

5780

159 A9.



MORNINGTON
PENINSULA

Shire



PLANNING FILE

Date complete
to records

11/3

/04

Permit No P02

/1833

PN 1116

COMPLETED
11/3/04

P02/1833

R17

0003

ES025.

VP01

DQ

ADDRESS

6 VIEW POINT ROAD McCRAE

MESSAGE

DATE 1-11

TIME 12.37

A.M.
P.M.

to Arthur Cooksley * Team Member *
from Charlie Pugh 59822355

Details P02 / 1833
6 View Point Rd - Macrae
- compliance -
Letter RCVD - AC
Please call 19/10/07 "General" letter

Tel. _____
Mobile _____
Fax PE07912 / 07

Signed

I & S

☐ URGENT

☐ Telephoned ☐ Please ring
☐ Will ring back ☐ Called in

I hereby authorise Mornington Peninsula Shire Council, Statutory Planning Unit, to undertake the necessary advertising requirements on my behalf.

ABN: 53 159 890 143

- i) Carry out advertising on my behalf
ii) Forward A4 size drawings with all advertising letters sent

YES/NO
YES/NO

P 02/1033

Name (Printed): SALLY MOSER

Property Address.....

6 View Point Rd, McRae

Officer David Quetch

Contact Number (03) 5986 0991

Signature: _____

I & S

Please DO NOT send any money until a remittance request has been received
Please phone our Planning Enquiry Line for further assistance on 59 86 0176

***** Please forward remittance to PO Box 1000, Rosebud 3939 or Fax on 5986 0841 *****
Planning & Environment Group are located at Queen Street, Mornington





Site: vacant, cleared, cliff to rear, Bay views.

Res, veg.

Nidia Medel

From: Nidia Medel
Sent: Friday, 2 November 2007 2:51 PM
To: Arthur Cooksley
Cc: Tracey Young
Subject: P02/1833 6 View Point Road, McCrae

Hi Arthur

I spoke to Charlie Pugh. He wanted to clarify matters raised in the letter dated 19th October 2007.

I told him that he needed to submit a new Landscape Plan for endorsement as per Condition 4 which must include 80% indigenous plantings.

He informed me that he had been to the local nurseries and would supply a new amended Landscape Plan. He requested a copy of the Landscape Plan to be sent out to him and I have mailed him a copy.

Thanks

Nids

Ref: P02/1833: Direct Dial: Arthur Cooksley on (03) 5950 1915, Fax: (03) 5950 1910
LAND: 1116

19th October 2007

CA & PM Pugh
3/4 Catherine St
MCCRAE 3938

Dear Mr & Mrs Pugh,

**PLANNING PERMIT P02/1833
6 VIEW POINT ROAD MCCRAE VIC 3938
DWELLING**

I refer to copies of a landscape plan for the above development, which was received by Council on 21st September 2007. This plan is purported to be submitted for approval pursuant to condition 4 of the above permit.

As you will be aware, condition 4 required, amongst others, that of the new vegetation to be planted, 80% had to be indigenous to the locality with a minimum of 25 indigenous trees and shrubs to be planted.

By contrast, the landscape plan submitted by you consists almost exclusively of plants that are non-indigenous or exotic to the area. On this basis, the plan does not satisfy the requirements of condition 4 and cannot be endorsed.

You are reminded that the submission and approval of a landscape plan was required to be carried out by 6 September 2003. As this condition of the permit remains unsatisfied, you are directed to attend to this matter as a matter of urgency to avoid further action from Council.

If you have any further queries I will be pleased to assist.

Yours faithfully,

I & S

**ARTHUR COOKSLEY
TEAM LEADER – STATUTORY PLANNING**

7316941

81319091



COMMITTED TO A
SUSTAINABLE
PENINSULA

PLANNING CORRESPONDENCE RECEIVED

From:	MORNINGTON PENINSULA Shire RECEIVED 21 SEP 2007
Planning Application: P02/1833	MAIN FILE 1116 OFFICER/S Tracey Young
Address:	XREF P02/1833.01 FTI
Attention to:	
Comments: Requested by Tracey Young - Planning Compliance. Landscape plan to address condition 4 of the permit.	

15-9-07.

RE - LANDSCAPE - NATIVE AND PLANTED TREES & SHRUBS

6 VIEW POINT RD.

MCCAME.

NATIVES.

19 - EUCALYPTS (INCL. 1/VERY SICK MANNA GUM.)

18 - PITTOSPORUMS

25 - TEE-TREES

1 - POPLAR

3 - PINE TREES

12 - PIN OAKS

4 - BLACK WATTLE

2 - BANKSIA

84 IN TOTAL

PLUS MANY OTHER COASTAL NATIVE SHRUBS THRU-OUT
THESE LARGER TREES - (YELLOW - PURPLE - WHITE FLOWERS)
POSSIBLY / 50 OR MORE

WE HAVE PLANTED

70 - SILVER SHEEN PITTOSPORUMS

6 - MECHILIAS

8 - BOTTLE BRUSH

20 - JACKS (RED & GOLD LEAF)

6 - PALMS

1 - MONSTERIA

4 - DRACONAS

150 - AGAPANTHUS.

1 - LEMON

1 - APPALAT

1 - AVOCADO

PLUS ROSES & FLOWERS IN POTS

THESE PLANTS ARE EXISTING - BUT THROUGHOUT THE DROUGHT
AND WATER RESTRICTIONS MANY OTHERS FAILED TO SURVIVE

" 2 x 1,000 LT. " WATER TANKS HAVE BEEN INSTALLED TO HELP THE
WATERING SITUATION - UN-FORTUNATELY, YOU NEED RAIN-FALL TO FILL
THEM.

AMENDMENT .

App details changed.

976023 80627001

Ref: P02/1833.01 : Direct Dial David Quelch on (03) 5950 1901: Fax: (03) 5950 1910
PIN NO LAND

9 September 2005

CA & PM Pugh
3/4 Catherine St
MCCRAE 3938

Dear Sir/Madam

**MINOR AMENDMENT APPLICATION P02/1833.01
6 VIEW POINT ROAD MCCRAE
DWELLING**

I refer to the amended plans received in relation to the above permit, and advise that the proposed modifications are satisfactory.

Attached is a copy of the plans that have been approved to form part of the Planning Permit. These plans amend and supersede the previously endorsed plans (Sheets 1 & 2) dated 27/08/2003. It should be retained with your records.

Before building works start, a building permit is also required.

If you have any further questions I will be pleased to assist.

Yours faithfully

I & S

**David Quelch
STATUTORY PLANNER**



Minor Amendment Delegate Report – P02/1833.01
Statutory Planning Department – Mornington

Prepared By Manager	David Quelch Ray Webb
Date	9 September 2005
Application Received	25 August 2005
Applicant	Moser Planning Services Pty Ltd
App. Description	DWELLING
Land Address	6 View Point Road MCCRAE VIC 3938
Land Number	1116
Planning Scheme	Mornington Peninsula Shire
Zoning	R1
Overlays	DDO3, ESO25, VPO1
App. Fee Paid	Nil

BACKGROUND

The *Planning and Environment (General Amendment) Act 2004* was Proclaimed on 23 May 2005 and introduced new provisions for the consideration of requests for amendments to planning permits. This included repealing the provisions of Section 62(3) of The Act which related to amendments to any plans, drawings or documents which were of a "minor" nature.

However, the transitional arrangements for the General Amendment Act provide that applications for "minor" amendments may continue to be assessed under the repealed provisions of Section 62(3) where the original planning permit as issued prior to or within three (3) months of the proclamation date of the General Amendment Act. On this basis any permit issued up to 23 August 2005 can be assessed under Section 62(3) of The Act if the criteria of that Section are satisfied.

Planning Permit P02/1833 was issued on 6 August 2003 and therefore may be assessed against Section 62(3) of The Act.

Section 62(3) of the Planning and Environment Act, 1987 states:

"The responsible authority may approve an amendment to any plans, drawings or other documents approved under a permit if the amendments are consistent with the planning scheme and the permit. "

PROPOSAL

The application for an amendment to Planning Permit P02/1833 was received on 25 August 2005.

The application involves the following modifications:

- ☐ Extension of kitchen area.

CONSIDERATION

It is considered that the proposed changes to Planning Permit P02/1833.01 satisfy the criteria of Section 62(3) of The Act on the basis that:

- ☐ The extension of the kitchen is only minor. Viewlines from the property at 10 Viewpoint Rd (located to the south west) will not be impacted by the change because the meals area already obstructs that viewline.
- ☐ The proposed change is unlikely to result in an increase in material detriment or impact on amenity to adjoining landowners.

RECOMMENDATION

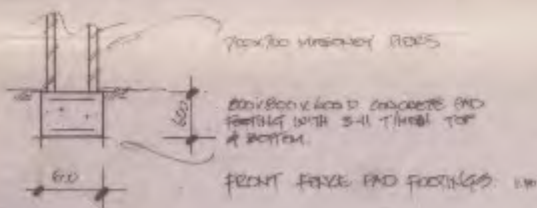
That the amended plans be endorsed to form part of Planning Permit P02/1833.01 pursuant to Section 62(3) of the Planning and Environment Act 1987.

I & S

.....
David Quelch
Statutory Planner
9 September 2005

General Notes: Any Excluded Works (new)

- [illegible]



STORMWATER SHALL BE DISCHARGED
TO UPLIFT POND; ABOVE A CHANGING WATER POND.
VIA 6" DIA. VUL. SLOPE QUALITY DIVE GRAVITY
SERVED SYSTEM FROM THE MAINLINE OF
DOWNPipes. SURFACE WATER FROM CUTOFF
DRAIN, AND A GRASS SHALL BE COLLECTED
TO TANK FOR RE USE ON SITE.
OVERFLOW SHALL BE TO SECONDARY
TANK INSTALLED WITH 2" DRAINAGE RAMP
10" SPACED TO GIVE WATER
BE USE GARDEN.

SITE / CONTEXT PLAN: 1:1000



FRONT FENCE ELEVATION:

[illegible]

DWELLING -
Ld 2 P.S. 114212
N°6 VIEW POINT ROAD
Mc CRAE 124. exp.
for G.A. & P.M. FUGH

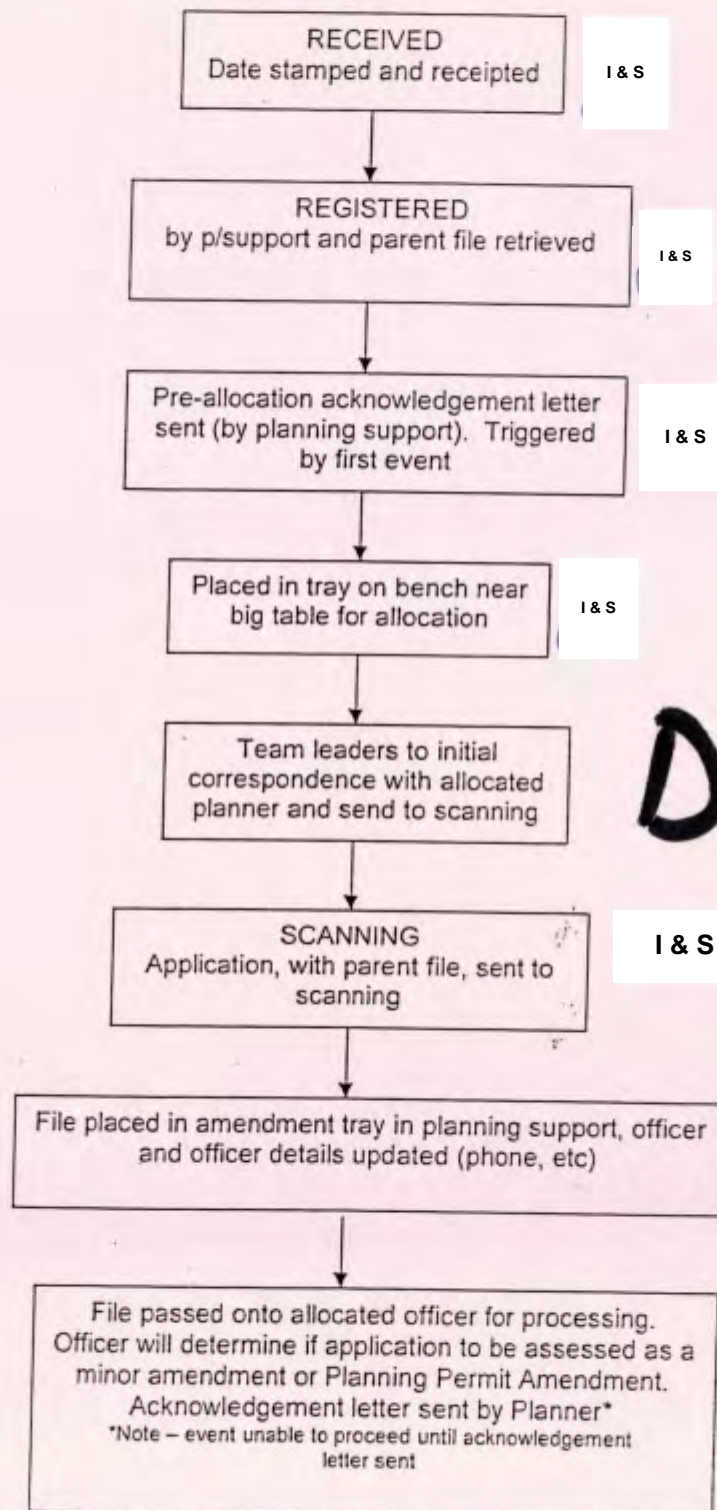
Mike Salpietro Drafting

BUILDING DESIGN

U.S. Dec 1954
WOLFE-BARTON
Victoria 1954
1954-1955

Process for a new application

AMENDMENT PROCESS (CHILD APPLICATION)



Ref: P02/1833.01:Planning Support: Direct Dial (03) 5950 1010: Fax (03) 5950 1910
PIN:1116

29 August 2005

CA & PM Pugh
3/4 Catherine Street
MCCRAE VIC 3938

Dear Sir/Madam,

**APPLICATION FOR AN AMENDMENT
REFERENCE P02/1833.01
6 VIEW POINT ROAD MCCRAE**

I refer to the above application received 25/08/2005.

Your application has been registered and will shortly be allocated to an officer. You will receive further advice as to who is dealing with your application and any further information Council may need to assess your application.

Should you have any queries, please contact Planning Support on (03) 5950 1010.

Yours faithfully,

Tracey Young
Planning Support Officer



MORNINGTON
PENINSULA

Shire

COMMITTED TO A
SUSTAINABLE
PENINSULA



971305

8184500

Application to Amend a Planning Permit

Use this form to make an application to amend a planning permit amendment under Section 72 of the Planning and Environment Act 1987 and to provide the information required by Regulation 16 of the Planning and Environment Regulations 2005.

Supplementary information requested in this form should be provided as an attachment.

Privacy notice

All information collected as part of this permit application will be available for public inspection in accordance with Section 51 of the Planning and Environment Act 1987, unless you specifically request confidentiality. The information collected about you as part of the planning permit process will be made available at Council, should you wish to inspect it.

Please print clearly in **black** pen

MORNINGTON PENINSULA Shire	
RECEIVED	25 AUG 2005
OFFICERS	
P02/1833-01	
P02/1833	

Planning Application reference

Please provide the current
Planning Permit reference number

P02/1833

The amendment proposal

Provide details of the amendment being applied for.

What is the amendment being
applied for?

Describe the changes proposed to
the application including any
changes to the plans or to any other
documents included in the
application.

(a) ALTERATION TO KITCHEN WINDOW
(b) AND MOVE ENTRY STAIRS TO CHANGE ROOM
AS SHOWN ON PLAN ENCLOSED.
WITH HIGH IT WINDOWS

Why is the amendment required?
State the reasons for the change.

(a) TO GIVE A MORE DIRECT VIEW TO THE BODY
DELETING THE 45° ANGLE
(b) TO OPEN UP THE ENTRY FOR INDOOR
PLANTS AND LET MORE SUN IN

Covenants and other restrictions
on title?

Check on title information:

Covenants, section 173 agreements
and other restrictions are identified
on the certificate of title.

Is the land affected by a registered covenant, section 173
agreement or restriction on title eg easement or building
envelope?

☒ No, continue

☐ Yes

Does the amended proposal breach, in any way,
the registered covenant, section 173 agreement or
restriction on title?

☒ No, continue

☐ Yes, contact council for advice on how to proceed before
continuing with this amendment

Note

Council must not grant an
amendment to a permit that
authorises anything that
would result in a breach of a
registered restrictive
covenant (sections 61(4) and
62 of the Planning and
Environment Act 1987).

Contact council for advice.

Supporting information (attachments – plans / drawing / reports)

List the documents you are attaching to support this amendment to the permit application including the title, plans, etc.

	Quantity	Document	Document date
a)	3	REVISED PLAN	25/08/2005
b)	3	" " SITE PLAN	25/08/2005
c)			D D / M M / Y Y Y Y
d)			D D / M M / Y Y Y Y
e)			D D / M M / Y Y Y Y
f)			D D / M M / Y Y Y Y
g)			D D / M M / Y Y Y Y
h)			D D / M M / Y Y Y Y
i)			D D / M M / Y Y Y Y
j)			D D / M M / Y Y Y Y
k)			D D / M M / Y Y Y Y
l)			D D / M M / Y Y Y Y

Costs of buildings and works / permit fee

State the cost of the works with respect to the proposed changes only..

Cost \$ NIL

Write 'NIL' if the cost difference is \$0.00

Write 'N/A' if the permit does not allow development

Note You may be required to verify this estimate.

Information checklist

12. Have you



Filled in the form completely?



Attached all necessary supporting information and documents?

Declaration

13. This form must be signed

Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that all the information is true and correct and the owner (if not myself) has been advised of the amended application.

Name:

C.B. & P.A. POEN

I am the: (tick all that apply)



Owner



Applicant



Contact



Agent for the applicant or owner (provide details in the Agent section below if you are not the contact)

I & S


Signature:


Date:

25/08/2005

Lodgement

Lodge the completed and signed form and all documents with:

Mail: 
Mornington Peninsula Shire
Private Bag 1000
Rosebud, 3939

In Person: 

The Sustainable Environment Group is located at the Mornington Office, Queen Street, Mornington.

Rosebud Office: Besgrove Street, Rosebud

Hastings Office: Marine Parade, Hastings

Somerville Office: Edward Street, Somerville

For help or more information

Telephone: ■ Planning Support (03) 5950 1010

Fax: (03) 5950 1910

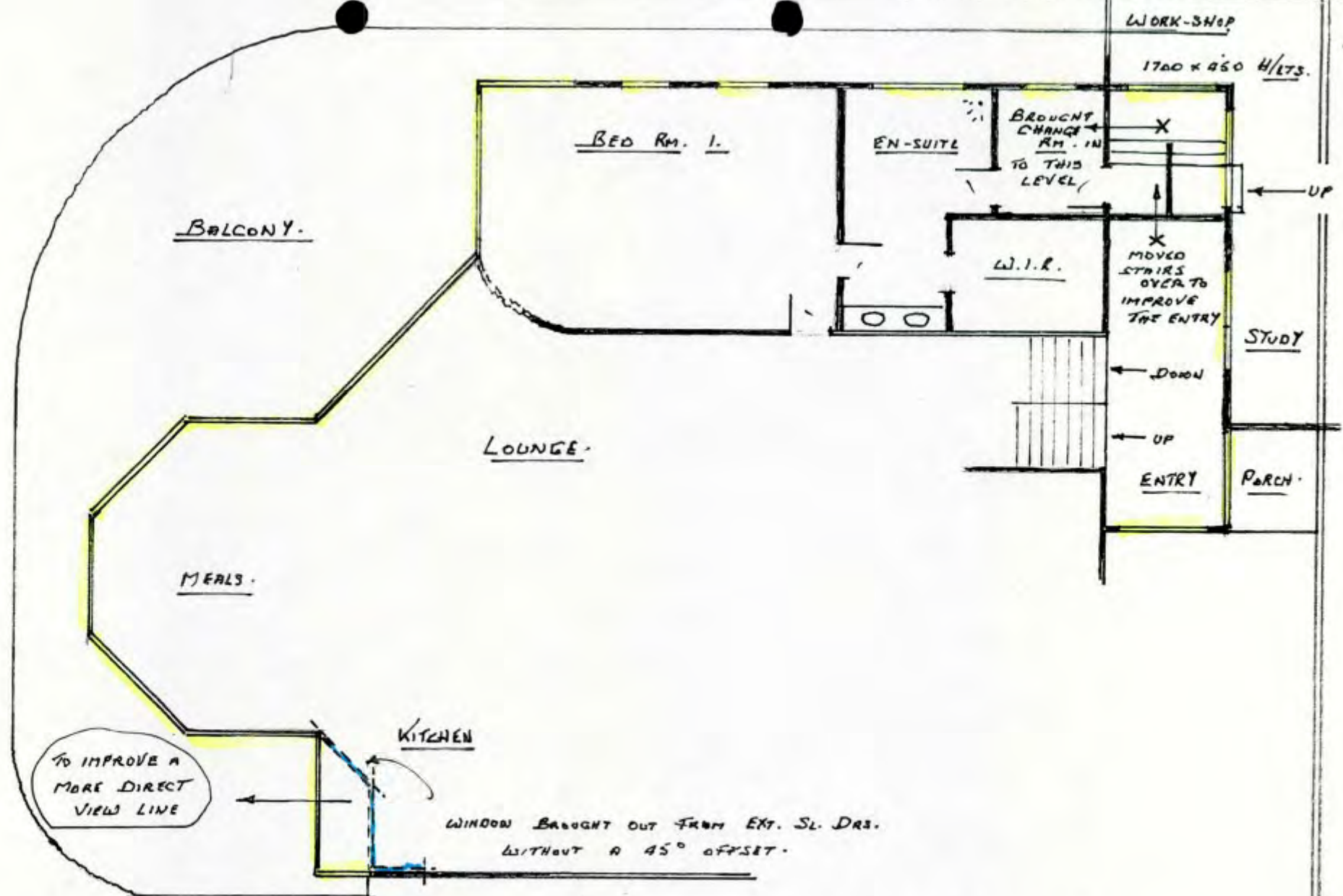
Email: custserv@mornpen.vic.gov.au

Office Use Only

Application No:

Allocated Officer:

Date Lodged:



AMENDMENTS TO PLAN

FOR C.A. + P.M. PUGH.
AT 6 VIEW POINT RD.
MCCRAE.

mw
25/8/05

ADDRESS: 6 View Point Rd McCrae
PERMIT No: P02/1833

CTR 11.3.04



COMMITTED TO A
SUSTAINABLE
PENINSULA

INTERNAL PERMIT AMENDMENT APPLICATION CHECK LIST

Basic application information	Mandatory	or X	Type of information that should be provided (as applicable)	Type of information that hasn't been provided (information that is to be contained in return letter to applicant if application is rejected)
Application form completed	✓	✓	Has the correct form been submitted? <i>Now use 1 form but old forms can still be accepted for "minor" amendments.</i>	
Land Details	✓	✓	• Address of subject land.	
Amendment Proposal Details	✓	✓	• Permit reference & description. • Description of changes	
Title/Covenant/Restrictions on Plan of Subdivision		not provided	• Full copy of current title, covenant/Sec. 173 agreements (if applicable)	
Cost of buildings/works (to fee)	✓ S.72 only	✓	• Cost difference from that approved by the permit to that now being sought. Is the estimate accurate?	
Correct application fee.		✓ not	• Appropriate fee paid? <i>Not mandatory at this stage.</i>	
Contact Details	✓	✓	• Contact details for applicant and owner.	
Signed Correctly	✓ S.72 only	✓	• Declaration to be completed	
Three (3) copies of plans and documents	✓	✓	• Must be a complete set of plans – not a plan that partially supersede a previously endorsed plan.	
Site plan/plans (details of lot boundary)		✓	• Boundary setbacks, vegetation location, site levels, adjoining buildings, other features etc.	
Elevations, all 4 sides Sections		✓	• Overall height and wall height of building (to N.G.L.) • Relative levels (R.L.'s) of each floor level and the highest part of the ridge where applicable	
Floor Plan (use of each room)		✓	• Fully dimensioned layout of the internal arrangement of the development/use	
Colours and finishes		X	• Colour schedule and finishes to external materials • Samples may be required for painted surfaces	

	Yes	No	Officer's Name (please print)	Date
Sufficient information for application to be assessed by a planner?	✓		Irrelevant & Sensitive	26/8/05

INTERNAL PERMIT AMENDMENT CHECKING GUIDELINES

- All applications for amendments to planning permits are to be checked by the Statutory Planner in the Counter Duty Role. The applications are then registered by the Planning Support Officer in the Planning Certificates/Council Reports role.

- The primary purpose of checking the applications is to ensure that it is accompanied by an application form and that adequate information has been provided to enable the application to be assessed.

It is not necessary to assess at this stage whether the application is assessed under the old or new amendment provisions.

- Three (3) copies of all plans or documents must be provided and the application form must include a comprehensive list of all the changes to the original plans or documents. It must also provide clear details of any proposed changes to the description of the permit and/or permit conditions (if applicable).
- Ideally a complete set of plans/documents will be submitted for endorsement (ie. all the sheets) however it is only mandatory to reject an application if the plan submitted only supersedes an earlier sheet in part – ie. the amendment changes the site plan on Sheet 2 of 3 but it is still necessary to refer to the previous sheet 2 of 3 for the floor plan. *This may not be immediately apparent when checking the application.*
- If the mandatory requirements of the checklist have not been satisfied use the right hand column to write what information should be contained in the letter which is sent to the applicant returning the application.
- When in doubt err on the side of accepting the application – use your discretion.

696324

John d'Helin
67 WHEATLAND ROAD
MALVERN, 3144

14 November 2003

The CEO
Mornington Peninsula Shire
Private Bag 1000
Rosebud, 3939

Dr Michael Kennedy

Dear Sir,

Ref. Planning application P02/1833 & Appeal P3390/2002, No 6 View Point Rd.
McCrae.

A planning permit has been granted for this building to proceed.

I noticed on the weekend of Nov. 8/9 that a storage container has been located on the nature strip outside the property. A mature tree located on the nature strip between properties No 4 & 6 has been damaged on the underside of branches overhanging the street. It is possible that during the delivery of the container this damage occurred.

My concern is for the survival of this tree without further damage due to or as a result of the building being constructed on the property at No 6 Viewpoint Rd. I would ask you to bring this matter to the attention of both the planning & enforcement officers.

This tree is not an indigenous species. It has been shaped by past pruning to avoid the power lines & to allow the garbage truck access however it also has been there overhanging this street for over 50 years. It is without doubt an essential asset that adds character to the streetscape.

Mr Pugh has indicated to neighbours that he considers the tree is in his way and is a nuisance & he intends to apply for a permit for removal. If council receives such an application I wish to be notified. I am concerned that Mr Pugh may do something to this perfectly healthy tree to make it damaged or unsafe in order to assist a permit application. My concerns are fuelled by the fact that I witnessed the removal of a mature Manna Gum from this property- I believe no permit had been issued at the time of removal.

My property is located at No. 16 Viewpoint Road, McCrae.

Please notify me at the Malvern address above of any relevant matters pertaining to this application.

MORNINGTON PENINSULA Shire	
RECEIVED	11 NOV 2003
MAIN FILE	1116
OFFICERS	DQ
XREF	P02/1833
FYI	

I & S

11 NOV 2003

Phone I & S . Mobile I & S Email: I & S

Ref: P02/1833: Direct Dial David Quelch on (03) 5986 0991: Fax: (03) 5986 0841

27 August 2003

Moser Planning Services Pty Ltd
5 Littleboy Rise
ENDEAVOUR HILLS VIC 3802

Dear Sir/Madam

PLANNING APPLICATION P02/1833
6 View Point Rd MCCRAE VIC 3938
DWELLING

I refer to Condition 1 of the above planning permit. The plans submitted in accordance with Condition 1 are considered satisfactory. Please find attached a copy of the endorsed plans. The plans should be read in conjunction with the planning permit and its conditions. The endorsed plans should be retained for your records.

If you have any further questions I will be pleased to assist.

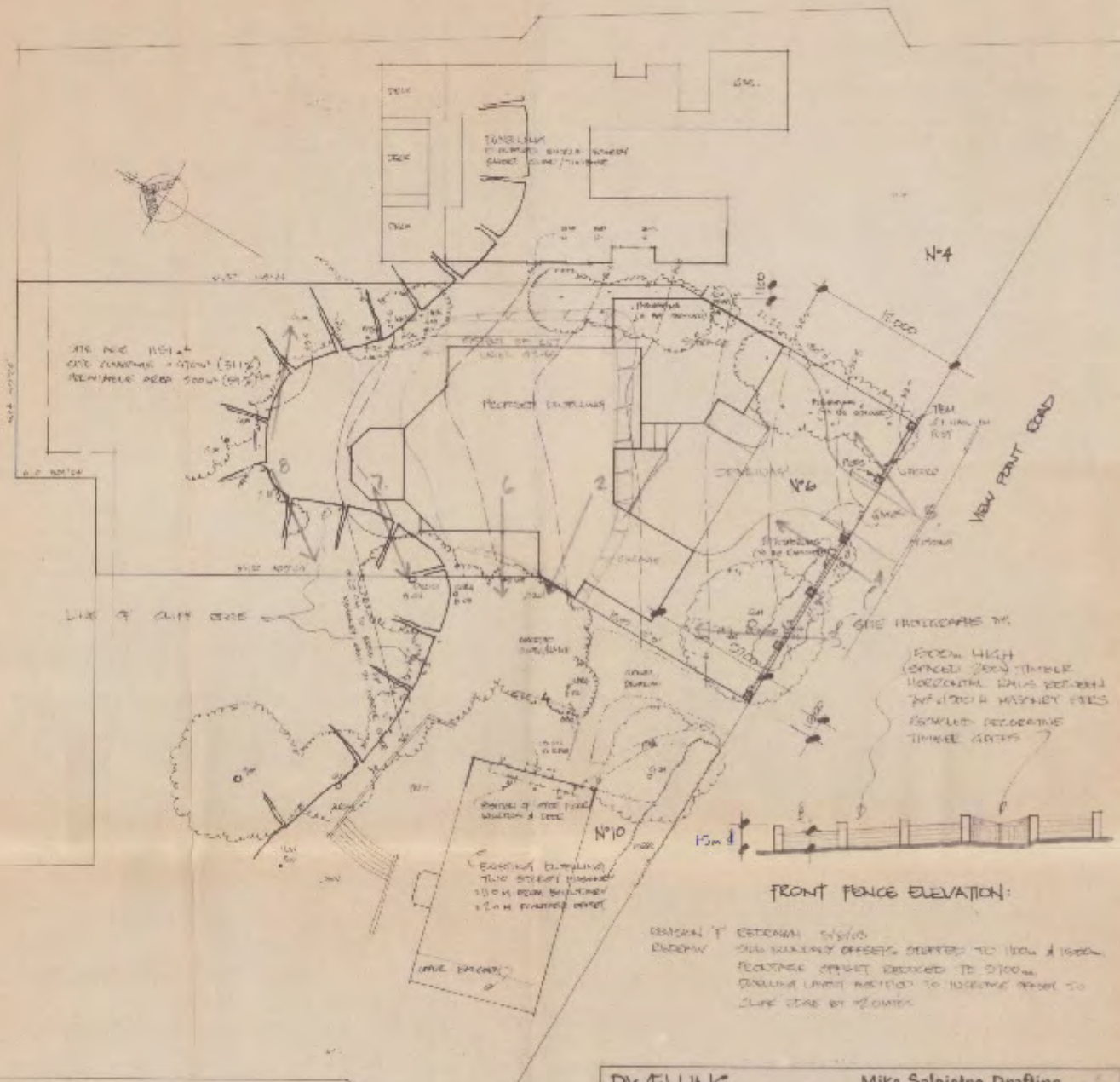
Yours faithfully

I & S

David Quelch
DEVELOPMENT PLANNER

WORKING DRAWING
 PLANNING PERMIT NO. 162/1833
 ENDORSED PLAN
 Sheet 3
 Signed [Signature]
 DEVR. CONVENT PLANNER
 Date 27/8/03

SUPERSEDED
 DATE 9/9/05 DQ



SITE/CONTEXT PLAN:

DWELLING
 Ld 2 PS 114212
 N°6 VIEW POINT ROAD
 M° CRAE
 for C.A. & P.M. PUGH

Mike Salpietro Drafting
 BUILDING DESIGN
 prddg

NOTES: 1. ALL DIMENSIONS ARE IN FEET
2. ALL DIMENSIONS ARE TO FACE
3. ALL DIMENSIONS ARE TO FACE
4. ALL DIMENSIONS ARE TO FACE

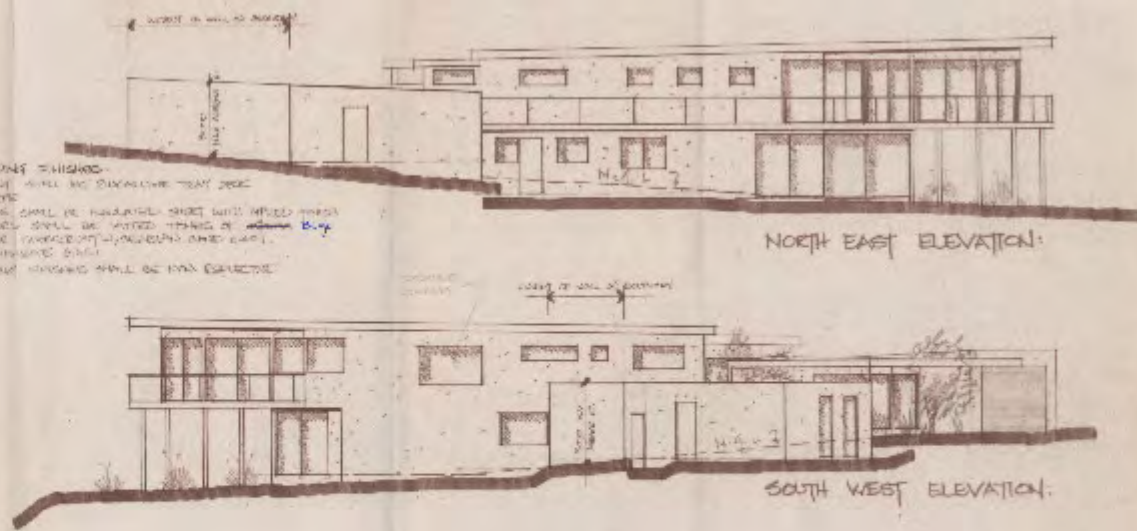
DATE: 12/2/01
DRAWN BY: M. SALPIETRO
CHECKED BY: M. SALPIETRO

SUPERSEDED
DATE: 3/25/02 BY: M. SALPIETRO



UPPER FLOOR PLAN:

EXISTING FINISHED
FLOORING SHALL BE DEMOLISHED TO EXPOSE
1" SLAB
WALLS SHALL BE REINFORCED WITH WIRE MESH
CEILING SHALL BE WOOD STUDS OR JOIST
CEILING FLOORING SHALL BE WOOD STUDS
OR JOIST FLOORING SHALL BE WOOD STUDS



NORTH EAST ELEVATION:

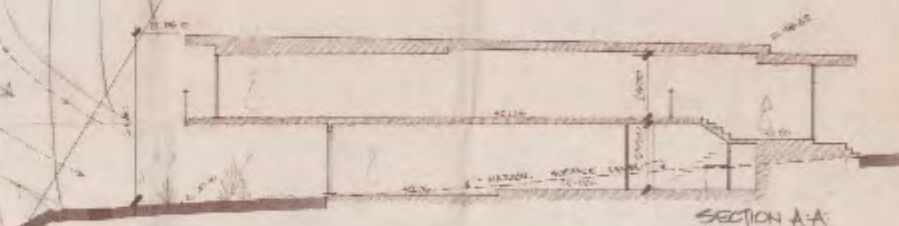
SOUTH WEST ELEVATION:



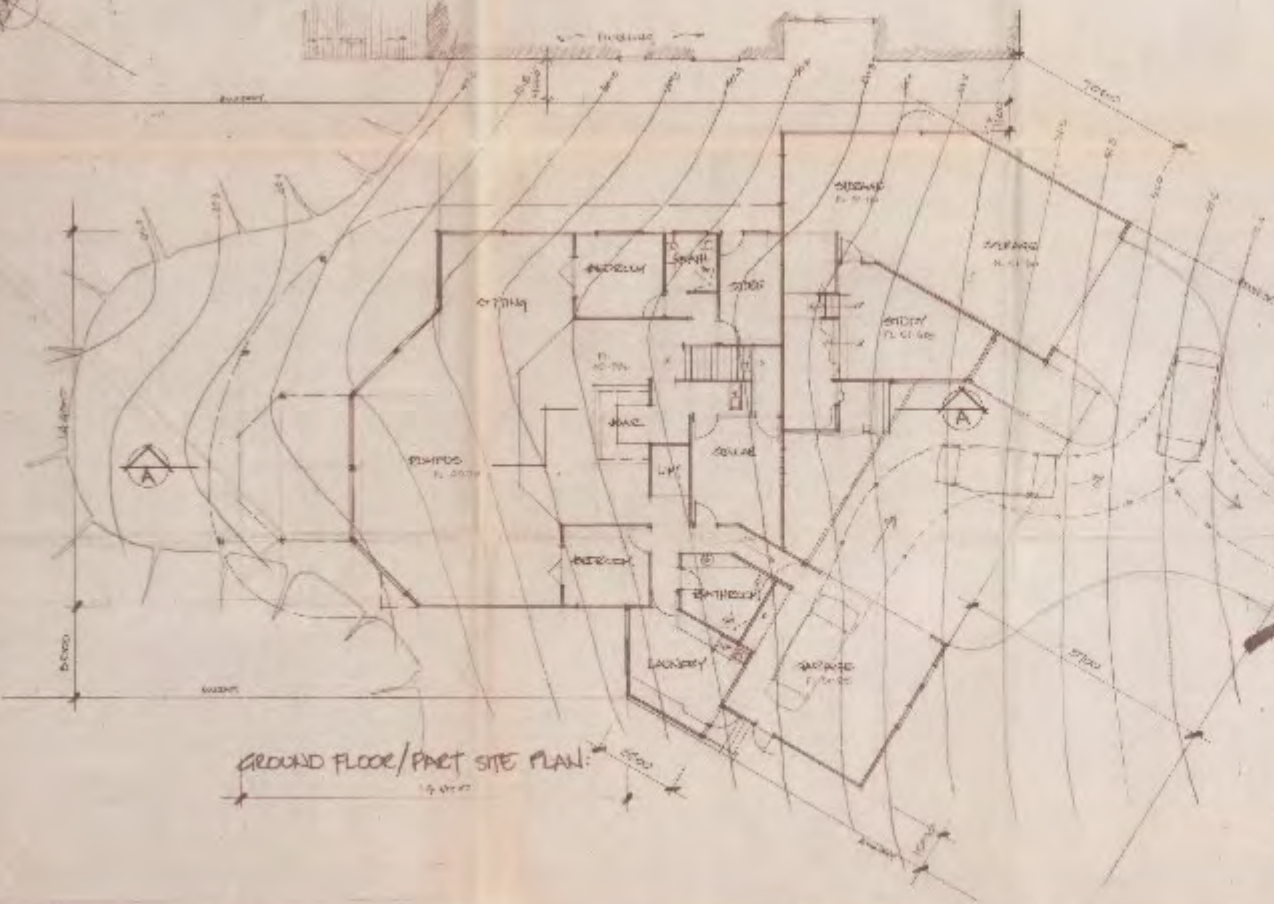
SOUTH EAST ELEVATION:



NORTH WEST ELEVATION:



SECTION A-A



GROUND FLOOR/PART SITE PLAN:

NOTES: 1. ALL DIMENSIONS ARE IN FEET
2. ALL DIMENSIONS ARE TO FACE
3. ALL DIMENSIONS ARE TO FACE
4. ALL DIMENSIONS ARE TO FACE

DWELLING
 LT 2 P. 0.032
 N. 6 VIEW POINT ROAD
 M. 0.032
 C.A. 4 P.M. 1971
 20' x 20'

M. Salpietro Drafting
 1000 N. 10th St.
 Phoenix, AZ 85006
 (602) 254-1111
 FAX (602) 254-1112

BOUNDING DESIGN
 1000 N. 10th St.
 Phoenix, AZ 85006
 (602) 254-1111
 FAX (602) 254-1112

pddg

M.P.S.C.

662881

With Compliments

ATTN DAVID ROULCH Development Planner

RE: PO2/1833 6 View Point Rd MCCARTHER

DAVID, PLEASE FIND ATTACHED COPIES (3) OF THE
MAIN DRAWING SHEET AMENDED IN ACCORD. WITH
CONDITION 1. OF THE PERMIT.

(I DID NOT HAVE THE PERMIT. CONDITIONS WHEN I
DOGGED THE RECENT SET OF PLANS)



RESIDENTIAL INDUSTRIAL COMMERCIAL

Mike Salpietro Drafting

ABN 88 210 888 612

81330000

MORNINGTON PENINSULA

RECEIVED 27 AUG 2003

BUILDING DESIGN

MAIN OFFICE P.O. Box 859 1116 MORNINGTON

Victoria 3931 ph 0425736931

DQ

PO2/1833

PH

Irrelevant & Sensitive



Ref: David Quelch Direct Dial (03) 5986 0991; Fax: (03) 5986 0841

20 August 2003

Moser Planning Services Pty Ltd
5 Littleboy Rise
ENDEAVOUR HILLS VIC 3802

Dear Sir/Madam

**PLANNING APPLICATION P02/1833
6 VIEW POINT RD MCCRAE
DWELLING**

I refer to your correspondence received 19th August 2003 and wish to advise that the amended plans fail to satisfy the conditions of the permit. In particular;

- Condition 1 (a)- the upper level dining room window along the west elevation does not show obscured glazing or 1.7 metre sill height.
- Condition 1 (b)- illustrate on plans how the vehicles will exit the garages using a maximum of two manoeuvres.
- Condition 1 (c)- the front fence shows brick piers to a height of 1.8 metres and must be reduced to a maximum height of 1.5 metres.

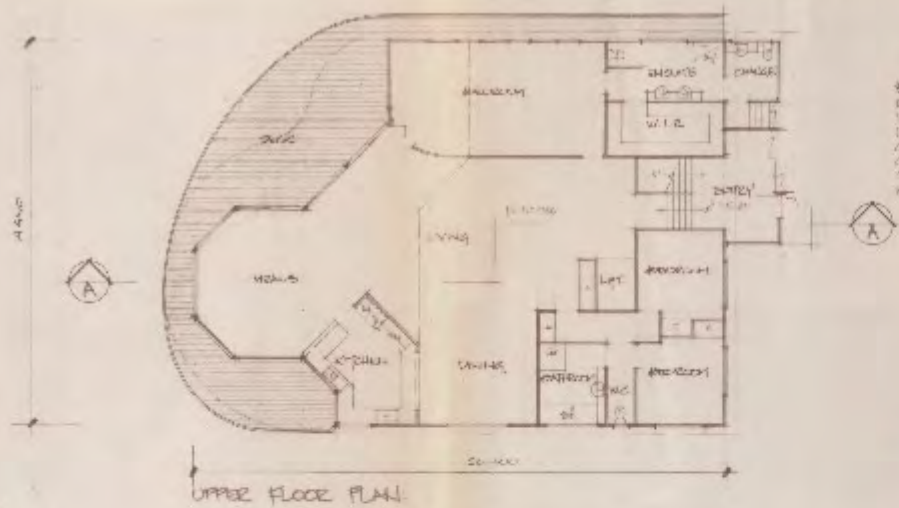
Following receipt of amended plans addressing the above, will be able to be endorsed.

If you have any further queries I will be pleased to assist.

