town. It identifies potential for shop top apartments and housing at the rear of commercial sites and sets out a series of general design guidelines.

Conclusion on planning context

- 23 It is our view that the existing and proposed policy and provisions support some development of the review site to provide additional commercial and residential opportunities within the existing commercial centre, where new development should respond primarily to the existing character and where

²¹ On 26 November 2014.

the limited growth sought tempers the policy imperatives to achieve urban consolidation objectives.

WHAT IS THE PHYSICAL CONTEXT?

- 24 The review site is vacant land on the south west corner of Victoria and Margaret Streets, Macedon. It is rectangular with a 49.3 metre frontage to Victoria Street, a 60.35 metre frontage to Margaret Street and a site area of 2975 square metres. There is a stand of eucalypts near the Margaret Street frontage and an oak tree adjacent to the western boundary.
- 25 Overall, the site is elevated above surrounding land which, combined with its corner location, relatively large vacant size and the open presentation to both streets, results in a prominence in the town. The site rises above the footpath in Victoria Street presenting a steep batter to the street. We were advised that Council had recently constructed the footpath and removed vegetation that previously lined the review site along this edge to provide angled car parking in front of the site. To Margaret Street the land also rises above an unformed road verge at the edge of the road surface and presents a batter to the street. There are views to Mount Macedon and the ranges to the north and north east from the review site.
- 26 Victoria Street runs east-west and is the main street of Macedon, a small township located on the Bendigo railway line. Lining the street is a mix of commercial and residential development with a variety of setbacks and presentations to the street that include shops built hard to the edge with a canopy over the footpath and dwellings, some of which are used for business purposes, set behind generous front setbacks occupied by relatively dense gardens to the street. Part of Victoria Street provides an avenue appearance created by mature canopy trees joining over the street except near the review site where the street trees are absent. There is an overall sense of spacing provided by gaps in front of premises facing Victoria Street and in between buildings. There is a variation in the height of buildings with single storey predominant.
- 27 Immediately to the west of the review site is the Macedon Railway Hotel located on the corner of Victoria Street and Smith Street. This single storey building is built in part to the Smith Street frontage but setback some 12 metres from the Victoria Street frontage with the setback area used for an informal outdoor area and driveway access. To the east of the review site, on the opposite side of Margaret Street, is a small group of attached shops that are slightly setback from the road with angled parking in front of them. Vehicle access is provided to the rear of these shops off Margaret Street. Further east of these shops are four dwellings with front gardens to the street.
- 28 Opposite the review site, on the north side of Victoria Street, is a small supermarket with floor area of approximately 383 square metres and car

parking to the east side. We were advised that there is a current permit for a 430 square metre extension to this supermarket that would largely occupy the existing car park. The permit also allows waiver of car parking with the resultant development providing three car spaces on site.

- 29 To the west of the supermarket there is a café in a timber shop with a gabled roof and verandah over the footpath and space between this building and the supermarket is used for outdoor seating. A dwelling set behind a picket fence and garden adjoins the cafe to the west with two shops further west. Further west again, on the corner of Smith Street is a densely planted garden area behind a low fence.
- 30 Diagonally opposite the site, on the north east corner of Victoria and Margaret Streets, is a dwelling set on a large lot with an established garden with a hedge to the street edge. Further east are two dwellings setback from the street, one of which is partly used for business purposes. A restaurant built to the street frontage with an elevated deck facing the street is on the north west corner of Victoria and Bruce Streets.
- 31 To the south of the review site is a double storey dwelling at 26 Margaret Street set on a large lot containing extensive gardens. The dwelling on this site has setbacks of approximately 14 metres to the frontage and 15 metres to the review site. Opposite the review site, on the east side of Margaret Street, there are several single storey dwellings setback from the street.
- 32 Informed by our site inspection we find the Macedon township a small rural village with limited commercial services, located in an attractive setting at the Mt Macedon foothills, with a varied built form and significant landscaping to Victoria Street created by street trees and private gardens to the street. The residential area around the commercial area is low density set on gently sloping land and surrounded by both native and exotic plantings. We see the review site as physically important in the commercial centre of the town given its location, topography and prominence and one where development will be important in bringing together the currently disparate elements that make up the town centre.

IS THE DESIGN RESPONSE ACCEPTABLE?

- 33 The applicant submits the proposal is a contemporary design that is reflective of the rural character expressed in the surrounding built environment. The submission was that the proposal responds to the key urban design actions called for in the most specific structure planning undertaken for the town centre in the MVCS including the provision of active frontages with footpaths and formalisation of the on-street angle parking abutting the site in Margaret Street.
- 34 It was the evidence of Mr Milner that the height, scale and design of the proposal will positively contribute to the character and identified qualities of the township and will appropriately provide infill to the development of

Macedon as a compact and vibrant town centre. He made reference to a settlement ‘heart’ where there is greater density, more intense, diverse and taller built form, vibrancy and a mix of uses. Macedon, in his evidence, lacks a heart due to the gaps in built form and this proposal has a strategically significant role in completing the ‘heart’ or hub of Macedon.

35 Mr Sheppard gave evidence that the proposal responds appropriately to the existing character of the area and will improve the amenity of the public realm having regard to the following:

- The two storey height is an appropriate response in the context of both single and double storey form and is consistent with policy promoting urban consolidation and shop top housing.
- A ‘lantern’ proposed in the north east corner will add to the visual interest of the roofline and mark the street corner as sought in the MVCS.
- The zero front setback of the ground floor to Victoria Street and part of Margaret Street together with the activation provided by glazed shop fronts is an appropriate response to the prevailing character and in accordance with guidelines in the MVCS.
- The proposal presents to Victoria Street as a row of attached buildings that step down with the slope to the east and are broken into distinct modules approximately 5.5m wide consistent with the typical building rhythm. The building design will repair a significant gap in the streetscape but also enhance the existing streetscape.
- The Victoria Street façade features glass, timber and metal battens with a combination of flat and skillion roofs that will provide an appropriate contemporary interpretation of the varied existing streetscape character.
- The dwellings facing Margaret Street are setback approximately 3.8 metres, similar to dwellings opposite, and together with the separation of 6.5 metres from the property to the north will provide a transition between the zero setback of the retail to the corner and the more generous setback of the dwelling on 26 Margaret Street.

36 Council criticised the design response for creating a dominant building that will not fit into the built form and landscape context of Macedon and presents an inappropriate architectural response in terms of rooflines. Thirty years ago this town was almost entirely destroyed by bushfire and Council says the restoration of the town is as much about landscaping as it is about built form.

37 Mr Glossop gave evidence that the proposed development will be read as a continuous building mass across the Victoria Street frontage and much of the Margaret Street frontage in a manner that fails to respond to the low scale built form in a spacious treed setting. It was his view that the

development will dominate Margaret Street in the context of the existing low scale built form and existing front setbacks to that street.