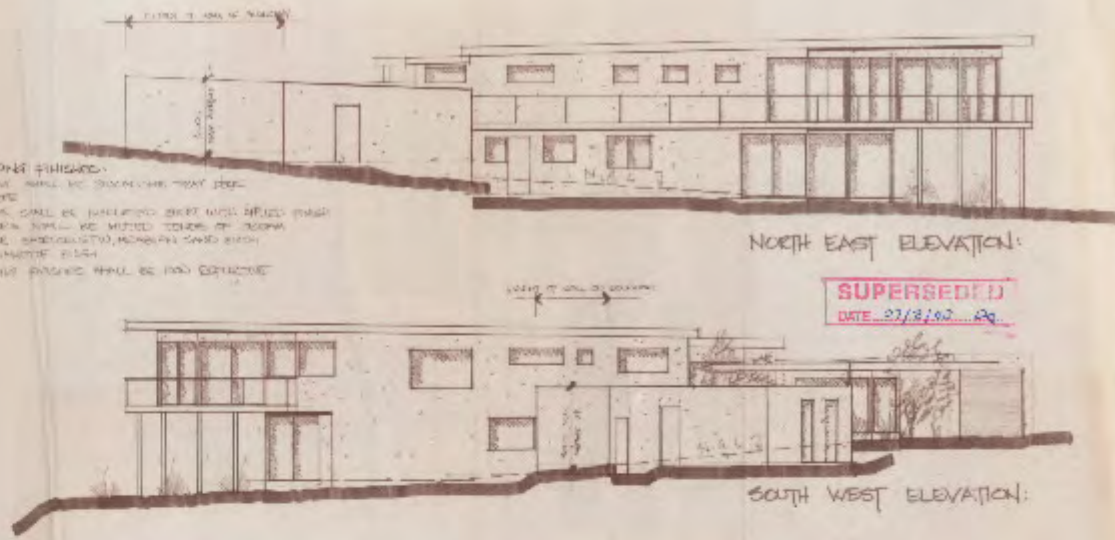
Yours faithfully

I & S

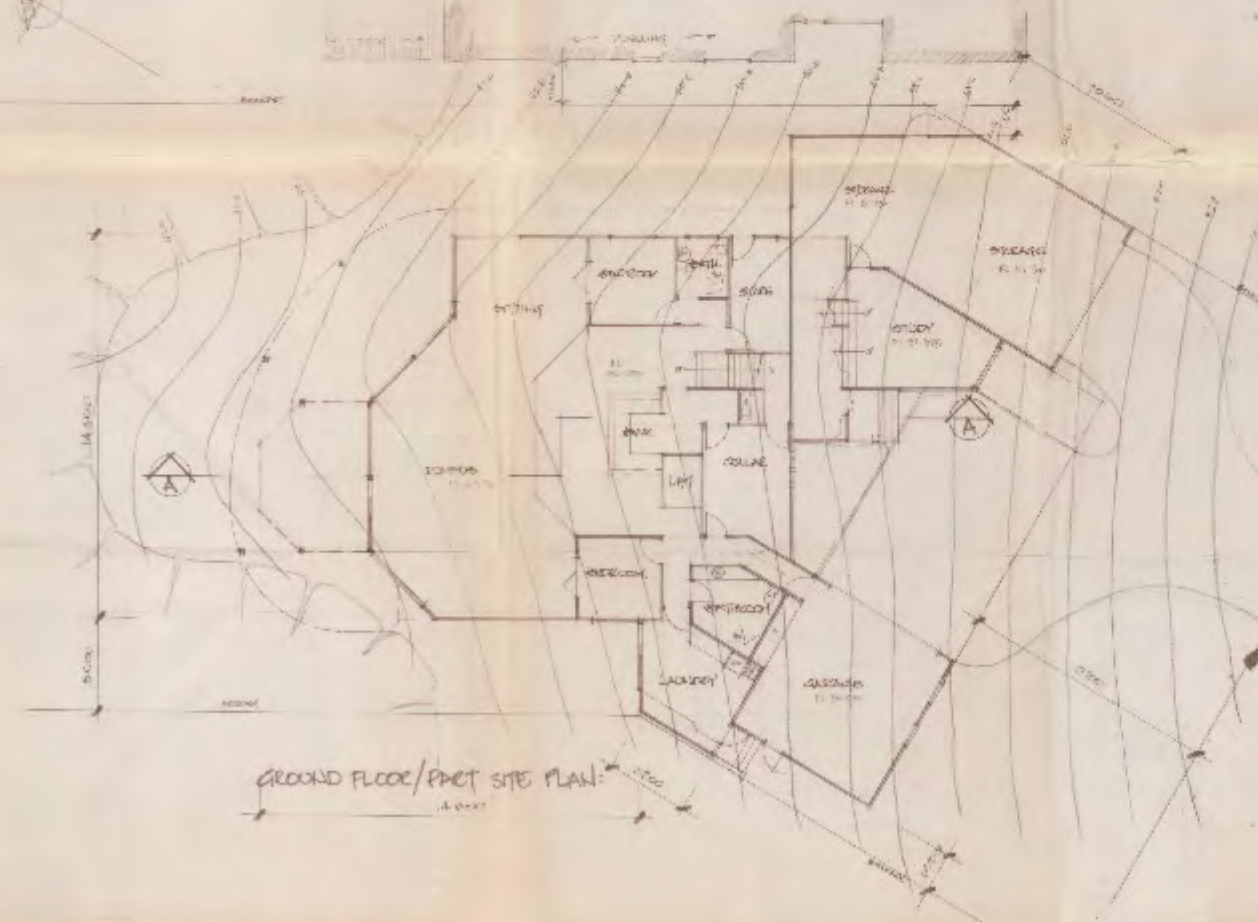
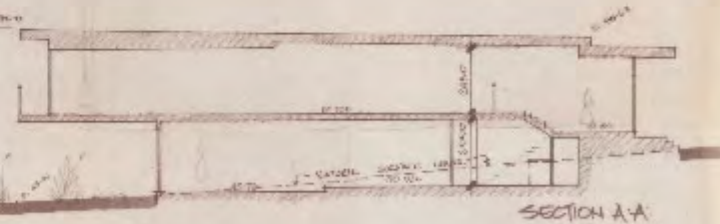
**David Quelch
DEVELOPMENT PLANNER**



BUILDING FINISHED:
 EXTERIOR SHALL BE CONCRETE WITH POOL
 1" SLAB
 WALLS SHALL BE BRICKWORK WITH BRICK FINISH
 CEILING SHALL BE MUDGED TONER OF BRICK
 FLOOR BRICKWORK, MASONRY SHALL BE
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SUPERSEDED
 DATE 07/12/02



NOTES TO BE OBSERVED
 1. ALL ROOMS SHALL BE FINISHED
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DWELLING Lot 2, P.O. 11402 N. & VIEW POINT ROAD MC CREE for C.A. & P.H. RUSH BY H.C.T.		Mike Salpietro Drafting 1100 E. 11th St. Suite 100 Tulsa, OK 74103 (918) 438-1111 www.mikesalpietro.com
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658608
M.P.S.C.

With Compliments

ATTN: DAVID QUELCH
DEVELOPMENT PLANNER.

RE: PLANNING APP NO: P02/1833
V.C.A.T NO P3390/2002.

DAVID, PLEASE FIND ATTACHED 3 ADDITIONAL COPIES
OF DRAWINGS PRESENTED FOR THE ABOVE V.C.A.T
HEARING.



MORNINGTON PENINSULA Shire	
RECEIVED	10 AUG 2003
MAIN FILE	1/16
OFFICER	De
P02/1833	
RESIDENTIAL INDUSTRIAL COMMERCIAL	

Mike Salpietro Drafting

ABN 66 210 885 812

BUILDING DESIGN

P.O. Box 859
MORNINGTON
Victoria 3931
ph 0425736931



Yours Mike

p.d.d.g.
Professional Drafting & Design Group



**MORNINGTON
PENINSULA**

Shire

ABN 53 159 890 143

Private Bag 1000

Besgrove Street

Rosebud 3939

www.mornpen.vic.gov.au

Tel 1300 850 600

Fax (03) 5986 6696

DX 30059

Ref: P02/1833: Direct Dial David Quelch on (03) 5986 0991: Fax: (03) 5986 0841

6 August 2003

Moser Planning Services Pty Ltd
5 Littleboy Rise
ENDEAVOUR HILLS VIC 3802

Dear Sir/Madam

PLANNING PERMIT P02/1833
DWELLING
6 VIEW POINT RD MCCRAE

I refer to the Victorian Civil and Administrative Tribunal decision dated 1 August 2003. The decision of the Responsible Authority has been affirmed.

Accordingly your copy of Planning Permit P02/1833 subject to the stated conditions is attached.

Please note that Condition 1 of the permit requires the submission and approval of amended plans prior to the commencement of the development.

If you have any further questions I will be pleased to assist.

Yours faithfully

Irrelevant & Sensitive

David Quelch
DEVELOPMENT PLANNING

*The Sustainable Environment Group is located at the Mornington Office
Queen Street, Mornington*

**PLANNING
PERMIT**

Permit No: P02/1833
Planning Scheme: Mornington Peninsula
Responsible Authority: Mornington Peninsula Shire

ADDRESS OF THE LAND:

6 VIEW POINT RD MCCRAE, (Lot 2 LP 114212 Vol 9088 Fol 778)

THE PERMIT ALLOWS:

THE DEVELOPMENT OF A DWELLING IN ACCORDANCE WITH THE ENDORSED PLANS.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:**Conditions Nos. 1 to 12 inclusive**

1. Before the development starts, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must generally be in accordance with that submitted but amended to show:
 - (a) obscured glazing or 1.7 metre sill height for the upper level dining room window along the west elevation
 - (b) driveway designed to enable a vehicle to exit the proposed garage using a maximum of two manoeuvres
 - (c) front fence reduce to a height of 1.5 metres ✓
2. The layout of the land, the size and type of the proposed buildings and works, including the materials of construction, on the endorsed plan must not be altered or modified without the consent of the Responsible Authority.
3. The materials and colour of the exterior finish of the building must be in accordance with the endorsed plans unless with the further permission of the Responsible Authority.

Signature For The _____ **I & S**
Responsible Authority: David Quelch

Date Issued: 6 August 2003

Development Planner

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 of Part 4 of the *Planning and Environment Act 1987*.)

WHEN DOES A PERMIT BEGIN?

A permit operates:

* from the date specified in the permit, or

* if no date is specified, from:

- (i) the date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal, or
- (ii) the date on which it was issued, in any other case.

WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if-

- * the development or any stage of it does not start within the time specified in the permit; or
- * the development requires the certification of a plan of subdivision or consolidation under the *Subdivision Act 1988* and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision; or
- * the development or any stage is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the *Subdivision Act 1988*.

2. A permit for the use of land expires if-

- * the use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit, or
- * the use is discontinued for a period of two years.

3. A permit for the development and use of land expires if-

- * the development or any stage of it does not start within the time specified in the permit; or
- * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
- * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
- * the use is discontinued for a period of two years.

4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the *Subdivision Act 1988*, unless the permit contains a different provision-

- * the use or development of any stage is to be taken to have started when the plan is certified; and
- * the permit expires if the plan is not certified within two years of the issue of the permit.

5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry.

WHAT ABOUT APPEALS?

- * The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal where, in which case no right of appeal exists.
- * An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to grant a permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.
- * An appeal is lodged with the Victorian Civil and Administrative Tribunal.
- * An appeal must be made on a Notice of Appeal form which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the prescribed fee.
- * An appeal must state the grounds upon which it is based.
- * An appeal must also be served on the Responsible Authority.
- * Details about appeals and the fees payable can be obtained from the:

Victorian Civil and Administrative Tribunal
Planning Division
7th Floor, 55 King Street,
Melbourne, 3000.
Phone: (03) 9628-9777

Fax: (03) 9628-9789

DX 210160

PLANNING PERMIT

Permit No: P02/1833
Planning Scheme: Mornington Peninsula
Responsible Authority: Mornington Peninsula Shire

4. Within one month of the date of this permit, a landscape plan must be submitted to and approved by the Responsible Authority and when approved this plan will become the endorsed plan under this permit. It must include:
 - (a) a survey of all existing vegetation and features.
 - (b) the areas set aside for landscaping, including the front, side and rear yards.
 - (c) a schedule of all proposed and/or existing trees, shrubs and ground cover, shrubs including the location and size at maturity of all plants and their botanical names.
 - (d) more than 80% indigenous species to the locality.
 - (e) a minimum of 25 indigenous tree and/or shrub species.
5. All planting must be maintained in a healthy condition to the satisfaction of the Responsible Authority. Any dead or diseased trees or shrubs must be replaced as soon as possible.
6. Native vegetation other than on the land shown for the construction of the development as shown on the endorsed plans must not be felled, lopped, topped, ringbarked or otherwise destroyed or removed except with the consent of the Responsible Authority.
7. A vehicular crossing must be provided to the standards of the Responsible Authority prior to the initial occupation of the building.
8. A driveway must be provided to the land and surfaced to the satisfaction of the Responsible Authority. It must be completed prior to the initial occupation of the building.
9. All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.
10. All areas of the development must be drained to a legal point of stormwater discharge via an underground drainage system or other approved method of stormwater drainage to the satisfaction of the Responsible Authority. This drainage system must include permanent siltation control measures during construction.

Signature For The
Responsible Authority: David Quelch

I & S

Date Issued: 6 August 2003

Development Planner

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 of Part 4 of the *Planning and Environment Act 1987*.)

WHEN DOES A PERMIT BEGIN?

A permit operates:

* from the date specified in the permit, or

* if no date is specified, from:

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 - * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
 - * the use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in section 6A(2) of the *Planning and Environment Act 1987*, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision-
 - * the use or development of any stage is to be taken to have started when the plan is certified; and
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Phone: (03) 9628-9777

Fax: (03) 9628-9789

DX 210160

PLANNING PERMIT

Permit No: P02/1833
Planning Scheme: Mornington Peninsula
Responsible Authority: Mornington Peninsula Shire

11. The development must be in accordance with the Site Investigation Report dated 30 April 2002 prepared by C.E. Lawrence & Associates (VIC) PTY LTD. Upon completion of the foundations and footings, a report must be submitted to the Responsible Authority to verify that works are in accordance with the recommendation of the Site Investigation Report.

12. This permit will expire if one of the following applies:

- The development is not started within two years of the date of this permit.
- The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the above periods if a request is made in writing before the permit expires or within the following three months.

Signature For The _____
Responsible Authority: David Quelch

Date Issued: 6 August 2003

Development Planner

IMPORTANT INFORMATION ABOUT THIS PERMIT

WHAT HAS BEEN DECIDED?

The Responsible Authority has issued a permit.

(Note: This is not a permit granted under Division 5 of Part 4 of the *Planning and Environment Act 1987*.)

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2. A permit for the use of land expires if:
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 - * the use is discontinued for a period of two years.
3. A permit for the development and use of land expires if:
 - * the development or any stage of it does not start within the time specified in the permit; or
 - * the development or any stage of it is not completed within the time specified in the permit, or, if no time is specified, within two years after the issue of the permit; or
 - * the use does not start within the time specified in the permit, or, if no time is specified, within two years after the completion of the development; or
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Fax: (03) 9628-9789

DX 210160

651834

VICTORIAN CIVIL AND
ADMINISTRATIVE TRIBUNAL

Planning & Environment List

1 August 2003

VCAT Reference Number: P3390/2002
Your Ref: P02/1833

Mornington Peninsula Shire Council
PO BOX 1000
ROSEBUD VIC 3940

SMC
5/8

31 AUG 2003

28136

DQ

P021833

Dear Sir/Madam

**Application Concerning: 6 View Point Rd
MCCRAE VIC 3938**

I refer to the above application and enclose a copy of VCAT's decision in this matter.

THE EFFECT OF THIS DECISION

This decision is final and binding unless it is set aside by the Supreme Court, or the order is corrected, revoked or varied under the provisions of s. 119 or 120 of the VCAT Act 1998.

In coming to its decision the Tribunal has made a finding on the issues before it. It has no power to review or reconsider or alter this finding once the decision is published. Therefore, it is inappropriate for the Tribunal to enter into correspondence with parties as to the issues presented before it and the merits of the decision.

Should you wish to challenge the decision, you should consider obtaining legal advice as to your rights in the circumstances. This should be done promptly as an appeal to the Supreme Court must be lodged within 28 days of this decision. The Tribunal is unable to enter into correspondence in relation to issues or evidence subject of this decision.

Please Note:

Most Planning & Environment List decisions are available via our website (www.vcat.vic.gov.au) which has a link to take you to the Australasian Legal Information Institute's website (AustLII) where records of the decisions are stored and may be accessed.

Decisions should appear on AustLII within 14 days after the decision is posted. We suggest you use the "Recent Updates List" function on AustLII to find recently released cases.

Yours faithfully

Irrelevant & Sensitive

Senior Registrar

Encl.

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

No. P3390/2002

Permit Application No. P02/1833

CATCHWORDS

*Mornington Peninsula Planning Scheme; Residential 1 Zone;
Design and Development Overlay; Environmental Significance Overlay;
Views; Neighbourhood character; Building bulk and scale*

APPLICANTS FOR REVIEW:	Robert Stent Cheryl Anne Batchelor
RESPONDENTS:	C and P Pugh
RESPONSIBLE AUTHORITY:	Mornington Peninsula Shire Council
SUBJECT LAND:	6 View Point Road, McCrae
WHERE HEARD:	At Melbourne
BEFORE:	John A Bennett, Member
HEARING TYPE:	Full hearing
DATE OF HEARING:	5 June 2003
DATE OF ORDER:	30 July 2003
MEDIUM NEUTRAL CITATION:	

ORDER

The decision of the Responsible Authority in relation to permit application No P02/1833 affirmed.


VICTORIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL
JOHN A. BENNETT
MEMBER

APPEARANCES

For the Applicants for Review

Robert Stent
Anne Batchelor

For the Responsible Authority

David Quelch, Development Planner

For the Respondent

Sally Moser, Planning Consultant

REASONS

Background

1. This was an application under Section 82 of the *Planning and Environment Act 1987* to review a decision by the Mornington Peninsula Shire Council to Issue a Notice of Decision to Grant a Permit for the construction of a two storey dwelling on land at 6 View Point Road, McCrae.
2. The site has an area of 1511 square metres. The site is divided into two main topographic sections - an upper, broadly level area facing View Point Road, which is to contain the new dwelling and a steeply sloping cliff section at the rear of the site. Neighbouring properties and land on the other side of View Point Road contain dwellings on generally generously sized lots. Lots on the seaward side of View Point Road and Prospect Hill Road are similarly dividend into a generally level street facing section and a steep rear cliff section.
3. The proposal involves construction of a two storey dwelling with an overall height of 6.55 metres above ground level. Because of the fall of the land the house appears to be single storey facing View Point Road but is clearly two storeys for much of its length and at the rear facing Port Phillip Bay. Setbacks vary, but ground floor walls abut the western side boundary for 3.2 metres and the eastern side boundary for 7.06 metres. Setback from the street frontage is 9.7 metres.
4. The site is zoned Residential 1 under the Mornington Peninsula Planning Scheme. A Design and Development Overlay (Schedule 3 - Coast and Landscape Design), an Environmental Significance Overlay (Schedule 25 - Port Phillip Coastal Area) and a Vegetation Protection Overlay (Schedule 1 - Township Vegetation) apply to the land. Neighbouring land is also zoned Residential 1 and is also affected by the same overlays.

5. Mr Quelch outlined the proposal, the subject site and environs, Planning Scheme provisions, amended plans, notification and matters considered by Council in its assessment of the application.
6. Mr Stent and Mrs Batchelor raised issues concerning the excessive height, width and bulk of the building, being out of character with the neighbourhood, inappropriate design response, loss of privacy caused by overlooking into rear terrace/yard and impact on views and viewlines.
7. Ms Moser then made a submission in support of the proposal. She dealt with the proposal, the site and locality, Planning Scheme controls, relevant history, planning issues including planning policy, neighbourhood character, ResCode, impacts on abutting properties, views and clearance of vegetation.

Issues for consideration

Planning Policy

8. Having heard and considered the submissions, photographs and plans presented by each of the parties, and carried out a site inspection, I have found that the proposed development complies with the provisions of State and Local Planning Policy Frameworks in relation to the construction of a single house on this land. Local policy for development in the Residential 1 zone (Clause 22.13) contains objectives primarily relating to stormwater and wastewater management, protection of remnant vegetation and energy efficiency.

Overlays

9. The Environmental Significance Overlay (Schedule 25) includes a statement of environmental significance identifying the Port Phillip coastal area and adjoining offshore areas as containing some of Victoria's most significant cultural and natural features. The site is located right at the edge of the overlay and the boundary runs along View Point Road and Prospect Hill Road. Objectives include the protection and enhancement of natural features,

vegetation, ecological diversity, landscape quality heritage values and recreation opportunities, promotion of excellence in design for buildings, facilities and structures, and coordinated management. Decision guidelines include the environmental objectives of the schedule, the existing use and development of the land, the degree to which the proposed development is dependent on a coastal location, whether the proposal is likely to cause deterioration through erosion or deposition of sand or silt or any other reason, and the contents of the Victorian Coastal Strategy and related documents. The Overlay clearly concerns development with direct impacts on coastal areas and intertidal and marine habitats. It is of limited applicability to development on this site, which is located on the top of the cliff well removed from the coastal strip or foreshore, and separated from it by the foreshore reserve, Point Nepean Road and houses at the base of the cliff. The proposal involves minimal excavation or landfill and minimal removal of vegetation. It will be only partly visible from foreshore areas, and less so than other, existing dwellings along the cliff top.

10. The Vegetation Protection Overlay (Schedule 1) also applies to the land but the area to be used for the house is largely cleared. Only a very small area of vegetation near the northern boundary is to be removed. Objectives and decision guidelines require that development proposals have proper regard to the landscape character of township areas and the likely effect of any vegetation removal on the stability of the site. Pittosporums to be removed are an environmental weed and their removal is a positive outcome of the proposal. Vegetation on and below the cliff face is not required to be removed for construction of the dwelling.
11. The Overlay with by far the greatest impact is the Design and Development Overlay (Schedule 3) and it is this overlay which Council, the permit applicant and residents focused on in terms of whether the proposal was consistent with design objectives, requirements and decision guidelines. I have considered the proposal against the design objectives and the general and mandatory requirements. I am satisfied that the mandatory requirements have been met. In relation to the general requirements, I am also satisfied that the proposal is

acceptable given the site characteristics, the location of the house back from the cliff edge (unlike the new house to the north), the retention of cliff face vegetation and the way in which the house has been sited to obtain views while not limiting views from adjoining and nearby houses. The house will be visible from foreshore areas but will be visually quite recessive compared to other more dominant buildings such as the adjoining Stent house. I consider that the design is responsive to the site and to the environment.

12. There is no doubt that the character of the neighbourhood is changing with a much more intense built form than in the past. New residential developments in Coburn Avenue and Prospect Hill Road are indicative of this change. I agree with Mr Stent that much of this new development is visually inconsistent with the more vegetated and lower scale development of the past. While the house on the review site will have a different character to either the Stent or Bendell properties, it is sufficiently set back from the street frontage to allow for retention of the large eucalypt and provision of new landscaping which will visually soften the dwelling from the street. The house site is a largely cleared pad, which slopes slightly towards the cliff edge. Very little vegetation will be removed other than pittosporums and the design and siting of the dwelling provides the opportunity for some new planting.
13. Having regard to the architectural plans and my inspection of the site and locality, I am of the opinion that the proposal responds to and is consistent with the character of newer development although I accept that it is different to the adjoining house to the west. As noted, the character of area is changing and I have no difficulty with the location, orientation and design of the proposed dwelling and consider that the notion of providing a two storey dwelling with an elevated rear deck is appropriate in this location.

Overlooking and privacy

14. At first floor level, the proposed dwelling has highlight windows facing each of the neighbouring properties with the only exception being corner windows in the main bedroom facing north east and the windows facing the deck with

views to Port Phillip Bay. I am satisfied that the distance between these windows and the outside terrace of the Stent property (partly obscured by trees) is sufficient to avoid loss of privacy. The distances from these windows to the private areas of the Stent property far exceeds the minimum set by ResCode.

Loss of Bay Views

15. In terms of the loss of Bay views, I note that one of the design objectives to be achieved in the DDO3 is:

To protect shared viewlines where reasonable and practical.

As previously noted, I have made a site inspection and was able to assess the views of the Bay from the Stent property, and from the review site having regard to viewlines from other nearby properties. It is reasonable to describe the Bay views as expansive, appealing and largely unobstructed because of the way in which houses have been located relatively close to the cliff edge (or hanging over it in the case of the Bendell house). I do not agree with Mr Stent or Mrs Batchelor that viewlines or views will be adversely impacted by the siting of the new dwelling. The proposed house, although forward of the Stent dwelling, has virtually no impact on any of these existing views and will not to any measurable extent adversely impact on these views of the Bay. I do not accept that Bay views from dwellings located further away to the north east will be affected in any way.

16. I have considered the decisions in *Kempe v City Greater Geelong Council* (1998/39188), *Gurr v Mornington Peninsula Shire Council* (P50161/01) and *Forster & Ors v Mornington Peninsula Shire Council & Anor* (P51503/2001) that were referred to me by Ms Moser. I found the discussions about views of particular relevance having regard to the specific reference to views in the DDO3, and have considered them in making my decision.

CONCLUSION

17. In summary, I have found that the proposal to construct a two storey dwelling is quite consistent with State and Local Planning Policy Frameworks and that it complies with the relevant elements of ResCode. I also consider that the proposal to construct a dwelling as proposed on this site is consistent with Council's local policies relevant to McCrae and with the provisions of relevant overlays.
18. In relation to the specific concerns raised by Mr Stent and Mrs Batchelor about building bulk, overlooking and loss of views, I am not persuaded that these will be unreasonable or unacceptable, or that they justify rejection of what I consider to be a well-designed proposal. Expansive Bay views exist at present and these will be retained with virtually no loss from any existing dwelling.

DECISION

19. Accordingly, I will affirm Council's decision and Order that a permit issue.

 
JOHN A BENNETT
MEMBER

Moser Planning Services Pty Ltd

May 7 2003

As addressed

Dear Sir/Madam

Re: PLANNING APPEAL P 3390/2002 6 VIEW POINT ROAD MC CRAE

Please find enclosed plans which we will be seeking to substitute as amended plans at the forthcoming planning appeal scheduled for hearing on 6 June 2003. The changes made to the plan comprise:

- An increase in the setback of the dwelling from the cliff edge by approximately 2 metres.
- The front setback altered from 11.09 metres to a variable setback ranging from 9.7 – 12 metres.
- Offsetting of the storage shed off the north east boundary opposite the habitable rooms of the abutting dwelling.
- Offsetting of the garage along the western boundary towards the front.
- Other changes and works required to accommodate the above.
- Additional information on the abutting properties has also be shown.

The above changes have been made to address the objectors concerns. Please do not hesitate to contact me should you require anything further at this stage on 0403 215 255.

Yours faithfully

I & S

MOSER PLANNING SERVICES PTY LTD

Moser Planning Services Pty Ltd

Stamp: **GW**

Stamp: **- 8 MAY 2003**

Stamp: **28736**

Stamp: **DD**

Stamp: **P02/1833**

PO2/1833

Scene 2.

Victorian Civil and Administrative Tribunal
Planning and Environment List
SCHEDULE 3

Practice Note Planning and Environment List (No. 1) – General Procedures – clause 11

FORM A

NOTICE OF APPLICATION TO AMEND PLANS

NOTE: Permit Applicant to complete all relevant details.

Subject Land:	6 View Point Road, Mc Crae	VCAT Reference No: P3390/2002
Responsible Authority:	Address: Private Bag 1000, Besgrove Street Rosebud 3939	
Mornington Peninsula Shire Council	Reference: P02/1833	
Permit Applicant:	Representatives (if any): Moser Planning Services Pty Ltd	
Moser Planning Services Pty Ltd for an on behalf of CA & P.M. Pugh	Address: 5 Little Boy Court Endeavour Hills 3802	
	Contact Person: Ms Sally Moser	
	Phone/Fax: 0403 215 255/9708 1113	

TO: Mornington Peninsula Shire Council
OF: PO Box 10000, Besgrove Street, Rosebud

An application for review concerning the above land has been lodged with VCAT and allocated the above reference number. In the course of that application for review, an application has been made to the Tribunal to amend the plans lodged with the permit application or with the Tribunal. The Tribunal has directed that the Permit Applicant serve the attached documents on you. If you wish to object or be heard in relation to the application to amend the lodged plans, or in the proceeding generally, you must within 10 business days of receipt of this notice

- (a) if you are already a party to the proceeding, file with the Tribunal a written objection to the plans amendment application setting out the reasons for your objection;
- (b) if you are not already a party to the proceeding, file with the Tribunal
 - (i) a written application to be joined as a party to the proceeding and statement of grounds in the form of Form B (attached);
 - (ii) if you wish to object to the plans amendment application, written reasons for your objection.

You should include sufficient information in your statement of grounds and reasons for objection to clearly identify the issues you intend to raise.

You may also apply in writing for an adjournment of the hearing, if a day is already listed, to give you sufficient time to consider the amended plans.

You must deliver or post a copy of your application, request and objection to the Permit Applicant and to the Responsible Authority prior to such application, request and objection being filed with the Tribunal, then complete the particulars as to service at the foot of Form B.

Please note the following:

- The application for review has been listed for hearing on the **5 June 2003 at 2.15pm** at 55 King Street, Melbourne.

▪ The amended plans can be inspected at the offices of the Responsible Authority or at VCAT. [If you wish to inspect the amended plans at VCAT, please phone 96289777 to make the necessary arrangements].

- A copy of the amended plans may be obtained by writing to, phoning or faxing the Permit Applicant or its representatives [see above contact details].

If you cannot attend the Hearing

If you are unable to attend the hearing in person or through a representative, please inform VCAT in writing prior to the hearing date.

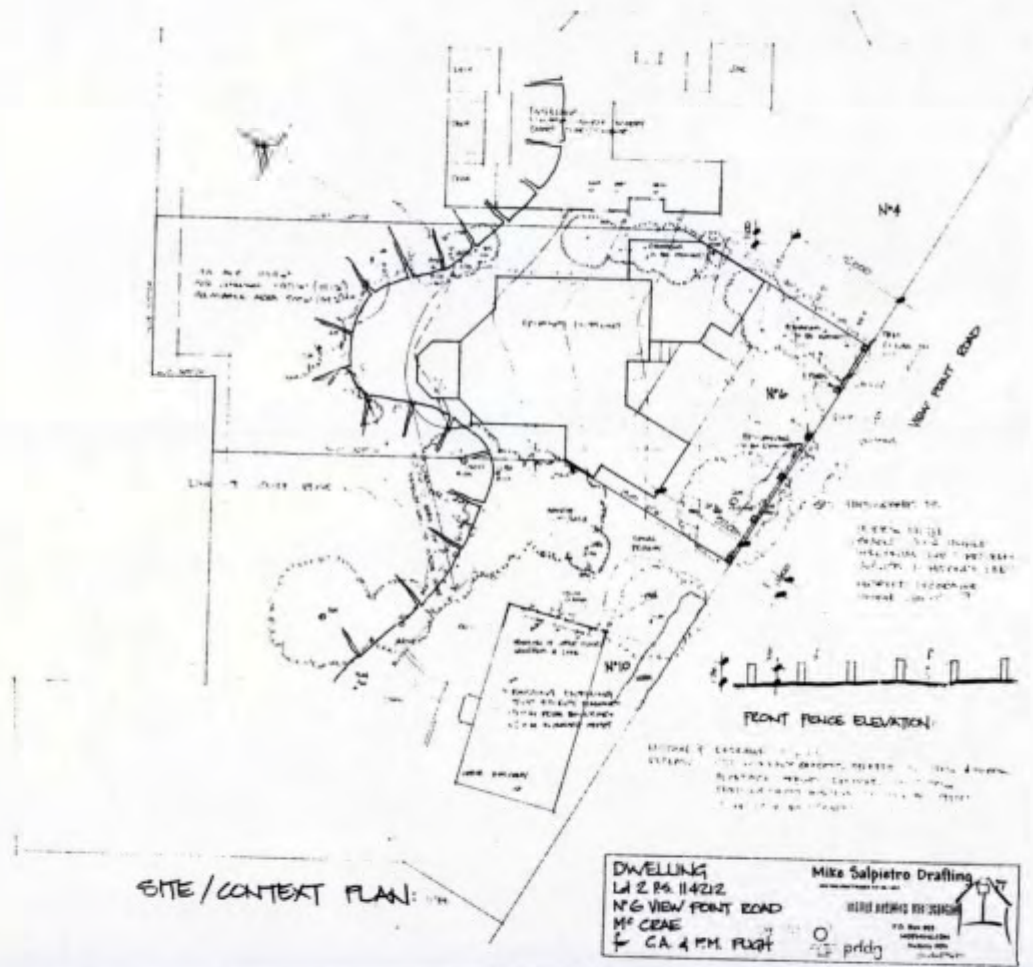
If you wish to have your case considered on the basis of documents (written submission) you should seek the agreement of the other parties and provide them with a copy of your submission prior to the hearing.

If a party does not consent to this course of action, you run the risk that an application will be made to VCAT to have your objection struck out.

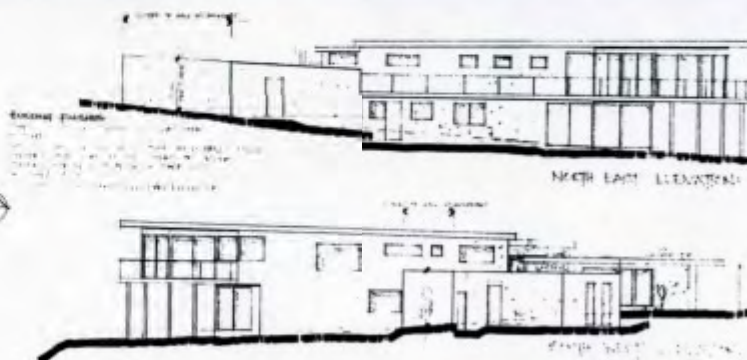
Withdrawal of Objection

If at any time after you have lodged your documents you wish to withdraw your objection, please inform VCAT, the Permit Applicant and the Responsible Authority in writing. On receipt of such advice your withdrawal will be noted on VCAT's file and you will receive no further correspondence.

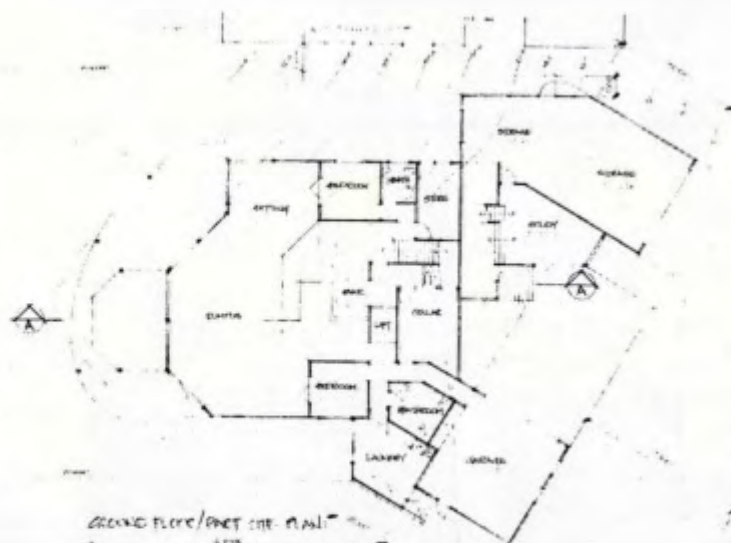
Should you have any further enquiries please contact VCAT. Please quote VCAT's reference number when communicating with VCAT.



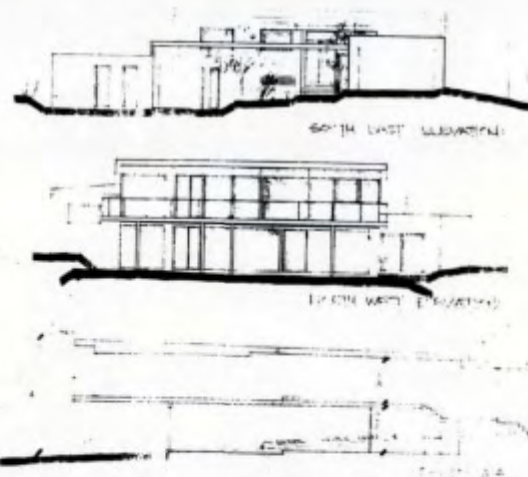
1995-1996, 1997-1998, 1999-2000



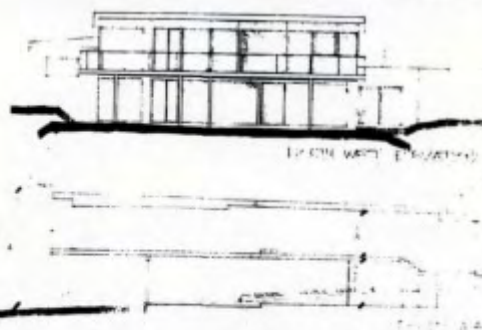
NORTH EAST L.L. EASTING



GROUND FLOOR/PLANET 1ST FLOOR



60° 14' EAST ELEVATION:



THE STATE OF NEW YORK

1. The first step is to identify the problem. This involves understanding the current situation and what needs to be changed.

DWELLING
Lb 2. PG PAGE
NP 6 VIEW POINT ECHO
MP CENG
for C.A. & P.H. PAGE
01

More Sulphate Urea...

pddg

MOSER PLANNING SERVICES PTY LTD

Submission on behalf of:

C. & P. Pugh
(permit applicant)

Purpose of Application:

Construction of a Double Storey Dwelling

Subject Site:

6 View Point Road, McCrae

Details of Hearing:

5 June 2003 at 2.15 pm

1.0 INTRODUCTION

This is an appeal by the applicant against an appeal by objectors against a decision by Mornington Peninsula Shire Council, to grant a permit for a double storey dwelling at 6 View Point Road McCrae.

2.0 APPEAL SITE AND LOCALITY

The site is located on the north side of View Point Road and is the second property west of the intersection of that street with Prospect Hill Road. The site is of irregular shape with a frontage to Viewpoint Road of 25.3 metres and an area of 1511 square metres. At 21.22 metres (eastern boundary) and 19 metres (southern boundary) the allotment changes direction from north to north east. The site is currently vacant and there are no easements restricting development. The site falls away (cliff face) sharply to the rear (beach side of the property). Vegetation on the property comprises Pittosporums along the front and side boundaries (noxious plants), native vegetation on the cliff face and a large manna gum located inside the front boundary of the land. There is an existing crossover to the land which is centrally located along the frontage.

East of the site is 4 View Point Road. This property contains a newly constructed dwelling. (Planning Permit P00/2457 was granted May 2001). The floor level of this dwelling is well above the cliff face (see photographs) and only minor, if any, excavation works appear to have been involved as part of its construction. The setback of the dwelling from View Point Road varies due to the angular placement of the structure on the block and is approximately 19 metres back from the street nearest the intervening boundary with the subject site. Bedroom and bathroom windows (west side) of the dwelling look out onto the subject site and are setback 1.65 metres from the intervening boundary. This dwelling is visible from Point Nepean Road due to the elevated nature of the structure above the cliff face.

West of the site is a two storey attic style dwelling with high roof pitch and dormer windows. This dwelling has landscaping along its eastern side which screens it from forward (north-east) views to the subject site. Windows located on the east side are well setback from the intervening boundary and there is garden between. Private open space areas are towards the Bay ie to the north and west. The dwelling is prominent within the neighbourhood and from Point Nepean Road due to its high roof pitch. The residence is setback approximately 2 metres from View Point Road and is screened from the street by a tall cypress hedge.

North of the site at the base of the cliff are residential properties fronting Point Nepean Road.

Opposite across View Point Road are other residential properties of differing architectural styles ranging from modern two storey prominent lifestyle residence to low key flat roofed older style cottages.

The neighbourhood is one that is undergoing change as older residences are replaced by more modern larger dwellings.

3.0 PROPOSAL

It is proposed to construct a two storey dwelling on the land. The residence has been sensitively designed to be non obtrusive from public viewing points, the neighbouring properties and Point Nepean Road. The proposal comprises a five bedroom residence with cellar, study and storage areas. The land owner has motor vehicles, a boat and caravan that are to be kept on the property undercover. At ground floor are the main entry, a living area and bedrooms plus laundry, study and storage areas. At first floor level is the entry, kitchen meals area along with bedroom areas. Due to the location of landscaping and the placement of buildings on the subject site and abutting properties, the upper floor meals area extends forward of the ground level affording the future residents views of the Bay.

The dwelling has been designed to ensure it will not detrimentally impact on the amenity of the abutting properties. Prior to the hearing amended plans were circulated. The plans differ to those originally considered by Council in that:

- The front setbacks have altered from 11 metres to the variable setbacks of 9.7, 15.5 and 12 metres. Note the setback of the storage area has increased from 11 – 12 metres.
- The storage area located along the eastern boundary has been shifted off the boundary where it was nearest the abutting dwelling to the east. This change was made not to comply with the planning but rather in response to a request by the abutting landowner. A minimum 1.1 metre wide separation is now provided between the boundary and the new dwelling.
- The dwelling has been reduced in size so as to achieve an additional two metre setback of the meals area and balcony from the cliff face thereby providing a total setback of 6.2 metres to the front of the meals area. Again this change whilst not required by planning, has been made to address the concerns of the abutting land owner to the east and west for that matter.
- The amount of construction along the western boundary has been decreased from approximately 10.5 metres to 3.2 metres with the garage at the front of the site now having a 1.5 metre setback off the boundary.

From the street the dwelling will have a setback similar to other residences in the immediate neighbourhood.

The above changes have been made to address the objectors concerns.

The dwelling would therefore have the following setbacks:

- 9.7, 15.5 and 12 metres from View Point Road.
- 1.5 – 3.5 metres (with a zero lot line section between) off the western boundary.
- Zero, 1.1 and 5 metres from the eastern boundary.
- 25 metres from the north west boundary (from the edge of the balcony)

As the site slopes upwards to View Point Road the residence is to be cut into the block. The finished floor levels at ground level would be 49.9 increasing to 52.72 at first floor. A flat roof design is proposed with covered verandah areas to the front and sides of the meals area. The building heights vary 4.5 – 5.6 metres to View Point Road, 4 – 6.5 metres to the west, 6.5 metres to the north and 3 – 6.5 metres to the east.

The dwelling would be constructed of rendered sheeting with glazed areas to the front maximising views of the bay available from the property and providing a building form that blends in rather than dominates the landscape. Existing vegetation down the escarpment will be retained so too will other plantings on-site. No vegetation removal is proposed other than that for which approval has already been obtained (pittosporums).

4.0 PLANNING CONTROLS

The land is zoned R1 in the Mornington Peninsula Planning Scheme. The objectives of this zone are:

- *To implement the State Planning Policy Framework and the Local Planning including the Municipal Strategic Statement and local planning policies.*
- *To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.*
- *To encourage residential development that respects the neighbourhood character.*
- *In appropriate locations to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.*

Within the R1 zone a planning permit is not required for the use of the land for the purpose of a dwelling. Design and Development Overlay No.3 (DDO3), Environmental Significance (ESO) and Vegetation Protection Overlay controls also apply to the land.

Pursuant to the DDO3 control a planning permit is not required if the general requirements are met. As the development exceeds the general requirements at certain points a planning permit is required. The trigger requiring the permit is that the dwelling is setback (in part) less than 6 metres from the cliff edge and it exceeds a building height of 6 metres (in part) and has wall heights exceeding 5.5 metres (small section). Non compliance with the general requirements is allowed:

"An application to construct a building or construct or carry out works should meet the General requirements of this schedule except where it has been demonstrated to the satisfaction of the responsible authority, that compliance is unreasonable or unnecessary and no significant loss of amenity will result."

As will be shown the areas where the application does not meet the General Requirements are a direct consequence of the physical characteristics of the site where put simply if it fully met the requirements, the area of developable land would be substantially reduced. In other words the dwelling would have to be pushed back closer to View Point Road and in so doing would have detrimental amenity impacts on the neighbourhood character. The General requirements of the DDO3 control state a development:

- *Must comply with Clause 54.01*
- *Must meet all of the objectives and should meet all of the standards of Clause 54.02, 54.03-3, 54.03-4, 54.03-6, 54.03-7, 54.04-2, 54.04-3, 54.04-4, 54.04-6, 54.05, 54.06-1.*
- *Must meet the objectives of Clauses 54.03-1, 54.03-2 and 54.04-1.*

The DDO3 control also contains a set of mandatory controls which require developments to not exceed a building height of 8 metres above natural ground level. The proposal complies with the mandatory controls.