- 38 Respondent objectors submitted that the bulk, scale and intensity of the proposal together with lack of opportunity for landscaping in the design proposal is inappropriate for Macedon and fails to respond to the clear direction to protect the existing character.
- 39 It was Mr Holdsworth's evidence that the long building frontage facing Victoria Street is both out of character and detrimental to the existing streetscape that includes individual buildings separated by sites with gardens in front of dwellings or former houses used for business purposes. Although the two storey built form, in principle, is an acceptable design solution and one which is supported by the MVSC, it is his view that the total mass and scale of the buildings together with the extent of glazed shop fronts and unbroken length of verandahs is contrary to what is sought for the town. To Margaret Street, Mr Holdsworth said the proposal is not consistent with other buildings in the street due to three storey form, façade length, long single skillion roof and overall building scale. He criticised the extent of built form adjacent to the low density residential area which creates a poor interface and the lack of opportunity for landscaping to the western boundary.
- 40 We have set out the planning and physical context of the review site in some detail in earlier sections of this decision. It is on the basis of this context, informed by our site visit, and having regard to the submissions and evidence in relation to built form response, we find the proposal fails. We say this for the following reasons.
- 41 We agree with Mr Milner's description of Macedon as a 'special and distinctive rural settlement'. We see part of that distinctiveness derived from the character created by the low density residential areas that surround the town centre in a setting amidst the bush on the southern slopes of the Macedon Ranges and the space evident in the town centre. We would add to that the space within the centre. We do not agree with Mr Milner that the commercial centre should be confined to Victoria Street west of Margaret Street plus the five shops opposite or Mr Sheppard, who said the design response should be informed primarily from the commercial built form. Rather, we say that the most recent strategic work that specifically addresses the town centre, the MVCS, should be considered and it included the entire commercial zone and identified space and landscaping opportunities as important characteristics.
- 42 Mr Milner went on to suggest that a significant point of difference to that low density character is the structure of the town centre which is the hub of the community providing for more intense development compared to the residential bush setting in the town. We agree that a town centre and associated commercial zoning and policy create an expectation where more

intense, mixed use development should be anticipated. However, we do not agree that the proposal achieves an appropriate level of intensity.

- 43 We find the spaciousness apparent in the residential areas of the town is reflected in the commercially zoned area. There is a series of irregular gaps between buildings and landscaping presenting to street frontage that create a low density feel to the commercial area, uncommon in an urban context but less unusual in a small town. Our reading of current and proposed policy is that this character is valued and is to be respected. We find the landscaped gaps are an important characteristic of the streetscape and although unusual in a commercial zone, we consider they are likely to be retained over the longer term given the clear policy direction limiting growth.
- 44 It is our view that the proposed design results in built form that is excessive in a context where there is spacing between buildings and landscaping opportunities and where most recent strategic thinking seeks to respect and enhance this characteristic. We agree with submissions that its intensity is more akin to what you might find in a suburban activity centre rather than the tempered approach to extent of built form that is called for in this town. This applies to both the shops and the residential component.
- 45 The review site is clearly a key development site within Macedon commercial centre as confirmed by specific reference in adopted policy and the MVCS and we agree with Mr Milner about the site having an important role in contributing to the 'heart' of the village. However, we do not see it as important to maximise the development potential that might be appropriate in a more urban setting where demand for housing and retail is high and land is relatively limited. Having regard to the economic analysis of Mr Nott²², the anecdotal information about business viability, the limited growth strategy and the availability of other sites within the commercial zone, we consider a reduced retail offer could be contemplated and would achieve an outcome that responds respectfully to the existing character.
- 46 Our specific built form concerns are as follows.
- 47 The length of building along Victoria Street that includes no effective breaks, no contribution to spacing or opportunity for landscaping we think is not respectful of the main street character. On a large frontage this will result in a dominant built form that fails to respect the spaciousness and gaps between buildings evident nearby. Even the much derided group of shops to the east step down, and whilst forward of other development with car parking in front, the impact is modified by the relatively confined width of the block and three attractive street trees. We see the width of this block as a good guide to the largest expanse of building along the streetscape but one that has not informed the extent of built form proposed on the review site.

²² Included in the MVCS.