A full assessment of the application pursuant to the relevant ResCode provisions is attached.

An Environmental Significance Overlay (Schedule 25) also applies to the land. This requires a planning permit be obtained for all Buildings and Works.

Clause 65 also applies. In considering applications Clause 65 of the Planning Scheme states *"The responsible authority must decide whether the proposal will produce acceptable outcomes in terms of the decision guidelines"* that include amongst others:

- *"The State Planning Policy Framework and the Local Planning Policy Framework including the Municipal Strategic Statement and local planning policies*
- *The purpose of the zone overlay or other provisions*
- *The orderly planning of the area*
- *The effect on the amenity of the area*
- *Whether the proposed development is designed to maintain or improve the quality of storm water within and exiting the site."*

A Vegetation Protection Overlay Control also applies. No vegetation removal other than that for which approval already exists, is sought as part of this application.

5.0 BACKGROUND

The application was lodged at Mornington Peninsula Shire Council in August 2002. Following lodgment there were meetings and discussions with the officer dealing with the application and changes were made to the plan. The application was advertised and objections received from five parties including the abutting land owners. The ground of objections concerned:

- Height, bulk and scale.
- Access to the rear of the property and walls on boundaries.
- Streetscape character.
- Large storage area – home occupation.
- Stability of the cliff face.
- Overlooking and overshadowing.
- Vegetation removal.

An on-site consultative meeting was held with objectors but nothing was resolved as the changes sought were excessive in nature. Discussions continued with Council regarding access arrangements to the site and amended plans were submitted.

Mornington Council considered the application on 11 December 2002 and determined that had objections not been received it would have granted a permit. A copy of the Notice of Decision is provided. The changes required by Condition 1 are easily able of being complied with.

Following the Notice of Decision an appeal was lodged by the two abutting land owners to VCAT. A later objection by a Ms A. Batchelor owner No. 16 Prospect Hill Road, was later received by the Tribunal. A directions hearing was convened and the late appeal accepted. (The applicant had no objection to Ms Batchelor becoming a party to the proceedings).

The matter went to mediation and was unsuccessful.

Following mediation Mr Pugh (applicant) and Mr Bendell (abutting land owner to the east) met and agreed to changes to the plan. The amended plans before the Tribunal today are the product of those discussions. Mr Bendell indicated to my client that he was happy with the changes and was not going to attend the hearing today. The changes made are significant and we believe they address the objector's concerns.

6.0 ASSESSMENT

6.1 THE PROPOSAL IS CONSISTENT WITH THE STATE AND LOCAL PLANNING POLICY FRAMEWORK

State Planning Policy

The State Planning Policies applicable to this appeal are found in Clauses 14 Settlement, 16 Housing and 19.03 Design and Built Form of the Mornington Planning Scheme.

Clause 14.02 states that that development within existing areas is to respect neighbourhood character. Clause 16.01 states that residential development is to be cost-effective in infrastructure provision and energy efficient. Clause 19.03 concerns design and built form and is aimed at achieving high quality urban design and architectural solutions that reflect the particular characteristics, aspirations and cultural identity of the community and promotes the attractiveness of towns. Moreover it states that development should achieve architectural and urban design outcomes that positively contribute to local urban character whilst minimising detrimental impacts on neighbouring properties.

The proposal meets these objectives.

Local Planning Policy Framework

The proposed development satisfies the Mornington Peninsula MSS as it applies to the site. It meets Clause 21.07 Guiding Future Township Development. It also satisfies Clause 22.13 concerning Township Environment. The site is identified as being located within an existing

Township Area on the Mornington Peninsula Strategic Framework Plan. It goes without saying the policies encourage residential development. They encouraging the provision of housing to meets the needs of the population which has diverse requirements. Neighbourhood character is important. The policies of the Mornington Peninsula Planning Scheme are extensive. In terms of the coastal areas, there is a strong theme that development be sensitive to its surrounds and the coastal landscape. Council's means of controlling development within these areas is highlighted in the policies as being through the application of Design and Development and Environmental Significance Overlay Controls. The overlays are designed to identify significant features and maintain environmental values within the township areas (Page 3 of 16 MSS). As a DDO and ESO controls apply to the site we need to examine what these controls are aimed at achieving.

The design objectives of the DDO3 Coast and Landscape Design control are directed at achieving site responsive design:

- The design and subdivision of housing is to be responsive to the environment, landform, site conditions and character of coastal villages, hillsides and cliff top areas. *We say the proposal is highly responsive. A large proportion of the development will be screened from Point Nepean Road by existing vegetation. Building heights have been kept down, the residence is set back behind the ridge line unlike other dwellings in the area that have been constructed forward and above the cliff edge. Buildings can readily be seen from Point Nepean Road. The proposal will merely fill in an existing blank area in the built form pattern.*
- To avoid higher densities in areas subject to instability, erosion or potential fire hazards. *The proposal comprises a single dwelling on a single lot identical to other dwelling densities in the street and surrounding area.*
- To ensure development is compatible with the environmental infrastructure. *Sewerage is available to the site along with telephone and electricity. Drainage will be to Penny Lane in accordance with Council requirements.*
- Development is to minimise vegetation removal. *Vegetation removal on-site comprises pittosporums for which Council approval already exists. Existing significant vegetation comprising the manna gum and trees down the cliff face are to be retained.*
- To ensure development has proper regard for the established streetscape and development pattern in terms of building height, scale and siting. *The site has a double storey development to one side and a single storey on the other. Building heights have been kept down. The building has been setback from the escarpment. The dwelling is in keeping with the neighbourhood character. See further discussion in subsequent section.*

- To protect shared view lines where reasonable and practicable. This has been achieved. *The broad sweeping unobstructed views of the abutting properties have been retained. See discussion in subsequent section.*
- To ensure buildings are designed and sited to avoid being visually obtrusive. *This has been achieved from the Point Nepean Road, View Point Road and the abutting properties. See discussion in subsequent section.*
- To ensure that development proposals are integrated with their site and surrounding area in terms of the relationship to existing buildings, open space and the coastal landscape. *This has been achieved. See subsequent section.*

Other requirements also apply but however are not significant in terms of the appellant's grounds of appeal.

There is a high level of overlap between the DDO3 and ESO overlay. The latter overlay applies to the coast, foreshore and adjoining off-shore areas. Many of its requirements would appear to relate to development on and immediately abutting the foreshore. It talks about protection and enhancement of *natural features, landscape quality and the like*, building excellence and co-ordinated management of the Port Phillip coastal area. The Victorian Coastal Strategy Siting and Design Guidelines and other documents are referred to. We have examined these documents and do not consider there to be conflict between their intentions and the development being sought.

In summary therefore we say the development is in accordance with the local planning policy framework.

There can be no doubt that the subject site is a suitable site for the construction of a dwelling. The land is fully serviced and is currently the only vacant allotment along View Point Road.

6.2 THE PROPOSAL MEETS THE PROVISIONS OF RESCODE AND OTHER CONTROLS APPLYING TO THE LAND.

6.2.1 Opportunities Constraints and Site Responsiveness

Prior to proceeding with the detailed analysis, it is useful to understand how the proposed design was generated.

Opportunities

- A large well located site with excellent views of Port Phillip Bay.

- An allotment form and configuration that extends forward in terms of the line of the cliff face beyond that of the abutting allotments.
- The existence of residential development on the abutting properties with that on the one to the east being located forward and above the cliff face.
- Existing vegetation on-site including a large manna gum at the front of the property that significantly contributes to the streetscape.
- Existing vegetation located on the subject site and abutting properties that provides screening and is protected by a Vegetation Protection Overlay.
- Vegetation along the cliff face immediately to the front of the site that screen a significant proportion of the dwelling from view from Point Nepean Road.

Constraints

- The need for the dwelling to balance the needs of the owner (from whom the proposal will be his principal residence) and the site's capabilities.
- The restricted amount of area available beyond the cliff edge.
- The need to keep building heights down to maintain the low key character of the neighbourhood when viewed from View Point and Point Nepean Roads.
- The need to minimise as far as practicable the loss of existing view lines of the abutting properties.
- The need to provide a generous setback from the frontage to ensure high levels of landscaping can be established in keeping with the neighbourhood.
- The need to respond to the layout and landscaping located on the abutting properties.

Design Response

The design response balances the opportunities and constraints of the site:

- The staggered setback of the dwelling provides an appropriate link between the 2 metre setback dwelling to the west and the 19 metre setback to the north.
- The generous front setback allows for large areas of landscaping to be established at the front of the site.
- The dwelling has been constructed back from the cliff edge and will be developed in accordance with sound engineering practices.
- The dwelling has been designed so that the forward meals area is away from the abutting property to the east so as to maintain the views available from that property. Having regard to the fact the part of the allotment not affected by the escarpment extends well forward of the neighbouring

properties, the meals area has been kept back away from the edge so as to retain views available to the abutting properties. If the meals area was located any further back this property would have a substantially reduced viewing area. The main viewlines of the abutting property to the west have been retained and are not affected by the development.

- The dwelling has been pulled back off the boundaries wherever possible in keeping with the pattern of development in the neighbourhood. The setback off the eastern boundary ranges from 1.1 to 5 metres thus providing a high level of separation and room for landscaping between the residential interface.
- On the west side only the laundry is now constructed along the boundary. Again generous setbacks are proposed ensuring vegetation is retained along with a spacious separation between dwellings. The laundry is now set back some 15.5 metres from the front boundary.
- The development has setbacks that respond sensitively to its neighbours.
- The large manna gum at the front of the site and vegetation down the slope is to be retained and supplemented with new plantings.

6.2.2 Neighbourhood Character

The neighbourhood character of the area is undergoing change as older homes are demolished and are replaced. Usually when replacement is occurring the newer residences are larger and more substantial often including double storey elements. Abutting the site to the west is an older style attic style inter-War dwelling with high gable roof. To the east is a new residence with decking and a hipped roof. Opposite is a flat roofed older style home with a well landscaped front setback. Further west along View Point Road is a new double storey modern residence that is prominent within the streetscape. Around the corner in Prospect Hill Road are several examples of new dwellings under construction. From View Point Road we therefore have a mix of architectural styles and building heights. Building materials are also mixed ranging from cement sheeting, weatherboards, brick and rendered finishes.

These diverse architectural styles and treatments are linked by well landscaped front setbacks and street planting. As one enters View Point Road there is a tall canopy of trees which extends over the road pavement at the front of the subject site. These trees, coupled with those on allotments and landscaped nature strip areas, provide the cohesive linking element that sets the neighbourhood character to that of a naturalistic coastal environment.

Despite the existence of a tall attic style dwelling abutting to the west, the designer has sought to design a modest low key double storey dwelling for

the subject site. Rather than impose visually on the streetscape, as other double storey residences in the area do, the proposal is set back and down into the site. The overall appearance therefore from View Point Road is that of a low key residence set behind a large generous landscaped setback. In fact from the street the residence will look like a single storey dwelling. Retention of the large manna gum inside the front boundary was also considered an important part of the design.

The amended plans also achieve the separation between dwellings that is common in the area whilst having regards to the specific constraints applicable to the land. While part of the storage shed is constructed to the boundary the garage has been relocated so that a 1.5 metre wide separation has been achieved. Landscaping will be provided in that location complementing plantings on the abutting property to the west ensuring that the naturalistic quality of the street is retained.

In terms of the built form at the front of the residence we have the entry, a storage area and garage. The dwelling has been specifically designed so that the garage appears for all intents and purposes to be one of the rooms of the residence. Because the doors to the garage and storage shed are at right angles to each other viewing angles of them from the road are minimised. The garage is also cut into the block utilising the slope. The fencing proposed (brick piers and horizontal timber rails) is also in keeping with the neighbourhood being predominantly of natural materials.

It is also appropriate that neighbourhood character also be considered to some extent from the northern side of the development. The development will be obscured from full view from the esplanade area by the vegetation located on the cliff face. Views of dwellings in the immediate and broader neighbourhood from the road below are readily available already and because of this it is also reasonable for some view of the proposed dwelling to be available from this vantage point. Given the vegetation the views though will be limited. The dwelling will merely fill in a gap created by the existing vacant block of land providing a gradation in height between the double storey attic style residence to the west and the single storey dwelling to the east.

It has been raised by objectors that the development does not respect a nominal building line created by the DDO3 control. This claim is unfounded and is misleading. There is no nominal building line that has been applied by Council or for that matter exists in the Mornington Planning Scheme. Indeed the opposite is true. The placement of buildings on properties in the area has arisen not as a result of any particular planning control (as none exists) but rather as a result of the development opportunities and constraints available to each property. For example the abutting dwelling to the west is located on double allotment. It too has cliff area on its title. As room was available the builder of this residence has not needed to utilise the cliff face in its design. This block of land is approximately twice as wide as that of the subject site

therefore enabling a dwelling to be constructed orientated widthways rather than lengthways on the block. Wide sweeping views from this site have easily been achieved because of its orientation. If we consider the new dwelling to the east the opposite is true. This site is long and narrow. In order to capture the views of the bay, the dwelling has been constructed some 11 metres forward of the cliff top. The latter treatment is not uncommon being found at several properties in the area.

The proposed dwelling has not had to extend beyond the cliff edge as there is room on site to accommodate its space needs. We therefore say that rather than some arbitrary building setback that is claimed to exist from the escarpment, the setback of dwellings and hence character of the neighbourhood has been established as a result of individual property owners responding to their respective site constraints, allotment orientation and their desire to maximise views of the bay from their allotments. To make the claim that there is some type of formal building line operating in the area has no substance and indeed is not supported by aerial photographic analysis of the neighbourhood.

If we consider the placement of residence we can see that the proposed dwelling is located in context with its immediate neighbourhood.

6.2.3 Impacts on Abutting Properties

Careful consideration has been given to the impact of the proposal on the abutting properties.

Property to the East

As already stated discussions have occurred with the land owner of this property who as we understand it is happy with the revised plans.

- The abutting residence is setback 1.6 metres off the intervening boundary with a 3 metre setback in the vicinity of the bathroom area. Setbacks in excess of those required pursuant to ResCode have been provided so as to create a spacious separation in this area between the two residences.
- The private secluded open space of this residence is away from the subject site and there is a large deck on the north side to take advantage of the bay views available from this location. The private secluded open space will not be affected in any way by the development.
- Unrestricted views available from the deck area at the front of the residence will not be obscured by the development. The main viewing area of the property is to the north west and north. Views in this direction are currently unrestricted. Views are currently restricted to the west by the existence of vegetation on the subject site, the Bendell's and Stent

properties. Some views will remain to the west as a result of the residence being shifted back two metres from the previous nominated location.

- Views between the decking areas will be restricted by existing vegetation.

Abutting Property to the West

The abutting property to the west will not be detrimentally affected by the development. The proposed dwelling has been sighted so as to:

- Maintain exactly the unrestricted existing view line of this property taking into account restrictions on the view arising from existing vegetation.
- Existing vegetation located on the eastern side of the allotment will substantially screen the built form of the dwelling itself.
- Changes required by Council with regards to opaque glazing of the dining room window will ensure there will be no overlooking (Views in any even not possible because of the existing vegetation).
- The proposed dwelling is located some 20 metres with vegetation between from the patio area of the appellant's property.
- There will be no overshadowing or overlooking impacts arising from the proposal.
- The secluded open space bbq area located on the east side of the dwelling will not be affected as it is fully enclosed with vegetation obscuring views of the building from the site. Where the dwelling will be visible from the open space located to the front the distance between is some 25 metres. Therefore the abutting land owner will see the new residence from a small forward extremity of its open space. There is nothing wrong with this as it's effectively the same perspective that exists from the subject site. Being able to see your neighbours dwelling is common between properties in this area.

Ms Batchelor's property located several allotments away will not be affected at all by the development.

Shared View Lines

As noted above the site is located within an area affected by a Design and Development Overlay Control No. 3. The application of this control forms part of the Council's means of implementing its local planning policy framework.

The objectives of the DDO No. 3 control are *"To protect shared viewlines where reasonable and practical."*

The Tribunal as considered the issue of viewlines on numerous occasions and determined that no one has an absolute right to a view. The situation differs slightly when there is a specific provision in the planning scheme which we do have in this case. Notwithstanding the existence of this provision, there is

still no absolute right for a view to be preserved unchanged. The key words of the DDO3 control are *where reasonable and practical*. We maintain there will be no change of view lines for the Stent's property except perhaps they may see a distant view of the dwelling from a small section of their private open space but this view is indeed substantially less than what can be seen of their residence from the subject site.

In terms of the abutting property to the east the principle viewing area is not affected. Views to the west are already restricted by vegetation and this situation will not change as a result of the development. The meals area has now been pushed back so that it will not obscure the views to the front from the deck of the dwelling.

Rather than pursue a dwelling extending out above the escarpment as others in the area have done, the owner has reduced the building so that it complements its neighbours. The owner could have easily sought construction to the edge of the escarpment. Such a design approach would have also been acceptable from the point of view that the developable area of the allotment itself projects forward of its neighbours. This however is not what is sought. Rather the solution proposed respects the neighbouring residences and is considered an appropriate design response.

Building Bulk

The proposal has been criticised as being bulky. This is not the case. There is good articulation provided on all sides and there is existing vegetation on both the site and abutting properties which is subject to protection, that should be taken into account when interpreting the elevations. Such criticisms are unfounded.

DDO3 and ESO 25 Controls

The proposal by large meets both the General and Mandatory requirements of the DDO3 control in that it is responsive to its environment, landform and site conditions, it has regard to the established streetscape and development pattern in terms of building height, scale and siting, protects shared viewlines where reasonable and practical and it is not visually obtrusive.

In terms of the ESO control the development maintains the natural features and landscape quality of the area. It does this in that it will not detrimentally intrude into the streetscape or viewable area of the site from the esplanade.

ResCode

A full analysis of the proposal in terms of the applicable ResCode provisions has been undertaken.

7.0 CONCLUSION

The proposal has been carefully designed having regard to its location and abutting land uses. The matters of concern raised by the objectors appear to stem more out of personal preference than a legitimate concern over the way the planning framework has been interpreted. The development has been supported by Mornington Peninsula Shire Council following careful consideration. The design parameters go beyond the minimums.

We submit that the proposal meets the state and local policy framework and based on the above respectfully request the appeals are dismissed and a permit issue.


Sally Moser, B.T.R.P. Hons, Grad. Dip Prop,
Planning Consultant

DESIGN ELEMENT	OBJECTIVES OF CLAUSE 54	STANDARDS	COMMENTS
Neighbourhood Character 54.02	<ul style="list-style-type: none"> * To ensure that the design respects the existing neighbourhood character or contributed to a preferred neighbourhood character. * To ensure that development responds to the features of the site and the surrounding area. 	<ul style="list-style-type: none"> * A1 The design is to be site responsive. 	<p>Proposed residence is of a style and design in keeping with the area. Flat roof design reflects dwelling opposite. Two storey split level residence with single storey appearance when viewed from View Point Road. Dwelling setback off the boundary on the west side. Large setback for the establishment of vegetation same as for other properties in the area. Existing significant vegetation retained. Muted shades will be utilised in finished in accordance with Council requirements.</p> <p>Complies</p>
Integration With Street 54.02-2	<ul style="list-style-type: none"> * To integrate the layout of development with the street. 	<ul style="list-style-type: none"> * A2 Dwellings to be orientated to front existing street. * High fencing to be avoided. * Observation of streets to be included in the design. 	<p>Proposed dwelling fronts View Point Road. Fence height of 1.5 metres not excessive and is made of materials (brick and timber) that will complement the area. Observation of street from inside the dwelling possible.</p> <p>Complies</p>
Street setback 54.03-1	<ul style="list-style-type: none"> * To ensure that the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site. 	<ul style="list-style-type: none"> * A3 If buildings on either abutting allotments the development is to be setback the average of the two. 	<p>Setback of dwelling to the east 19 metres, dwelling to the south 2 metres. Maximum frontage setback of 9 metres required. Setback provided comprises 9.7 to garage, 15.8 to the front of the dwelling and 12 metres to the storage area. Development more than complies.</p>
Building Height 54.03-2	<ul style="list-style-type: none"> * To ensure that the height of buildings respects the existing or preferred neighbourhood character. 	<ul style="list-style-type: none"> * A4 Maximum building height allowed of 9 metres. 	<p>Building has a maximum height to the top of the ridge of 6.5 metres above natural ground level.</p> <p>Complies</p>
Site Coverage 54.03-3	<ul style="list-style-type: none"> * To ensure that the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site. 	<ul style="list-style-type: none"> * A5 Maximum building site coverage of 60% 	<p>Development proposes 31.1% site coverage.</p> <p>The development complies with the standard.</p>
Permeability	<ul style="list-style-type: none"> * To reduce the impact of increased stormwater 	<ul style="list-style-type: none"> * A6 At least 20% of the site should not be covered by 	<p>Development provides for 59%</p>

54.03-4	run-off on the drainage system. * To facilitate on-site stormwater infiltration.	impervious surfaces	permeability. The proposal complies.
Energy Efficiency 54.03-5	* To achieve and protect energy efficient dwellings. * To ensure the orientation and layout reduce fossil fuel use and make use of daylight and solar energy.	* Buildings are to make use of solar energy and ensure energy efficiency of existing dwellings on adjoining lots is not unreasonably reduced.	Dwelling is orientated to take full advantage of its northern orientation at both upper and lower levels. The solar efficiency of abutting dwellings will not be reduced because of the setbacks provided. Development complies.
Significant Trees 54.03-6	* Development is to respect the landscape character of the neighbourhood and retain significant trees on-site.	* To encourage the retention of trees and provide for the planting of trees in keeping with the neighbourhood.	All significant vegetation on the site is being retained. The large manna gum at the front of the site is being kept along with the vegetation on the escarpment. Condition of the permit requires extensive planting of natives on-site. Applicant will comply with this. Only vegetation removal are pittosporum plants that are declared noxious by Mornington Peninsula Shire Council. Development complies.
Car Parking 54.03-7	* To ensure that car parking is adequate for the needs of residents.	* Two spaces per dwelling with one space at least 6 metres long and 3.5 metres wide that is covered.	The development complies. Additional parking facilities have been provided to meet the need of the future residents of the dwelling.
Side & Rear Setbacks 54.01-1	* To ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.	* Building not on boundary (or within 150mm) - 1.0m plus 0.3m for every metre of height over 3.6m of height up to 6.9m plus 1m for every metre of height over 6.9m * Sunblinds, verandahs, porches, eaves etc may encroach not more than 500mm into the setback * Landings having an area of not more than 2.m ² & less than 1m high, stairways, ramps, pergolas etc may encroach into the setback	All setbacks and building heights comply.

Walls on boundaries 54.04-2	<ul style="list-style-type: none"> * To ensure that the location, length and height of a wall on a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings. 	<ul style="list-style-type: none"> * 10m length plus 25% of the remaining length of the boundary of an adjoining lot or * The length of an existing or simultaneously constructed boundary walls on an adjoining lot (whichever is greater) * Walls built on boundary should not exceed an average height of 3m with no part higher than 3.6m * Walls on boundaries should not have an impact on space of adjoining properties * Boundary walls to be setback further than the façade of the dwelling 	<p>Only 7.06 metres of wall located along the eastern boundary (72.59 metre boundary length) away from the abutting dwelling.</p> <p>Only 3.2 metres of wall located along the western boundary (59.41 metre boundary length).</p> <p>Proposal complies</p>
Daylight to Existing Windows 54.04-3	<ul style="list-style-type: none"> * To allow adequate daylight into existing habitable room windows. 	<ul style="list-style-type: none"> * Buildings opposite habitable room windows are to provide for a light court with a minimum of 3 metres and 1 metre clear to sky. The calculation of area may include land on the abutting allotment. 	<p>6.5 and 4.5 metre separations between eastern walls of proposed dwellings and windows located on the west side of the abutting dwelling to the east.</p> <p>Proposal complies</p>
North Facing Windows 54.04-4	<ul style="list-style-type: none"> * To allow adequate solar access to existing north-facing habitable room windows. 	<ul style="list-style-type: none"> * Building setbacks based on height apply. 	<p>There are no north facing windows on abutting properties that are affected by the development.</p> <p>Proposal complies</p>
Overshadowing of open space 54.04-5	<ul style="list-style-type: none"> * To ensure that buildings do not unreasonably overshadow existing secluded private open space.. 	<ul style="list-style-type: none"> * 75% or 40 square metres with a minimum dimension of 3 metres is to receive five hours of sunlight between 9 am and 3pm on 22 September. 	<p>Private open space of abutting dwellings already affected by existing vegetation on those properties. Private open space areas located away from the subject site.</p> <p>Proposal complies</p>
Overlooking 54.04-6	<ul style="list-style-type: none"> * To limit views into existing secluded private open space and habitable room windows.. 	<ul style="list-style-type: none"> * Views into rooms and private secluded open space within 9 metres are to be restricted. 	<p>Conditions of permit require opaque glazing of upper level dining room window. Elsewhere views are restricted. Highlight windows used along sensitive interfaces. Views between balconies possible however this is characteristic of the neighbourhood. Complies</p>

Daylight to new windows 54.05-1	* To allow adequate daylight into new habitable room windows.	* Light courts to be provided if development close to walls/fences and carports.	There are no habitable room windows that are compromised by the proposal. Complies
Private open space 54.05-2	* To provide adequate private open space for the reasonable recreation and service needs of residents.	* 80 square metres to be provided with a secluded area of 25 square metres.	Private secluded open space provided at ground level at the front of the rumpus room and at first floor level at the balcony and beyond. Complies
Solar access to open space 54.04-6	* To allow solar access into the secluded private open space of a new dwelling.	* The private open space should be located on the north side of the dwelling.	The upper deck area is located on the north side and will receive plenty of sunlight. There is an open grassed area forward of this which will also receive high levels of solar access. Complies
Detailed design 54.04-61	* To encourage design detailed design that respects the existing or preferred neighbourhood character.	* Building design are to be in keeping with the neighbourhood.	The neighbourhood comprises a mix of architectural types. A flat roof dwelling located well setback from the street is located directly opposite. The dwelling has been designed to be unobtrusive when viewed from the street. Complies



Victorian Civil and Administrative Tribunal

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Gurr D v ~~Mornington~~ Peninsula SC [2001] VCAT 2065 (26 October 2001)

Last Updated: 15 November 2001

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING LIST Application for Review No. P50161/01

Permit Application No. P010224

APPLICANT FOR REVIEW: D Gurr

RESPONDENT/OBJECTORS: K White & Others

RESPONSIBLE AUTHORITY: ~~Mornington~~ Peninsula Shire Council

WHERE HEARD: At Rosebud

BEFORE : W R Gould, Senior Member

DATE OF HEARING: 18 September 2001

DATE OF ORDER: 26 October 2001

MEDIUM NEUTRAL CITATION [2001] VCAT 2065

SUBJECT LAND: 271 Esplanade, Mt Martha

Land Area and Dimensions

18.0m: frontage

754sqm: area

ORDER

1. The permit is granted.
2. It is directed that the Responsible Authority issue the permit subject to the following conditions:-

1. Before the development starts, plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit (the plans must be drawn to scale with dimensions and three (3) copies must be provided). The plan must show:

(a) the maximum height of the building to be RL 105.65, verified to a temporary benchmark to be shown on the plan;

(b) the materials and colours of the pergola;

(c) the pergola west of the spa shall be deleted.

2. The materials and colour of the exterior finish of the building must be in accordance with the endorsed plans unless with the further permission of the Responsible Authority.

3. Within three (3) months of the practical completion of the development, a landscape plan must be submitted to and approved to the satisfaction of the Responsible Authority.

4. Construction traffic shall exit off the Esplanade from the northbound lane only and shall not turn right onto the Esplanade when exiting the site.

5. All disturbed surfaces resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.

6. Air conditioning or other plant equipment shall be located to the satisfaction of the Responsible Authority.

7. All telephone and electricity services shall be installed underground to the satisfaction of the Responsible Authority.

8. This permit will expire if one of the following applies:

* The development is not started within two (2) years of the date of the permit; and

* The development is not completed within four (4) years of the date of this permit.

The Responsible Authority may extend the above periods if a request is made in writing before the permit expires or within the following three (3) months.

9. All fences shall be transparent and of chain mesh, post and wire or similar and be a maximum height of 1.8 metres.

W R GOULD

SENIOR MEMBER

APPEARANCES

Mr D Burman with Ms N. Neville, Planning Officer, represented the Responsible Authority.

Mr D. Crowder of Ratio Consultants, appeared for Mr K White, 269 Esplanade and Ms L. Campbell, 270 Esplanade.

The following objectors appeared in person: Mr & Mrs S. Traeger, Mr & Mrs

L Opray, Mr J Goodman and Mr T Crowle, all of Bradford Road.

Mr C. Bowden, Town Planning Consultant, appeared for the Applicant for Review.

NATURE OF APPLICATION

Application under S.79 of the *Planning and Environment Act 1987* (PE Act) for review of the failure to grant a permit within the prescribed time.

PROPOSAL

Detached House

PLANNING SCHEME AND ZONING/OVERLAY CONTROLS


Mornington Peninsula Planning Scheme - Residential 1

- Vegetation Protection Overlay (VP01)
- Design and Development Overlay (**DD03**)

REASONS

1. This application for a two-storey house to be built over a garage/bunk room was submitted by Roger Burns Design Services on behalf of the owner, Mr D Gurr. At the hearing Mr Bowden sought leave to substitute amended drawings for those, which accompanied the application. These plans had been circulated to all parties prior to the hearing.

2. There was no objection to this substitution. Accordingly these plans (endorsed "WRG 18 Sep 01") became the basis of this review.

3. The subject site has access via an unmade road leading from the Esplanade. Similar access is available to the neighbouring properties. All have 180° panoramic **views** over Port Phillip Bay. The site is largely devoid of vegetation other than small bushes and grass. 

4. A permit is required for the proposal in order to allow the following three variations to the Design And Development Overlay No. 3 (**DD03**):-

- * earthworks more than 1m (approximately 3m);
- * overall building height greater than 6m (6.3m);
- * wall heights greater than 5.5m (6m on eastern elevation).

5. These requirements may be varied if:-

...the responsible authority is satisfied that compliance is unreasonable or unnecessary and no significant loss of amenity will result from approval of the variation.

6. The proposal was advertised by direction of the Responsible Authority and eleven objections received. Following an onsite meeting between the Applicant and most Objectors, amended plans were lodged on 28 August 2001. On 10 September 2001 the Responsible Authority resolved to support the application subject to nine conditions.

7. The Applicant placed poles on the site cut to the height of each corner of the proposal. These were particularly useful in assessing the height of the proposed dwelling - and thus interruption to **view** lines - during the inspection, which followed the hearing.

8. With regard to the height and bulk of the proposal, Mr Burman gave the following comments:-

The high point is now located in the south east corner (front corner) of the building. Although there will be some impact of the bulk on the adjoining dwellings, it is considered that the extent of this impact is reasonable taking into consideration the large scale of the dwellings to the north and north west of the site.

The existing properties to the east of the site along the Esplanade will be able to see a portion of the east elevation of the dwelling, however, it is considered that these properties will still have a predominate outlook from the south east around to the south west, with the proposed dwelling not creating a significant bulk from this perspective.

*The design of the dwelling is of a style that is a contemporary building that has been designed to allow for the achievement of **views** out to Port Phillip Bay and Arthur's Seat. The proposed building design has taken into consideration the slope of the land, which results in a dwelling design that is responsive to the slope and characteristics of the site.*

*Overall, the bulk and scale of the building is consistent with the character of the surrounding area, and the height of the building respects the ability of the properties to the rear and east of the site to obtain appropriate shared **views**.*

....

*Impact upon viewlines is a legitimate planning concern insofar as **views** form part of the existing amenity of properties, which should be taken into account in assessing the impact of a new proposal. This is given added weight where the Planning Scheme makes specific address of **views**, as they do in this case, under the provisions of **DD03**. However, the Tribunal has consistently held that no legal right to a **view** exists, and has supported proposals involving the complete loss of a **view** where these **views** were available across vacant blocks. The assessment in the current situation must therefore be not whether any substantial viewline impact exists, but instead whether the impact upon viewlines is unusual, excessive, or beyond the reasonable expectations of neighbours. Furthermore, as dictated by the design objectives, assessment needs to assess whether preservation of the **view** is "reasonable and practical."*

*In this case, the objectors' dwellings to the rear of the site will still obtain **views** over the top of the proposed dwelling. It would have been reasonable for neighbours to expect that the subject property may at some time be developed by a two-storey building, similar in nature to many of the new dwellings along Bradford Road. The proposal is not unusually high for a second storey development, and contains a height that is consistent with dwellings to the north of the subject site.*

9. Mr Burman also said that the height of future landscaping on the site was of concern to the Objectors. Thus the Responsible Authority suggested that conditions be placed on any resulting permit to cover the following matters:-

- * Landscaping along the rear boundary to be a maximum of 1.8 metres, in line with a standard fence that could be built;*
- * Landscaping along the side boundaries for a length of 8 metres from the rear to be a maximum of 2 metres in height;*
- * From the north west corner of the site, a line to be taken from 8 metres to the east, and 8 metres to the south and no landscaping in this triangle shall exceed 2 metres in height;*
- * 3-4 metres in height of landscaping permitted to protect the privacy of users of the northern deck.*

10. Two other matters were answered by Mr Burman:-

(i) Access by construction traffic.

Mr Burman said that the unmade road was used by all residents along this part of the Esplanade. He considered that a condition could be placed on the permit to ensure that any major damage caused during construction is rectified by the owner or builder.

(ii) Third storey of the proposal.

Mr Burman said that a two-storey height control exists under DDO3. He continued:-

The original plans submitted could have been construed as three storey as a result of the location of the storage to the rear of the proposed garage. The current amended plans reflect the use of a staggered approach to the dwelling design to account for the steep slope of the site. The use of this approach does not create a three storey dwelling, due to the ability to utilise the contours of the land.

11. For the two Objectors living in the Esplanade Mr Crowder made the following points:-

- * The proposed depth of excavation indicates that "the design has little or no regard to the topographical constraints of the site".*
- * Little of the site will be available for "meaningful landscaping on the site."*
- * The proposal should be set back further from the frontage "to ensure it does not detract from the outlook and views" of the neighbours.*
- * There will be unreasonable overlooking and overshadowing from the proposal. Noise from the deck areas may disrupt amenity.*
- * Setting the proposal further back on the block would reduce the building height and reduce the visual impact of the proposal from these Objectors' properties.*

12. The other Objectors generally agreed with the submission by Mr Crowder but made the point

that part of the pergola and deck at the rear (north) of the proposal should be removed.

13. In response, Mr Bowden pointed out that a dwelling is as-of-right in the zone subject to the various buildings and works requirements of the DDO. In this case he said a permit is required because of the three variations requested (above).

14. He made the following points:-

Height and Bulk of the Dwelling

In this case, the applicant has amended the proposal to reduce the height of the proposed development to generally accord with the Design and Development Overlay provisions. The result will be a dwelling that sits comfortably in its environs given that the height and bulk of the dwelling will be addressed by stepping the development to follow the slope of the land. In addition, the height of the dwelling will generally accord with the height of existing vegetation, enabling the development to "nestle" into the immediate environs.

In respect to the character of the area, we note that the neighbourhood contains a number of large modern two and three storey dwellings, located on sloping site that have been designed to take advantage of ~~views~~ of Port Phillip Bay and Arthur's Seat.

~~Views~~

An inspection of the area and surrounding properties reveals that substantial panoramic ~~views~~ are available of Port Phillip Bay and Arthur's seat.

While the proposed dwelling will remove some ~~views~~, the overall loss is considered minor in terms of the overall extent of available ~~views~~ and is not unreasonable given the following aspects:

** No nearby properties will experience a total loss of ~~view~~. In fact most properties will still have available spectacular ~~views~~ of the Bay and Arthur's Seat.*

** It is unreasonable to expect unrestricted ~~views~~ over the review site given the nature of development in the area and the site is clearly suitable for a multi storey dwelling.*

** There is no legal requirement to a ~~view~~ and it is only relevant in respect to the Planning Scheme where it is reasonable and practical to do so and existing amenity is significantly affected. In this case, substantial ~~views~~ will still be available and hence a reasonable level of amenity will be maintained for neighbouring residents.*

15. As noted above, the subject site and environs were inspected following the hearing in the company of all parties. The panoramic ~~views~~ of the sea are a particular feature of this locality, as are the numbers of very large and substantial homes. Clearly the proposal is in keeping with development in the neighbourhood.

16. The inspection was greatly assisted by the four poles erected on the subject site to the height of each corner of the proposal and were inspected from a number of vantage points on the neighbouring properties.

17. As a result have no doubt whatsoever that the decision arrived at by the Responsible Authority to grant the permit on the amended plans is the correct one. Substantial viewlines will remain for each of the neighbours in accordance with the concept of "view sharing" which has been endorsed by the various members of the Tribunal over many years. In addition, the stepping down of the proposal along the gradient of the slope gives a substantial reduction in building bulk and ensures that the maximum possible viewlines will remain for neighbours.

18. Mr Crowder seemed to argue against the dropping down of the proposal by means of a 3m deep cut at the rear. Clearly this is a desirable design feature so far as all parties are concerned, particularly those Objectors who live to the rear of the site.

19. Use of the unmade road for access is a non-issue. The access is a public highway and free to be used by any citizen with the right to pass and repass at will.

20. I do take issue however with the number of conditions sought to be imposed by the Responsible Authority, which I regard as excessive.

21. Probably few, if in fact any, dwellings in this locality are the subject of the somewhat draconian conditions which it is sought to impose on landscaping for example. These conditions have been modified to reflect more closely the standards, which apply to housing generally, and to make the conditions more directly applicable to the subject site.

22. The permit is granted subject to the conditions set out above.

W R GOULD

SENIOR MEMBER



Victorian Civil and Administrative Tribunal

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Kempe v City Greater Geelong [1999] VCAT 472 (8 April 1999)

Last Updated: 18 May 2000

IN THE VICTORIAN CIVIL AND

ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING LIST

APPLICATION FOR REVIEW NO. 1998/39188

PERMIT APPLICATION NO. 1227/97

HEARD AT MELBOURNE ON THURSDAY 6 AUGUST 1998, TUESDAY 20 OCTOBER 1998, WEDNESDAY 21 OCTOBER 1998 AND MONDAY 25 JANUARY 1999 WITH AN INSPECTION IN THE COMPANY OF THE PARTIES AND/OR THEIR REPRESENTATIVES ON FRIDAY 23 OCTOBER 1998

TRIBUNAL

GERARD SHARKEY, MEMBER

PARTIES

Applicant for Review/

Permit Applicant S. Kempe

Responsible Authority City of Greater Geelong

Respondents/Objectors B. Woodburn & ors.

NATURE OF APPLICATION

Application under Section 77 of the *Planning and Environment Act 1987* (the Act) for a review of a decision to refuse to grant a permit.

PROPOSAL

Additions raising the existing building height above 7.5 metres and construction of a third floor.

THE LAND

Address

52 Baker Street, Ocean Grove

Dimensions

Frontage 20.12 metres, depth 42.67 metres, area approximately 903 square metres.

PLANNING SCHEME AND ZONING

Greater Geelong Planning Scheme, Residential A Zone

GROUND OFS OF REFUSAL

1. The proposal will be detrimental to the amenity of adjacent properties and the general area.
2. The proposal is inconsistent with the predominant character of the neighbourhood.
3. The proposal is contrary to the orderly and proper planning of the area.

GROUND OFS OF APPLICATION FOR REVIEW

1. The proposal would not be materially detrimental to the amenity of the neighbourhood or enjoyment of adjacent properties.
2. The proposal would not be contrary to the predominant character of the neighbourhood.
3. The proposal is not inconsistent with the orderly and proper planning of the locality.

APPEARANCES

Mr. T. Demeo, Town Planner, for the Responsible Authority.

Mr. H. McM. Wright QC and Mr. C. Townshend of Counsel, instructed by Simon Jaques and Co. Solicitors, for the Applicants for Review/Objectors. Mr. Wright called Mr. B. Rogers, a Consultant Planner of AT Cocks Consultants, as an expert witness. Each of the Respondents/Objectors were also called as witnesses.

Mr. C. Porter of Counsel, instructed by Coulter Burke Solicitors, for the Respondent/Permit Applicant. Mr. Porter called Mr. T. Chakir, the Architect for the proposal, as a witness.

Written submissions, plans, photographs and other documents have all been considered in arriving at the Order in this matter, and have been placed on the Tribunal file, except for the large photographs.

I carried out an inspection on Friday 23 October 1998 in the company of the Applicant for Review/Permit Applicant, the Respondents/Objectors and a representative of the Responsible

Authority.

BACKGROUND

This was a hearing of an Application for Review of a decision of the Responsible Authority to refuse to grant a permit for development of additions to a dwelling at 52 Baker Street, Ocean Grove, which would raise the existing building height above 7.5 metres and also construction of a third floor.

On Day 1 Mr. Porter, for the Applicant for Review/Permit Applicant, said that revised plans had been circulated on 28 July 1998, and requested that the permit application be amended by substituting the revised plans in the permit application. Mr. Wright, for the Respondents/Objectors, said that there had been inadequate time to consider the revised plans, and there was some confusion about what was actually proposed. Mr. Wright also said that there could be other residents who had not objected, but may consider that they are affected by the revised plans.

Mr. Porter called Mr. Chakir, the Architect for the proposal, who provided details of the changes proposed. I made Directions that the permit application be amended by substituting the revised plans in the permit application, and that further information be provided to the parties and to other persons who might be affected. The hearing was adjourned to Tuesday 20 October 1998. The Directions and accompanying Reasons were dated 14 August 1998.

Mr. Demeo, in his written submission for the Responsible Authority, described the subject site and the locality as follows:

"The site is located on the south side of Baker Street, one property to the west from its intersection with President's Avenue. The site has a frontage to Baker Street of approximately 21m and a depth of 43m, resulting in a total area of 903sq.m.

The property is developed with a two storey detached dwelling which is set only 4.5m from the rear property boundary. It is estimated to be between 6.5m and 7.6 metres above natural ground level.

The submission in support of the application states that "...subject land rises to the north (Baker Street), but is substantially flat, apparently having been cut into the 'hill' at the time of construction of the dwelling. The topography of the area is such that the land generally rises towards the north and east (Baker Street and Presidents Avenue) ..."

The property to the east (on the corner of Baker St and Presidents Ave) is developed with a three-storey dwelling constructed on the northern third of the site. The property to the west is developed with a two-storey dwelling, also on the northern part of the site. The surrounding area is generally developed with detached dwellings.

LOCALITY

Baker Street is an unconstructed road with no kerb and channel.

The streetscape is characterised by a variety of single and double storey dwellings, though one three-storey dwelling exists to the east. This is the only three-storey dwelling in this section of Baker Street between Field Street and Presidents Avenue.

All lots abutting the subject site are developed with residential housing."

Mr. Demeo described the proposal as follows:

"It is proposed to construct an additional storey to the existing dwelling, creating a three-storey dwelling with a total maximum height between 9.2m and 9.4m above the existing ground level. The proposed addition will generally follow the footprint of the existing building.

The addition to the dwelling will incorporate changes to the floor plan layout of the existing two storeys. The third level will comprise living areas, dining room and kitchen facilities. A new deck is to be constructed along the northern facade of the building, in line with a similar deck on the existing level below. More substantial deck areas are to be constructed along the southern and western facades of the building. The work will include rendering the exposed brickwork, installing additional windows on the existing levels and modifying the existing building at stairwell, entry and balcony areas."

The properties of the Respondents/Objectors are 51 Baker Street which is directly opposite the subject site on the north side of Baker Street, and is owned by Famwood Pty Ltd, the trustee company for the Woodburn Family Trust, 53 Baker Street which is on the north-west corner of Baker Street and President's Avenue and is owned by Mr. R. Smith and Mrs. E. Smith, and 54 Baker Street which is on the south-west corner of Baker Street and President's Avenue, and which is owned by Mr. B. van Laar, and which on its western boundary abuts the subject site.