- 48 A hedged garden area to the south east corner of Victoria and Smith Streets, in front of the hotel, makes a pleasant contribution in combination with street trees that is unlikely to change given the limited growth policy. We consider the review site should also make a contribution along this interface. The western elevations of the development appear harsh in oblique views to Victoria Street and the station. The walkway and retaining wall with fencing above appears institutional and not sufficiently well resolved to be acceptable.
- 49 We acknowledge the applicant's suggestion to remove the covered walkway adjacent to the western boundary allowing for planting of creepers that could grow over the boundary fence and the inclusion of climbing plants adjacent to the verandah posts on the Victoria Street footpath. Whilst these inclusions are an improvement they do not address the sense of space between buildings that we see as an important and valued characteristic of the centre.
- 50 The extent of built form internally to the site we find excessive in a context where the site cover is low to moderate, a characteristic to be respected under the design guidelines in the MVCS. The extensive cut to the western boundary for the western elevation of dwelling 1, the need to screen or use highlight windows internally, the 'sunken' nature of courtyards for some dwellings and the limited opportunities for landscaping internal to the site (further limited by the need to address CFA guidelines on landscaping, a matter we refer to later) combine to suggest a design that aims for a relatively intense level of development. This is not a satisfactory response to the spacing and landscaping evident in both the commercial and residential parts of the town. Whilst not a situation that occurs commonly on C1Z land where significant development is generally expected, the existing character of the commercial area of Macedon, the interface with a low density residential zone and policy that seeks limited growth creates a context where a lower intensity is appropriate. We think the design guidelines of the MVCS seek this low intensity within the C1Z with references to setbacks, landscaping on site and to screen walls near boundaries and low to moderate site coverage.
- 51 The interface of the review site to 26 Margaret Street provides a context that is unlikely to alter given the Low Density Residential zoning of the adjoining land. Whilst we find it appropriate to have buildings facing the adjoining site to the south we think it harshly handled with cut and benching rather than a design that follows the topography of the land. There is support for such an approach to the Victoria Street frontage to achieve a contiguous level with the existing footpath, but not at an interface with a low density residential site. This is another interface where landscaping and space are important elements of context and we consider the proposal should respond with more generous landscaping opportunities to these boundaries, again noting that CFA guidelines on landscaping limit

proximity of tree planting to buildings and require considerable space between tree canopies resulting in the need for greater space to achieve a successful landscape appearance.

- 52 Unlike a metropolitan Melbourne setting we do not find imperatives in the Scheme to maximise opportunities for urban consolidation. Despite the obvious advantages of living close to a railway station, a development with a reduced number of dwellings in Macedon is an outcome that on balance is appropriate in a location identified with extreme fire risk and reflects the ‘no growth’ approach sought in proposed policy, a term accepted to mean some additional development but limited population increase.
- 53 We think the design response has a number of positive aspects but ultimately proposes a development that is too intense for the context. We set out brief findings on the matters we find appropriate:
- Height proposed achieves an acceptable transition from nearby buildings.
 - The higher element to mark the corner to Margaret Street is appropriate.
 - The site cut is an appropriate response to Victoria Street. We do not share the view that a stepped approach up from the footpath is required. We think the site cut that allows shop fronts to be at footpath level at zero lot line allows for an active front and interaction to the street.
 - The inclusion of a verandah over the footpath is a positive response to streetscape, as are the mix of materials and the roof line.
 - The location of all cars behind the main street frontage and the avoidance of vehicle access to Victoria Street appropriately maintains an active commercial frontage.
 - The presentation of dwellings to Margaret Street is appropriate in terms of setbacks, opportunity for landscaping and built form. We do not think these dwellings present with a three storey form to the street.
 - The proposed public works are generous and would positively contribute to the public realm.

IS AN ACCEPTABLE STANDARD OF INTERNAL AMENITY ACHIEVED?

- 54 Various Scheme provisions seek to ensure that the internal amenity of new dwellings is appropriate including the purpose of Clause 55²³ that encourages residential development that provides reasonable standards of amenity for future residents. We consider daylight and outlook from a habitable room is an important part of the amenity enjoyed in a dwelling. Although there are situations where it might be acceptable to allow bedrooms to rely on light from roof windows, we consider there are no circumstances in this case that justify a reduction in internal amenity. We

²³ A relevant consideration under Clause 34.01-8.

find this aspect of design an indication that the development is seeking too much of the site.