PLANNING PROVISIONS

The Residential A Zone is the subject of Clause 50 of the Regional Section of the Greater Geelong Planning Scheme. The purpose of the zone includes:

" To provide predominantly for housing.*

** To provide the opportunity for a variety of residential densities and dwelling types.*

** To ensure that residential development is of good quality cost-effective design that is responsive to the residential character and amenity of the area and housing needs of the population.*

....."

A dwelling is a Permit not required - Section 1 use pursuant to Clause 50-1.1, but Section 50-3.3 Building Height, provides:

"Buildings must not contain more than 2 storeys or be over 7.5 metres in height above natural ground level except with a permit."

A permit is therefore required for this proposal.

Clause 18 sets out Guidelines for approval, and Clause 18-1 sets out general guidelines that must be considered before deciding on an application as follows:

** The State, regional and municipal planning policies.*

** The purpose of the zone, reserved land or control.*

** Orderly planning of the area.*

** Effect on the amenity of the neighbourhood.*

** Any matter required to be considered in the zone, reserve or control.*

and if appropriate:

** The existing use and the possible future use and development of the land and all contiguous and adjacent lands.*

** The size and shape of the land to which the application relates and the siting of the proposed development in relation to the size and shape of the adjoining development.*

** Whether the proposed means of entrance to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading and parking of vehicles on the site.*

** Whether adequate provision has been made for the landscaping and treatment of the site, including maintenance.*

** The effect of the development of the land upon the use or development of other lands which have a common means of natural or artificial drainage.*

** Proximity of the land to any reserved land.*

** The provision of services of water, sewerage, drainage, electricity and gas."*

REASONS FOR ORDER

Mr. Demeo, in his written submission for the Responsible Authority, addressed the grounds of refusal to grant a permit. Mr. Demeo concluded:

"The proposed third storey addition which is the subject of this appeal is out of context with the character of the existing streetscape and the locality.

The purpose of the structure is to expand ocean views which are presently enjoyed at second storey level. By increasing those views with the additional habitable rooms, the proposed development will intrude on the privacy and outlook of adjoining properties."

Mr. Demeo tendered a copy of the Officer's Report for this proposal. Mr. Wright on behalf of the Respondents/Objectors, submitted that the Officer's Report had been prepared without the particular officer looking at the subject site. Mr. Demeo said that the Officer who prepared the report had visited the site, but he was not sure if the Officer who actually delivered the report to the Council had seen the site. The Tribunal and its predecessors have said again and again that Officer's Reports are one matter that can be considered by the Tribunal, but it is the responsibility of the Responsible Authority to make its own decision on a permit application, irrespective of the recommendation contained in an Officer's Report. The summary at the commencement of the Officer's Report included the following:

"It is considered that the objections to the application cannot be substantiate such that refusal of the application would be warranted. It is considered that the proposal will not result in an unreasonable detriment to the amenity of the area and that the application should be supported."

views. There can be little argument that the views possessed by these properties are a significant part of their amenity.

Likewise, the house on the subject land already enjoys panoramic views. The Applicant seeks to add a third storey to the existing dwelling to obtain an even better view. It is submitted that the improvement of this view would be at the expense of the outlooks currently enjoyed by the objectors' properties. In essence, the proposed development would not result in a fair distribution of the available view for all of those properties who share it.

Basic Proposition

There is no legal ~~right to a view~~. However, in appropriate circumstances, the preservation of a view, or interference with a view, will be a relevant planning consideration.

It is potentially no less a relevant or legitimate planning consideration than the preservation of sunlight, the avoidance of overshadowing or freedom from the visual impacts of building bulk.

It is submitted that whether interference with a view is a relevant planning consideration depends upon the reasonable and legitimate expectations of those who enjoy the view. In this regard it is submitted that there are three relevant factors.

a) First, the location of the properties concerned. There is clearly a distinction between an urban situation, and a rural or coastal location in an essentially recreational area. The preservation of a view is far more likely to be a relevant aspect of amenity in the latter situation.

b) Second, the nature of the applicable planning control. It is submitted that there is a clear difference between situations where construction to a particular height is "as of right, and situations where a planning permit is required to built above a specified height. In the second case interference with views enjoyed from adjoining properties will be a relevant planning consideration, particularly if the criteria for the exercise of planning discretion include a consideration of the amenity of the neighbourhood.

c) Third, the basic objectives of planning legislation in Victoria require the Tribunal to look at the "fairness" of the situation (see s. 4 Planning and Environment Act 1987). Where the existence of a panoramic view is an asset enjoyed by a number of properties it is a question of allowing a reasonable share of the asset to each property, and not permitting any one property to interfere unreasonably with the share of other properties."

Mr. Wright said that the Tribunal has consistently identified views with the concept of residential amenity, and the degree to which views form part of the reasonable expectations of a resident will depend upon the location of the dwelling, the development controls, and the fairness of the situation. Mr. Wright said that in coastal areas where there is a height limit, a view is a more important factor in determining amenity of a property. He said that each of the properties in a coastal hillside situation is entitled to a share of the same view and a measure of protection is to be afforded to those who have previously invested in the view. Mr. Wright said this is not to say that new development is not also entitled to a view provided it is within reason. Mr. Wright cited *Tashounidis v Shire of Flinders* 1 AATR 116 which he said has been followed by the Tribunal on many occasions. He said that the situation does not invite an examination of who has the best view, or whether each property should have the same view. He said that the property of Mr. van Laar at 54 Baker Street, is higher up the slope with no immediate neighbour to the rear. He said that this case is about whether the view shed is at the present time is reasonably shared. Mr. Wright went on to say:

"There are important components of the views enjoyed by the properties in this part of Ocean Grove. Each of these components is enjoyed to a greater or lesser extent depending on the viewing point.

a) Most significant is the view of, and importantly to Flinders Point (the bluff). This is an impressive feature, more so than photographs can do justice. The view to and around the bluff is important because the viewer sees the bluff rise out of the expanse of water before it, and can see waves and foam swirling around the base of it.

b) Of course valued views take in an expanse of ocean and, if possible breaking waves on the foreshore.

c) Of particular interest to the Objectors is the view to a water feature referred to as "The Bommie". This is a wave formation which appears and disappears over an underlying reef formation. The view to the south is also of passing ships and, on occasions, whales."

Mr. Wright argued that the existing two storey dwelling on the subject site enjoys commanding views from its first floor living areas, and he said that it appears to be constructed to maximise view, although it falls within the as-of-right building envelope. He said that this dwelling appears to have been sited towards the lower part of the subject site which he said is logical because it avoids any interruption to views from the dwelling to the west, which predates it. He said that the development of the land to the east, Mr. van Laar's property at 54 Baker Street, has occurred since, and as with the dwelling of the Applicant for Review/Permit Applicant has located its living areas on this second floor. Mr. Wright argued that the long-standing planning control, which limits buildings to two storeys and 7.5 metres in height, gives residents a reasonable and a legitimate expectation that any building which exceeds these limits will not significantly impact on their view.

Mr. Wright went on to refer in detail to the impact on the proposal of the views currently enjoy by the Respondents/Objectors, and he called Mr. B. Rogers, a Consultant Planner, to give evidence on the impact of those views.

Mr. Rogers said that he had visited the subject site and the surrounding area, and had viewed the subject site from each of the properties of the Respondents/Objectors and from the foreshore area. He said that he had also viewed plans and diagrams prepared by Mr. Woodburn, an Architect and a member of the Family Trust which owns 51 Baker Street, which illustrate the existing "view sheds", or "viewing arcs", of the properties of the Respondents/Objectors, and interpreted the impact of the proposal on those views. Mr. Rogers said:

"Based on my assessment of the proposal I consider the relevant issues to be:

** the extent of the proposal's impact on the views available to the main areas of the existing residences at Nos. 51, 53 and 54 Baker Street; and*

** the impact of the additional physical bulk of the proposed third level approximately 15 metres to the south west of the main living area of No. 54 Baker Street."*

Mr. Rogers said that he had assessed the impact on views available to the three properties of the Respondents/Objectors, and had reviewed the diagrams prepared by Mr. Woodburn, which illustrate the existing "view shed" from the main living areas of the three properties. He considered that those "view shed" diagrams accurately affect the impact of the proposed additional level at 52 Baker Street. Mr. Rogers said:

"The analysis illustrated on the diagrams has used the central point at the south western facade of the main living area of each of the three properties as the reference point for the analysis. These diagrams identify:

- * The total existing viewing arc.*
- * A primary viewing arc, which incorporates the view over the ocean and the view to "the Bluff".*
- * The principal axis or view line to the Bluff.*
- * The existing interruptions to the viewing arc available to each property.*
- * An indication of the interruption to the viewing arch that would be caused by the proposed additional level and 52 Baker Street."*

Mr. Rogers went on to summarise the analysis for 51, 53 and 54 Baker Street.

Mr. W. Woodburn spoke to a written submission. Mr. Woodburn has been a registered architect since 1951. He is a Director of Famwood Pty Ltd, the trustee company for his family trust, which is the proprietor of 51 Baker Street, where a residence has been situated which has been used continuously as a vacation house for the past 35 years. Both Famwood Pty Ltd and Mr. Woodburn in his own right are Respondents/Objectors. Mr. Woodburn spoke to a written submission which set out his objections to the proposal, and also described the preparation of photographs which he had prepared to illustrate the effect of the proposal.

Mr. B. van Laar, a Respondent/Objector of 54 Baker Street spoke to a written submission. Mr. van Laar said in his written submission:

"My property is located next to 52 Baker Street on the east side. Our property is located further up the hill. The aspect of our house faces South West, with traditional views of the bluff (there are no views towards the north or west or east. The home built is on the same axis and location as the previous historic Ocean Grove home (which was burnt down twelve years ago).

Before building our home we negotiated with the previous owners of 52 Baker Street and amended dramatically our plans to minimise overshadowing. These changes cost us an additional \$86,000 in construction and excavation costs.

Our aspect and general amenity will be severely affected by the proposed development. The sheer mass of the construction will significantly impact on our lifestyle in an area where we spend some 96% of our time as a family, in daylight.

The upstairs area, which is our parent's retreat and master bedroom, originally had plans for a larger living/family area but this was altered by negotiation with the previous owners of 52 Baker Street.

It should also be noted councillors actually visited our properties and judged for themselves on site, how our privacy, aspect and general amenity were affected. They unanimously upheld our objection. The council officers who supported the application did not bother to come into our home.

The councillors were Cr. Anthony Aitken, (chairperson for Councillors Hearing Panel), Cr. Ken

Jarvis (Major of Geelong) and Cr. Allana Goldsworthy (Solicitor).

Mr. R. Smith, a Respondent/Objector of 52 Baker Street spoke to a written submission and said:

"My Name is Reginald George Smith, I, my wife Elaine, and my family have enjoyed the coastal town ambience of Ocean Grove for 32 years, without exception, spending every Christmas and summer holidays in a wonderful surf beach environment.

We purchased our current holiday home at 53 Baker St in March 1983, having had 2 other beach side locations prior to that. The property location at Baker St had special appeal, being of the highest position on the Presidents Ave./Baker St. hill, directly overlooking the surf beach and Barwon Heads Bluff, thus affording a magnificent view of same.

Prior to the decision to purchase this property, I enquired with the then responsible authority 'The Bellarine Shire' as to the prospect of 3 story houses being permitted in the area. At that time, I was assured verbally that 3 story houses would not be acceptable and would be over height limits. This enquiry was made out of concern that an existing 2 story house at 52 Baker St. was directly in line and between the living area view points of 53 Baker St and the surf beach and Barwon Heads Bluff.

While our home is 2 story, the upstairs 2nd story is bedrooms. It is the ground floor living area that we spend most of the daylight hours and it is from there that our major angle of view focuses on the Barwon Heads bluff. It is my contention that the applicant proposes to improve his already excellent view perspective to the detriment of my viewing perspective. There is no doubt the applicants proposal would obliterate a major segment of my available viewing angle taking away the horizon, most of the Bluff and the ocean foreground.

I also contend that if the applicant was to be successful with the proposal and the on going potential -or trend that anyone and everyone may be successful with 3 story developments in the future, the disadvantage to the general community would be a very significant loss of amenity.

For many years I have had the vision of retiring at my home at 53 Baker St. and sharing the pleasantness of this coastal ambience with our 8 grandchildren as we did with our own children.

If a 3rd story addition to 52 Baker St was to become a reality, then I believe Ocean Grove is not the place I want to be in my twilight years as such a proposal would have a devastating impact and significant loss of our amenity."

Mr. Porter spoke to written submissions for the Applicant for Review/Permit Applicant. Mr. Porter said:

"The appellants own, and reside permanently at, the subject land at 52 Baker Street, Ocean Grove. The subject land has a frontage of 21 metres and a depth of 43 metres, and is located on the south side of Baker Street on a steep slope, falling generally towards the south west, offering magnificent views over the sea to residents on the hill at the eastern end of Baker Street.

The 3 objectors' properties are all located above the subject land. Natural ground levels at each of the objectors' properties are generally higher than at the subject land. The houses on each of the objectors' properties enjoy spectacular panoramic views through the middle distance, to the coastline, the sea, and the horizon.

The subject land and the existing house, are in full view from objectors' houses. The view of the house constitutes a small part of the immediate to middle distance view down the face of the slope

to the sea.

The panoramic views of the sea from the upper levels of the objectors' houses are unaffected.

The proposed alteration, adding an upper storey to the existing house on the subject land would marginally affect the existing situation. The panoramic views from the objectors' houses would remain. The immediate to middle distance views across and down the face of the slope to the sea, would include a view of the new level. The angle of view affected, would be very small. The change would be to substitute the new level in a narrow angled section of the view.

Because the objectors are located higher, and generally to the north of the subject land, loss of sunlight is not an issue affecting them.

The application which is the subject of this appeal was made with the object of obtaining the additional space considered necessary and in keeping with the appellants' wish to use the house as a permanent residence. After discussions with their architect the appellants concluded that an additional level would not be detrimental to existing amenity in the area, and that it was a logical choice. The houses on each side of the subject land are substantial; the house immediately to the south, which is located close to the common boundary is not greatly affected, and has the potential to carry additional storeys in the future.

All 3 objectors therefore have houses with panoramic views of breath taking proportions. In the case of the Van Laar house this has been achieved with a 3 storey house rising a maximum of almost 10 metres above natural ground level in places. In the case of the Woodburn and Smith houses, this has been achieved by maximising the superior height of their blocks.

The proposed upper level to the house on the subject land will constitute a variation and addition to a relatively small feature in the middle distance view from the Woodburn and Smith houses, and would be accordingly, of little or no consequence.

The impact on the van Laar house has to be considered as part of the overall aesthetic relationship between the two houses. The Van Laar house dominates the amenity of the subject land in every respect. Its height and bulk is formidable, its impact on privacy at the subject land is very considerable. The proposed addition to the house on the subject land redresses the situation somewhat, without causing further imbalance or repercussions to houses in the surrounding area. It is certainly no more or less than necessary to redress the imbalance.

The van Laar house retains its panoramic views from the upper level, and most of the view from middle levels.

This most certainly is not a case where the whole, or the best part, of the view would be lost. Even if it were, the need to redress imbalance between the two buildings would have to be weighed up in favour of the addition.

The appellants therefore contend that the grounds of refusal and the objections relating to view cannot be sustained. The proposed upper level would not unfairly or unreasonably deprive the objectors of a view. At most a few degrees of the middle distance would be varied in an inconsequential fashion.

Although the Responsible Authority relied on three grounds of refusal, embracing loss of amenity generally, and asserting that the proposal would be contrary to orderly and proper planning, submissions relating to views have occupied by far the most time during the hearing. It would be fair to say that other issues could be resolved, consistently with existing conditions, by appropriate conditions.

As a matter of reasonable expectations, it could not be contended that a totally unimpeded panoramic view from any level at any of the Objectors' houses is to be expected as part of the continuing amenity. Some degree of impediment must be expected from garden trees and houses."

Mr. Porter called Mr. Chakir, the Architect for the proposal, as a witness. Mr. Chakir said:

"The van Laar house has been designed with a definite focus to the view to the south west. Its view shed therefore extends over the Kempe property. More particularly this property has a substantial impact on the privacy of the Kempe property, which will presumably be addressed upon maturation of the vegetation required in by the Van Laar permit.

My design solution was to maintain the existing building footprint, utilising the existing stair and circulation arrangements. This approach would have minimal impact on the outlook enjoyed by the Woodburn and Smith properties, it would recognise the existing vegetation heights to the south, and would anticipate the construction of higher buildings on the properties to the south of the site whilst, in the longer term, maintaining an ocean outlook from the Kempe property.

The design solution is not unusual for the locality, nor is it outrageous. It would result in a building form which is similar to many in the surrounding area.

The design solution, unlike the Van Laar solution, would not dominate the locality. The building height at around 9.6 metres is not excessively high, nor given its siting, would the additions dominate the skyline when viewed from the foreshore area. Buildings in the immediate area have heights of 8 to 10 metres.

The proposed additions would create a building with a floor area of around 418 square metres, which would include formal and informal living and dining areas, a substantial master bedroom with ensuite, two further bedrooms and a study. By all measures a good sized but not extravagant family home.

Conclusion

The proposed alterations upgrade a modest building and would provide an improved standard of accommodation for a family home.

The design solution is determined by the consideration of a number of physical and non-physical characteristics or demands.

The fortuitous siting of the existing building creates the opportunity for an additional floor level without dominating the locality, maintaining the building profile below the ridge line.

The design solutions maintains and reinforces the principle of view sharing, and recognises and responds to the opportunities for the construction of additional levels on buildings to the south of the site."

Mr. Demeo, in an oral closing submission for the Responsible Authority, emphasised that the view of the Bluff was a "jewel in the crown" which was enjoyed by the Respondents/Objectors, and this proposal could result in that enjoyment being impaired, having an effect on the amenity they currently enjoy.

Mr. Wright, in an oral closing submission for the Respondents/Objectors, said this was a case about a view which would be decided by a view, ie. my view of the area from the subject site and the properties of the Respondents/Objectors. Mr. Wright said that there was no argument that there is no legal ~~right to a view~~, as there is no legal right to be free from overshadowing, impact on privacy or overlooking. Mr. Wright said that amenity enjoyed by persons is important, and in fact the planning control does require a permit for this proposal. Mr. Wright said that the impact on the van Laar property was very significant, but he said that the most significant impact was on the Smith property. He said that there was a dramatic effect on the Smith property, a significant effect on the van Laar property, and an impact of some consequence on the Woodburn property. Mr. Wright said any proposal for a third storey on any other dwelling would require a permit, persons affected by such proposal could object, and if the proposal was considered unreasonable then it could be refused. Such matters must be considered on a case by case basis. Mr. Wright drew a distinction between rural, coastal and urban situations. Mr. Wright reiterated the basic propositions which were set out on pages 2 and 3 of his written submission, and have been quoted on pages 9 and 10 of these Reasons.

The dwelling at 54 Baker Street, that of Mr. van Laar, was the subject of a permit issued by the City of Greater Geelong and dated 1 February 1996. The author of the Officer's Report was Sarah McDonald, who it will be recalled was the author of the report for the subject permit application which was criticised for the Respondents/Objectors. The summary to the Officer's Report on the permit application for 54 Baker Street read as follows:

" The site is located on the south-west corner of Baker Street and Presidents Avenue. The site is steeply sloping, with a drop of some 7.0m from the north-east corner to the south-west corner of the site.*

** It is proposed to construct a three storey dwelling on the site. The height of the dwelling is approximately 8.8m, however the height above natural ground level ranges between 5.0m and 9.8m.*

** Two objections, and one "comment", have been received. One of the objections has been withdrawn. After a consultation meeting between the objector and applicant, and the submission of amended plans and further information, it is considered that the objections have been satisfactorily resolved.*

** The proposal is considered appropriate for the site and is not expected to have a detrimental impact on adjacent properties. As such it is considered that the application should be supported."*

There were two objections to that permit application, one from Mr. Smith, the owner of 53 Baker Street and a Respondent/Objector in the subject Application for Review, and also an objection from the former owner of the subject site. The objection of Mr. Smith was withdrawn, and the Officer's Report dealt in detail with the concerns of the former owner of 52 Baker Street. The report concluded:

"It is expected that the proposal will be highly visible, particularly when viewed from the foreshore area to the south-west. However, with planting of trees up to 8m in height and the use of muted tonings on the external area of the building, it is considered that the building can be harmonious with its surroundings. Part of the reason that the building will be highly visible is the unique topography of the site and its vicinity. In this context, the building could be considered to accentuate the topography. Also, other developments that have been approved in the general locality are anticipated to have a similar high profile and visibility, in particular the double storey, nine unit development at 41 - 43 The Esplanade, which is on the cliff virtually above this site. It is therefore considered that the proposal will not have a detrimental impact on the amenity of the area due to its appearance.

The proposal is considered to maximise the sites features (i.e. views to the ocean, steeply sloping block) whilst limiting the impact on adjoining properties. As such the proposal is considered appropriate for the site and it is recommended that the application be supported."

Mr. Demeo tendered a copy of the Decision in Appeal No. 1996/34316 Dr Barry Reid v City of Greater Geelong, which was appeal against the decision of the Responsible Authority to refuse to grant a permit for a third storey extension to a dwelling over 7.5 metres in height at 123 Dare Street, Ocean Grove. Mr. Terrill allowed the appeal and directed that a permit not be granted. Mr. Wright quoted the following passage from the Reasons for Determination:

"The Tribunal is of the opinion that the third storey addition will create an amenity loss for those in the immediate area and create a dominant feature on the hill when viewed from the south as noted in the photographs presented by Ms Hose of the existing hillside. In this instance there is no need to exceed the 7.5m height to obtain views and as stated, if permitted to exceed that height, amenity will be affected."

Mr. Terrill was no doubt dealing with the particular merits of that appeal, and whilst I acknowledge that there will be some loss of amenity for the Respondents/Objectors in the subject Application for Review I do not consider that the paragraph quoted can be applied here without any reservation.

Mr. Demeo tendered a copy of the Decision in Appeal No. 1995/42700 R & L Taylor & Ors v City of Greater Geelong, which was an appeal against the decision of the Responsible Authority to grant a permit for six double storey units at 77 Dare Street, Ocean Grove. Mr. Byard allowed the appeal in part subject to inclusion of a permit Condition 1(f) which would require ridged roofs to be replaced with flat roofs and heights of units reduced to protect view. Mr. Wright referred to two paragraphs in the Reasons for Determination in

R & L Taylor & Ors v City of Greater Geelong, as follows:

"The other, I think important matter, that seems to have been completely overlooked or disregarded is the amenity of the neighbouring property to the east so far as its views are concerned. I suspect that the Applicant and his draftsman have completely forgotten about the Taylor property and the Taylors' interest in their view. The proposal represents, in my view, a significant diminution in the amenity of the Taylor land.

It is true to say that the segment of the view blocked out by the proposed new structure is a minor section of a wide spectrum of view representing only 20-30° of a view that exceeds 180° from east to west. What this mathematical approach overlooks is that the part blocked out is the crucial and best part of the view. The "jewel in the crown" so to speak. The loss of 50 or 60% of the view in other segments would not be as detrimental as the loss of this part of it."

As I have already mentioned, Mr. Wright cited *Tashounidis v Shire of Flinders* 1 AATR 116. Mr. Buckley said at page 118:

"It is necessary and prudent to set out the legal position regarding ~~rights~~ to a view. Courts have held that there is no legal right to a view. One of the more recent decisions was handed down by the New South Wales Land and Environment Court in the case of Anthony & Anor v Manly Municipal Council heard on 4 September 1985 (reported 1985 E.L.R. 0110). The Court held that nearby residents who objected to the erection of a second storey to a dwelling which commanded panoramic views has acquired no freehold or easement rights which entitled them to prohibit the reasonable development of other property because they wished to enjoy a view over and around that property.

While accepting those legal decisions, protection of an existing view is considered to be a relevant town planning consideration to which regard should be had when making a planning decision. The Tribunal accepts the statement, which was quoted by Mr. Bartley in his submission, set out by a division of the Planning Appeals Board in its determination of Appeal No. P86/542 when it stated:

"... There are valid community expectations and town planning obligations that later developments would necessarily be constrained in their height, size, orientation and location to give a measure of protection to the factors enjoyed by earlier buildings, especially light, sunlight, privacy and views. On the other hand the later development also is entitled to a reasonable enjoyment of the same factors and should not be so constrained by the presence of earlier dwellings to make its reasonable enjoyment of those factors virtually negligible if not impossible. It is clear that what must be achieved is a balance in the reasonable desires of competing interests. In questions of amenity the emphasis must be on reasonableness."

Mr. Porter made reference to Appeal No. 1995/43000 *R J Henderson & Ors v Hobsons Bay City Council* in which I said:

"In Appeal Nos. 1995/843 and 2048, Ariss and Morow-Griffin v Surf Coast Shire and Peter Mills & Associates, Mr. Barr said:

"The generally accepted principles to be applied in matters involving views were set out in Tashounidis v Shire of Flinders and others 1 AATR 116 and Clausen v Shire of Mornington and others 4 AATR 125. Those principles were stated in the determination of Appeal No. 1992/31994, J.B. Young v Shire of Winchelsea and others which related to a proposed detached house at 32 Richardson Street, Lorne. The principles are quoted below with approval:

"(a) there is no legal right to view;

(b) views form part of the existing amenity of a dwelling and their loss is a relevant consideration to take into account;

(c) the availability of views must be considered in the light of what constitutes a reasonable sharing of those views; and

(d) added emphasis will be placed on considerations (b) and (c) above if the question of views is specifically addressed under the Planning Scheme."

Mr. Wright rightly drew a distinction between an urban situation, and a rural or coastal location in an essentially recreational area, and submitted that in the latter situation the preservation of a view

is far more likely to be a relevant aspect of amenity. Whilst I relied on the passages quoted above in *R J Henderson & Ors v Hobsons Bay City Council*, those passages did in fact relate to a rural or coastal location in an essentially recreational area.

Application for Review No. 1998/13017 *I & R Edwards, M J Rodda and Department of Natural Resources and Environment v Surfcoast Shire Council* was an Application for Review of the Responsible Authority to grant a permit to construct a building of more than one storey with a height greater than 7.5 metres above ground level. This application was heard concurrently with Application for Review No. 1998/26838 which concerned Conditions. The subject site was at 1 Carnoustie Avenue, Jan Juc. Mrs. Monk allowed the Application for Review of the decision to grant a permit, and directed that a permit not be granted, and also disallowed the Application for Review of Conditions. It will be noted that the Department of Natural Resources and Environment was an Applicant for Review/Objector, and was represented at the hearing. In its Grounds the Department said:

"The Department objects to the determination to grant a permit on the grounds that the proposal is detrimental to the visual amenity of the coastal foreshore, in particular:

i) The form of the development is visually insensitive and overbearing in the context of the coastal landscape.

The form, bulk, siting and height (including roof-top deck) of the building is inconsistent with and dominates the natural landscape and other buildings in the area. The Victorian Coastal Strategy (1997) has an objective for improving design outcomes for buildings and structures in foreshore and coastal areas on both public and private land. The proposal does not appear to maintain or enhance the integrity of the coastal environment and landscape character as required under the Strategy.

ii) The development will result in a significant loss of public satisfaction and amenity.

The development maximises potential views from the property to the exclusion or disadvantage of Crown land users. Views both to and from the coast and of the vegetation are significant assets of this part of the coastline. The development significantly detracts from the aesthetic and landscape values and experience for users of the adjacent."

In the Reasons for Order Mrs. Monk said:

"It was the Department's submission, reinforced by accurately scaled elevations of the proposed dwelling showing neighbouring dwellings and foreshore vegetation, that the height and mass of the proposed building was such that it could not "complement the surrounding coastal landscape". In its submission the development was visually insensitive and overbearing in its context. Mr Brooks noted that the prevailing height of the coastal heathland vegetation - especially following further clearance of weed species such as coastal Tea Tree - was around 1 to 2.5m and that the façades of the building most visible from the coastal reserve would be substantially higher and more extensive than those of neighbouring dwellings. It would, he argued, have as a result a greater visual impact.

The Department contended that the proposed building, by reason of its visual bulk, did not meet the goal of the cultural and aesthetic siting and design guidelines which is for structures to be "sited and designed to culturally respect their setting and visually complement the surrounding coastal landscape". The Department summarised the relevant siting and design standards as follows:

Mrs. Monk also discussed other issues including overshadowing, loss of view and overlooking. I consider however that I & R Edwards, M J Rodda and Department of Natural Resources and Environment can be distinguished from the subject Application for Review because the Department of Natural Resources and Environment did not play such a significant role in the subject Application for Review, even though I acknowledge that Mr. Demeo made reference to the Victorian Coastal Strategy 1997 in his closing submission.

It was agreed that there is no legal **right to a view** but, as stated by Mr. Wright, in appropriate circumstances the preservation of a view or interference with a view will be a relevant planning consideration. A permit is required because a third storey and a height in excess of 7.5 metres is proposed. The granting of such a permit would impact on views enjoyed by Respondents/Objectors, and concepts of reasonable sharing of views and fairness become relevant.

The Respondents/Objectors were concerned about the extent of view they would lose, including the likelihood that they could lose a view of Flinders Point (the Bluff), and the view of the water feature referred to as *"The Bommie"*, and also views of passing ships and occasionally whales.

Mr. Rogers, who was called as an expert witness by Mr. Wright, discussed the views enjoyed by the Respondents/Objectors, provided his assessment of the impact of the proposal on those views, and spoke to plans and diagrams prepared by Mr. Woodburn. It would seem that the van Laar residence has been planned to take maximum advantage of the view over the subject site. The upper level is bedrooms and from that level the view may not be seriously affected. The view at the middle level would be affected, but the extent of that effect would depend from what part of that level a person was viewing. It would appear from the Officer's Report on the permit application for the van Laar residence that the former owner of the subject site did object very strongly to a permit being granted for that residence. The objections seem to include overlooking, overshadowing and mass and bulk although some of the concerns were no doubt addressed in conditions. I do not think it could be a legitimate expectation of the van Laars that it would not be possible for an application to be made for another storey to the dwelling on the subject site, which is currently rather lower in profile and demonstrates currently less mass and bulk than the property on the van Laar property. The van Laar property will still enjoy significant views although those views may not be from the situations in their dwelling from which they would desire to have significant views.

I note that Mr. Smith was an objector to the grant of a permit for the van Laar residence, but he withdrew that objection. It seems to me that Mr. Smith has already suffered a loss of the view that he had previously enjoyed as a result of the construction of the van Laar's residence. He is understandably concerned that the subject proposal will result in a further loss of the view that he now enjoys.

Mr. Wright in his closing submission described the impact on views currently enjoyed from the Woodburn property as being *"of some consequence"*. The A frame construction of the Woodburn dwelling tends to orientate views from within the dwelling away from the subject site, although the view from the balcony at the front of the dwelling would certainly be affected.

The proposed additional storey on the dwelling on the subject site would improve the view available from that property, but it would also in the words of Mr. Porter provide *"the additional space considered necessary and in keeping with the appellant's wish to use the house as a permanent residence."* Mr. Porter noted that the houses on each side of the subject are substantial,

and he said that the house immediately to the south is not greatly affected. He said that that house *"has the potential to carry out additional storeys in the future"*. Such an outcome would of course be subject to the owner of that house making application for, and obtaining, an appropriate planning permit.

Mr. Wright said that this was a case about a view which would be decided by a view, ie. my view of the area from the subject site and the properties of the Respondents/Objectors. Having had the benefit of that view, and having carefully re-read the submissions and evidence, and studied the photographs and plans and diagrams that were tendered during the four days of this hearing, I accept that allowing this Application for Review and directing that a permit be granted would result in some diminishing of the views enjoyed by the Respondents/Objectors. Whilst it is accepted that there is no **right to a view**, it is also accepted that interference with a view will result in some loss of amenity enjoyed. What is important is that there be an equitable sharing of views. The fact that a particular dwelling is erected first and has views over other land on which dwellings have not yet been erected, or relatively modest dwellings have been erected, does not confer a permanent right to the whole of the view enjoyed to be maintained. Consideration of development in the future must have regard to a reasonably equitable sharing of views. This is particularly so when there are controls in the planning scheme with the respect to the number of storeys and the height of dwellings.

I have come to the conclusion that allowing this Application for Review and directing the grant of a permit, whilst restricting views currently enjoyed by Respondents/Objectors, would still result in an equitable sharing of views amongst the various parties. I do not consider that the proposal would be so detrimental to the amenity of adjacent properties in the general area that the Application for Review should be disallowed. I also do not consider that the proposal is inconsistent with the predominant character of the neighbourhood having regard to the size of some of the dwellings in the neighbourhood, nor do I consider that the proposal is contrary to orderly and proper planning of the area.

I have therefore come to the conclusion that the Application for Review should be allowed, and I will direct that a permit, subject to conditions, be granted.

ORDER

The Order of the Tribunal is that the Application for Review is allowed and a permit is granted for additions raising the existing building height at 52 Baker Street, Ocean Grove above 7.5 metres and the construction of a third floor, subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the revised plans substituted in the permit application by Order of the Tribunal dated 14 August 1998, but modified to show the external fabric, including the roofing, in muted tonings of non-reflective material so as to blend with the environment and preserve the aesthetic amenity of the area.

2. The site must be drained to the satisfaction of the Responsible Authority. No storm water, sullage, sewerage or polluted drainage must be allowed to drain or discharge from the land to adjoining properties, to the satisfaction of the Responsible Authority.

3. The use and development as shown on the endorsed plans must not be altered with the written consent of the Responsible Authority.

4. *This permit will expire if one of the following circumstances applies:*

a) The development is not started within two years of the date of this permit.

b) The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

The Responsible Authority is directed to issue a permit in accordance with this Order pursuant to Section 85(1)(b)(ii) of the Planning and Environment Act 1987.

DATED

G.J. SHARKEY

MEMBER

GJS/MW



Victorian Civil and Administrative Tribunal

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Kempe v City Greater Geelong [1999] VCAT 472 (8 April 1999)

Last Updated: 18 May 2000

IN THE VICTORIAN CIVIL AND

ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING LIST

APPLICATION FOR REVIEW NO. 1998/39188

PERMIT APPLICATION NO. 1227/97

HEARD AT MELBOURNE ON THURSDAY 6 AUGUST 1998, TUESDAY 20 OCTOBER 1998, WEDNESDAY 21 OCTOBER 1998 AND MONDAY 25 JANUARY 1999 WITH AN INSPECTION IN THE COMPANY OF THE PARTIES AND/OR THEIR REPRESENTATIVES ON FRIDAY 23 OCTOBER 1998

TRIBUNAL

GERARD SHARKEY, MEMBER

PARTIES

Applicant for Review/

Permit Applicant S. Kempe

Responsible Authority City of Greater Geelong

Respondents/Objectors B. Woodburn & ors.

NATURE OF APPLICATION

Application under Section 77 of the *Planning and Environment Act 1987* (the Act) for a review of a decision to refuse to grant a permit.

PROPOSAL

Additions raising the existing building height above 7.5 metres and construction of a third floor.

THE LAND

Address

52 Baker Street, Ocean Grove

Dimensions

Frontage 20.12 metres, depth 42.67 metres, area approximately 903 square metres.

PLANNING SCHEME AND ZONING

Greater Geelong Planning Scheme, Residential A Zone

GROUND OF REFUSAL

1. The proposal will be detrimental to the amenity of adjacent properties and the general area.
2. The proposal is inconsistent with the predominant character of the neighbourhood.
3. The proposal is contrary to the orderly and proper planning of the area.

GROUND OF APPLICATION FOR REVIEW

1. The proposal would not be materially detrimental to the amenity of the neighbourhood or enjoyment of adjacent properties.
2. The proposal would not be contrary to the predominant character of the neighbourhood.
3. The proposal is not inconsistent with the orderly and proper planning of the locality.

APPEARANCES

Mr. T. Demeo, Town Planner, for the Responsible Authority.

Mr. H. McM. Wright QC and Mr. C. Townshend of Counsel, instructed by Simon Jaques and Co. Solicitors, for the Applicants for Review/Objectors. Mr. Wright called Mr. B. Rogers, a Consultant Planner of AT Cocks Consultants, as an expert witness. Each of the Respondents/Objectors were also called as witnesses.

Mr. C. Porter of Counsel, instructed by Coulter Burke Solicitors, for the Respondent/Permit Applicant. Mr. Porter called Mr. T. Chakir, the Architect for the proposal, as a witness.

Written submissions, plans, photographs and other documents have all been considered in arriving at the Order in this matter, and have been placed on the Tribunal file, except for the large photographs.

I carried out an inspection on Friday 23 October 1998 in the company of the Applicant for Review/Permit Applicant, the Respondents/Objectors and a representative of the Responsible

Authority.

BACKGROUND

This was a hearing of an Application for Review of a decision of the Responsible Authority to refuse to grant a permit for development of additions to a dwelling at 52 Baker Street, Ocean Grove, which would raise the existing building height above 7.5 metres and also construction of a third floor.

On Day 1 Mr. Porter, for the Applicant for Review/Permit Applicant, said that revised plans had been circulated on 28 July 1998, and requested that the permit application be amended by substituting the revised plans in the permit application. Mr. Wright, for the Respondents/Objectors, said that there had been inadequate time to consider the revised plans, and there was some confusion about what was actually proposed. Mr. Wright also said that there could be other residents who had not objected, but may consider that they are affected by the revised plans.

Mr. Porter called Mr. Chakir, the Architect for the proposal, who provided details of the changes proposed. I made Directions that the permit application be amended by substituting the revised plans in the permit application, and that further information be provided to the parties and to other persons who might be affected. The hearing was adjourned to Tuesday 20 October 1998. The Directions and accompanying Reasons were dated 14 August 1998.

Mr. Demeo, in his written submission for the Responsible Authority, described the subject site and the locality as follows:

"The site is located on the south side of Baker Street, one property to the west from its intersection with President's Avenue. The site has a frontage to Baker Street of approximately 21m and a depth of 43m, resulting in a total area of 903sq.m.

The property is developed with a two storey detached dwelling which is set only 4.5m from the rear property boundary. It is estimated to be between 6.5m and 7.6 metres above natural ground level.

The submission in support of the application states that "...subject land rises to the north (Baker Street), but is substantially flat, apparently having been cut into the 'hill' at the time of construction of the dwelling. The topography of the area is such that the land generally rises towards the north and east (Baker Street and Presidents Avenue) ..."

The property to the east (on the corner of Baker St and Presidents Ave) is developed with a three-storey dwelling constructed on the northern third of the site. The property to the west is developed with a two-storey dwelling, also on the northern part of the site. The surrounding area is generally developed with detached dwellings.

LOCALITY

Baker Street is an unconstructed road with no kerb and channel.

The streetscape is characterised by a variety of single and double storey dwellings, though one three-storey dwelling exists to the east. This is the only three-storey dwelling in this section of Baker Street between Field Street and Presidents Avenue.

All lots abutting the subject site are developed with residential housing."

Mr. Demeo described the proposal as follows:

"It is proposed to construct an additional storey to the existing dwelling, creating a three-storey dwelling with a total maximum height between 9.2m and 9.4m above the existing ground level. The proposed addition will generally follow the footprint of the existing building.

The addition to the dwelling will incorporate changes to the floor plan layout of the existing two storeys. The third level will comprise living areas, dining room and kitchen facilities. A new deck is to be constructed along the northern facade of the building, in line with a similar deck on the existing level below. More substantial deck areas are to be constructed along the southern and western facades of the building. The work will include rendering the exposed brickwork, installing additional windows on the existing levels and modifying the existing building at stairwell, entry and balcony areas."

The properties of the Respondents/Objectors are 51 Baker Street which is directly opposite the subject site on the north side of Baker Street, and is owned by Famwood Pty Ltd, the trustee company for the Woodburn Family Trust, 53 Baker Street which is on the north-west corner of Baker Street and President's Avenue and is owned by Mr. R. Smith and Mrs. E. Smith, and 54 Baker Street which is on the south-west corner of Baker Street and President's Avenue, and which is owned by Mr. B. van Laar, and which on its western boundary abuts the subject site.

PLANNING PROVISIONS

The Residential A Zone is the subject of Clause 50 of the Regional Section of the Greater Geelong Planning Scheme. The purpose of the zone includes:

" To provide predominantly for housing.*

** To provide the opportunity for a variety of residential densities and dwelling types.*

** To ensure that residential development is of good quality cost-effective design that is responsive to the residential character and amenity of the area and housing needs of the population.*

....."

A dwelling is a Permit not required - Section 1 use pursuant to Clause 50-1.1, but Section 50-3.3 Building Height, provides:

"Buildings must not contain more than 2 storeys or be over 7.5 metres in height above natural ground level except with a permit."

A permit is therefore required for this proposal.

Clause 18 sets out Guidelines for approval, and Clause 18-1 sets out general guidelines that must be considered before deciding on an application as follows:

** The State, regional and municipal planning policies.*

** The purpose of the zone, reserved land or control.*

** Orderly planning of the area.*

** Effect on the amenity of the neighbourhood.*

** Any matter required to be considered in the zone, reserve or control.*

and if appropriate:

** The existing use and the possible future use and development of the land and all contiguous and adjacent lands.*

** The size and shape of the land to which the application relates and the siting of the proposed development in relation to the size and shape of the adjoining development.*

** Whether the proposed means of entrance to and egress from the site are adequate and whether adequate provision has been made for the loading, unloading and parking of vehicles on the site.*

** Whether adequate provision has been made for the landscaping and treatment of the site, including maintenance.*

** The effect of the development of the land upon the use or development of other lands which have a common means of natural or artificial drainage.*

** Proximity of the land to any reserved land.*

** The provision of services of water, sewerage, drainage, electricity and gas."*

REASONS FOR ORDER

Mr. Demeo, in his written submission for the Responsible Authority, addressed the grounds of refusal to grant a permit. Mr. Demeo concluded:

"The proposed third storey addition which is the subject of this appeal is out of context with the character of the existing streetscape and the locality.

The purpose of the structure is to expand ocean views which are presently enjoyed at second storey level. By increasing those views with the additional habitable rooms, the proposed development will intrude on the privacy and outlook of adjoining properties."

Mr. Demeo tendered a copy of the Officer's Report for this proposal. Mr. Wright on behalf of the Respondents/Objectors, submitted that the Officer's Report had been prepared without the particular officer looking at the subject site. Mr. Demeo said that the Officer who prepared the report had visited the site, but he was not sure if the Officer who actually delivered the report to the Council had seen the site. The Tribunal and its predecessors have said again and again that Officer's Reports are one matter that can be considered by the Tribunal, but it is the responsibility of the Responsible Authority to make its own decision on a permit application, irrespective of the recommendation contained in an Officer's Report. The summary at the commencement of the Officer's Report included the following:

"It is considered that the objections to the application cannot be substantiate such that refusal of the application would be warranted. It is considered that the proposal will not result in an unreasonable detriment to the amenity of the area and that the application should be supported."

With regard to the impact on views currently enjoyed by the Respondents/Objectors, the Officer's Report said:

"The objectors are the owners and/or occupiers of the property directly abutting to the east (no. 54), the property directly opposite to the north (no. 51) and the property diagonally opposite to the north-east (no. 53). All of these objectors are concerned in respect to the potential loss of view to the south and south-west from the living areas and balconies/decks of their existing dwellings. All of these dwellings enjoy views to the ocean and Barwon Heads bluff from their properties, with the three storey dwelling at 54 Baker Street only being recently constructed to take advantage of the views currently enjoyed by the site. The construction of the proposed third storey to the subject dwelling will remove a portion of the view enjoyed by the adjacent dwellings, to varying degrees, but will not totally obliterate the views enjoyed by any of these dwellings.

.....

It is relevant to note that the existing dwelling is developed at the rear of the property, on the lowest part of the block. The location of the dwelling on the lower part of the block assists in limiting the impact of the third storey dwelling on the views, particularly for the properties on the northern side of Baker Street.

It is considered that it cannot be justified that the loss of views enjoyed by adjacent properties would be such that they would have a significant or unreasonable impact on the amenity of these dwellings."

In response to an objection that the increase in height proposed would not be keeping with the harmony between the natural landscape and the built environment, the Officer's report said:

"In support of the application, photographs of the view and horizon line looking north from the foreshore area have been submitted to show that the proposed additional storey will not negatively impact on this view. Due to the location of the existing dwelling on the lowest part of the block, the backdrop of the existing three storey dwelling at 54 Baker St and the two storey, pitched roof dwelling at 50 Baker St, and the fact that the land behind (to the north) of the subject site is higher, the proposed additional storey will not be an intrusion into the horizon."

The Officer's Report concluded:

"The key concern of objectors in relation to the proposal is the potential for the loss of the views currently enjoyed from their properties. It is undeniable that the additional storey to the dwelling will reduce the views from adjacent properties to the ocean and Barwon Heads bluff. However, these properties will retain reasonable views to the ocean, the bluff and the surrounding area. It is considered that the loss of view that will result from the proposal could not be justified as an unreasonable detriment to the amenity of the area. The other matters raised by objectors are considered not to be able to be justified.

It is considered that the proposal is appropriate on the basis that it will not result in unreasonable detriment to the amenity of the adjacent properties. It is therefore recommended that the application be supported."

Mr. Wright spoke to a written submission for the Respondents/Objectors. With respect to their properties, Mr. Wright said:

"Each of the properties referred to above is located and built to enjoy ocean, beach and foreshore

views. There can be little argument that the views possessed by these properties are a significant part of their amenity.

Likewise, the house on the subject land already enjoys panoramic views. The Applicant seeks to add a third storey to the existing dwelling to obtain an even better view. It is submitted that the improvement of this view would be at the expense of the outlooks currently enjoyed by the objectors' properties. In essence, the proposed development would not result in a fair distribution of the available view for all of those properties who share it.

Basic Proposition

There is no legal **right to a view**. However, in appropriate circumstances, the preservation of a view, or interference with a view, will be a relevant planning consideration.

It is potentially no less a relevant or legitimate planning consideration than the preservation of sunlight, the avoidance of overshadowing or freedom from the visual impacts of building bulk.

It is submitted that whether interference with a view is a relevant planning consideration depends upon the reasonable and legitimate expectations of those who enjoy the view. In this regard it is submitted that there are three relevant factors.

a) First, the location of the properties concerned. There is clearly a distinction between an urban situation, and a rural or coastal location in an essentially recreational area. The preservation of a view is far more likely to be a relevant aspect of amenity in the latter situation.

b) Second, the nature of the applicable planning control. It is submitted that there is a clear difference between situations where construction to a particular height is "as of right, and situations where a planning permit is required to built above a specified height. In the second case interference with views enjoyed from adjoining properties will be a relevant planning consideration, particularly if the criteria for the exercise of planning discretion include a consideration of the amenity of the neighbourhood.

c) Third, the basic objectives of planning legislation in Victoria require the Tribunal to look at the "fairness" of the situation (see s. 4 Planning and Environment Act 1987). Where the existence of a panoramic view is an asset enjoyed by a number of properties it is a question of allowing a reasonable share of the asset to each property, and not permitting any one property to interfere unreasonably with the share of other properties."

Mr. Wright said that the Tribunal has consistently identified views with the concept of residential amenity, and the degree to which views form part of the reasonable expectations of a resident will depend upon the location of the dwelling, the development controls, and the fairness of the situation. Mr. Wright said that in coastal areas where there is a height limit, a view is a more important factor in determining amenity of a property. He said that each of the properties in a coastal hillside situation is entitled to a share of the same view and a measure of protection is to be afforded to those who have previously invested in the view. Mr. Wright said this is not to say that new development is not also entitled to a view provided it is within reason. Mr. Wright cited *Tashounidis v Shire of Flinders* 1 AATR 116 which he said has been followed by the Tribunal on many occasions. He said that the situation does not invite an examination of who has the best view, or whether each property should have the same view. He said that the property of Mr. van Laar at 54 Baker Street, is higher up the slope with no immediate neighbour to the rear. He said that this case is about whether the view shed at the present time is reasonably shared. Mr. Wright went on to say:

"There are important components of the views enjoyed by the properties in this part of Ocean Grove. Each of these components is enjoyed to a greater or lesser extent depending on the viewing point.

a) Most significant is the view of, and importantly to Flinders Point (the bluff). This is an impressive feature, more so than photographs can do justice. The view to and around the bluff is important because the viewer sees the bluff rise out of the expanse of water before it, and can see waves and foam swirling around the base of it.

b) Of course valued views take in an expanse of ocean and, if possible breaking waves on the foreshore.

c) Of particular interest to the Objectors is the view to a water feature referred to as "The Bommie". This is a wave formation which appears and disappears over an underlying reef formation. The view to the south is also of passing ships and, on occasions, whales."

Mr. Wright argued that the existing two storey dwelling on the subject site enjoys commanding views from its first floor living areas, and he said that it appears to be constructed to maximise view, although it falls within the as-of-right building envelope. He said that this dwelling appears to have been sited towards the lower part of the subject site which he said is logical because it avoids any interruption to views from the dwelling to the west, which predates it. He said that the development of the land to the east, Mr. van Laar's property at 54 Baker Street, has occurred since, and as with the dwelling of the Applicant for Review/Permit Applicant has located its living areas on this second floor. Mr. Wright argued that the long-standing planning control, which limits buildings to two storeys and 7.5 metres in height, gives residents a reasonable and a legitimate expectation that any building which exceeds these limits will not significantly impact on their view.

Mr. Wright went on to refer in detail to the impact on the proposal of the views currently enjoy by the Respondents/Objectors, and he called Mr. B. Rogers, a Consultant Planner, to give evidence on the impact of those views.

Mr. Rogers said that he had visited the subject site and the surrounding area, and had viewed the subject site from each of the properties of the Respondents/Objectors and from the foreshore area. He said that he had also viewed plans and diagrams prepared by Mr. Woodburn, an Architect and a member of the Family Trust which owns 51 Baker Street, which illustrate the existing "view sheds", or "viewing arcs", of the properties of the Respondents/Objectors, and interpreted the impact of the proposal on those views. Mr. Rogers said:

"Based on my assessment of the proposal I consider the relevant issues to be:

** the extent of the proposal's impact on the views available to the main areas of the existing residences at Nos. 51, 53 and 54 Baker Street; and*

** the impact of the additional physical bulk of the proposed third level approximately 15 metres to the south west of the main living area of No. 54 Baker Street."*

Mr. Rogers said that he had assessed the impact on views available to the three properties of the Respondents/Objectors, and had reviewed the diagrams prepared by Mr. Woodburn, which illustrate the existing "view shed" from the main living areas of the three properties. He considered that those "view shed" diagrams accurately affect the impact of the proposed additional level at 52 Baker Street. Mr. Rogers said:

"The analysis illustrated on the diagrams has used the central point at the south western facade of the main living area of each of the three properties as the reference point for the analysis. These diagrams identify:

- * The total existing viewing arc.*
- * A primary viewing arc, which incorporates the view over the ocean and the view to "the Bluff".*
- * The principal axis or view line to the Bluff.*
- * The existing interruptions to the viewing arc available to each property.*
- * An indication of the interruption to the viewing arch that would be caused by the proposed additional level and 52 Baker Street."*

Mr. Rogers went on to summarise the analysis for 51, 53 and 54 Baker Street.

Mr. W. Woodburn spoke to a written submission. Mr. Woodburn has been a registered architect since 1951. He is a Director of Famwood Pty Ltd, the trustee company for his family trust, which is the proprietor of 51 Baker Street, where a residence has been situated which has been used continuously as a vacation house for the past 35 years. Both Famwood Pty Ltd and Mr. Woodburn in his own right are Respondents/Objectors. Mr. Woodburn spoke to a written submission which set out his objections to the proposal, and also described the preparation of photographs which he had prepared to illustrate the effect of the proposal.

Mr. B. van Laar, a Respondent/Objector of 54 Baker Street spoke to a written submission. Mr. van Laar said in his written submission:

"My property is located next to 52 Baker Street on the east side. Our property is located further up the hill. The aspect of our house faces South West, with traditional views of the bluff (there are no views towards the north or west or east. The home built is on the same axis and location as the previous historic Ocean Grove home (which was burnt down twelve years ago).

Before building our home we negotiated with the previous owners of 52 Baker Street and amended dramatically our plans to minimise overshadowing. These changes cost us an additional \$86,000 in construction and excavation costs.

Our aspect and general amenity will be severely affected by the proposed development. The sheer mass of the construction will significantly impact on our lifestyle in an area where we spend some 96% of our time as a family, in daylight.

The upstairs area, which is our parent's retreat and master bedroom, originally had plans for a larger living/family area but this was altered by negotiation with the previous owners of 52 Baker Street.

It should also be noted councillors actually visited our properties and judged for themselves on site, how our privacy, aspect and general amenity were affected. They unanimously upheld our objection. The council officers who supported the application did not bother to come into our home.

The councillors were Cr. Anthony Aitken, (chairperson for Councillors Hearing Panel), Cr. Ken

Jarvis (Major of Geelong) and Cr. Allana Goldsworthy (Solicitor).

Mr. R. Smith, a Respondent/Objector of 52 Baker Street spoke to a written submission and said:

"My Name is Reginald George Smith, I, my wife Elaine, and my family have enjoyed the coastal town ambience of Ocean Grove for 32 years, without exception, spending every Christmas and summer holidays in a wonderful surf beach environment.

We purchased our current holiday home at 53 Baker St in March 1983, having had 2 other beach side locations prior to that. The property location at Baker St had special appeal, being of the highest position on the Presidents Ave./Baker St. hill, directly overlooking the surf beach and Barwon Heads Bluff, thus affording a magnificent view of same.

Prior to the decision to purchase this property, I enquired with the then responsible authority 'The Bellarine Shire' as to the prospect of 3 story houses being permitted in the area. At that time, I was assured verbally that 3 story houses would not be acceptable and would be over height limits. This enquiry was made out of concern that an existing 2 story house at 52 Baker St. was directly in line and between the living area view points of 53 Baker St and the surf beach and Barwon Heads Bluff.

While our home is 2 story, the upstairs 2nd story is bedrooms. It is the ground floor living area that we spend most of the daylight hours and it is from there that our major angle of view focuses on the Barwon Heads bluff. It is my contention that the applicant proposes to improve his already excellent view perspective to the detriment of my viewing perspective. There is no doubt the applicants proposal would obliterate a major segment of my available viewing angle taking away the horizon, most of the Bluff and the ocean foreground.

I also contend that if the applicant was to be successful with the proposal and the on going potential -or trend that anyone and everyone may be successful with 3 story developments in the future, the disadvantage to the general community would be a very significant loss of amenity.

For many years I have had the vision of retiring at my home at 53 Baker St. and sharing the pleasantness of this coastal ambience with our 8 grandchildren as we did with our own children.

If a 3rd story addition to 52 Baker St was to become a reality, then I believe Ocean Grove is not the place I want to be in my twilight years as such a proposal would have a devastating impact and significant loss of our amenity."

Mr. Porter spoke to written submissions for the Applicant for Review/Permit Applicant. Mr. Porter said:

"The appellants own, and reside permanently at, the subject land at 52 Baker Street, Ocean Grove. The subject land has a frontage of 21 metres and a depth of 43 metres, and is located on the south side of Baker Street on a steep slope, facing generally towards the south west, offering magnificent views over the sea to residents on the hill at the eastern end of Baker Street.

The 3 objectors' properties are all located above the subject land. Natural ground levels at each of the objectors' properties are generally higher than at the subject land. The houses on each of the objectors' properties enjoy spectacular panoramic views through the middle distance, to the coastline, the sea, and the horizon.

The subject land and the existing house, are in full view from objectors' houses. The view of the house constitutes a small part of the immediate to middle distance view down the face of the slope

to the sea.

The panoramic views of the sea from the upper levels of the objectors' houses are unaffected.

The proposed alteration, adding an upper storey to the existing house on the subject land would marginally affect the existing situation. The panoramic views from the objectors' houses would remain. The immediate to middle distance views across and down the face of the slope to the sea, would include a view of the new level. The angle of view affected, would be very small. The change would be to substitute the new level in a narrow angled section of the view.

Because the objectors are located higher, and generally to the north of the subject land, loss of sunlight is not an issue affecting them.

The application which is the subject of this appeal was made with the object of obtaining the additional space considered necessary and in keeping with the appellants' wish to use the house as a permanent residence. After discussions with their architect the appellants concluded that an additional level would not be detrimental to existing amenity in the area, and that it was a logical choice. The houses on each side of the subject land are substantial; the house immediately to the south, which is located close to the common boundary is not greatly affected, and has the potential to carry additional storeys in the future.

All 3 objectors therefore have houses with panoramic views of breath taking proportions. In the case of the Van Laar house this has been achieved with a 3 storey house rising a maximum of almost 10 metres above natural ground level in places. In the case of the Woodburn and Smith houses, this has been achieved by maximising the superior height of their blocks.

The proposed upper level to the house on the subject land will constitute a variation and addition to a relatively small feature in the middle distance view from the Woodburn and Smith houses, and would be accordingly, of little or no consequence.

The impact on the van Laar house has to be considered as part of the overall aesthetic relationship between the two houses. The Van Laar house dominates the amenity of the subject land in every respect. Its height and bulk is formidable, its impact on privacy at the subject land is very considerable. The proposed addition to the house on the subject land redresses the situation somewhat, without causing further imbalance or repercussions to houses in the surrounding area. It is certainly no more or less than necessary to redress the imbalance.

The van Laar house retains its panoramic views from the upper level, and most of the view from middle levels.

This most certainly is not a case where the whole, or the best part, of the view would be lost. Even if it were, the need to redress imbalance between the two buildings would have to be weighed up in favour of the addition.

The appellants therefore contend that the grounds of refusal and the objections relating to view cannot be sustained. The proposed upper level would not unfairly or unreasonably deprive the objectors of a view. At most a few degrees of the middle distance would be varied in an inconsequential fashion.

Although the Responsible Authority relied on three grounds of refusal, embracing loss of amenity generally, and asserting that the proposal would be contrary to orderly and proper planning, submissions relating to views have occupied by far the most time during the hearing. It would be fair to say that other issues could be resolved, consistently with existing conditions, by appropriate conditions.

.....

As a matter of reasonable expectations, it could not be contended that a totally unimpeded panoramic view from any level at any of the Objectors' houses is to be expected as part of the continuing amenity. Some degree of impediment must be expected from garden trees and houses."

Mr. Porter called Mr. Chakir, the Architect for the proposal, as a witness. Mr. Chakir said:

"The van Laar house has been designed with a definite focus to the view to the south west. Its view shed therefore extends over the Kempe property. More particularly this property has a substantial impact on the privacy of the Kempe property, which will presumably be addressed upon maturation of the vegetation required in by the Van Laar permit.

.....

My design solution was to maintain the existing building footprint, utilising the existing stair and circulation arrangements. This approach would have minimal impact on the outlook enjoyed by the Woodburn and Smith properties, it would recognise the existing vegetation heights to the south, and would anticipate the construction of higher buildings on the properties to the south of the site whilst, in the longer term, maintaining on ocean outlook from the Kempe property.

The design solution is not unusual for the locality, nor is it outrageous. It would result in a building form which is similar to many in the surrounding area.

The design solution, unlike the Van Laar solution, would not dominate the locality. The building height at around 9.6 metres is not excessively high, nor given its siting, would the additions dominate the skyline when viewed from the foreshore area. Buildings in the immediate area have heights of 8 to 10 metres.

The proposed additions would create a building with a floor area of around 418 square metres, which would include formal and informal living and dining areas, a substantial master bedroom with ensuite, two further bedrooms and a study. By all measures a good sized but not extravagant family home.

Conclusion

The proposed alterations upgrade a modest building and would provide an improved standard of accommodation for a family home.

The design solution is determined by the consideration of a number of physical and non-physical characteristics or demands.

The fortuitous siting of the existing building creates the opportunity for an additional floor level without dominating the locality, maintaining the building profile below the ridge line.

The design solutions maintains and reinforces the principle of view sharing, and recognises and responds to the opportunities for the construction of additional levels on buildings to the south of the site."

Mr. Demeo, in an oral closing submission for the Responsible Authority, emphasised that the view of the Bluff was a "jewel in the crown" which was enjoyed by the Respondents/Objectors, and this proposal could result in that enjoyment being impaired, having an effect on the amenity they currently enjoy.

Mr. Wright, in an oral closing submission for the Respondents/Objectors, said this was a case about a view which would be decided by a view, ie. my view of the area from the subject site and the properties of the Respondents/Objectors. Mr. Wright said that there was no argument that there is no legal ~~right to a view~~, as there is no legal right to be free from overshadowing, impact on privacy or overlooking. Mr. Wright said that amenity enjoyed by persons is important, and in fact the planning control does require a permit for this proposal. Mr. Wright said that the impact on the van Laar property was very significant, but he said that the most significant impact was on the Smith property. He said that there was a dramatic effect on the Smith property, a significant effect on the van Laar property, and an impact of some consequence on the Woodburn property. Mr. Wright said any proposal for a third storey on any other dwelling would require a permit, persons affected by such proposal could object, and if the proposal was considered unreasonable then it could be refused. Such matters must be considered on a case by case basis. Mr. Wright drew a distinction between rural, coastal and urban situations. Mr. Wright reiterated the basic propositions which were set out on pages 2 and 3 of his written submission, and have been quoted on pages 9 and 10 of these Reasons.

The dwelling at 54 Baker Street, that of Mr. van Laar, was the subject of a permit issued by the City of Greater Geelong and dated 1 February 1996. The author of the Officer's Report was Sarah McDonald, who it will be recalled was the author of the report for the subject permit application which was criticised for the Respondents/Objectors. The summary to the Officer's Report on the permit application for 54 Baker Street read as follows:

" The site is located on the south-west corner of Baker Street and Presidents Avenue. The site is steeply sloping, with a drop of some 7.0m from the north-east corner to the south-west corner of the site.*

** It is proposed to construct a three storey dwelling on the site. The height of the dwelling is approximately 8.8m, however the height above natural ground level ranges between 5.0m and 9.8m.*

** Two objections, and one "comment", have been received. One of the objections has been withdrawn. After a consultation meeting between the objector and applicant, and the submission of amended plans and further information, it is considered that the objections have been satisfactorily resolved.*

** The proposal is considered appropriate for the site and is not expected to have a detrimental impact on adjacent properties. As such it is considered that the application should be supported."*

There were two objections to that permit application, one from Mr. Smith, the owner of 53 Baker Street and a Respondent/Objector in the subject Application for Review, and also an objection from the former owner of the subject site. The objection of Mr. Smith was withdrawn, and the Officer's Report dealt in detail with the concerns of the former owner of 52 Baker Street. The report concluded:

"It is expected that the proposal will be highly visible, particularly when viewed from the foreshore area to the south-west. However, with planting of trees up to 8m in height and the use of muted tonings on the external area of the building, it is considered that the building can be harmonious with its surroundings. Part of the reason that the building will be highly visible is the unique topography of the site and its vicinity. In this context, the building could be considered to accentuate the topography. Also, other developments that have been approved in the general locality are anticipated to have a similar high profile and visibility, in particular the double storey, nine unit development at 41 - 43 The Esplanade, which is on the cliff virtually above this site. It is therefore considered that the proposal will not have a detrimental impact on the amenity of the area due to its appearance.

The proposal is considered to maximise the sites features (i.e. views to the ocean, steeply sloping block) whilst limiting the impact on adjoining properties. As such the proposal is considered appropriate for the site and it is recommended that the application be supported."

Mr. Demeo tendered a copy of the Decision in Appeal No. 1996/34316 Dr Barry Reid v City of Greater Geelong, which was appeal against the decision of the Responsible Authority to refuse to grant a permit for a third storey extension to a dwelling over 7.5 metres in height at 123 Dare Street, Ocean Grove. Mr. Terrill allowed the appeal and directed that a permit not be granted. Mr. Wright quoted the following passage from the Reasons for Determination:

"The Tribunal is of the opinion that the third storey addition will create an amenity loss for those in the immediate area and create a dominant feature on the hill when viewed from the south as noted in the photographs presented by Ms Hose of the existing hillside. In this instance there is no need to exceed the 7.5m height to obtain views and as stated, if permitted to exceed that height, amenity will be affected."

Mr. Terrill was no doubt dealing with the particular merits of that appeal, and whilst I acknowledge that there will be some loss of amenity for the Respondents/Objectors in the subject Application for Review I do not consider that the paragraph quoted can be applied here without any reservation.

Mr. Demeo tendered a copy of the Decision in Appeal No. 1995/42700 R & L Taylor & Ors v City of Greater Geelong, which was an appeal against the decision of the Responsible Authority to grant a permit for six double storey units at 77 Dare Street, Ocean Grove. Mr. Byard allowed the appeal in part subject to inclusion of a permit Condition 1(f) which would require ridged roofs to be replaced with flat roofs and heights of units reduced to protect view. Mr. Wright referred to two paragraphs in the Reasons for Determination in

R & L Taylor & Ors v City of Greater Geelong, as follows:

"The other, I think important matter, that seems to have been completely overlooked or disregarded is the amenity of the neighbouring property to the east so far as its views are concerned. I suspect that the Applicant and his draftsman have completely forgotten about the Taylor property and the Taylors' interest in their view. The proposal represents, in my view, a significant diminution in the amenity of the Taylor land.

It is true to say that the segment of the view blocked out by the proposed new structure is a minor section of a wide spectrum of view representing only 20-30° of a view that exceeds 180° from east to west. What this mathematical approach overlooks is that the part blocked out is the crucial and best part of the view. The "jewel in the crown" so to speak. The loss of 50 or 60% of the view in other segments would not be as detrimental as the loss of this part of it."

As I have already mentioned, Mr. Wright cited *Tashounidis v Shire of Flinders* 1 AATR 116. Mr. Buckley said at page 118:

"It is necessary and prudent to set out the legal position regarding ~~rights~~ to a view. Courts have held that there is no legal right to a view. One of the more recent decisions was handed down by the New South Wales Land and Environment Court in the case of Anthony & Anor v Manly Municipal Council heard on 4 September 1985 (reported 1985 E.L.R. 0110). The Court held that nearby residents who objected to the erection of a second storey to a dwelling which commanded panoramic views has acquired no freehold or easement rights which entitled them to prohibit the reasonable development of other property because they wished to enjoy a view over and around that property.

While accepting those legal decisions, protection of an existing view is considered to be a relevant town planning consideration to which regard should be had when making a planning decision. The Tribunal accepts the statement, which was quoted by Mr. Bartley in his submission, set out by a division of the Planning Appeals Board in its determination of Appeal No. P86/542 when it stated:

"... There are valid community expectations and town planning obligations that later developments would necessarily be constrained in their height, size, orientation and location to give a measure of protection to the factors enjoyed by earlier buildings, especially light, sunlight, privacy and views. On the other hand the later development also is entitled to a reasonable enjoyment of the same factors and should not be so constrained by the presence of earlier dwellings to make its reasonable enjoyment of those factors virtually negligible if not impossible. It is clear that what must be achieved is a balance in the reasonable desires of competing interests. In questions of amenity the emphasis must be on reasonableness."

Mr. Porter made reference to Appeal No. 1995/43000 *R J Henderson & Ors v Hobsons Bay City Council* in which I said:

"In Appeal Nos. 1995/843 and 2048, Ariss and Morow-Griffin v Surf Coast Shire and Peter Mills & Associates, Mr. Barr said:

"The generally accepted principles to be applied in matters involving views were set out in Tashounidis v Shire of Flinders and others 1 AATR 116 and Clausen v Shire of Mornington and others 4 AATR 125. Those principles were stated in the determination of Appeal No. 1992/31994, J.B. Young v Shire of Winchelsea and others which related to a proposed detached house at 32 Richardson Street, Lorne. The principles are quoted below with approval:

"(a) there is no legal right to view;

(b) views form part of the existing amenity of a dwelling and their loss is a relevant consideration to take into account;

(c) the availability of views must be considered in the light of what constitutes a reasonable sharing of those views; and

(d) added emphasis will be placed on considerations (b) and (c) above if the question of views is specifically addressed under the Planning Scheme."

Mr. Wright rightly drew a distinction between an urban situation, and a rural or coastal location in an essentially recreational area, and submitted that in the latter situation the preservation of a view

is far more likely to be a relevant aspect of amenity. Whilst I relied on the passages quoted above in *R J Henderson & Ors v Hobsons Bay City Council*, those passages did in fact relate to a rural or coastal location in an essentially recreational area.

Application for Review No. 1998/13017 I & R Edwards, M J Rodda and *Department of Natural Resources and Environment v Surfcoast Shire Council* was an Application for Review of the Responsible Authority to grant a permit to construct a building of more than one storey with a height greater than 7.5 metres above ground level. This application was heard concurrently with Application for Review No. 1998/26838 which concerned Conditions. The subject site was at 1 Carnoustie Avenue, Jan Juc. Mrs. Monk allowed the Application for Review of the decision to grant a permit, and directed that a permit not be granted, and also disallowed the Application for Review of Conditions. It will be noted that the Department of Natural Resources and Environment was an Applicant for Review/Objector, and was represented at the hearing. In its Grounds the Department said:

"The Department objects to the determination to grant a permit on the grounds that the proposal is detrimental to the visual amenity of the coastal foreshore, in particular:

i) The form of the development is visually insensitive and overbearing in the context of the coastal landscape.

The form, bulk, siting and height (including roof-top deck) of the building is inconsistent with and dominates the natural landscape and other buildings in the area. The Victorian Coastal Strategy (1997) has an objective for improving design outcomes for buildings and structures in foreshore and coastal areas on both public and private land. The proposal does not appear to maintain or enhance the integrity of the coastal environment and landscape character as required under the Strategy.

ii) The development will result in a significant loss of public satisfaction and amenity.

The development maximises potential views from the property to the exclusion or disadvantage of Crown land users. Views both to and from the coast and of the vegetation are significant assets of this part of the coastline. The development significantly detracts from the aesthetic and landscape values and experience for users of the adjacent."

In the Reasons for Order Mrs. Monk said:

"It was the Department's submission, reinforced by accurately scaled elevations of the proposed dwelling showing neighbouring dwellings and foreshore vegetation, that the height and mass of the proposed building was such that it could not "complement the surrounding coastal landscape". In its submission the development was visually insensitive and overbearing in its context. Mr Brooks noted that the prevailing height of the coastal heathland vegetation - especially following further clearance of weed species such as coastal Tea Tree - was around 1 to 2.5m and that the façades of the building most visible from the coastal reserve would be substantially higher and more extensive than those of neighbouring dwellings. It would, he argued, have as a result a greater visual impact.

The Department contended that the proposed building, by reason of its visual bulk, did not meet the goal of the cultural and aesthetic siting and design guidelines which is for structures to be "sited and designed to culturally respect their setting and visually complement the surrounding coastal landscape". The Department summarised the relevant siting and design standards as follows:

Mrs. Monk also discussed other issues including overshadowing, loss of view and overlooking. I consider however that I & R Edwards, M J Rodda and Department of Natural Resources and Environment can be distinguished from the subject Application for Review because the Department of Natural Resources and Environment did not play such a significant role in the subject Application for Review, even though I acknowledge that Mr. Demeo made reference to the Victorian Coastal Strategy 1997 in his closing submission.

It was agreed that there is no legal **right to a view** but, as stated by Mr. Wright, in appropriate circumstances the preservation of a view or interference with a view will be a relevant planning consideration. A permit is required because a third storey and a height in excess of 7.5 metres is proposed. The granting of such a permit would impact on views enjoyed by Respondents/Objectors, and concepts of reasonable sharing of views and fairness become relevant.

The Respondents/Objectors were concerned about the extent of view they would lose, including the likelihood that they could lose a view of Flinders Point (the Bluff), and the view of the water feature referred to as *"The Bommie"*, and also views of passing ships and occasionally whales.

Mr. Rogers, who was called as an expert witness by Mr. Wright, discussed the views enjoyed by the Respondents/Objectors, provided his assessment of the impact of the proposal on those views, and spoke to plans and diagrams prepared by Mr. Woodburn. It would seem that the van Laar residence has been planned to take maximum advantage of the view over the subject site. The upper level is bedrooms and from that level the view may not be seriously affected. The view at the middle level would be affected, but the extent of that effect would depend from what part of that level a person was viewing. It would appear from the Officer's Report on the permit application for the van Laar residence that the former owner of the subject site did object very strongly to a permit being granted for that residence. The objections seem to include overlooking, overshadowing and mass and bulk although some of the concerns were no doubt addressed in conditions. I do not think it could be a legitimate expectation of the van Laars that it would not be possible for an application to be made for another storey to the dwelling on the subject site, which is currently rather lower in profile and demonstrates currently less mass and bulk than the property on the van Laar property. The van Laar property will still enjoy significant views although those views may not be from the situations in their dwelling from which they would desire to have significant views.

I note that Mr. Smith was an objector to the grant of a permit for the van Laar residence, but he withdrew that objection. It seems to me that Mr. Smith has already suffered a loss of the view that he had previously enjoyed as a result of the construction of the van Laar's residence. He is understandably concerned that the subject proposal will result in a further loss of the view that he now enjoys.

Mr. Wright in his closing submission described the impact on views currently enjoyed from the Woodburn property as being *"of some consequence"*. The A frame construction of the Woodburn dwelling tends to orientate views from within the dwelling away from the subject site, although the view from the balcony at the front of the dwelling would certainly be affected.

The proposed additional storey on the dwelling on the subject site would improve the view available from that property, but it would also in the words of Mr. Porter provide *"the additional space considered necessary and in keeping with the appellant's wish to use the house as a permanent residence."* Mr. Porter noted that the houses on each side of the subject are substantial,

and he said that the house immediately to the south is not greatly affected. He said that that house "has the potential to carry out additional storeys in the future". Such an outcome would of course be subject to the owner of that house making application for, and obtaining, an appropriate planning permit.

Mr. Wright said that this was a case about a view which would be decided by a view, ie. my view of the area from the subject site and the properties of the Respondents/Objectors. Having had the benefit of that view, and having carefully re-read the submissions and evidence, and studied the photographs and plans and diagrams that were tendered during the four days of this hearing, I accept that allowing this Application for Review and directing that a permit be granted would result in some diminishing of the views enjoyed by the Respondents/Objectors. Whilst it is accepted that there is no **right to a view**, it is also accepted that interference with a view will result in some loss of amenity enjoyed. What is important is that there be an equitable sharing of views. The fact that a particular dwelling is erected first and has views over other land on which dwellings have not yet been erected, or relatively modest dwellings have been erected, does not confer a permanent right to the whole of the view enjoyed to be maintained. Consideration of development in the future must have regard to a reasonably equitable sharing of views. This is particularly so when there are controls in the planning scheme with the respect to the number of storeys and the height of dwellings.

I have come to the conclusion that allowing this Application for Review and directing the grant of a permit, whilst restricting views currently enjoyed by Respondents/Objectors, would still result in an equitable sharing of views amongst the various parties. I do not consider that the proposal would be so detrimental to the amenity of adjacent properties in the general area that the Application for Review should be disallowed. I also do not consider that the proposal is inconsistent with the predominant character of the neighbourhood having regard to the size of some of the dwellings in the neighbourhood, nor do I consider that the proposal is contrary to orderly and proper planning of the area.

I have therefore come to the conclusion that the Application for Review should be allowed, and I will direct that a permit, subject to conditions, be granted.

ORDER

The Order of the Tribunal is that the Application for Review is allowed and a permit is granted for additions raising the existing building height at 52 Baker Street, Ocean Grove above 7.5 metres and the construction of a third floor, subject to the following conditions:

1. Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be generally in accordance with the revised plans substituted in the permit application by Order of the Tribunal dated 14 August 1998, but modified to show the external fabric, including the roofing, in muted tonings of non-reflective material so as to blend with the environment and preserve the aesthetic amenity of the area.

2. The site must be drained to the satisfaction of the Responsible Authority. No storm water, sillage, sewerage or polluted drainage must be allowed to drain or discharge from the land to adjoining properties, to the satisfaction of the Responsible Authority.

3. The use and development as shown on the endorsed plans must not be altered with the written consent of the Responsible Authority.

4. *This permit will expire if one of the following circumstances applies:*

a) *The development is not started within two years of the date of this permit.*

b) *The development is not completed within four years of the date of this permit.*

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

The Responsible Authority is directed to issue a permit in accordance with this Order pursuant to Section 85(1)(b)(ii) of the *Planning and Environment Act 1987*.

DATED

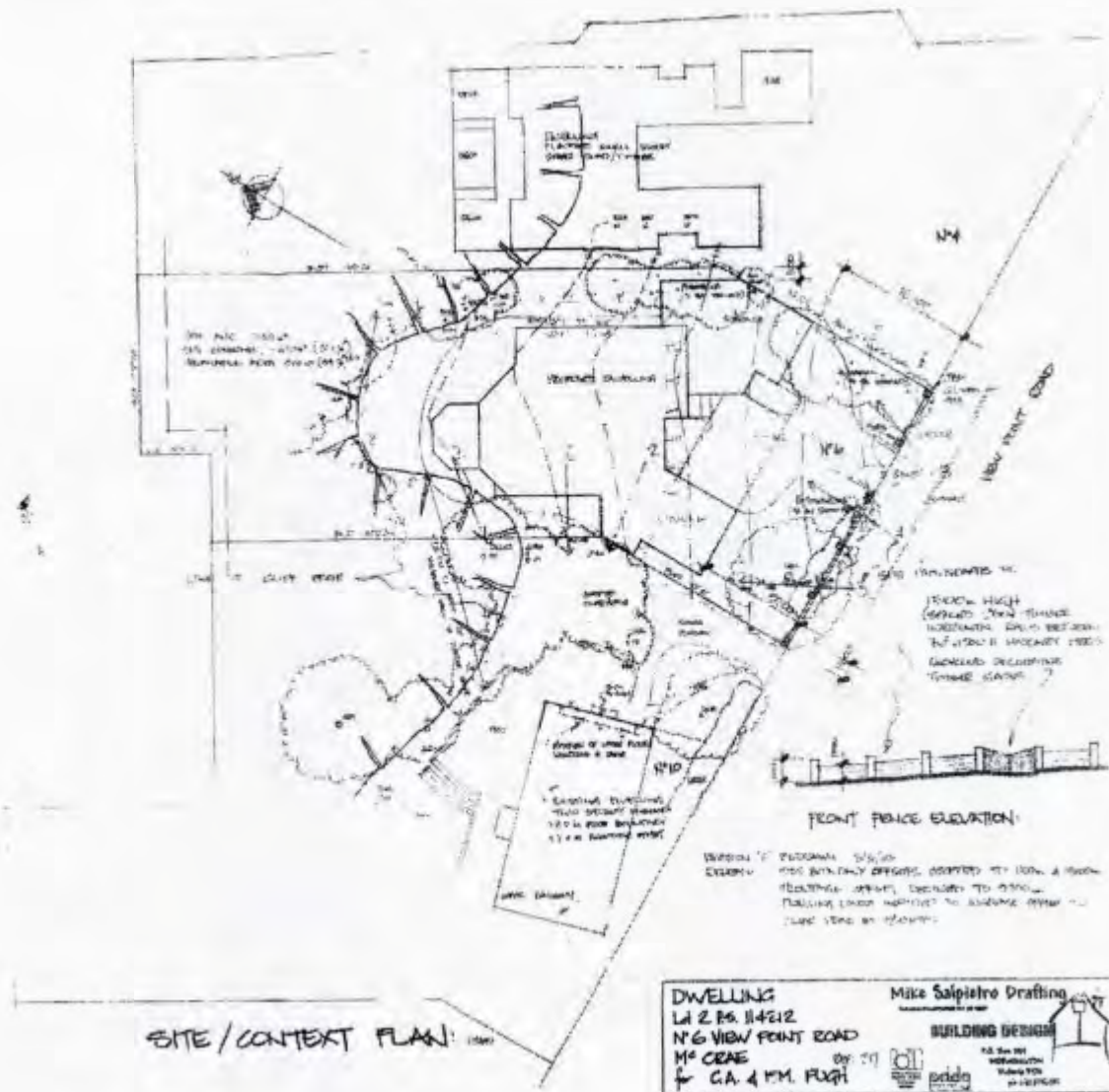
G.J. SHARKEY

MEMBER

GJS/MW

An aerial photograph of a residential neighborhood. A road runs diagonally from the top left towards the bottom center. The area is densely populated with houses, many of which have light-colored roofs, and are surrounded by lush green trees. A large, dark, irregular shape, possibly a pond or a large tree, is visible in the upper right quadrant. The overall scene depicts a typical suburban or rural settlement.

The image consists of two maps of McCrae, Georgia. The left map is a street map showing the town of McCrae, Georgia, with the McCrae Cemetery located near the intersection of Highway 1 and Highway 2. The right map is a more detailed street map of the same area, showing the cemetery's location relative to various streets and landmarks. A black arrow points to the cemetery's location on the right map.