- 55 Bedroom 2 within dwellings 9-13 and 16 have no windows. Instead these six rooms are provided with an openable skylight. It is our view that the absence of outlook from these rooms will result in poor amenity for future residents and is unacceptable on a site with the advantages of a large size, corner location and in a small rural town setting.
- 56 We find the layout of dwelling 15, a small, one bedroom/studio apartment above retail space facing Margaret Street, poorly resolved. It contains a living room relying on borrowed light from a bedroom window located some 7 metres away, an outcome we think provides unacceptable amenity.
- 57 Eight other bedrooms are provided with highlight windows, three of which face a covered walkway/pergola and seven of which face south. Whilst the use of the rooms makes amenity impacts less critical compared with a living room, the layout results in compromised access to daylight and outlook.
- 58 The proposal is a new development on a site that is not constrained in terms of access to daylight and is in a context where maximising dwelling density is not a priority and where the advantages of an inner city location are not present. We consider compromised access to daylight and outlook is not acceptable in these circumstances.

ARE BUSHFIRE RISKS ACCEPTABLY RESOLVED?

- 59 It was common ground that Macedon is within an area of recognised bushfire risk.
- 60 The Country Fire Authority (CFA), a referral authority in this proceeding, consents to the grant of a permit subject to permit conditions that address vegetation management within the property boundaries (defendable space), building to BAL-12.5 level of construction (to ensure the building has reasonable resistance to ember attack and radiant heat), dedicated static water supply for residents to utilise and static water supply for fire fighters to assist in fire fighting. In reaching this position the CFA assessed the review site to be within a bushfire risk landscape best described as ‘landscape type 2’ and said the anticipated wider landscape bushfire behaviour from surrounding land would be moderated by the residential and commercial uses and predominantly cultivated gardens nearby but noted that a bushfire impacting the review site from bushland reserves to the west could potentially produce some ember attack.
- 61 The applicant submits that the proposal appropriately addresses fire risk, a position borne out by the CFA conditional support. An assessment of the hazard accompanied the original application, amended plans were prepared to meet CFA requirements and a further report prepared by Mr Thompson on how the proposal responds to the BMO was submitted prior to the

resumed hearing on 16 February 2015.²⁴ All of this material, in the applicant's submission, supports the view that overall the proposed siting and construction of the proposal will meet the requirements of the BMO and, subject to permit conditions relating to landscaping and other matters, will ensure compliance with the requirements of clause 52.47 of the Scheme.

- 62 Council advised that it had initially been guided by the CFA with respect to the bushfire threat. Council pointed out that VC109 introduces revised assessment criteria including preparation of a 'bushfire hazard landscape assessment' which has not been prepared. In the absence of that information, Council says it is difficult to assess the bushfire risk presented by the broader landscape and whether that risk warrants the development not proceeding. Several specific issues relating to access, appropriateness of proposed landscaping, roof design, defensible space and practicality of implementing CFA conditions remain unresolved in Council's view and justify rejection of the application.
- 63 Subsequent to the further additional material provided by the applicant in relation to bushfire hazard landscape assessment, Council submitted that the review site is more appropriately included in 'landscape type 3'²⁵ and this requires a more detailed consideration of whether there would be an acceptable response to bushfire risk.
- 64 In the submission of the respondents²⁶, it is not appropriate to develop 17 dwellings on the site given the extreme bushfire risk that all residents of Macedon face. It was argued that the CFA have approached consideration of the proposal in an inappropriately narrow manner that relates to provision of water supply matters rather than considering the broader landscape risk that affects Macedon and the potentially increased risk to existing residents from increased development. To support this view the respondents referred to the findings of the Panel in Amendment C92 that, in assessing whether restructure provisions should be altered to allow 17 additional house lots in Macedon, found that *...adding households to a township in an area of extreme fire hazard is not to prioritise the protection of human life over other policy considerations.*²⁷
- 65 We agree the review site and the Macedon township are within high bushfire risk area and this is one of the key reasons that existing and proposed policy under Amendment C84 seeks to limit growth within Macedon.