Applicants site/context plan



No 6 Viewpoint Road, McCrae

VCAT APPEAL REFERENCE NO: P3390/2002



Viewpoint Rd looking west



Viewpoint Rd looking east



View Point Rd

VCAT APPEAL REFERENCE NO: P3390/2002



South; View Point Rd

VCAT APPEAL REFERENCE NO: P3390/2002



Viewpoint Road

VCAT APPEAL REFERENCE NO: P3390/2002



South; View Point Rd

VCAT APPEAL REFERENCE NO: P3390/2002



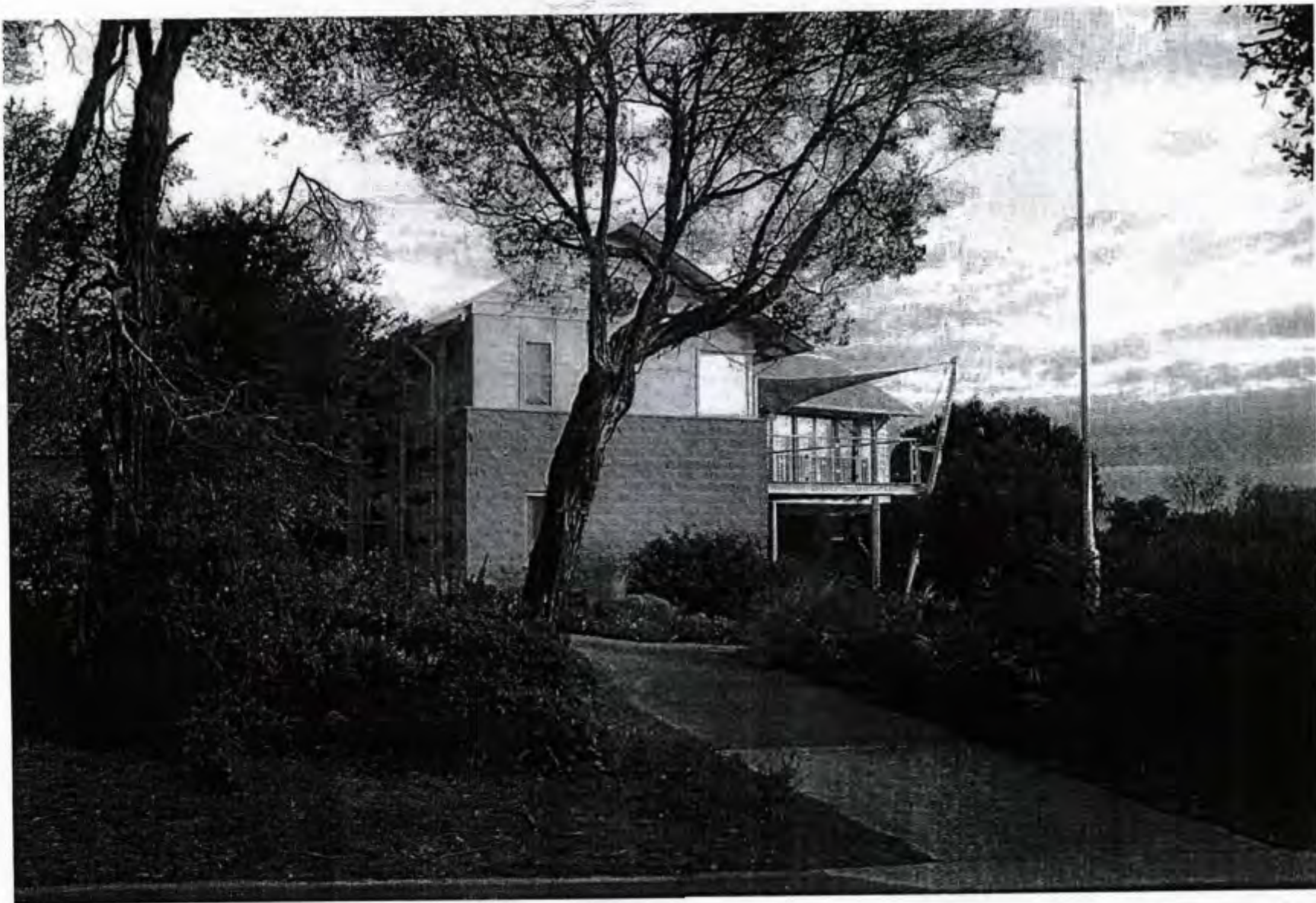
South; View Point Rd

VCAT APPEAL REFERENCE NO P3390/2002



South side of Viewpoint Rd, opposite No 6

VCA APPEAL REFERENCE NO: P3390/2002



New house, Viewpoint Rd

VCAT APPEAL REFERENCE NO: P3390/20C2



Viewpoint Rd

VCAT APPEAL REFERENCE NO: P3390/2002



Viewpoint Rd

VCAT APPEAL REFERENCE NO: P3390/2002



Viewpoint Rd, Public pathway to beach



Public Pathway

VCAT APPEAL REFERENCE NO: P3390/2002

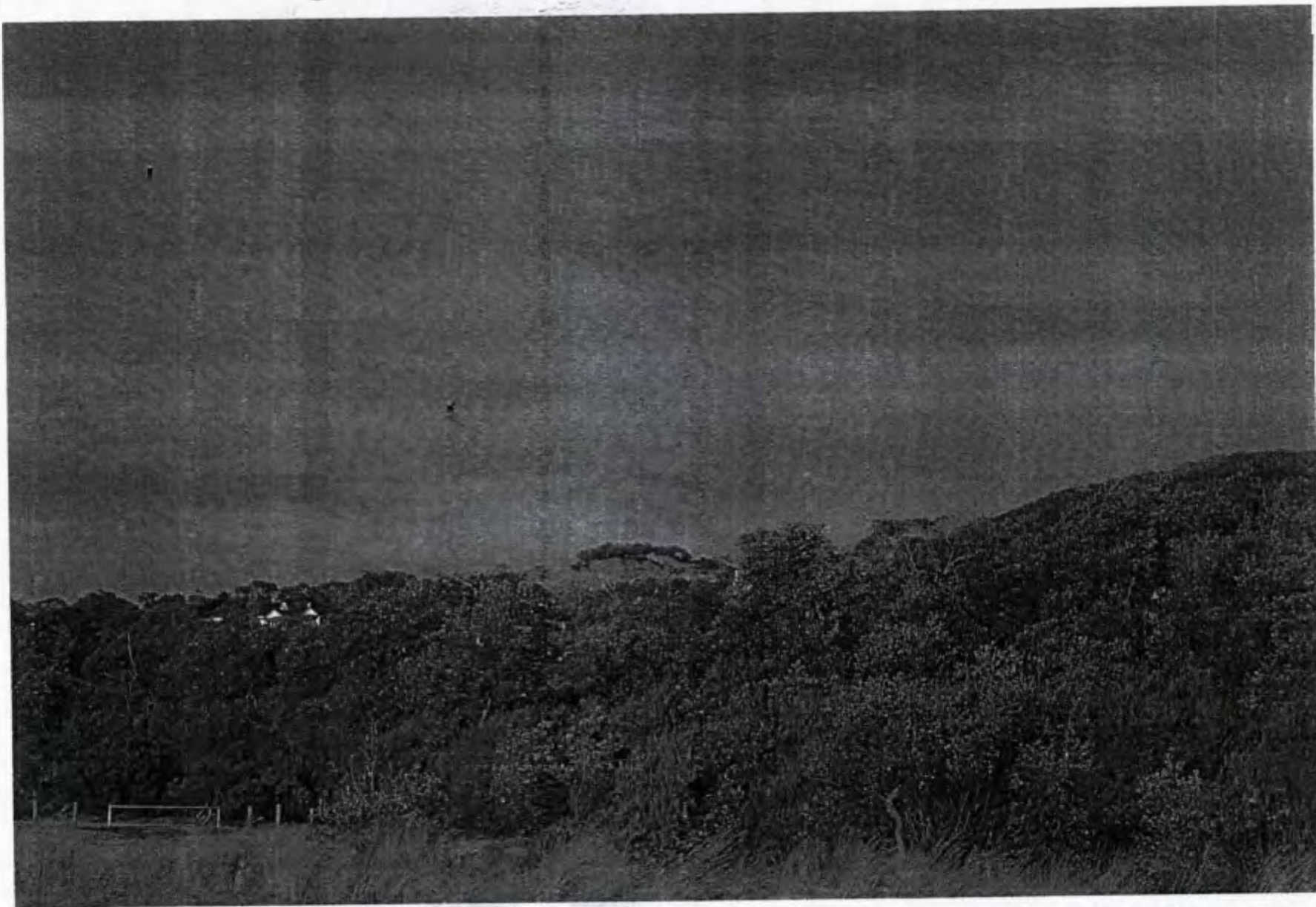


Margaret Street

VCAT APPEAL REFERENCE NO: P3390/2002



View from foreshore



View from beach



End of Viewpoint Rd



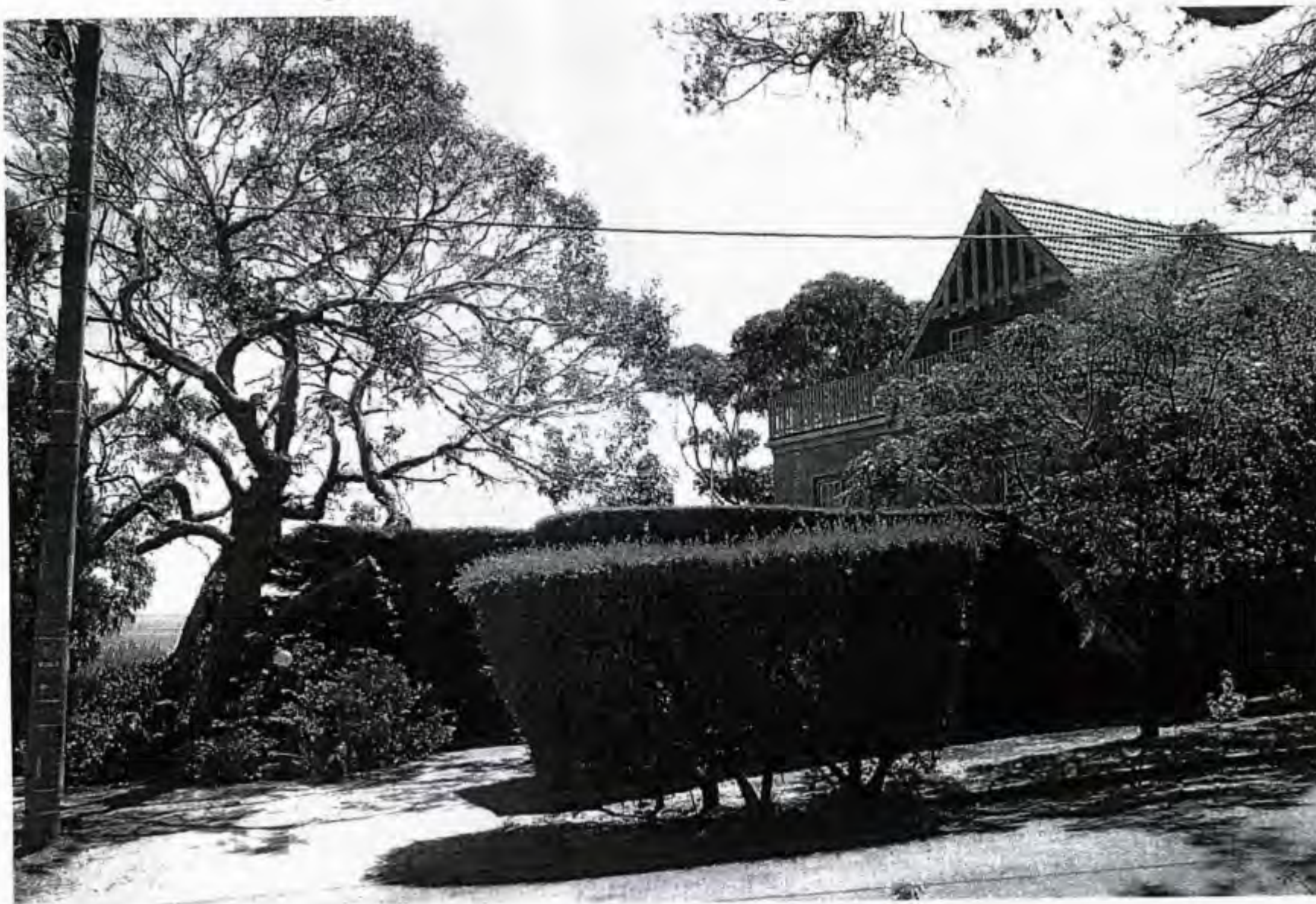
Viewpoint Rd cul de sac

VCAT APPEAL REFERENCE NO: F3330/2002



14 Viewpoint Rd

VCAT APPEAL REFERENCE NO: P3390/2002



No 10 Viewpoint Road, McCrae West aspect

VCAT APPEAL REFERENCE NO: P3390/2002



No 10 Viewpoint Road, McCrae

VCAT APPEAL REFERENCE NO: P3390/2002

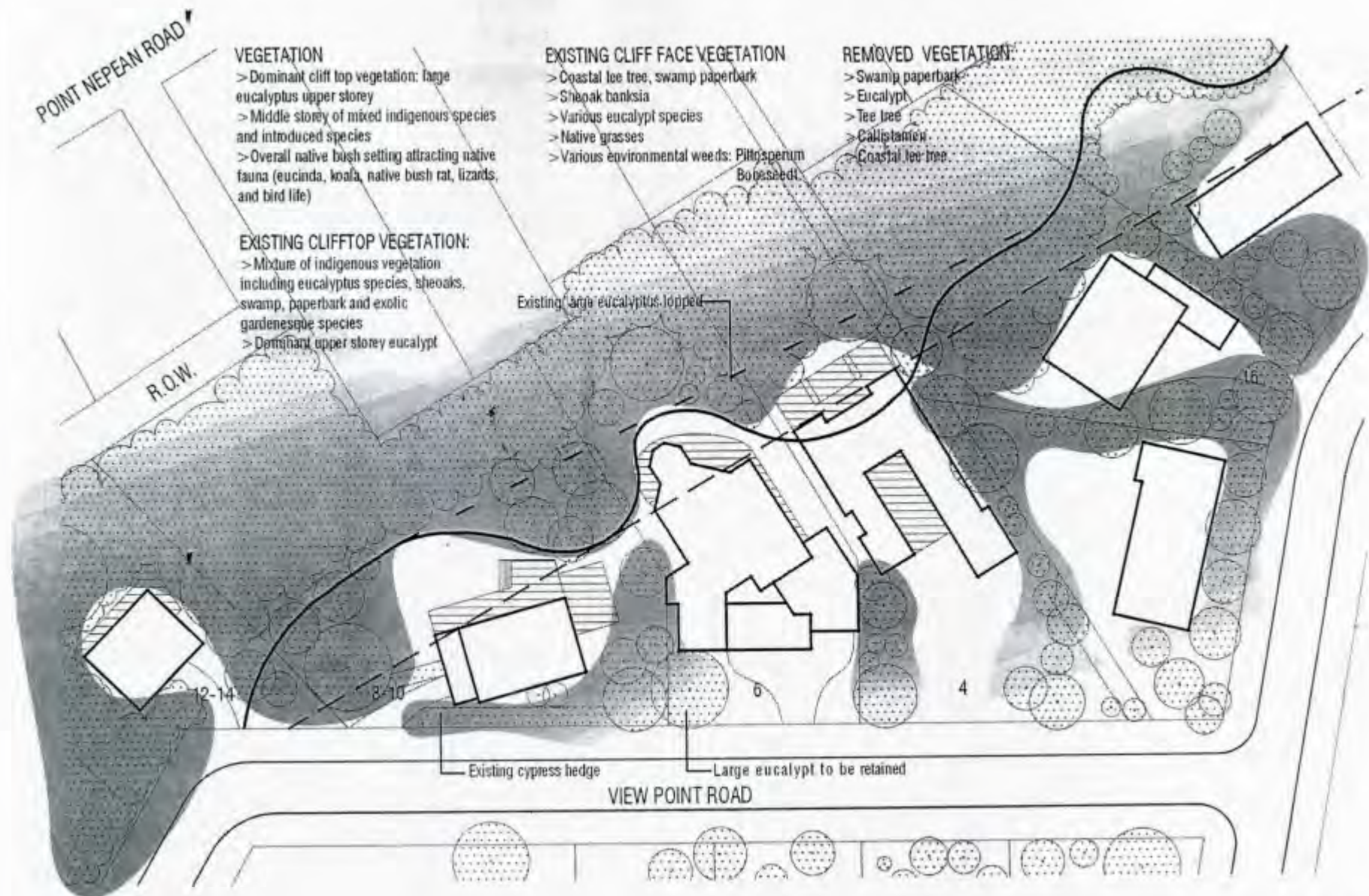


10 View Point Rd, east end



4 Viewpoint Rd.

VCAT APPEAL REFERENCE NO: P3390/2002





No 6 Viewpoint Road, McCrae

VCAT APPEAL REFERENCE NO: P3390/2002



Landscape character

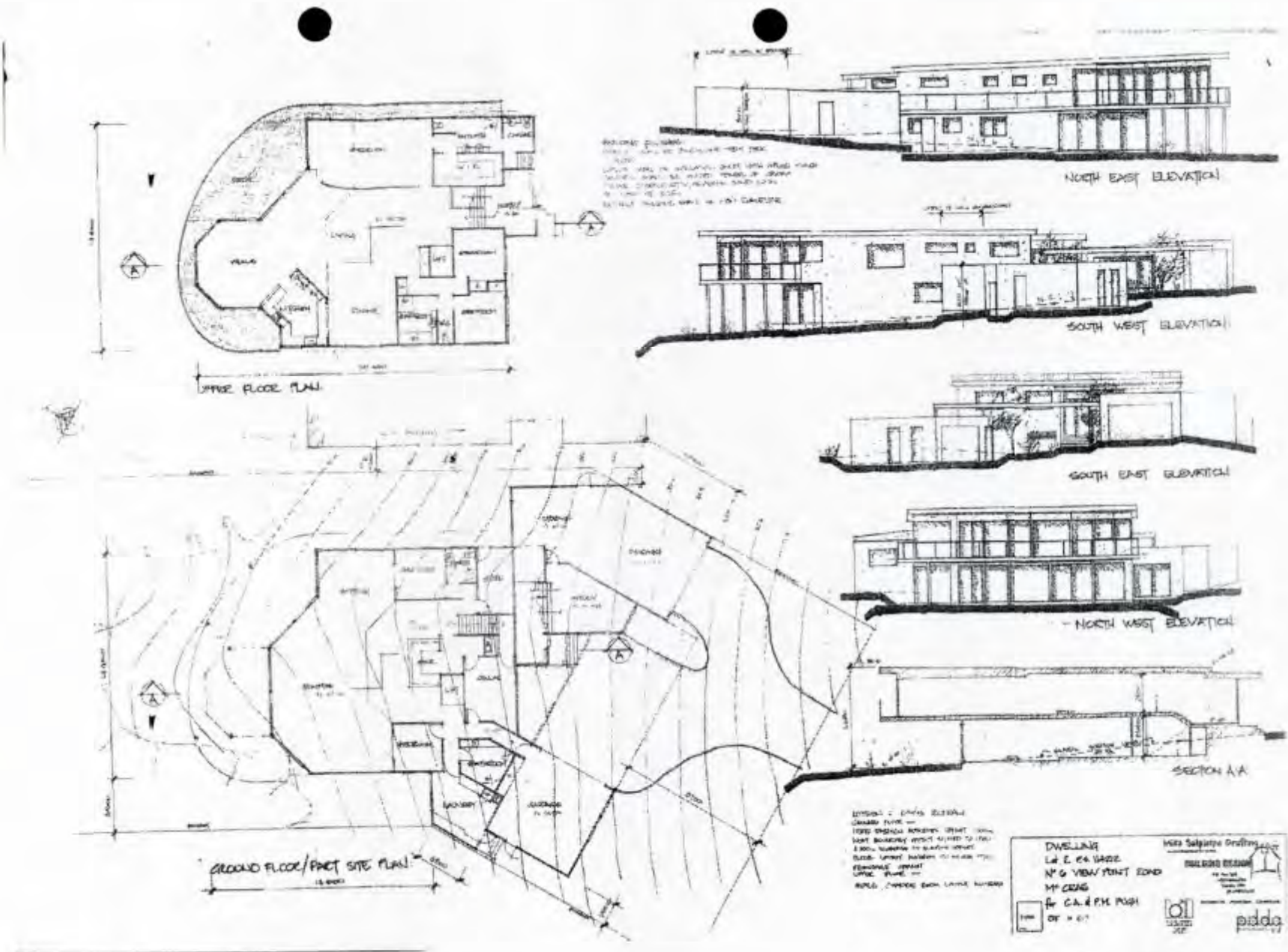


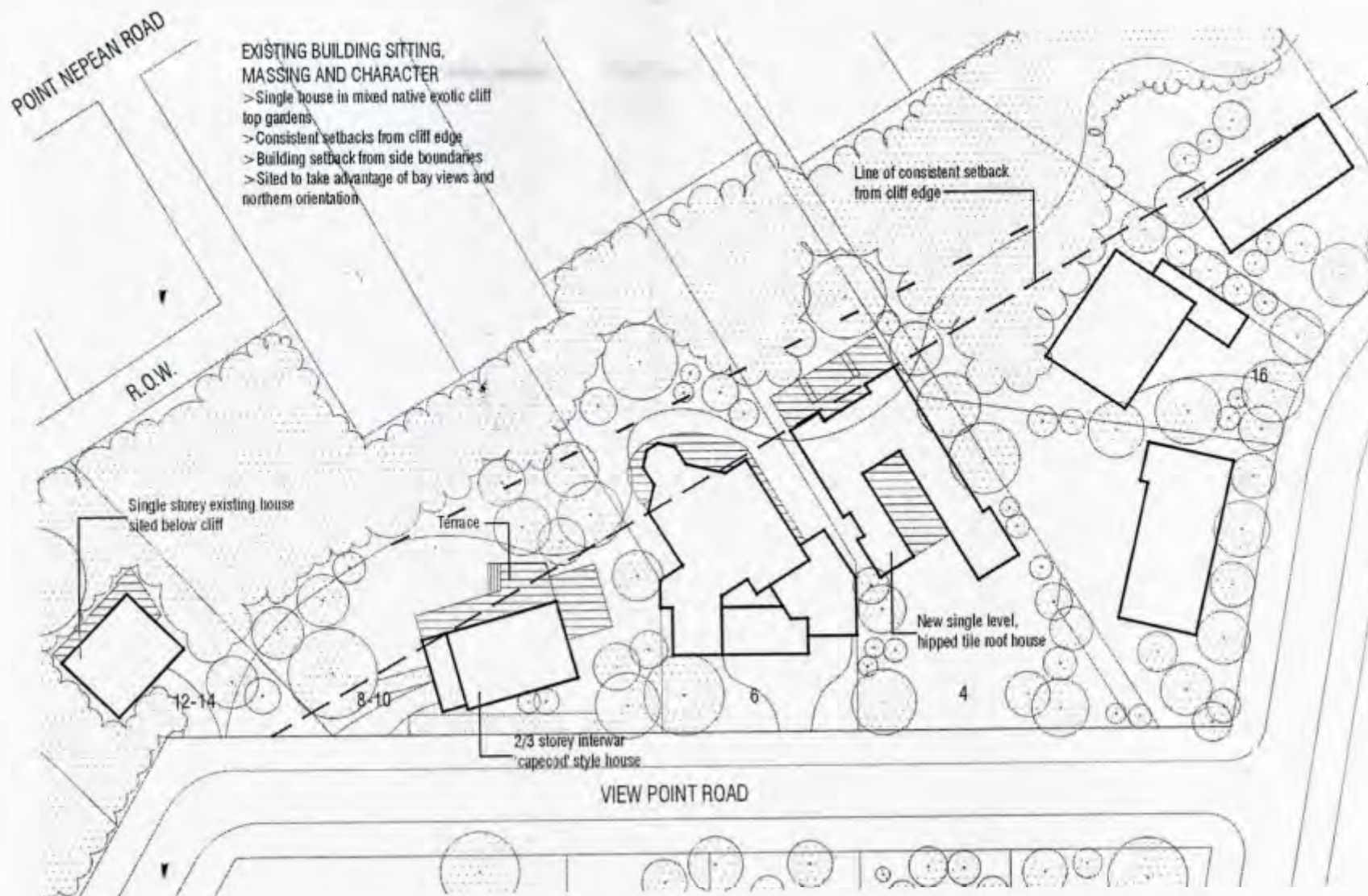
SUBJECT SITE



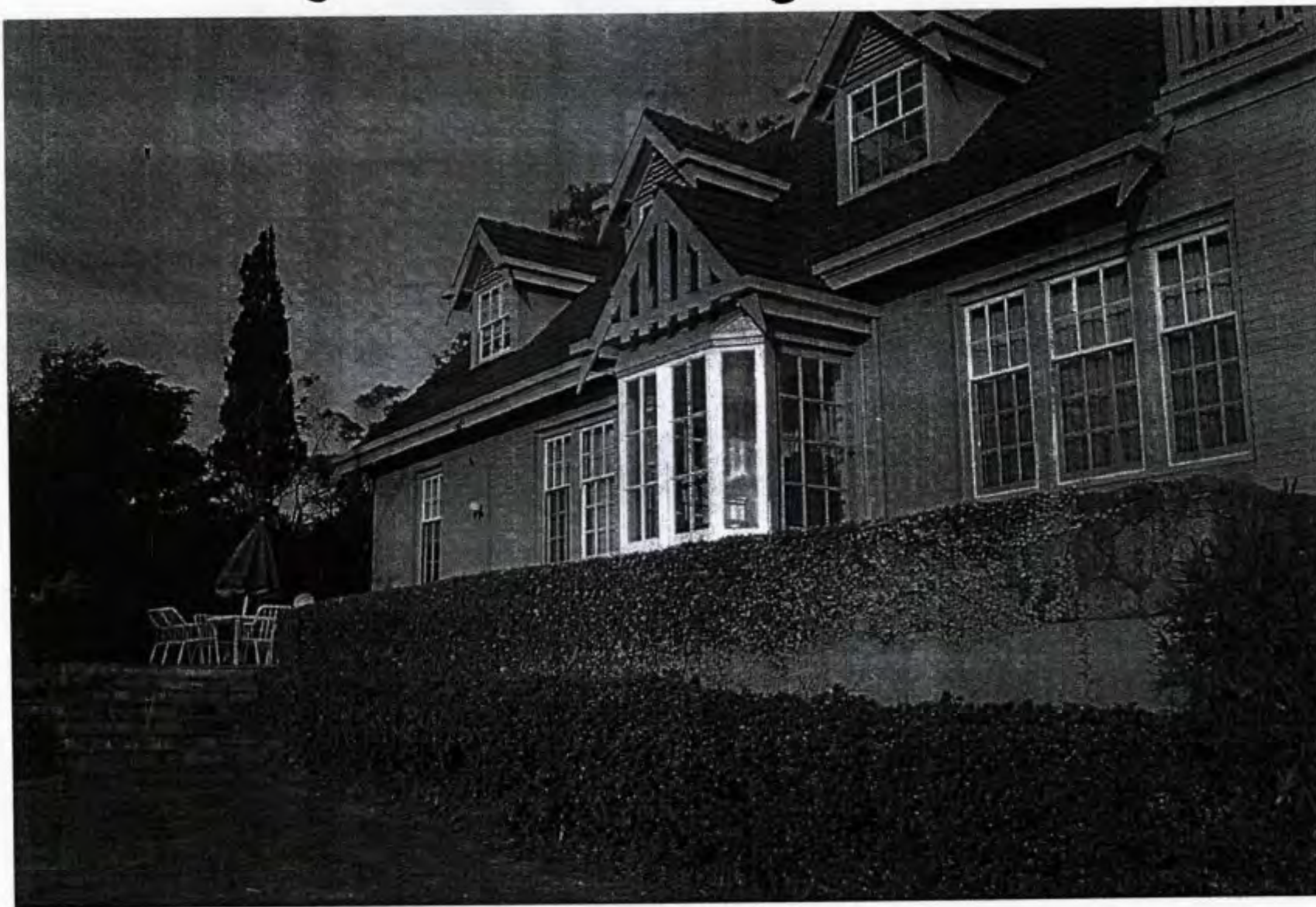


6 Viewpoint Rd, lopped eucalypt





Siting Issues



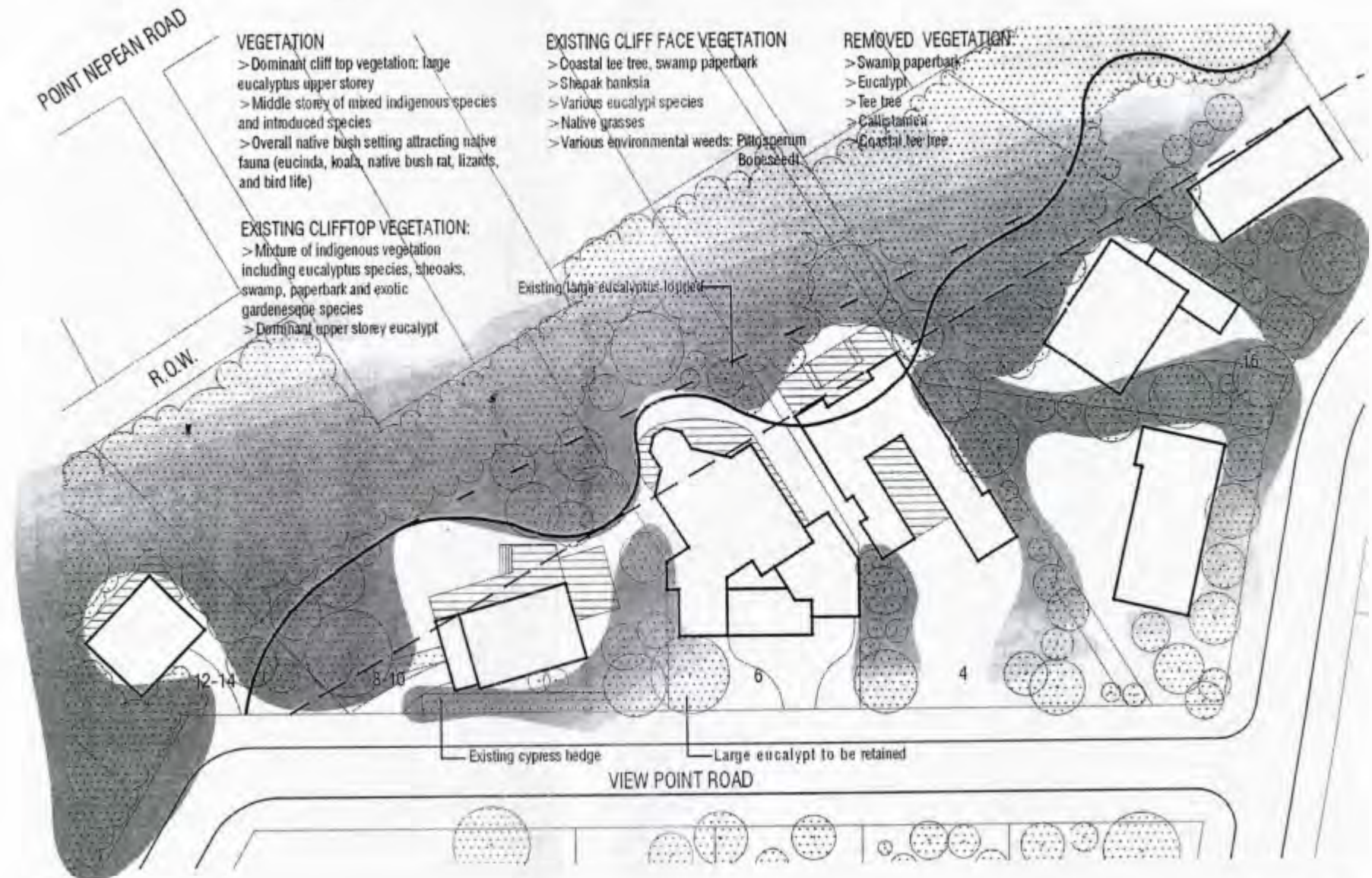
10 Viewpoint Rd. secluded terrace

VCAT APPEAL REFERENCE NO: P3390/2002

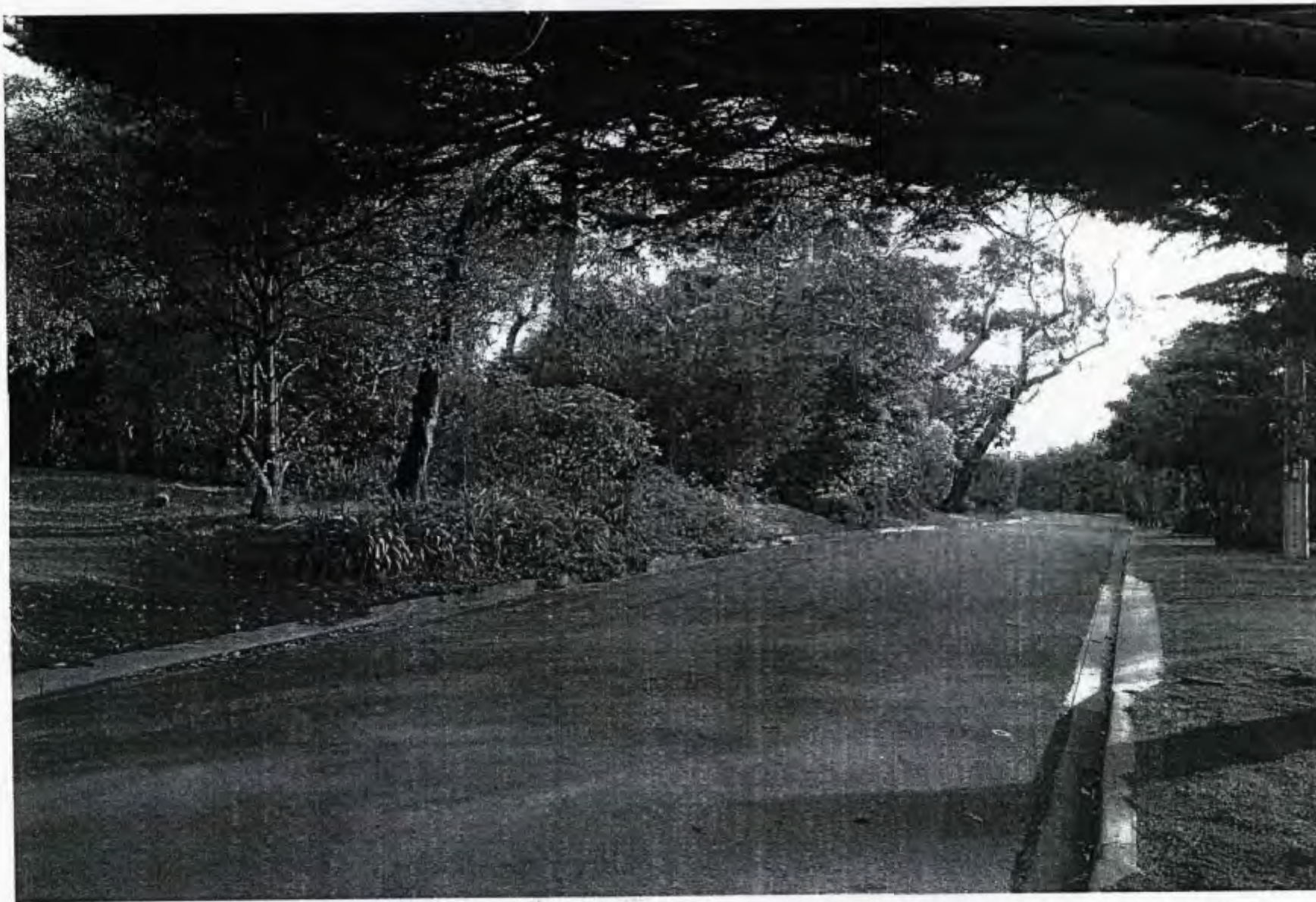


Margaret Street

VCAT APPEAL REFERENCE NO: P3390/2002

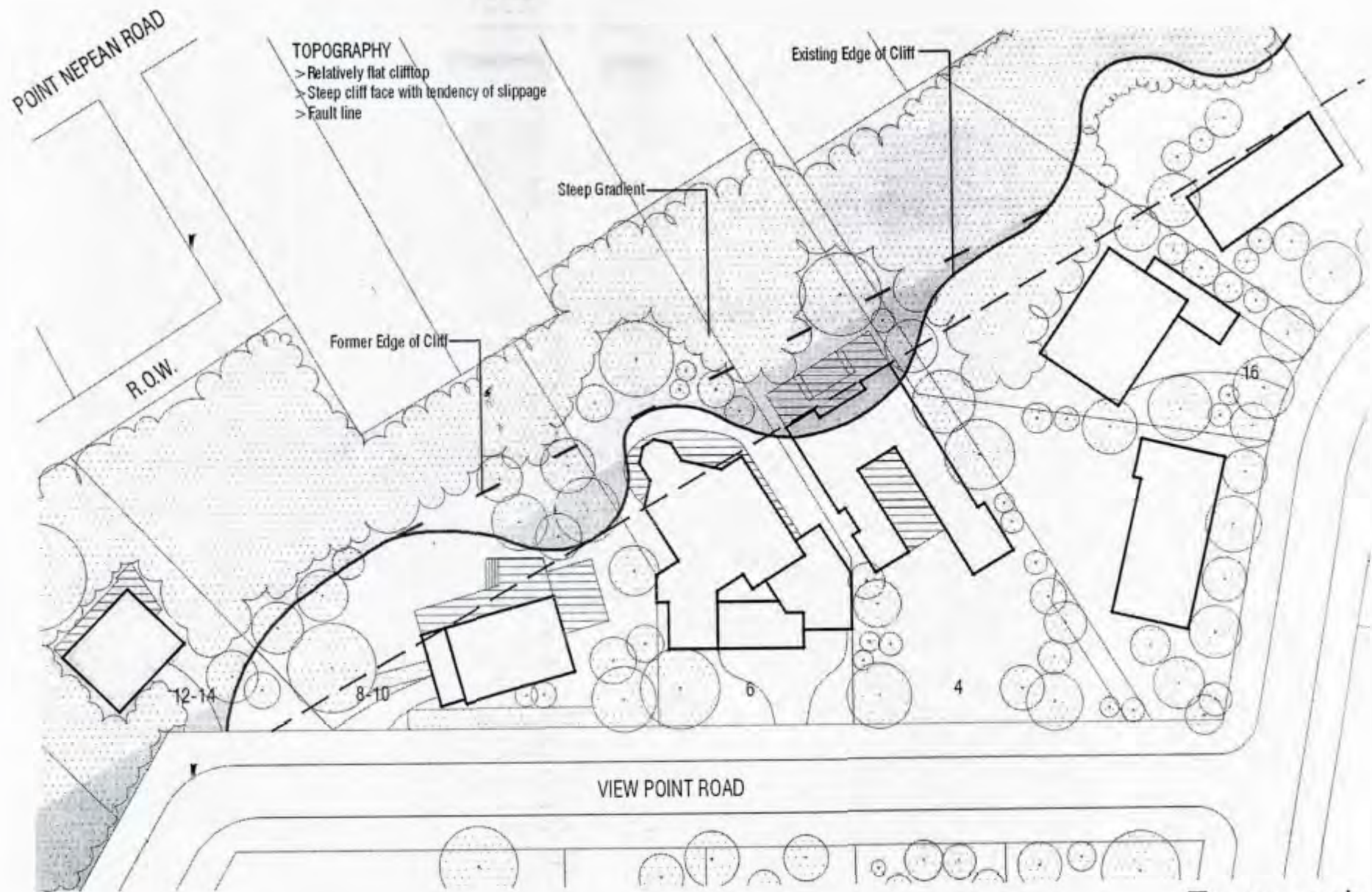


Vegetation

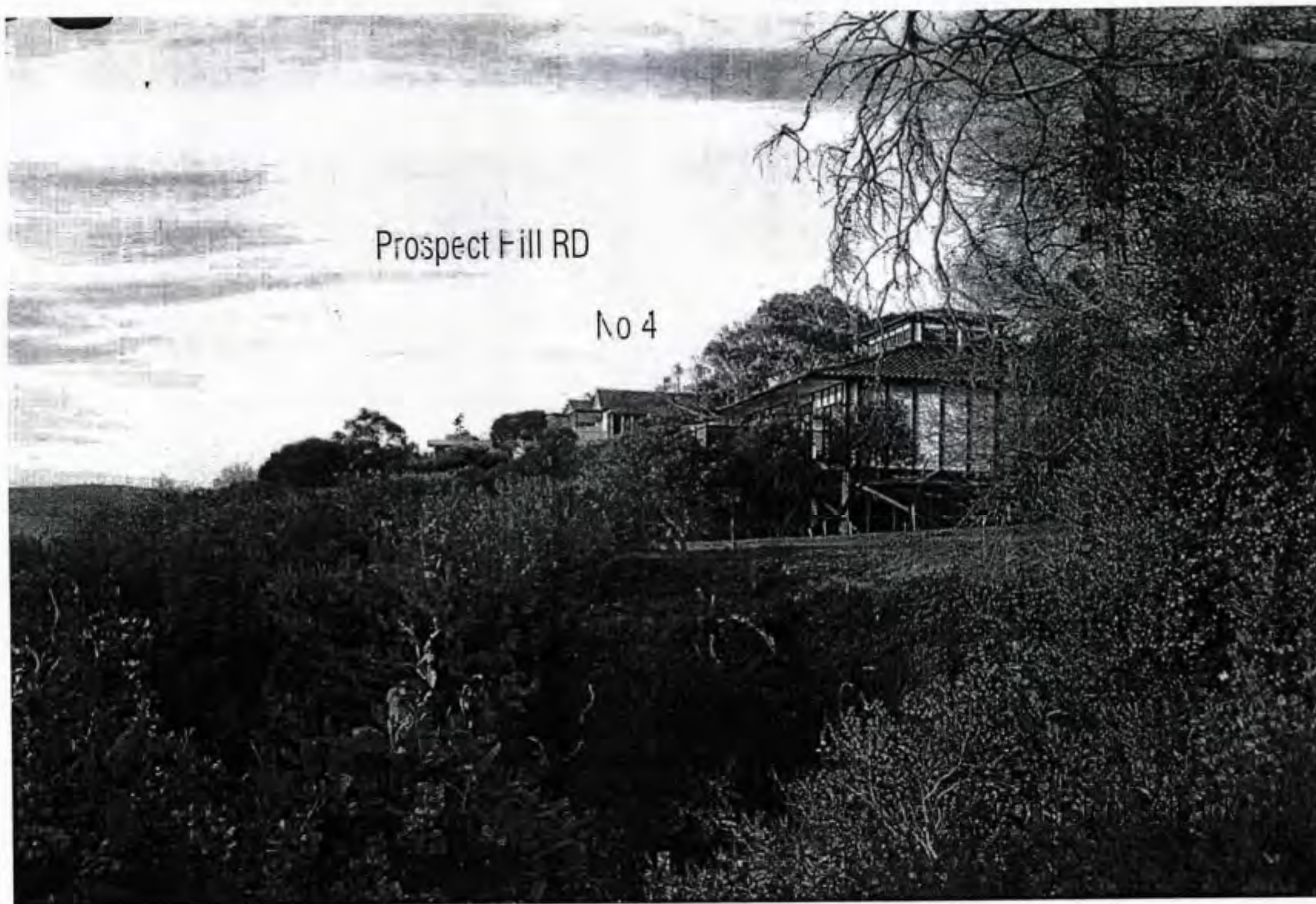


South; Viewpoint Road, McCrae

VCAT APPEAL REFERENCE NO: P3390/2002



Topography

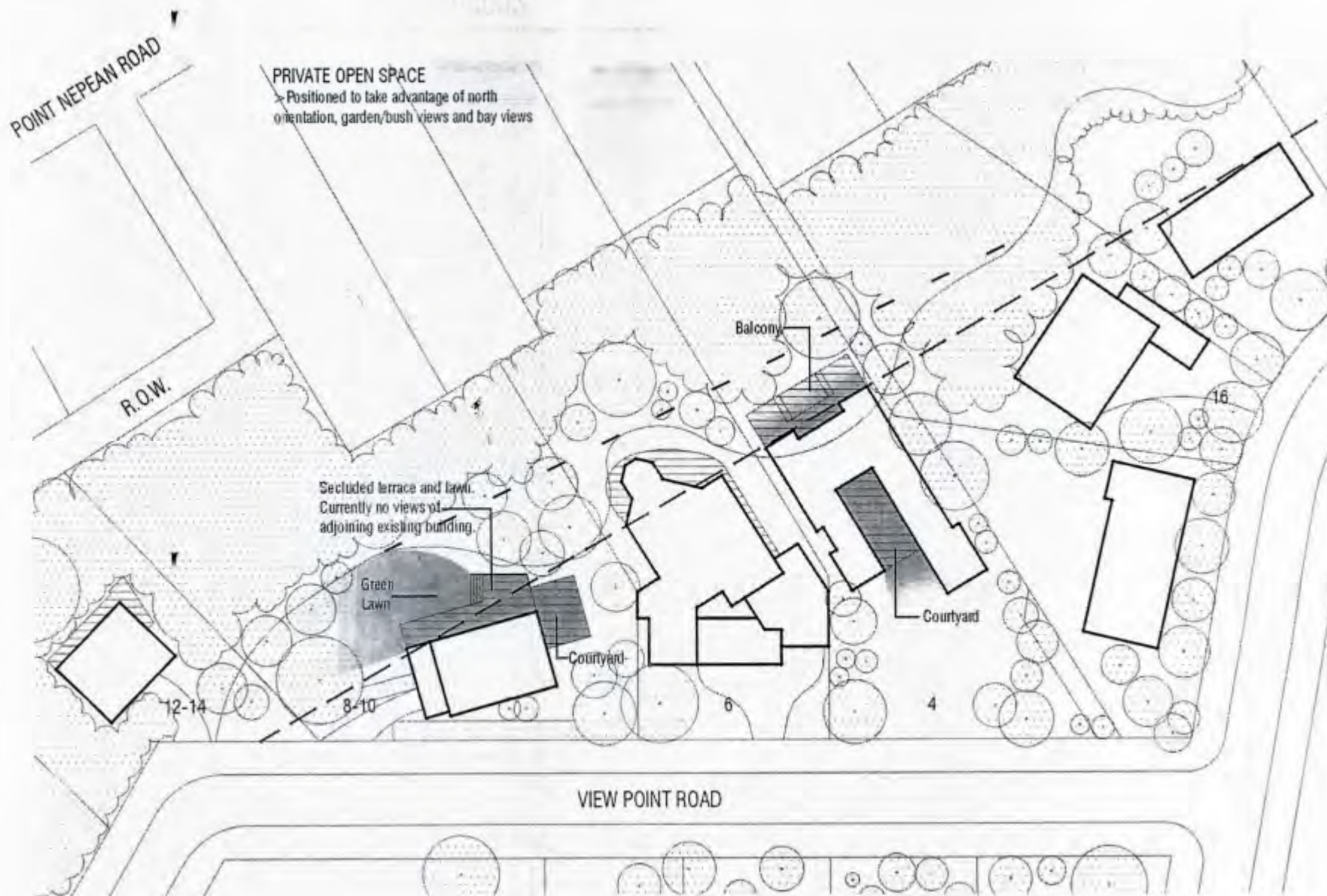


Existing view from secluded terrace



10 Viewpoint Rd. View from secluded private open space

VCAT APPEAL REFERENCE NO: P3390/2002



Private Open Space



10 Viewpoint Rd, Private open spaces; courtyard

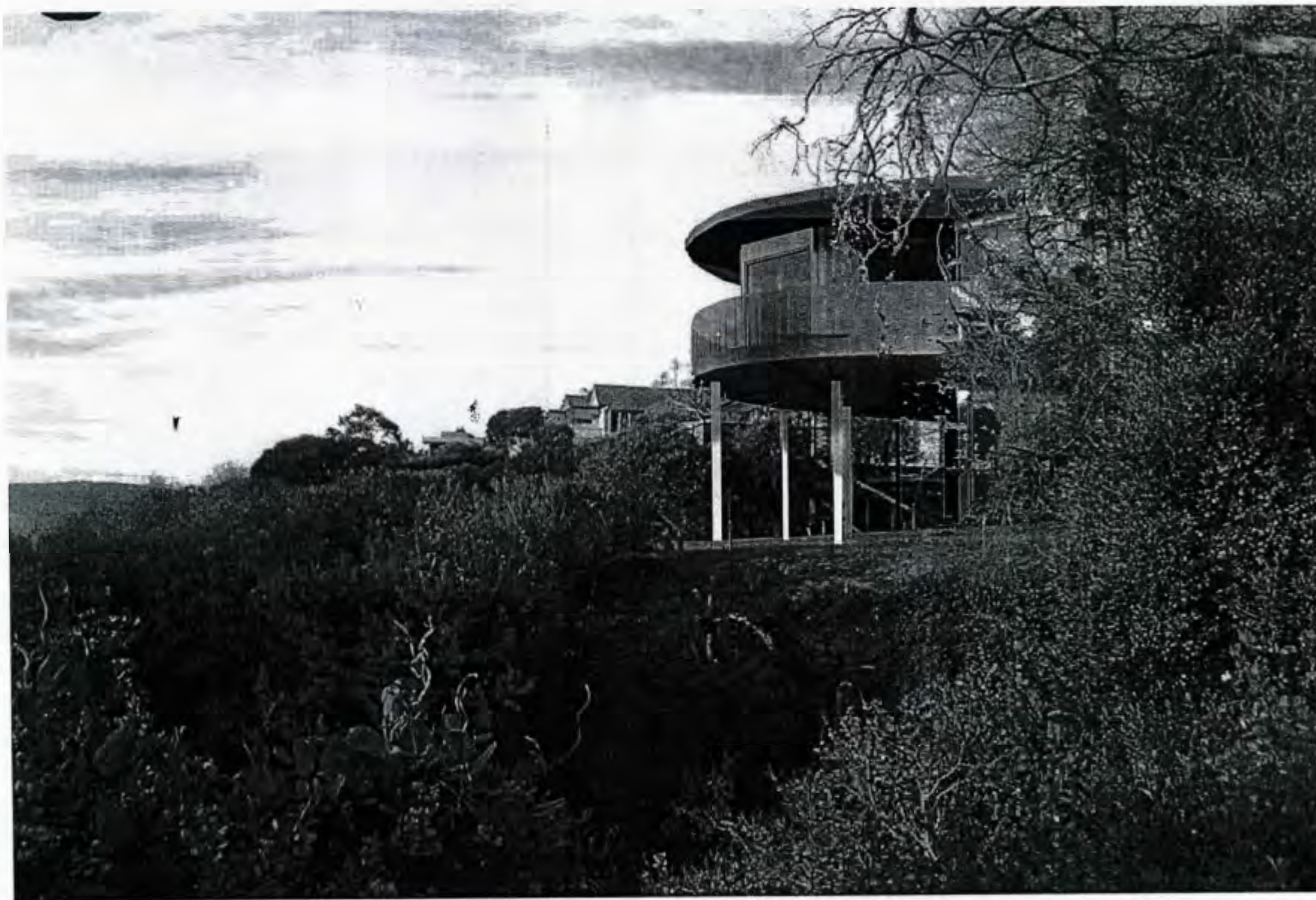


10 'viewpoint Rd. Secluded open space



10 Viewpoint Rd. View from secluded private open space

VCAT APPEAL REFERENCE NO: P3390/2002



3D perspective



10 Viewpoint Rd, lawn area

VCAT APPEAL REFERENCE NO: P3390/2002



New development; Prospect Hill Road

VCAT APPEAL REFERENCE NO: P3390/2032



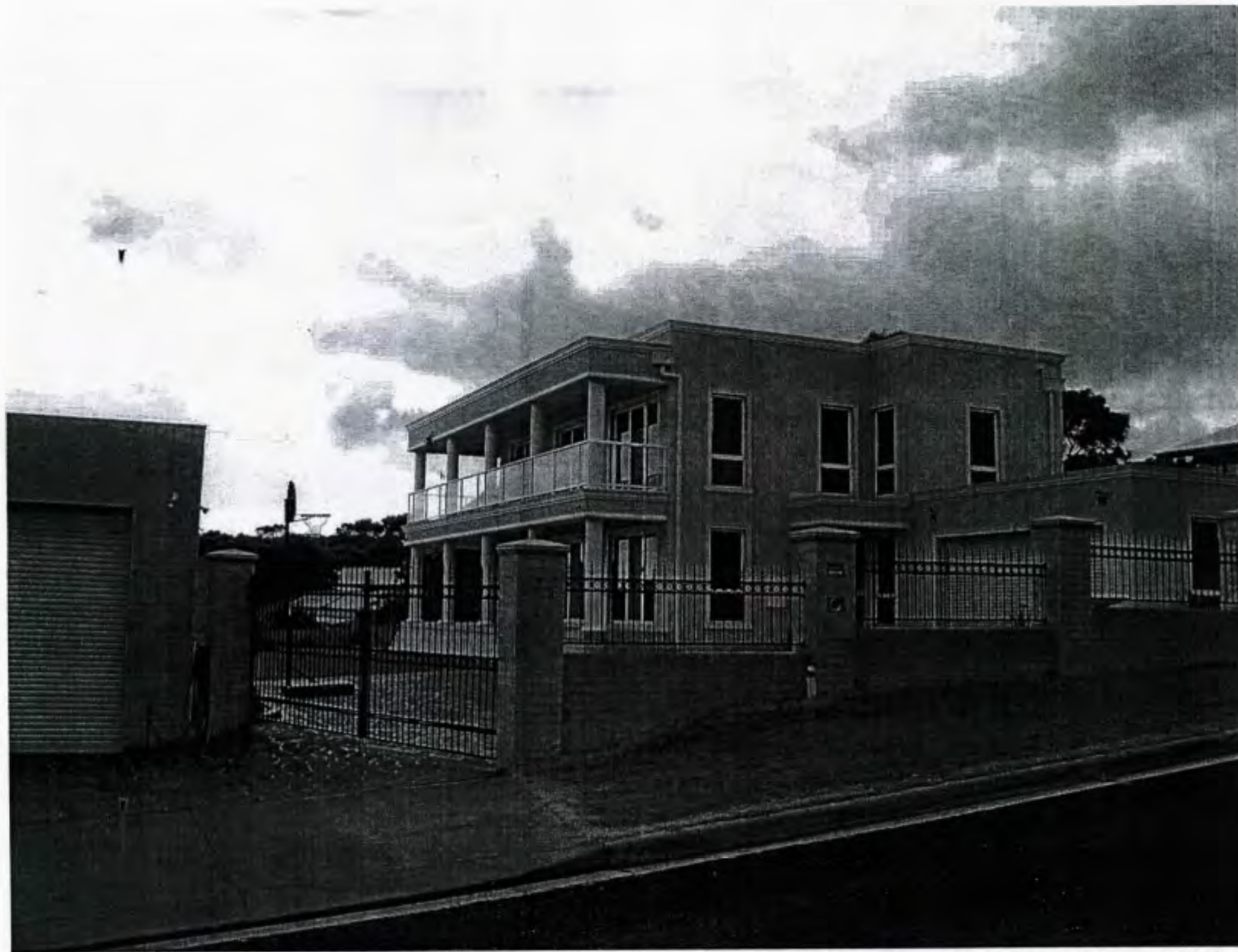
Example of new development in McCrae. Changing/new units; Meredith Street