²⁴ Prepared by Sam Thompson of Regional Planning and Design Pty Ltd dated 5 February 2015 and attached to an addendum to the landscape evidence of Tim Vernon dated 6 February 2015.

²⁵ One of four bushfire landscape types referred to in Planning Practice Note 65 Preparing and Assessing an Application under the Bushfire Provisions in Planning Schemes (DTPLI July 2014)

²⁶ It is noted that Clause 44.06-5 of the Scheme exempts applications under the BMO from certain notice and review rights. Other provisions of the Scheme that relate to bushfire risk such as Clauses 13.05 and 65.01 do not include these exemptions.

²⁷ At page 37 of the Panel Report on Amendment C92 28 January 2014.

- 66 We acknowledge the reference to the findings of the Panel in relation to Amendment C92. That amendment proposes an increase in the number of lots within existing residential areas under the Restructure Overlay and relates to strategic planning for the area. We consider this is different from the circumstances in this case that seeks development within an existing commercial zone.
- 67 We are not satisfied from the information before us that development on the site can be achieved in compliance with the objectives and approved measures contained in Clause 52.47 of the Scheme. Given the changed requirements introduced under Amendment VC109 that apply,²⁸ we consider a revised assessment needs to be made that includes a bushfire hazard assessment, a bushfire hazard landscape assessment and a bushfire management statement. We acknowledge the report of Mr Thompson that addressed some of these matters submitted as part of amended landscape evidence, but consider there are a number of matters that remain unresolved. This includes the difference of opinion on the classification of the landscape type within which the review site sits and what implications this would have for design and construction. There are also difficulties in reconciling the proposed planting regime with achievement of CFA conditions, noting that the CFA indicated that conditions could be modified to achieve an acceptable outcome more suited to a higher density development. This issue exemplifies the difficulties in ensuring a dense development can achieve landscaping that is an appropriate response to fire protection yet still contribute to the landscape character existing and sought for the area and adds another layer that contributes to our conclusion that the proposal is too intense for the site and context.
- 68 Even if we had been satisfied on bushfire risk matters it would not have changed our view that the proposal should be rejected for the reasons given. If we had been inclined to grant a permit and acknowledging the changes in provisions relating to bushfire under Amendment VC109, we would have allowed further submissions.

ARE THERE UNREASONABLE EXTERNAL AMENITY IMPACTS?

- 69 The treatment of the interface with 26 Margaret Street is of concern as referred to in our assessment of the design response. The built form presents strongly to this interface with the LDRZ in a manner we think is not well resolved. Whilst we have acknowledged the positives of avoiding ‘back of house’ presentation to this boundary, we think the extensive cut and benching and associated retaining walls results in a design that fails to respond to topography, the opportunity for landscaping is limited and the built form presents with a mass that does not achieve an appropriate transition to the spacious setting to the south.

²⁸ Approved 31 July 2014 and noting no transitional provisions apply.

- 70 Other than this concern, we find the proposal would not result in unreasonable impacts on the amenity of 26 Margaret Street.
- 71 Our observations from the downstairs living room of the dwelling on 26 Margaret Street showed views over the review site are effectively blocked by differences in levels and landscaping on its own site. From the bedroom upstairs the view is somewhat restricted by an inset dormer window. We consider the views to Mt Macedon obtained from a balcony off the bedroom would be retained. Similarly views from the barbeque area and the more westerly part of the land views will continue to be available.
- 72 Any development on the site, the crest of which is visible from the garden on 26 Margaret Street, will obstruct some views available at present. We do not find reduced views from this property a reason for rejecting the proposal. We acknowledge the reference to protection of significant view lines to Mount Macedon and surrounding areas in local policy under both the current Scheme and under Amendment C84.²⁹ However we are not persuaded that this refers to private views but think it seeks to protect important views from the public realm. Even if we are wrong on this point, we consider the outcome acceptable given the proposal will not result in loss of all views from 26 Margaret Street and a location adjacent to land in a C1Z must temper reasonable expectations of built form.
- 73 We find no unacceptable overshadowing impacts and consider overlooking is addressed in the design or could be by permit condition.