VCAT APPEAL REFERENCE NO: P3390/2002



Example of new development in McCrae. Changing/new units; Meredith Street

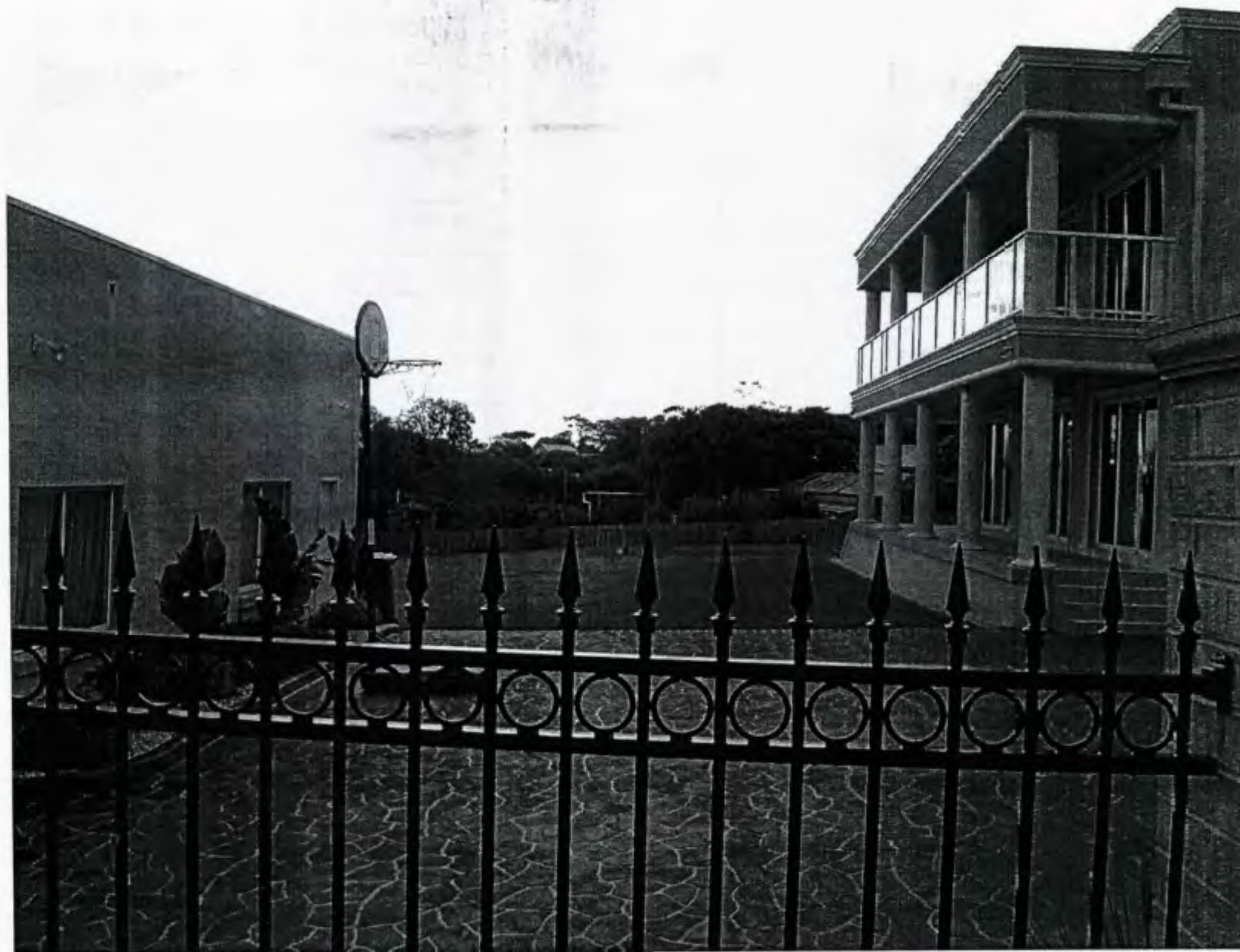
VCAT APPEAL REFERENCE NO: P3390/2002



Example of new development in McCrae. Changing/new units; Meredith Street
VCAT APPEAL REFERENCE NO: P3390/2002

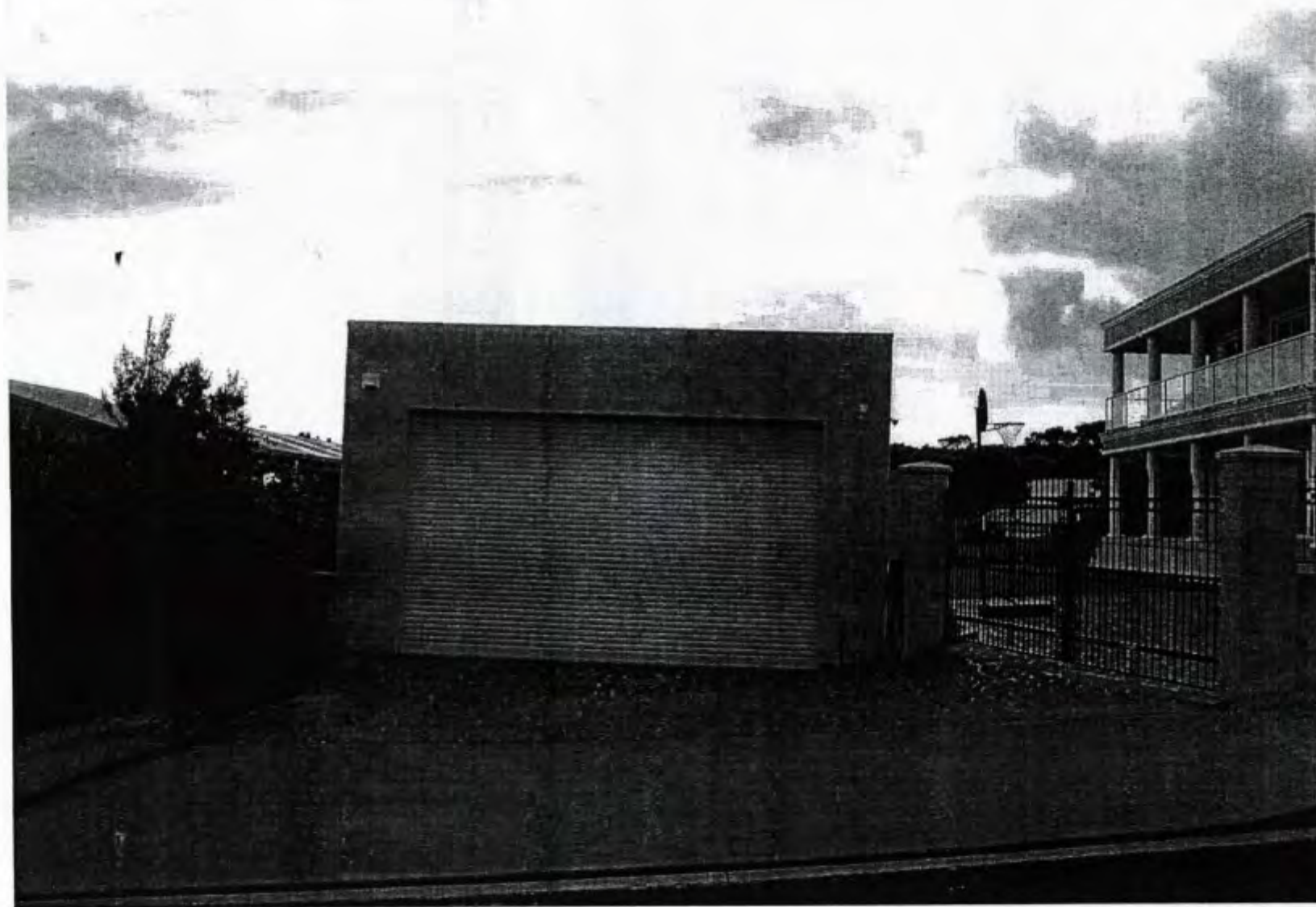


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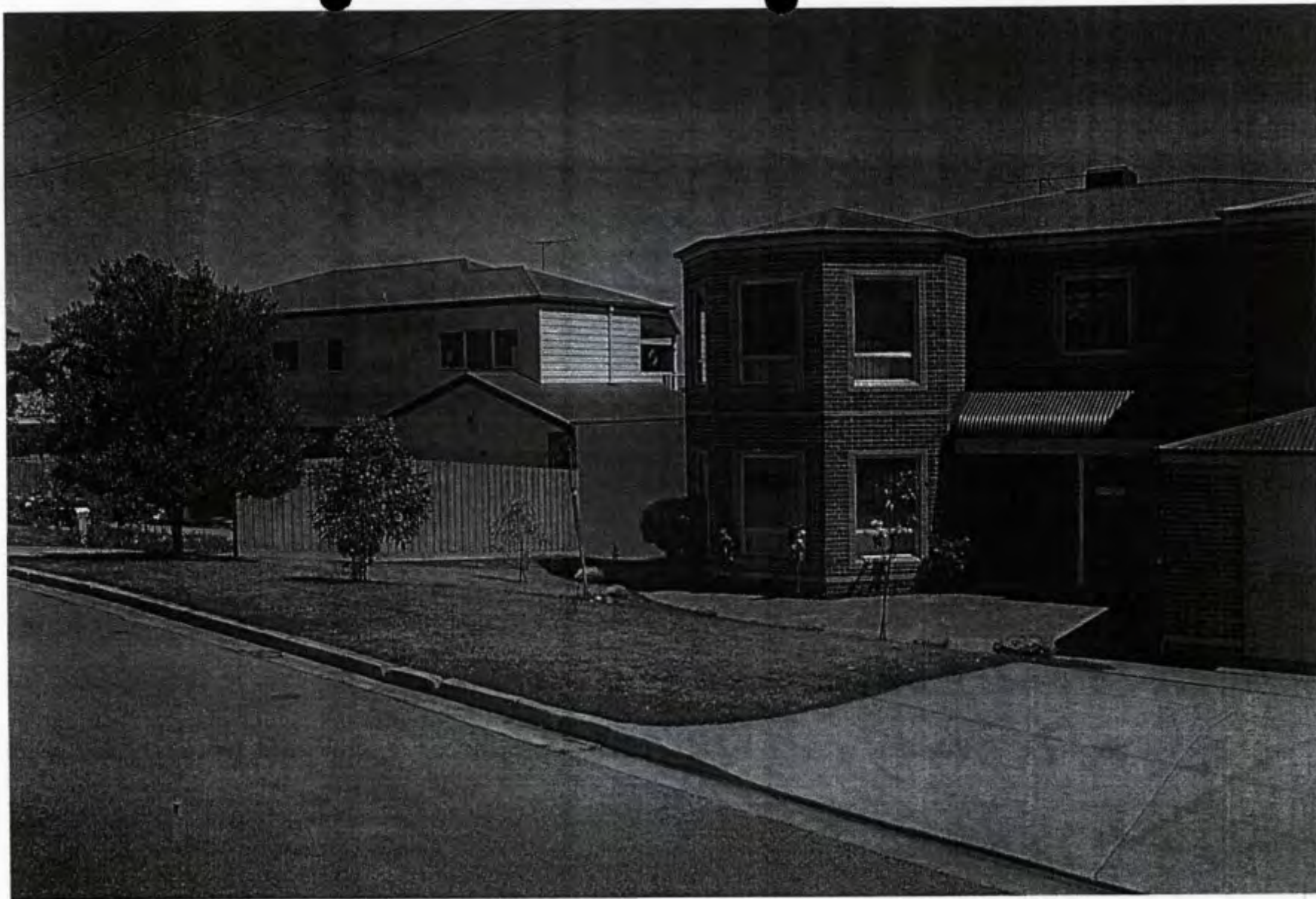
Example of new development in McCrae. Changing/new units: Meredith Street

VCAT APPEAL REFERENCE NO: P3390/2002



Prospect Hill Road

VCAT APPEAL REFERENCE NO P3390/2002



New development; Coburn Ave, McCrae

VCAT APPEAL REFERENCE NO: P3390/2002



Landscape character

PLANNING APPEAL NO. 3390/2002
6 View Point Road
McCrae

I am Robert Stent. I represent my parents who are the owners of 8-10 Viewpoint Rd. and other family members in this appeal against the Shire of Mornington Peninsula's notice of decision to grant a permit for a single residence 6 Viewpoint Rd., McCrae. My parents have owned the property, "Rosemarin" for 26 years, however McCrae has been a family holiday destination for 50 years.

For us the important features of "Rosemarin," and particularly McCrae, has been its sense of isolation, bush environment on the coast, wonderful beaches and bush foreshore. McCrae until recently has escaped the urban development which has marred much of Dromana and Rosebud and other seaside resort towns throughout the state. McCrae has been fortunate to retain much of its village character but recent development, such as that proposed at 6 Viewpoint Rd., is exerting pressure and adversely impacting those unique qualities.

GROUND OFS OF APPEAL

In summary, our grounds for appeal are:

- > The proposal does not respect the existing neighbourhood character;
- > The proposal is not responsive to the site and the neighbourhood;
- > The proposal, when viewed from the street and adjoining properties will adversely impact due to it's visual bulk, site coverage and inappropriate design response;
- > The proposal fails to respect the landscape character of the neighbourhood and fails to account for a number of mature trees removed within the last 12 months;
- > The proposal does not respect the prevailing neighbourhood character in regard to walls on boundaries;
- > The proposal's siting detrimentally impacts on the amenity of secluded private open space of existing secluded private open space of adjoining residencies;
- > The proposal lacks sufficient architectural merit in its response to both the natures of the site and the adjoining;
- > Landscape and neighbourhood character. The proposal responds poorly to the site and is an over development with excessive visual bulk and impact to amenity of adjoining residencies.

It is on this basis that we provide our submission as follows:

- 1 Summary and outline of key statutory controls
- 2 Analysis of the site analysis
- 3 Identification of key site analysis features
- 4 Examination of the design response;

SUMMARY OF STATUTORY CONTROLS

STATE PLANNING POLICY FRAMEWORK

19.03-1 Objective

To achieve high quality urban design and architecture

19.03-2 General Implementation

Development should achieve architectural and urban design outcomes that contribute positively to local and urban character and enhance the public realm while minimising detrimental impact on neighbouring properties.

...include a site analysis and descriptive statement explaining how the proposed development responds to the site and its context.

Context

A comprehensive site analysis should be the starting point of the design process and form the basis for consideration of height, scale and massing of the new development.

SCHEDULE 3 TO THE DESIGN AND DEVELOPMENT OVERLAY (DD03)

Coast and Landscape Design

1.0 Design objectives

- > To ensure that the design of subdivision and housing is responsive to the environment, landform, site conditions and character of coastal villages, hillsides and clifftop areas.
- > To avoid higher densities of development in areas subject to instability, erosion or potential fire hazard.
- > To recognise areas where substantial vegetation cover is a dominant visual and environmental feature of the local area by ensuring site areas are large enough to accommodate development while retaining natural or established vegetation cover and to provide substantial areas for new landscaping and open space.
- > To ensure that new development has proper regard for the established streetscape and development pattern in terms of building height, scale and siting.
- > To protect shared viewlines where reasonable and practical.
- > To ensure that buildings are designed and sited to avoid being visually obtrusive, particularly in terms of creating a silhouette above a skyline or existing tree canopy line when viewed from surrounding streets and properties.
- > To ensure that the design of development has adequate regard to fire and risk and includes appropriate fire protection measures.

2.0 Rescode

- > Must comply with Clause 54.01
- > Must meet all of the objectives and should meet all of the standards of Clause 54.02, 54.03-3, 54.03-4, 54.03-5, 54.03-6, 54.03-7, 54.04-2, 54.04-3, 54.04-4, 54.04-5, 54.04-6, 54.05, 54.06-1.
- > Must meet the objectives of Clauses 54.03-1, 54.03-2 and 54.04-1

General requirements

- > Buildings must not be located on a ridge
- > The difference between finished ground level and natural ground level as a result of excavation and filling must not exceed one metre and must be properly battered or retained
- > All buildings must be located...at least 6 metres from any cliff edge

Mandatory requirements

- > These requirements cannot be varied with a permit

4.0 Decision Guidelines

- > Where an objective has been applied from Clause 54.02 to 54.06, inclusive, the relevant decision guidelines from that Clause.
- > Whether any loss of amenity will result from a variation to the requirements of this schedule.
- > Whether opportunities exist to avoid a building being visually obtrusive
- > The effect of any proposed subdivision or development on the environmental and landscape values of site and of the local area.

VEGETATION PROTECTION OVERLAY (VPO)

Township Vegetation

1.0

In these areas, the impression is of buildings within a landscape rather than that of landscaping around buildings.

2.0 Vegetation protection objective to be achieved

- > To recognise areas where substantial vegetation cover is the dominant visual and environmental feature.
- > To ensure that the subdivision and development proposals have proper regard to the landscape character of township areas.
- > To ensure that new development has proper regard for the established landscape, streetscape and development pattern in terms of being consistent with the existing balance between vegetation and building form in the local area and contributing to the landscape character of the area.
- > To ensure that any removal of natural vegetation and works associated with development in environmentally sensitive areas, including streamline areas, is carried out with proper regard to the physical characteristics of each site and the local area.
- > To protect and conserve native vegetation, including grasses and ground flora.
- > To encourage strategic replanting to provide for the long term maintenance of landscape and environmental values within townships.
- > To prevent the premature removal of vegetation from a site prior to consideration of design options for a proposed development.

3.0 Permit requirement

A permit is required to remove, destroy or lop any vegetation.

Decision Guidelines

Before deciding on an application, the responsible authority must consider, as appropriate;

- > The need for a report, by a properly qualified person and to the satisfaction of the responsible authority, on the vegetation and habitat significance of the vegetation to be removed.
- > Whether there is any reasonable alternative means of siting buildings and works in order to conserve the native vegetation of the area.
- > The benefit of conditions requiring planning, replanting and other treatment of the land, having regard to the relationship between buildings and the landscape and the maintenance, where possible, of shared view lines.

ENVIRONMENTAL SIGNIFICANCE OVERLAY (ES025)

2.0 Environmental objectives to be achieved

- > To protect and enhance the natural features, vegetation, ecological diversity, landscape quality, heritage values and recreation opportunities of the Port Phillip Bay.
- > To promote excellence in design of buildings, facilities and structures in the coastal area.

3.0 Decision Guidelines

- > The responsible authority must consider...The degree to which the proposed development is dependent on a coastal location.

32.01 RESIDENTIAL ZONE 1

To encourage residential development that respects the neighbourhood character

Decision guidelines

Before deciding on an application ... consider... including the MMS and Local planning policies

Respecting character does not mean preventing change...*respect for the character of a neighbourhood means that the development should try to "fit in".*

SITE ANALYSIS

The starting point for all development to be assessed under State Planning Policy Framework is the preparation of a site analysis and, perhaps more importantly, the development of a design response that has regard to the opportunities and constraints identified by the site analysis.

We believe that the applicant's designer has failed to undertake a comprehensive site analysis in order to adequately identify the key features of the site and neighbourhood, the potential for impact to adjoining properties and neighbourhood, and address the relevant statutory controls. As a consequence, the application is significantly flawed and will result in a poor design outcome.

We submit that the design was undertaken prior to any or without any consideration of a site analysis. In any case, the site analysis appears to have been undertaken simply as an exercise without a purpose. To support this somewhat cavalier approach we submit the following anecdotes:

- > Mr. Charlie Pugh, part owner and applicant advised my sister on site in late February 2002, at the time he was removing vegetation, that he intended to build out to the cliff edge so that he could obtain views of the McCrae lighthouse.
- > When I remonstrated with Mr. Pugh regarding the removal of planting along our adjoining boundary soon after, he advised me he did not require a planning permit as that he could build "as of right".
- > The proposed building was at the same time pegged out six months prior to the submission of his planning application, however, a planning application was sought and approved for the removal of vegetation along the property for the construction of a fence. This location coincides with the garage and carport of the lodged application. The fence has not been constructed.

We have always understood the site would be built upon one day. We are not seeking to prohibit development of the site and nor have we sought to intervene with new recent applications in Viewpoint Road. We have not considered this to be necessary as they are generally responsive to site and context. We also understand the planning process provides those "being already there", with an advantage of influence in the outcome for newcomers. However, we believe in this instance the Shire has narrowly focussed on lessening the proposal's impact to the street rather than using the complete range of decision guidelines nor the intent and spirit of the relevant planning policies at its disposal.

We believe the applicant has relied on "tick the box" measures to demonstrate compliance. In this context, the report of the Advisory Committee for the Draft Residential Code for Consultation (Rescode), March 2000 which influenced the shape and content of much of Rescode, is appropriate when it states; *"the complex nature of meaningful assessment of proposals cannot be distilled down to a series of quantifiable requirements. It requires qualitative assessment"* and. *"the focus of assessment of development should always be on outcomes, not the satisfaction of rules for their own sake"*.

EXAMINATION OF DESIGN RESPONSE:

EXISTING LANDSCAPE CHARACTER

Vegetation Protection Overlay (VPO)

Vegetation protection objective to be achieved:

"To recognise areas where substantial vegetation cover is the dominant visual and environmental feature"

Two distinct landscape characters exist are relevant to the area and site, namely:

- > Cliff top
- > Cliff face

Cliff Top

The bush and leafy character of this neighbourhood is also strongly influenced in the area by remnants of indigenous eucalypt plantings. With the lower canopy species such as tee tree, casuarina, and banksia these combine to create an open bush woodland effect along the upper cliff top and between and around houses. It produces a strong visual image of the spreading leafy canopies of the trees dominating the landscape with the mixed but uniform landscape of mixed native and exotic vegetation within private gardens.

The effect is of well established and mature bush setting and overhead tree canopy is to *unify the neighbourhood* and create a strong neighbourhood character providing **"the impression ... of buildings within a landscape rather than that of landscaping around buildings."**

Cliff Face

Design and Development Overlay (DD03): "All buildings must be located...at least 6 metres from any cliff edge"

The notable feature is the steep topography. The siting of new buildings is a factor in determining how prominently they are viewed from surrounding areas, such as the beach below and adjoining properties. Indeed this is taken up by DD03 as a design objective that new development; *"to ensure that buildings are designed and sited to avoid being visually obtrusive, particularly in terms of creating a silhouette above a skyline or existing tree canopy line..."*

Existing cliff face vegetation assists reducing the visual obtrusiveness of new cliff top buildings. Existing cliff face vegetation in the area consists of she-oak, coastal tee tree, banksia, sedge grasses, Correa, heath etc. Large eucalypt species such as manna gum and stringy bark provide **a dominant upper canopy appearance**. However, the existing large eucalypt trees which may have diminished the visual impact of a new building have been severely lopped. This has not been identified on the applicant's site context plan. We do not know who undertook this or at whose instructions, the point we make is that due to the lack of an existing tree canopy line **the appropriate siting of a building on this site is now crucial in order to minimise its visual impact.**

The other key feature is the unstable nature of the cliff face. Many slippages have occurred in recent years and according to long term residents the line of the cliff edge has significantly reduced. At one stage, one could walk across along the cliff edge in a straight line. Many trees have grown at an angle away from a vertical position which, in the case of the Thredbo disaster, indicates unstable conditions continue. We understand that the applicant has provided some engineering advice as to the how a building can be located at the cliff face, however in view of such instances as Thredbo, would surely highlight this a significant factor to be taken into account by the Tribunal.

Siting Response

Vegetation Protection Overlay (VPO): "To ensure that new development has proper regard for the established landscape, streetscape and development pattern in terms of being consistent with the existing balance between vegetation and building form in the local area and contributing to the landscape character of the area."

The State Planning Agenda describes neighbourhood as the; "qualitative interplay of built form, vegetation, topographic and social characteristics, in both private and public domains, that make one place different (or distinct) from another."

We argue that the application has almost completely **failed to identify the key landscape characteristics**, other than an engineering response dealing with unstable cliff conditions, that makes this coastal location unique. These prevailing characteristics are;

- > substantial indigenous vegetation cover, particularly the mature eucalypt trees, is the dominant visual and environmental feature
- > the vegetation extends through and around buildings
- > The habitat that existing indigenous vegetation provides for local fauna such as: echidna, bush rats, koala, possum, bats, varieties of reptiles and extensive range of birdlife.
- > That the mature eucalypt diffuse the appearance of buildings.
- > We are not satisfied that the Shire has adequately used the decision guidelines available to it under Rescode, DD03 and VPO to test whether the application is appropriate in terms achieving balance between the built form and the prevailing landscape character. Furthermore, the Shire has failed to articulate or justify why encroachments should be allowed **into the 6.0m setback from the cliff face.**

We do not believe the planning office's assertion that the "reduced" site area available for building justifies the building out to both boundaries and to build to the cliff face at the expense of landscape character.

Whilst the applicant has demonstrated compliance with quantifiable measures when taking into account the entire site it is a matter of judgement if the "buildable" area is used in the calculations. As argued, we believe the site consists of two parts: that of cliff face and cliff top.

Whilst it is accepted that most of the existing cliff top portion of the site has been cleared, the question is: **to what extent the proposal together with the matters to be taken into account, pursuant to the statutory controls and Rescode, including the existing vegetated character of the area and the opportunities for this site, make an appropriate contribution to that character?**

We answer that the proposal will **make a poor contribution due to minimal area being available for landscape** caused by:

- > building out to the boundaries
- > the overall large footprint of the house
- > the need to excavate to accommodate changes in site levels with resulting retaining walls;
- > the placement of numerous external access doors, associated pathways and service areas
- > the extent of area given over for storage, garages, driveways and carports,
- > the lack of setback from the cliff face for landscaping , and
- > Undercroft deck area where vegetation will struggle to survive.

We would submit that the proposal is simply too large a footprint and provides too little area for landscaping to make an appropriate contribution. The issue is that the design response, or perhaps more accurately the final plans, **appear to have had very little regard to prevailing landscape character. Rather the site analysis therefore appears to have been undertaken simply as an exercise without a purpose.**

Rescode is mandatory about the need for residential development to *"respect the existing neighbourhood character... and to ensure that the design responds to the features of the site and the surrounding area"*.

In the final report of the VicCode 2 review panel - whose report provided the basis for the advent of the Good Design Guide and hence Rescode - considerable emphasis is given to the need to have regard to neighbourhood character, including character where landscape plays a significant contribution. The cumulative process of tree removal on the secluded and green and leafy character of areas was a matter for particular consideration by the Panel. In this context it is worthwhile considering.

At page 28 of its report the Panel considered the role of landscape in neighbourhood character and suggested: *"Therefore, if change is to occur within the suburbs, it needs to do so in a context which respects and maintains the essential garden character of Melbourne where gardens are a dominant feature of the "character" or "feel" of a neighbourhood. Several steps need to be taken to achieve this. Landscape as a design element needs to be strengthened and amalgamated with the streetscape element to become an element dealing with neighbourhood character. Provision must be made in new development for the retention or planting of trees which will develop a canopy. This will be easier to achieve on larger sites where communal open space or internal streets offer opportunities without reduction in density. On standard infill site opportunities are more limited, which is one reason why densities on such sites should be lower and set backs probably greater. Each site should make a positive contribution to the amenity of the area as a whole, not just refrain from adversely affecting the amenity of neighbouring properties. The placement of buildings on a site to maximize room for trees and gardens should be encouraged."*

More recently, The Report of the Advisory Committee on the Draft Residential Code for Consultation (Rescode) in 20 December 2000, states on page 25: *"Infill locations were where the Standing Advisory Committee found the greatest number of bad examples of new residential development. The majority of these were single house, which have now requirement for a planning permit and have different standards applied to them. This is in contrast to greenfield locations where there are few problems with new development, apart from carparking An established urban context is therefore the area where there is greatest need for skilled and informed judgement to be exercised in decision-making associated with new buildings."* This issue highlighted the need for the design of single houses to be accountable and made part of Rescode.

EXISTING BUILT FORM AND SITING

Rescode 54.04 Side and rear setback objective: **To ensure that the height and setback of a building form and respects the existing of preferred neighbourhood character and limits the impact on the amenity of existing dwellings.**

The prevailing built form is single detached "holiday" housing of a variety of styles reflecting the periods and circumstances of when they were built. These range from 8-10 Viewpoint Rd which is interwar Cape Cod style with attic windows in steep tiled roof through to humble fibro beach shacks and more "moderne" styles of the 60's. More recently, the area has undergone a spike in development levels reflecting the increased demand for homes near and/or with views of sea. It has included replacement of existing housing stock and vacant blocks built with larger housing types of a variety of styles and forms.

The overall variety of scales and styles indicate that a non prescriptive approach to form and style would be appropriate and that issues of siting, mass and landscape are relevant in determining appropriate outcome. Colours, finishes and materials are also of consideration in terms of fit within site and context.

Siting

The prevailing character of building siting is the appearance of landscape around and between buildings. Existing buildings are in the main, setback from side boundaries allowing for substantial vegetation, particularly for larger eucalypt trees and screen planting. This prevailing character is enhanced by the uniformity of the landscape. Importantly, it is the lack of structures on boundaries, including fences, which contributes to the dominance of landscape in the area rather than that of buildings dominant.

The other issue relevant in this context is **views between the buildings** to Port Phillip Bay. Viewpoint Rd. is a cul de sac which ends at the start of a public pathway which follows a bush lined creek connecting, down below, with Margaret St., a shady unmade track which connects to Nepean Highway. From there the path provides access to either (or all) the beach and the network of foreshore walking tracks, the beach and the McCrae Village shops. This pathway is part of an extensive network of walking tracks in the area refurbished in recent years by the Shire. The Viewpoint Rd. track is particularly popular in the area as it offers, due to its "no through road" nature, a route relatively free of traffic.

Herein lies the nub of this issue. That is the experience and enjoyment of bush and views through bush to Bay long enjoyed by people living in the area. Viewpoint Rd. has retained its distinctive qualities and provides a unique coastal landscape experience. Development has lessened that experience. Whilst this experience may not be at first impressions evident, there is sufficient clues contained within the design guidelines, particularly in Schedule 3 of the Design and Development Overlay (DD03): ***"To ensure that new development has proper regard for the established streetscape and development pattern in terms of building height, scale and siting" and "to protect shared viewlines where reasonable and practical."***

Siting: Shared Viewlines

One further siting issue relates to the application's lack of analysis of setbacks from the cliff edge which would allow for maximising views but not at the expense of blocking neighbours viewlines: *"to protect shared viewlines where reasonable and practical."*

An analysis would have indicated that the house either side of 6 Viewpoint Road more or less share the same extent of views without impinging on each other. This occurs largely by good sense prior to the advent of planning controls, but also in some recent instances by design. Recent new housing in Prospect Hill Rd. are sited along the same cliff edge and have made sited their houses with a consistent setback with their neighbours in order to share the views and not impose themselves on their neighbours. This demonstrates not only adherence of the statutory controls regarding shared viewlines but their intent.

The property at 12 Viewpoint Rd. is not relevant in this respect as is it sited under the cliff edge and in any case is hidden from neighbours and street.

The identification of this consistent setback line creates a democratic sharing of the view lines which is completely lacking with applicant's analysis.

Siting: Design Response

We argue that the design response in terms of siting is flawed. Quite clearly the applicant has failed to distinguish the prevailing nature of setbacks in the area or has even addressed the intent of statutory controls. **The response is clearly without reference to the established viewlines, patterns siting allowing for the continuation and rhythm of landscape.**

Rather, it clearly sets out to maximise views and filled the remaining site area to maximise storage (for what?) and parking for caravans, trucks, boats and cars as a as the primary design considerations. The result lacks any sensitivity to any of the prevailing

We argue that the large size of the proposed house, and for that matter the extensive areas of parking and storage, presents a poor response because of a lack appropriate design process. The matter of what can be reasonably and practically accommodated on this site has not in this instance appeared to have been addressed at all during the design process.

We argue the area will be adversely affected by this proposal. **The planning officer's claims of a lack of sufficient "buildable" site area as appropriate reason to condone a boundary to boundary response offering little area for landscape and denying the experience of views between and through buildings and landscape is wrong and we seek the support of the Tribunal to correct this situation.** As previously suggested, the issues is not our objecting to a building on this site, but the outcome. We are not against the size of house or for that matter the extent parking or storage areas only that they are can be demonstrated to be put together with balance to the nature of site and location.

Building Mass

We argue that there is sufficient variety of buildings in the area demonstrating different sizes and masses to provide precedence and support for a large house on this site. The issue we continue to return to is the quality of design outcome and its fit with site and context. In this instance, the issue of exposure of a building on this site is important due to the cliff face acting as a promontory. The issues of setbacks has been previously addressed in terms of controls and landscape and therefore the height and mass issue becomes a matter of judgement, particularly when considered from different vantage points.

The beach and down below view:

The proposal, due to its proximity to cliff edge and its height will provide the impression of the house about to launch itself off the cliff much like a hang glider.

Viewpoint Road/Streetscape view

Although the planning officer's report states the appearance of the building from Viewpoint Road will be single storey, it will be the appearance of the garage, carport, and the storage that will dominate the appearance.

In addition, the amount of area given over to provide car, truck, boat and caravan access and parking reduces the opportunity for landscaping thereby the appearance is harshened rather than screened or softened by landscaping.

The proposed fence will highlight the hard edges created by building out to side boundaries in an otherwise fenceless landscape dominant neighbourhood.

Many local authority now exist affecting new residential development dealing with siting and design of garages and carport with the specific intent to minimise their impact to street. Rescode addresses this indirectly with decision guidelines and objectives, however in this instance the assessment has appeared to be narrow.

Height

Again we argue that there is sufficient diversity of height in the area and neighbourhood to justify higher buildings but only on a basis of a better outcome that may have otherwise resulted. It therefore a matter of judgement. We offer the following points.

The relative height of the proposed dwelling is consistent with relative height of the neighbouring dwellings. However, the flat zincalume metal roof area, whilst in addition to not meeting the Shire's muted tones policy, will be viewed from adjoining properties, and upper hill areas including the first floor balcony and bedroom from our residence.

In addition, the slope of topography will expose roof from Viewpoint Rd. as well as properties on the southern side of Viewpoint Rd. and the lack of adequate areas for landscaping will not provide adequate camouflage of the roof and building bulk.

The proposal does not indicate a roof plan and lacks any detail as to a lift overrun, plant and equipment for any air conditioning which would further exacerbate the poor resultant appearance.

Overlooking

The type of overlooking in this instance is different from a typical urban location where overlooking can occur due to the site size and configuration. We acknowledge views are a valued asset and overlooking can be more difficult to prevent if access to those views are to be shared.

The locational issues here relate to the following existing features:

- > buildable site configurations are flat side by side with orientation to bay views and no overlooking occurs because of sloping topography
- > vegetation of 10 Viewpoint Rd. provides buffer between sites at the "flat" cliff top areas
- > vegetation provides minimal opportunities for screening over gully sightlines as the ground drops sharply away
- > private open terrace space of 10 Viewpoint Rd is secluded but overlooking occurs from private open space lawn areas

The proposal will overlook the private open space of neighbouring properties. This is largely a result of siting and the height of the building at the cliff end of the site, the location of windows, the projection of first floor decks and living spaces, and the layout of spaces internally.

Whilst the planning officers have acknowledged that a overlooking issue will result by imposing sill height/obscure glazing to a dining room they have not fully considered the proposal and understood its impact. We understand this may have been difficult due to the lack of information provided by the applicant. Rescode 54.04-6 provides decision guidelines that the responsible authority must consider (not may) in terms of "the existing extent of overlooking into the secluded private open space" and, "the impact on the amenity of the secluded private open space". The dining room window is only one point of overlooking to secluded open space. Why not the meals area? Is the type of food consumed there allowing it to be an amnesty? What about the deck and kitchen?

What reasonable steps can we undertake to avoid been overlooked from our terrace?

- > screening: will enclose the terrace and block out views
- > Planting: will take many years for tall eucalypts to grow to a height sufficient enough from the gully.

What then would be reasonable steps be available to "the other side of the boundary?"

- > setback all built areas including deck areas to the prevailing cliff face setback;
- > setback from side boundaries to allow for screen planting not reliant on other properties

SUMMARY

The subject site is a classic example of the need "for skilled and informed judgement." The planning system now requires the designer to demonstrate how an established character can be synthesised with a new development. Unfortunately this proposed development provides no evidence of this. There is little to suggest that the design responds to the site and therefore that the design process and the assessment process have followed that required by Rescode and the relevant other planning policies.

The Shire has not used the tools available to it in the Planning Scheme to address this. Unfortunately, this is evident in a number of developments making their presence felt in the area which exhibit lack of skill and judgement and yet are approved.

We seek the Tribunal's support for our submission.

VCAT REFERENCE P3390/2002

TENDERING PARTY: C A BATCHELOR

28 KARDINIA ROAD

GLEN IRIS 3146

My family have owned a property at McCrae for approximately 50 years. Obviously, one cannot reasonably expect that there will not be changes over such a long period of time but surely the key characteristics and charm of the area can be retained. Sadly, this has not been the case.

There has been massive & unnecessary destruction of the natural vegetation in the area to allow for new homes. What was a natural & secluded bush area has become a just another suburban area.

The proposed development at 6 View Point Road is the epitome of the lack of planning that has occurred in the last few years. The block has been cleared of all vegetation with the exception of one gum tree on the front boundary.

The proposed house is enormous and will be the dominant and prevailing feature on the cliff. The bulk, scale & siting of the building is not responsive to the site & area.

The major difficulty I have with the proposal is the total disregard for shared view lines & the established building line along the cliff which clearly affects the enjoyment of the area by other residents.

The proposed development will totally obliterate my view of the McCrae lighthouse and impact on my view towards Rosebud, Rye & Sorrento enormously.

I think it is unreasonable that one development can impact so dramatically on neighbours, and spoil the views that residents and visitors to the area have enjoyed for many years.

**SUBMISSION TO THE VICTORIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL BY THE RESPONSIBLE AUTHORITY
STATUTORY PLANNING**



**MORNINGTON
PENINSULA**

Shire

APPLICATION FOR REVIEW No.	P3390/2002
REVIEW TYPE	Sect 82 Review Of A Decision To Grant A Permit
APPELLANT	Mr Robert Stent, Mr James R Bendell, Ms Cheryl Anne Batchelor
SUBJECT SITE	6 View Point Rd MCCRAE VIC 3938
PLANNING SCHEME	Mornington Peninsula Planning Scheme, 1999
RESPONSIBLE AUTHORITY	Mornington Peninsula Shire
PLANNING APPLICATION No	P02/1833

Dave's copy.

The Appeal

The appeal is against Council's decision to grant a permit for the development of a dwelling and associated works at no. 6 View Point Road, McCrae.

The appellant Robert Stent's grounds of appeal are as follows:

1. The proposal does not respect the existing neighbourhood character.
2. The proposal is not responsive to the site and the neighbourhood.
3. The proposal, when viewed from the street and adjoining properties will adversely impact due to its visual bulk, site coverage and inappropriate design response.
4. The proposal fails to respect the landscape character of the neighbourhood and fails to account for a number of mature trees removed within the last 12 months.
5. The proposal does not respect the prevailing neighbourhood character in regard to walls on boundaries.
6. The proposal's siting detrimentally impacts on the amenity of secluded private open space of adjoining residencies.
7. The proposal lacks sufficient architectural merit in its response to both the nature of the site and the adjoining landscape and neighbourhood character. The proposal responds poorly to the site and is an over development with excessive visual bulk and impact on adjoining residencies.