ARE THE PUBLIC REALM WORKS APPROPRIATE?

- 74 It is acknowledged that development of a key and large site allows a co-ordinated delivery of a number of positive outcomes. We applaud the applicant for agreeing to contribute substantially to public realm works including footpath and angled parking in Margaret Street, planters and seating to Victoria Street and undergrounding of power. Although we acknowledge the concerns of Council and neighbours about how these works would connect with adjoining sites and implications to existing infrastructure, we consider these matters could be addressed and would not be a reason to reject the proposal.

ARE THE CAR PARKING, ACCESS AND LOADING BAY ARRANGEMENTS SATISFACTORY?

- 75 Respondent objectors raised concerns about the failure of the proposal to provide car parking and a loading/unloading bay onsite in accordance with the Scheme standards. It was put that the urban consolidation objectives that are routinely relied upon in metropolitan Melbourne to advance a case for a waiver do not apply to a small rural village such as Macedon where a no growth policy applies.

²⁹ At Clause 22.09-2 of the Scheme and 21.13-6 under Amendment C84.

- 76 Council does not support the waiver of car parking and the loading bay submitting that failure to meet car parking and loading requirements on a site of this size indicates the development is too intense.
- 77 The applicant submits that the proposal makes adequate provision of car parking and loading can satisfactorily be provided for on street. It was the evidence of Mr Hunt that the onsite car parking provision is sufficient to meet the long term parking demands generated by the proposal, that short term car parking demands can be accommodated on-street, the surrounding road network can accommodate the expected traffic movement and loading can occur on-street.
- 78 We find the car parking provision which includes 28 car spaces on-site acceptable. We say this for the following reasons.
- 79 The proposal provides one car space for each one and two bedroom dwelling and two car spaces for the dwellings containing three bedrooms. This meets the standard specified for resident parking.
- 80 Seven car spaces will be provided for the six retail premises achieving one space for each of the smaller tenancies and two for the large premise proposed on the corner. We are satisfied that this provision will provide for staff parking onsite.
- 81 It is our view that car parking demand generated by visitors to the dwellings and retail premises can be accommodated on-street. In reaching that position we have had regard to the following matters:
- Mr Hunt's evidence that the peak demand for retail and residential visitors would be for 13 spaces.
 - The parking surveys undertaken in the vicinity of the site, referred to in Mr Hunt's evidence, indicate a low usage of the existing publicly available spaces with a minimum availability for 12 spaces along Victoria Street in front of the review site and the adjacent lot.
 - There are 10 existing angle car spaces adjacent to the Victoria Street frontage.
 - The applicant proposes works to Margaret Street that will replace the existing parallel parking for seven cars with nine angled car spaces including a space accessible by disabled persons.
 - The location of the site within an activity centre means visits are often made for multiple purposes.
 - The proximity to a railway station and the provision of bicycle parking allows some trips to be made by means other than car.
 - Given the limited growth anticipated in Macedon, reliance on shared parking for retail customers is unlikely to reach saturation levels.

- Allowing for all customer parking on street was supported by Council in its decision to approve the additions to the nearby supermarket with only three car spaces on site.
- 82 We are satisfied that the internal access arrangements will meet applicable standards and will allow convenient and useable access to car spaces.
- 83 It is our view that the relatively small retail premises proposed are likely to generate limited demand for loading and unloading with the majority of deliveries undertaken by vans rather than large trucks. We support Mr Hunt's suggestion to designate an on-street car space for loading outside of peak periods which will cater for loading whilst maintaining the maximum parking availability during peak parking periods. We note that if circumstances in the future suggest that a larger, dedicated loading bay is required, Council can address this matter.

CONCLUSION

- 84 For the reasons explained above, the decision of the Responsible Authority is affirmed. No permit is to issue.

Cindy Wilson
Presiding Member

Ann Keddie
Member