The appellant James Bendell's grounds of appeal are as follows:

1. The setback from the cliff edge is excessively minimal on safety grounds, and is contrary to previously established council precedent for the vicinity where cliff face is evident. No evidence of a landslip assessment report has been presented.
2. The proposal will impact on private open space to both sides.
3. Boundary to boundary construction is contrary to neighbourhood character in terms of landscape.
4. The excessive visual bulk of the proposed development is out of character in terms of landscape.
5. The 26 metre long 'storage area', in addition to a two car garage and a two car port is manifestly excessive and suggests that it will be used as a part of the owners business ventures.
6. The fire rating of the boundary wall of the 'storage area' adjacent to the existing dwelling is of serious concern to the occupiers of that dwelling.
7. There is no landscaping buffer on the boundary as exists on all other houses in the street.
8. All other dwellings along the cliff respected a nominal building line apart from the proposed dwelling, which fails to protect the shared view lines [DDO3].
9. The view under the proposed deck and construction will be visually offensive.
10. The side of the storage area on the boundary is visually unsightly without any set back or landscaping.

The appellant Cheryl Batchelor's grounds of appeal are as follows:

1. The land forms the top of a steep slope (est. 45degrees). The area is part of the Selwyn Fault and is apparently unstable and prone to slip. No evidence of Landslip Assessment Report.
2. Not following established nominal building line that fails to protect shared view lines [DDO3].
3. Bulk, scale, and siting (ie boundary to boundary) of the building is not responsive to the site and area.

The Land (Refer to Appendix 1)

The land is lot 2 on LP114212 Vol 9088 Fol 778. It has a 25.3m frontage to View Point Rd and a total area of 1511 square metres.

The land falls from the street frontage (south to the north) and a cliff face crosses the site. Vegetation is confined to the north of the site along the cliff face, pittosporum along the north east boundary, and a large gum tree to the south west near the street frontage. No fencing screens the subject land.

Adjoining Land

South- single storey dwellings on the other side of Viewpoint Rd, which are well setback and screened by vegetation.

North- single and two storey dwellings sited well below the subject site and adjoin Point Nepean Rd.

West- a large two storey dwelling, which is reasonably well screened by vegetation.

East- a recently constructed dwelling raised on posts, which partially extend over the cliff face.

Overall, the dwellings in the locality comprise of a variety of building materials and designs. Most dwellings are orientated to obtain views of Port Phillip Bay.

The Application

- Application received on 02/08/02, accompanied by a Site Plan and elevations showing a two storey building with a maximum building height of 6.7 metres above natural ground level.
- 04/09/02, application advertised, five objections received - from No.605 Point Nepean Rd and no's.3, 4,10, & 16 View Point Rd respectively.
- 11/10/02 a site meeting was held.
- 18/11/02 a site investigation report and amended plans received showing the deletion of the double carport (and increased front setback from 5 metres to 11 metres); increased landscaping; and relocation of the northern wall of the storage room back from the bedroom window of the abutting dwelling to the north east.
- 11/12/02, Responsible Authority issued a Notice of Decision to Grant a Permit.
- 23/12/02, Notice of Application for Review received on behalf of the owners of no.4 & no.10 View Point Rd.
- 5/2/03, Cheryl Batchelor was granted leave to lodge an application for review pursuant to Section 82B *Planning and Environment Act 1987*.
- 17/4/03, application was referred to mediation.
- 7/5/03, amended plans received showing an increase in the setback from the cliff edge of 2 metres; front setback reduced from 11 metres to 9.7 metres; offsetting the

storage room off the north east boundary opposite the habitable rooms of the adjoining dwelling; and offsetting the garage along the west boundary by 1.5 metres.

The application is for the development of a two storey dwelling, including five bedrooms, a study and cellar, a large store room and double garage.

Refer to site plan

	Dwelling
Materials/Colour	Insulation sheet (Beige/Stone) and tray deck roof (Green/Brown/Beige)
Siting	9.7 m from south boundary (front) 19.5 m from north boundary 1 m from the south boundary walls on both the west and east boundaries
Wall Height	6.55 metres
Overall Height	6.55 metres
Earthworks	Cut – 1 metre Fill – negligible
Vegetation Clearing	Some Pittosporum along the north east boundary

Planning Controls

Planning controls are administered through the Mornington Peninsula Planning Scheme, for which the Mornington Peninsula Shire is the Responsible Authority.

State Planning Policy Framework

Clause 19.03 – Design and Built Form.

The objectives of the policy are to achieve high quality urban design and architecture that:

- Reflects the particular characteristics, aspirations and cultural identity of the community,
- Enhances livability, diversity, amenity and safety of the public realm, and
- Promotes attractiveness of towns and cities within broader strategic contexts.

Municipal Strategic Statement

Clause 21.07-2 – Local Area Character.

The expressed objective is to ensure that the design and intensity of new residential subdivision and development is site and area responsive, having regard to:

- Environmental capacity and principles of best practice environmental management,
- The availability of infrastructure,
- The neighbourhood character and heritage of the area
- The accessibility of the area to facilities, services and employment centres.

Local Planning Policy Framework

Clause 22.13 – Township Environment.

The relevant policies require that:

- New developments be connected to reticulated sewerage.
- Best practice environmental management be used in the design, construction and operation of drainage systems to reduce impacts on surface waters.
- New developments and redevelopments be designed and managed to minimise the impact of stormwater runoff on waterways.

Residential 1 Zone (Refer to Appendix 2- Text, & Appendix 3- Map)

Pursuant to clause 32.01-3, a permit is not required to construct a dwelling on land which is in excess of 300 square metres.

Pursuant to the table to clause 32.01-1, a permit is not required for the use of a dwelling.

One Dwelling on A Lot

In the Residential 1 Zone an application to construct a building or construct or carry out works associated with one dwelling on a lot:

- Must comply with Clause 54.01
- Must meet all of the objectives and should meet all of the standards of Clause 54.03-3, 54.03-4, 54.03-5, 54.03-6, 54.03-7; 54.04-2, 54.04-3, 54.04-4, 54.04-5, 54.04-6, 54.05, 54.06-1.
- Must meet the objectives of Clauses 54.03-1, 54.03-2 and 54.04-1.

Design and Development Overlay (Refer to Appendix 4- Text, & Appendix 5- Map)

The Design and Development Overlay provides that a permit is required to construct a building or carry out works unless a schedule to the overlay specifically states that a permit is not required.

The land is subject to Schedule 3 of the Design and Development Overlay. This Schedule provides that a permit is required for all new dwellings where set prescriptive requirements are met. The proposal seeks to vary the following requirements of the Design and Development Overlay.

1. *No building may exceed a wall height of 5.5 metres or a building height of 6 metres.*
2. *All buildings must be setback at least 7.5 metres from any land within a Public Park and Recreation Zone, Public Conservation and Resource Zone or Road Zone and at least 6 metres from any cliff edge.*

The Responsible Authority may vary this requirement if it is *satisfied that compliance is unreasonable or unnecessary and no significant loss of amenity will result from approval of the variation.*

Matters to be considered by the Responsible Authority are set out at section 4.0 of Schedule 3. The relevant matters are:

- The design objectives of this schedule.
- Where an objective has been applied from Clause 54.02 to 54.06, inclusive, the relevant decision guidelines from that Clause.
- Whether any loss of amenity will result from a variation to the requirements of this schedule.
- Any relevant development plan, heritage study, code or policy relating to the protection and development of land in the area.
- Whether opportunities exist to avoid a building being visually obtrusive by the use of alternative building designs, including split level and staggered building forms, that follow the natural slope of the land and reduce the need for site excavation or filling.

- The effect of any proposed subdivision or development on the environmental and landscape values of site and of the local area, including the effect on streamlines, foreshores, areas of remnant vegetation, areas prone to erosion and on the amenity and accessibility of areas of public open space.
- The need to ensure that the design of development has adequate regard to fire risk and includes appropriate fire protection measures.

The decision guidelines of Clause 65 are also taken into consideration.

Environmental Significance Overlay (Refer to Appendix 6-Text, & Appendix 7- Map)
 Environmental Significance Overlay – Schedule 25 provides that a permit is required to construct a building or carry out works. Environmental objectives to be achieved are:

1. To protect and enhance the natural features, vegetation, ecological diversity, landscape quality, heritage values and recreation opportunities of the Port Phillip Bay coastal area and associated intertidal and marine habitats.
2. To promote excellence in design of buildings, facilities and structures in the coastal area.
3. To promote coordinated management of the Port Phillip coastal area.

Vegetation Protection Overlay (Refer to Appendix 8- Text, & Appendix 9- Map)
 Vegetation Protection Overlay – Schedule 1 provides that a permit is required to remove, destroy or lop any vegetation except (among other things) the removal of vegetation carried out in conjunction with a development approved under a planning permit and in accordance with an endorsed plan. The proposal only requires the removal of a small area of vegetation adjoining the north east boundary.

Council's consideration

1) Policy considerations

a) State Planning Policy

Council is satisfied that the proposed development meets the objectives of clause 19.03, in that a high standard of design and architecture will be achieved. The development positively responds to the characteristics of the area without compromising the public realm.

The planning application was accompanied by a Site Plan which identified that a two storey dwelling as proposed to be sited would respond most favourably to the surrounding development. The views currently enjoyed by the adjoining neighbours would be substantially maintained by keeping the building height to 6.55 metres and below, while maintaining the existing pattern of development for dwellings along the escarpment.

b) Municipal Strategic Statement

The proposal satisfies the objective of clause 21.07 in that the land:

- is serviced by all relevant utility services, including drainage and sewerage,
- abuts a sealed road that has adequate capacity to service the land,

- has no significant vegetation that would be lost through the development
- has no known heritage value.

c) Local Planning Policy

The proposed development reasonably satisfies the objectives of clause 22.13, which are focused principally on the need for environmental sustainability in new developments. The area is sewered and has stormwater drainage to Penny Lane.

2) Overlay considerations

Decision guidelines of Schedule 3 to the Design and Development Overlay:

a) Design objectives

- The design responds to the site characteristics of a slight fall from the south. A reasonable balance of cut and fill is achieved.
- A site investigation report determines that the proposed development would not detrimentally impact the cliff face.
- The development does not exceed the environmental capacity of the area, which is serviced by all relevant utility services.
- No significant vegetation cover will be lost.
- The development is two storey and two storey developments dominate the area.
- The primary views of Port Phillip Bay from the adjoining properties have been protected where reasonable and practical. (Refer to Appendix 10)
- The building will not be visually obtrusive or silhouette above the skyline.

illustrate using photo + site plan.

b) Loss of amenity resulting from variation to the requirements:

- The requirements to be varied are wall height and building height exceeding 5.5 metres and 6 metres respectively, and building within 6 metres of a cliff face.
- Maximum wall and building height are achieved to the rear of the dwelling due the slope of the land and comprise only a small portion of the development. From the street frontage the dwelling will appear to be single storey.
- No significant trees will be removed and vegetation will only be cleared within the building envelope or two metre perimeter.
- The granting of the variation to this requirement will not result in any significant loss of amenity.
- Building within 6 metres of the cliff edge is considered reasonable due to the irregular shape of the lot, front setback requirements, and the position of the cliff edge towards the centre of the lot. A Site Investigation Report has been submitted and determines that the development would not detrimentally impact on the stability of the site. A condition of approval requires that the development be carried out in accordance with the Site Investigation Report.

c) There are no development plans, heritage studies, codes or policies (other than within the Local Planning Policy Framework) which affect the land.

d) The building will not be visually obtrusive for the following reasons:

- The floor to ceiling height for the ground floor and first floor level is on average 2.5 metres. This is considered to be reasonable.
- At no point within the building envelope does the maximum cut or fill exceed one metre.

- The dwelling will appear single storey from the street frontage and the bulk is equal to or less than other dwellings in the locality.
- f) The development will have no affect on the environmental or landscape values of the area.
- g) The development does not create any fire risk.

Decision Guidelines of Schedule 25 to the Environmental Significance Overlay

- The proposed development requires minimal excavation or fill.
- The proposed development requires minimal removal of vegetation. A condition of approval will require the planting of indigenous tree species.
- Although the proposed development will be visible from the foreshore of Port Phillip Bay and Point Nepean Rd, it will be reduced in scale compared to the two adjoining dwellings. The use of muted colours, non-reflective building materials and the low profile of the roofline (inconjunction with some vegetation screening) will minimise the visual impact of the development sited in a prominent location.
- Objectives and guidelines of the Victorian Coastal Strategy, Siting and Design Guidelines for Structures on the Victorian Coast (May 1998) and Landscape Setting Types for the Victorian Coast (May 1998) have been satisfied.

Decision Guidelines of Schedule 1 to the Vegetation Protection Overlay

- *Pittosporum*, the species of vegetation to be removed, is classed as an environmental weed.
- Vegetation to be removed has been established for less than 10 years and which is not required as landscaping under a planning approval.
- A portion of the vegetation to be removed is within the building envelope, driveway, and line of the front fence.
- Removal of the vegetation is not in the vicinity of the cliff face and will not impact on the stability of the site.
- A condition of approval will require the planting of indigenous tree and plant species.

3) One Dwelling On A Lot – Clause 54 considerations (Refer to Appendix 11)

The proposed development satisfies the Objectives, Standards and Decision Guidelines of Clause 54 and in summary:

- Respects the existing neighbourhood character.
- Provides for reasonable standards of amenity for existing and new residents.
- Is responsive to the site and the neighbourhood.
- Note that a condition of approval will require the upper level dining room window along the west elevation is to be obscured glazing or have a 1.7m sill height. The balcony does not overlook the secluded open space of the adjoining properties, and only has a direct view out over the cliff face.

4) Consideration of Clause 65

The matters set out in this clause are substantially addressed through consideration of policy and amenity issues.

Conclusion

In reaching its decision to approve the application, the Responsible Authority was satisfied that:

- The development would not have any significant effect on the streetscape or the environment,
- The extent of variation being sought to requirements for wall and building height, setback from any cliff edge, and vegetation removal was not unreasonable and would not result in a loss of amenity,
- The extent of view loss to the objectors was not unreasonable,
- The development was consistent with the orderly and proper planning of the area.

It is respectfully requested that the Tribunal uphold the decision of the Responsible Authority and disallow the subject appeal.

I & S

David Quelch
Development Planner

5 June 2003

Appendices



APPLICATION FOR REVIEW No. P3390/2002
PLANNING APPLICATION No P02/1833

List of Appendices

1. Site map
2. Residential 1 Zone- Text
3. Residential 1 Zone- Map
4. Development and Design Overlay (Schedule 3)- Text
5. Development and Design Overlay (Schedule 3)- Map
6. Environmental Significance Overlay (Schedule 25)- Text
7. Environmental Significance Overlay (Schedule 25)- Map
8. Vegetation Protection Overlay (Schedule 1)- Text
9. Vegetation Protection Overlay (Schedule 1)- Map
10. 3 Overbay Ave- VCAT Order
11. ResCode Table



100 m 



Appendix 2

32.01 RESIDENTIAL 1 ZONE

Shown on the planning scheme map as **R1Z**.

Purpose

To implement the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.

To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.

To encourage residential development that respects the neighbourhood character.

In appropriate locations, to allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs.

32.01-1 Table of uses

Section 1 - Permit not required

USE	CONDITION
Animal keeping (other than Animal boarding)	Must be no more than 2 animals.
Apiculture	Must meet the requirements of the Apiary Code of Practice, May 1997.
Bed and breakfast	No more than 6 persons may be accommodated away from their normal place of residence. At least 1 car parking space must be provided for each 2 persons able to be accommodated away from their normal place of residence.
Carnival	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.
Circus	Must meet the requirements of A 'Good Neighbour' Code of Practice for a Circus or Carnival, October 1997.
Dependent person's unit	Must be the only dependent person's unit on the lot.
Dwelling (other than Bed and breakfast) Home occupation Informal outdoor recreation Mineral exploration	
Mining	Must meet the requirements of Clause 52.08-2.
Minor utility installation Natural systems	

Section 1 - Permit not required (continued)

USE	CONDITION
Place of worship	Must be no social or recreation activities. The gross floor area of all buildings must not exceed 180 square metres. The site must not exceed 1200 square metres. The site must adjoin, or have access to, a road in a Road Zone.
Railway Road	
Search for stone	Must not be costeaning or bulk sampling.
Telecommunications facility	Buildings and works must meet the requirements of Clause 52.19.
Tramway	

Section 2 - Permit required

USE	CONDITION
Accommodation (other than Dependent person's unit and Dwelling) Agriculture (other than Animal keeping, Animal training, Apiculture, Horse stables, and Intensive animal husbandry)	
Animal keeping (other than Animal boarding) – if the Section 1 condition is not met	Must be no more than 5 animals.
Car park	Must be used in conjunction with another use in Section 1 or 2.
Car wash	The site must adjoin, or have access to, a road in a Road Zone.
Community market	
Convenience restaurant	The site must adjoin, or have access to, a road in a Road Zone.
Convenience shop	The leasable floor area must not exceed 80 square metres.
Food and drink premises (other than Convenience restaurant and Take away food premises) Leisure and recreation (other than Informal outdoor recreation and Motor racing track) Medical centre Mineral, stone, or soil extraction (other than Extractive industry, Mineral exploration, Mining, and Search for stone)	

Section 2 - Permit required (continued)

USE	CONDITION
Place of assembly (other than Amusement parlour, Carnival, Circus, Nightclub, and Place of worship) Plant nursery	
Service station	The site must either: <ul style="list-style-type: none">• Adjoin a business zone or industrial zone.• Adjoin, or have access to, a road in a Road Zone. The site must not exceed either: <ul style="list-style-type: none">• 3000 square metres.• 3600 square metres if it adjoins on two boundaries a road in a Road Zone.
Store	Must be in a building, not a dwelling, and used to store equipment, goods, or motor vehicles used in conjunction with the occupation of a resident of a dwelling on the lot.
Take away food premises	The site must adjoin, or have access to, a road in a Road Zone.
Utility installation (other than Minor utility installation and Telecommunications facility)	
Any other use not in Section 1 or 3	

Section 3 - Prohibited

USE
Amusement parlour
Animal boarding
Animal training
Brothel
Cinema based entertainment facility
Extractive industry
Horse stables
Industry (other than Car wash)
Intensive animal husbandry
Motor racing track
Nightclub
Office (other than Medical centre)
Retail premises (other than Community market, Convenience shop, Food and drink premises, and Plant nursery)
Saleyard
Transport terminal
Warehouse (other than Store)

32.01-2 Subdivision

Permit requirement

A permit is required to subdivide land.

A subdivision must meet the requirements of Clause 56.

Exemption from notice and review

An application to subdivide land into lots each containing an existing dwelling or car parking space is exempt from the notice requirements of Section 52(1)(a), (b) and (d), the decision requirements of Section 64(1), (2) and (3) and the review rights of Section 82(1) of the Act.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The objectives and standards of Clause 56.

32.01-3 Construction and extension of one dwelling on a lot

Permit requirement

A permit is required to construct or extend one dwelling on:

- A lot of less than 300 square metres.
- A lot of between 300 square metres and 500 square metres if specified in the schedule to this zone.

The construction or extension of a dwelling includes a front fence within 3 metres of a street if the fence exceeds the maximum height specified in Clause 54.06-2.

A development must meet the requirements of Clause 54.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The objectives, standards and decision guidelines of Clause 54.

32.01-4 Construction and extension of two or more dwellings on a lot and residential buildings

Permit requirement

A permit is required to:

- Construct a dwelling if there is at least one dwelling existing on the lot.
- Construct two or more dwellings on a lot.
- Extend a dwelling if there are two or more dwellings on the lot.
- Construct or extend a residential building.

The construction or extension of a dwelling or a residential building includes a front fence within 3 metres of a street if the fence exceeds the maximum height specified in Clause 55.06-2.

A development must meet the requirements of Clause 55. This does not apply to a development of four or more storeys, excluding a basement.

A permit is not required to construct one dependent person's unit on a lot.

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

- The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.
- The objectives, standards and decision guidelines of Clause 55.

32.01-5 Requirements of Clause 54 and Clause 55

The schedule to this zone may specify the requirements of:

- Standards A3, A4, A5, A10, A17 and A20 of Clause 54 of this scheme.
- Standards B6, B7, B8, B17, B28 and B32 of Clause 55 of this scheme.

If a requirement is not specified in the schedule to this zone, the requirement set out in the relevant standard of Clause 54 or Clause 55 applies.

32.01-6 Buildings and works associated with a Section 2 use

A permit is required to construct a building or construct or carry out works for a use in Section 2 of Clause 32.01-1.

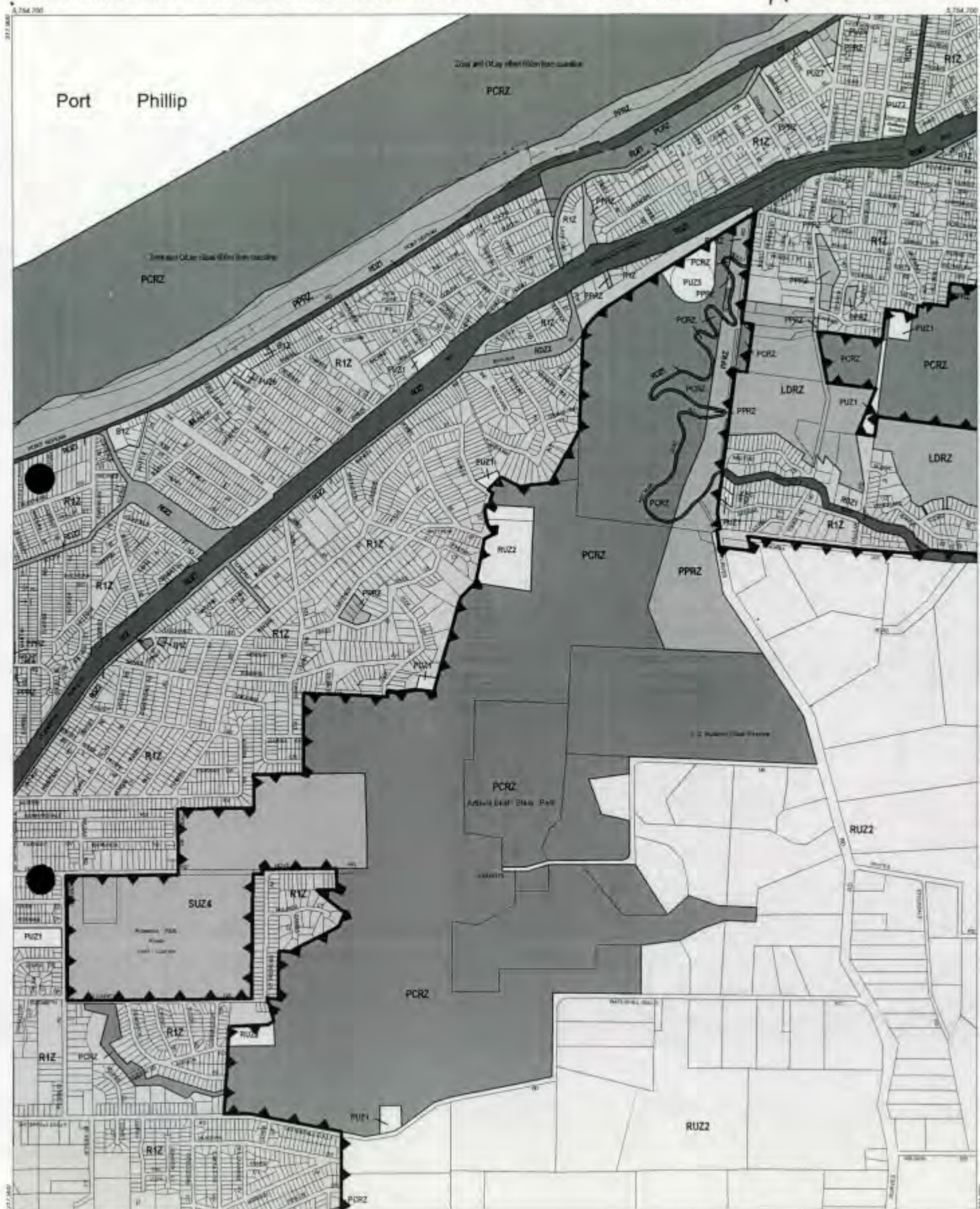
32.01-7 Advertising signs

Advertising sign requirements are at Clause 52.05. This zone is in Category 3.

Notes: *Refer to the State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement, for strategies and policies which may affect the use and development of land.*

Check whether an overlay also applies to the land.

Other requirements may also apply. These can be found at Particular Provisions.



Business	Public Land	Public Use Zone
B1 Business 1 Zone	P1 Public Land	P1 Public Use Zone
B2 Business 2 Zone	P2 Public Land	P2 Public Use Zone
B3 Business 3 Zone	P3 Public Land	P3 Public Use Zone
B4 Business 4 Zone	P4 Public Land	P4 Public Use Zone
B5 Business 5 Zone	P5 Public Land	P5 Public Use Zone
B6 Business 6 Zone	P6 Public Land	P6 Public Use Zone
B7 Business 7 Zone	P7 Public Land	P7 Public Use Zone
B8 Business 8 Zone	P8 Public Land	P8 Public Use Zone
B9 Business 9 Zone	P9 Public Land	P9 Public Use Zone
B10 Business 10 Zone	P10 Public Land	P10 Public Use Zone
B11 Business 11 Zone	P11 Public Land	P11 Public Use Zone
B12 Business 12 Zone	P12 Public Land	P12 Public Use Zone
B13 Business 13 Zone	P13 Public Land	P13 Public Use Zone
B14 Business 14 Zone	P14 Public Land	P14 Public Use Zone
B15 Business 15 Zone	P15 Public Land	P15 Public Use Zone
B16 Business 16 Zone	P16 Public Land	P16 Public Use Zone
B17 Business 17 Zone	P17 Public Land	P17 Public Use Zone
B18 Business 18 Zone	P18 Public Land	P18 Public Use Zone
B19 Business 19 Zone	P19 Public Land	P19 Public Use Zone
B20 Business 20 Zone	P20 Public Land	P20 Public Use Zone
B21 Business 21 Zone	P21 Public Land	P21 Public Use Zone
B22 Business 22 Zone	P22 Public Land	P22 Public Use Zone
B23 Business 23 Zone	P23 Public Land	P23 Public Use Zone
B24 Business 24 Zone	P24 Public Land	P24 Public Use Zone
B25 Business 25 Zone	P25 Public Land	P25 Public Use Zone
B26 Business 26 Zone	P26 Public Land	P26 Public Use Zone
B27 Business 27 Zone	P27 Public Land	P27 Public Use Zone
B28 Business 28 Zone	P28 Public Land	P28 Public Use Zone
B29 Business 29 Zone	P29 Public Land	P29 Public Use Zone
B30 Business 30 Zone	P30 Public Land	P30 Public Use Zone
B31 Business 31 Zone	P31 Public Land	P31 Public Use Zone
B32 Business 32 Zone	P32 Public Land	P32 Public Use Zone
B33 Business 33 Zone	P33 Public Land	P33 Public Use Zone
B34 Business 34 Zone	P34 Public Land	P34 Public Use Zone
B35 Business 35 Zone	P35 Public Land	P35 Public Use Zone
B36 Business 36 Zone	P36 Public Land	P36 Public Use Zone
B37 Business 37 Zone	P37 Public Land	P37 Public Use Zone
B38 Business 38 Zone	P38 Public Land	P38 Public Use Zone
B39 Business 39 Zone	P39 Public Land	P39 Public Use Zone
B40 Business 40 Zone	P40 Public Land	P40 Public Use Zone
B41 Business 41 Zone	P41 Public Land	P41 Public Use Zone
B42 Business 42 Zone	P42 Public Land	P42 Public Use Zone
B43 Business 43 Zone	P43 Public Land	P43 Public Use Zone
B44 Business 44 Zone	P44 Public Land	P44 Public Use Zone
B45 Business 45 Zone	P45 Public Land	P45 Public Use Zone
B46 Business 46 Zone	P46 Public Land	P46 Public Use Zone
B47 Business 47 Zone	P47 Public Land	P47 Public Use Zone
B48 Business 48 Zone	P48 Public Land	P48 Public Use Zone
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B50 Business 50 Zone	P50 Public Land	P50 Public Use Zone
B51 Business 51 Zone	P51 Public Land	P51 Public Use Zone
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B55 Business 55 Zone	P55 Public Land	P55 Public Use Zone
B56 Business 56 Zone	P56 Public Land	P56 Public Use Zone
B57 Business 57 Zone	P57 Public Land	P57 Public Use Zone
B58 Business 58 Zone	P58 Public Land	P58 Public Use Zone
B59 Business 59 Zone	P59 Public Land	P59 Public Use Zone
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B68 Business 68 Zone	P68 Public Land	P68 Public Use Zone
B69 Business 69 Zone	P69 Public Land	P69 Public Use Zone
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B93 Business 93 Zone	P93 Public Land	P93 Public Use Zone
B94 Business 94 Zone	P94 Public Land	P94 Public Use Zone
B95 Business 95 Zone	P95 Public Land	P95 Public Use Zone
B96 Business 96 Zone	P96 Public Land	P96 Public Use Zone
B97 Business 97 Zone	P97 Public Land	P97 Public Use Zone
B98 Business 98 Zone	P98 Public Land	P98 Public Use Zone
B99 Business 99 Zone	P99 Public Land	P99 Public Use Zone
B100 Business 100 Zone	P100 Public Land	P100 Public Use Zone



Appendix 4

SCHEDULE 3 TO THE DESIGN AND DEVELOPMENT OVERLAY

Shown on the planning scheme map as DDO3

COAST AND LANDSCAPE DESIGN

1.0 Design objectives

- To ensure that the design of subdivision and housing is responsive to the environment, landform, site conditions and character of coastal villages, hillsides and clifftop areas.
- To avoid higher densities of development in areas subject to instability, erosion or potential fire hazard and to minimise the extent of required earthworks.
- To ensure that development densities are compatible with the environmental and infrastructure capacities of the area, including the capacity of local streets, drainage systems and sewerage systems. Where reticulated sewerage is not available, particular consideration must be given to the ability to contain all waste water onsite and the impact of development on ground water conditions. Particular attention must be given to the impact of development on streamlines, water ways and wetlands and to avoiding the development of land susceptible to stream erosion or flooding.
- To recognise areas where substantial vegetation cover is a dominant visual and environmental feature of the local area by ensuring site areas are large enough to accommodate development while retaining natural or established vegetation cover and to provide substantial areas for new landscaping and open space.
- To ensure that new development has proper regard for the established streetscape and development pattern in terms of building height, scale and siting.
- To protect shared viewlines where reasonable and practical.
- To ensure that buildings are designed and sited to avoid being visually obtrusive, particularly in terms of creating a silhouette above a skyline or existing tree canopy line when viewed from surrounding streets and properties.
- To ensure that subdivision and development proposals have proper regard to heritage values, including those of areas such as the Portsea Clifftop area and the Sorrento Heritage Precinct.
- To ensure that subdivision proposals will enable new buildings to be integrated with their site and the surrounding area in terms of the relationship to existing buildings, open space areas and the coastal landscape.
- To recognise areas where a lower intensity of residential activity and traffic movement contributes to the amenity of the area.
- To ensure that the design of development has adequate regard to fire risk and includes appropriate fire protection measures.
- To recognise areas, with limited access to infrastructure, services and facilities, including public transport, that are considered inappropriate for higher densities of occupation.

2.0 Buildings and works

No permit required

A permit is not required to construct a building or construct or carry out works for any of the following, but only if, the General requirements set out in this schedule are met.

- A dwelling extension or alteration.
- An outbuilding.
- A dependent person's unit.

Note: The Mandatory requirements of this schedule also apply.

Permit required

An application to construct a building or construct or carry out works should meet the General requirements of this schedule except where it has been demonstrated to the satisfaction of the responsible authority, that compliance is unreasonable or unnecessary and no significant loss of amenity will result.

Note: The Mandatory requirements of this schedule also apply.

In the Residential 1 zone, an application to construct a building or construct or carry out works associated with one dwelling on a lot:

- Must comply with Clause 54.01.
- Must meet all of the objectives and should meet all of the standards of Clause 54.02, 54.03-3, 54.03-4, 54.03-5, 54.03-6, 54.03-7; 54.04-2; 54.04-3, 54.04-4, 54.04-5, 54.04-6, 54.05, 54.06-1.
- Must meet the objectives of Clauses 54.03-1, 54.03-2 and 54.04-1.

A permit is required to construct a fence if:

- The fence has a height of 1.8m or more; or
- The fence is located 6 metres or less from any public foreshore land, cliff edge or cliff face; or,
- The fence is constructed of fibro cement sheet materials.

General requirements

- All buildings and works must be located on land with a slope of less than 20%.
- Buildings must not be located on a ridge.
- No building may exceed a wall height of 5.5 metres or a building height of 6 metres.
- The difference between finished ground level and natural ground level as a result of excavation and filling must not exceed one metre and must be properly battered or retained.
- All buildings must be located at least 10 metres from any land within a Public Park and Recreation Zone, Public Conservation and Resource Zone or Road Zone and at least 6 metres from any cliff edge.
- Buildings must be setback at least 7.5 metres from a road frontage and 3 metres from any side road boundary. Where a dwelling on an adjoining lot that fronts the same road is set back less than 7.5 metres, the minimum setback is the same as that of the adjoining dwelling.
- A building containing more than one storey must not provide access to a roof area, deck, verandah or the like which has a level higher than the floor level of the upper storey.
- More than half of the external wall cladding of any dwelling must consist of brick, masonry, timber, simulated weatherboards or other materials approved by the responsible authority.
- All cladding and trim must be coloured and maintained in muted tones of green, brown, beige or other colours approved by the responsible authority. The external finish of all buildings must be of a low reflectivity (less than 40% reflectivity) to minimise glare and reflection of light. This requirement includes roofing materials, unless the pitch of the roof is 5 degrees or less and is not overlooked from any adjoining buildings, land or roadways. Solar panels are exempted. Where an extension to a dwelling is proposed which does not increase the floor area by more than 25%, the colours may match that of the existing development.
- A building must not be a relocated building or moveable structure such as a tramcar or the like. This does not apply to a dependent person's unit or a newly pre-fabricated building.

Mandatory requirements

The following requirements apply, as appropriate, to all buildings and works, whether or not a permit is required.

Sewerage and drainage

All new dwellings must be connected to:

- A reticulated sewerage system or an alternative approved by the responsible authority.
- A reticulated drainage system or an alternative approved by the responsible authority.

These requirements cannot be varied with a permit.

Maximum building height

A building must have a maximum building height of no more than 8 metres and must contain no more than 2 storeys above natural ground level. This does not apply to any of the following:

- A building that complies with height provisions specified in a plan approved under a schedule to the Development Plan Overlay.
- Alteration to or extension of a lawfully existing building but only if all of the following requirements are met:
 - The existing building has a building height of more than 8 metres or contains 3 or more storeys above natural ground level.
 - The maximum building height of the existing building is not exceeded.
 - The external bulk of the existing building is not significantly increased.
 - The footprint of the upper storey, existing at the approval date, is not increased by more than 10%.

These requirements cannot be varied with a permit except that an application to construct a building with a height of more than 8 metres may be considered in the area located to the north of a boundary defined by Ellerina Road West, Bruce Road, the Nepean Highway, Mornington-Flinders Road, Bittern- Dromana Road and Disney Street. This provision does not apply after 31 December 2003.

Number of dwellings

No more than one dwelling, excluding a dependent person's unit, may be constructed on a lot. This requirement cannot be varied with a permit.

3.0**Subdivision**

Where land is within a Residential 1 Zone, the average area of all lots within a subdivision must be no less than 1500 square metres and each lot must be able to contain a rectangle with minimum dimensions of 25 metres x 35 metres. These requirements do not apply to lots that are in compliance with a restructure plan under Clause 45.05 or a development plan under Clause 43.04.

Where land is within a Low Density Residential Zone each lot within a subdivision must have an area of least 4000 square metres.

Land that is capable of further subdivision is excluded from the calculation of average lot area.

The area of land set aside as common property or land that is to be transferred to Council for public open space and recreation, over and above that which may be required under

Section 18 of the Subdivision Act 1988, may be included in the calculation of average lot density.

These requirements cannot be varied with a permit unless any of the following requirements are met:

- The subdivision realigns the boundary between existing lots, provided no new lot or additional subdivision potential is created.
- Two or more dwellings have lawfully existed on a lot since the approval date and the subdivision proposes to create separate lots for each dwelling.
- The subdivision excises land for a road, utility installation or other public purpose.

4.0

Decision guidelines

Before deciding on an application the responsible authority must consider as appropriate:

- The design objectives of this schedule.
- Where an objective has been applied from Clause 54.02 to 54.06, inclusive, the relevant decision guidelines from that Clause.
- Whether any loss of amenity will result from a variation to the requirements of this schedule.
- Any relevant development plan, heritage study, code or policy relating to the protection and development of land in the area.
- Whether opportunities exist to avoid a building being visually obtrusive by the use of alternative building designs, including split level and staggered building forms, that follow the natural slope of the land and reduce the need for site excavation or filling.
- The effect of any proposed subdivision or development on the environmental and landscape values of site and of the local area, including the effect on streamlines, foreshores, areas of remnant vegetation, areas prone to erosion and on the amenity and accessibility of areas of public open space.
- In areas where reticulated sewerage is not available, whether the applicant has submitted a report from a suitably qualified person to demonstrate whether effluent can be treated and retained on-site, without contaminating groundwater, in accordance with State Environment Protection Policies.
- The need to ensure that the design of development has adequate regard to fire risk and includes appropriate fire protection measures.



Overlay
 Design and Development Overlay
 Schedule 1
 Design and Development Overlay
 Schedule 2
 Design and Development Overlay
 Schedule 4

AUSTRALIAN MAP GRID ZONE 52

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 Edition: 04/2009



SCHEDULE 25 TO THE ENVIRONMENTAL SIGNIFICANCE OVERLAY

Shown on the planning scheme map as ESO25

PORT PHILLIP COASTAL AREA**1.0 Statement of environmental significance**

The Port Phillip coastal area and adjoining offshore areas contain some of Victoria's most significant cultural and natural features, including sites of ecological, archaeological, geological, geomorphological, aesthetic and cultural heritage value. These places are of cultural, scientific and educational value to current and future generations.

2.0 Environmental objectives to be achieved

- To protect and enhance the natural features, vegetation, ecological diversity, landscape quality, heritage values and recreation opportunities of the Port Phillip Bay coastal area and associated intertidal and marine habitats.
- To promote excellence in design of buildings, facilities and structures in the coastal area.
- To promote coordinated management of the Port Phillip coastal area.

3.0 Permit requirement

A permit is required to construct fencing.

A permit is not required for:

The removal of vegetation in the ordinary course of the management of established parks or gardens or in the course of the repair or maintenance of any other works including fire breaks.

Works for the establishment, maintenance, repair or removal of signs or other structures necessary for the safety or protection of the public including traffic management devices, survey marks and beacons, navigation aids, safety fences or railings.

Any structure, works or use for which consent has been granted under the Port Phillip Coastal Planning and Management Act 1966 since 16 February 1986.

A minor public utility installation or litter receptacles.

Development carried out by or on behalf of Melbourne Parks and Waterways or Parks Victoria under the relevant provisions of the Water Industry Act 1994, the Water Act 1989, the Marine Act 1968, the Port of Melbourne Authority Act 1958, the Crown Land (Reserves) Act 1978 or the Parks Victoria Act 1998.

Every application involving land within or abutting a Public Park and Recreation Zone or Public Conservation and Resource Zone must be referred to the Secretary to the Department of Natural Resources and Environment and Parks Victoria under Section 55 of the Act.

4.0 Decision guidelines

Before deciding on an application, the responsible authority must consider, as appropriate:

- The environmental objectives of this schedule.
- The existing use and development of the land.
- The degree to which the proposed development is dependent on a coastal location.
- The ability to reduce the number of buildings and other structures by combined use or reuse of existing buildings.
- The appropriateness of a condition requiring the relocation or removal of inappropriate structures as part of an application.
- Whether any proposed structure or works, including the planting or removal of vegetation, is likely to cause any deterioration of the Port Phillip Coastal Area by virtue of erosion or the deposition of sand or silt or any other reason.
- The Victorian Coastal Strategy, Siting and Design Guidelines for Structures on the Victorian Coast (May 1998) and Landscape Setting Types for the Victorian Coast (May 1998).



Legend

Environmental Significance Overlay (Schedule 2)

Other (Schedule 2)

Environmental Significance Overlay (Schedule 2)

Other (Schedule 2)

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This map should be used in conjunction with the Planning Scheme.

Notes on application are located in the ES024 TO MAPS.

1:10,000

Australian Map Grid Zone 56

NEED TO ALIGNING METRIC SERIES MAP

Victoria The Place to Be

SCHEDULE 1 TO THE VEGETATION PROTECTION OVERLAY

Shown on the planning scheme map as VPO1

TOWNSHIP VEGETATION**1.0 Statement of nature and significance of vegetation to be protected**

There are many residential areas within the Mornington Peninsula's where substantial vegetation cover, rather than built form, is the dominant visual and environmental feature. These areas include the Mt Eliza escarpment, areas of the Mornington township, the rural residential areas of Somerville, Hastings and Crib Point, the Westernport coastal villages, and the hillside, cliff top, sand dune and wildcoast areas of the southern Peninsula.

In these areas, the impression is of buildings within a landscape rather than that of landscaping around buildings. This balance between natural or introduced vegetation and built form contributes substantially to local character. Vegetation in these areas also serves important environmental functions in providing areas of habitat and habitat corridors, assisting soil stability, reducing the intensity of stormwater runoff and limiting the erosion and siltation of streamlines.

2.0 Vegetation protection objective to be achieved

- To recognise areas where substantial vegetation cover is the dominant visual and environmental feature.
- To ensure that subdivision and development proposals have proper regard to the landscape character of township areas.
- To ensure that new development has proper regard for the established landscape, streetscape and development pattern in terms of being consistent with the existing balance between vegetation and building form in the local area and contributing to the landscape character of the area.
- To ensure that any removal of natural vegetation and works associated with development in environmentally sensitive areas, including streamline areas, is carried out with proper regard to the physical characteristics of each site and the local area.
- To avoid grazing on the steeper slopes of Arthur's Seat.
- To ensure that any removal of natural vegetation in proximity to the Point Nepean National Park or other public land has proper regard to the impact on these areas.
- To protect and conserve native vegetation, including grasses and ground flora.
- To protect and conserve the habitat value of vegetation within township areas.
- To encourage strategic replanting to provide for the long term maintenance of landscape and environmental values within townships.
- To ensure that the proposed relocation of dwellings, or other buildings, includes measures to minimise the removal of vegetation on site and from road reserves.
- To prevent the premature removal of vegetation from a site prior to consideration of design options for a proposed development.

3.0 Permit requirement

A permit is required to remove, destroy or lop any vegetation, except for:

- The removal of vegetation carried out in conjunction with a development approved under a planning permit and in accordance with an endorsed plan.
- The removal of vegetation necessary for the construction of a dwelling, dwelling extension or outbuilding where no planning permit is required and provided that:
 - A building permit has been granted for the proposed development.
 - Vegetation is only removed from the building footprint or within 2 metres of the proposed building.
 - No tree with a trunk circumference greater than 0.35 metres is removed within 6 metres of a road frontage.
- The removal of vegetation to enable the formation of a single crossing and access driveway with a maximum width of 3.7 metres.
- ⑥ The removal of vegetation which presents an immediate risk of personal injury or damage to property including the culling of single trees located within 3 metres of a dwelling or outbuilding, or which overhangs a boundary line.
- The removal of any dead timber or branch which has occurred through natural circumstances, fire or the spread of noxious weeds.
- The removal of any tree or branch of a tree which impairs the access of motor vehicles along any existing or approved access track, provided that such access track has a width no greater than 3.7 metres.
- The maintenance of landscaping, including pruning, which does not effect the stability, general form and viability of the vegetation.
- The removal of vegetation that has been established for less than 10 years and which is not required as landscaping under a planning approval.

An application for permit must be accompanied by a vegetation management plan clearly indicating:

- All existing vegetation on the site, the extent and purpose of proposed vegetation removal and the species, density and location of trees and other vegetation to be planted.
- The location of any watercourse on the property, and, if relevant, the location of areas where the ground slope exceeds 20 percent.

Where it is proposed to relocate a building, the application must specify the intended access route and provide an assessment of the vegetation impact, both on the site and on road reserves, including any proposed replanting.

3.0 Decision guidelines

Before deciding on an application, the responsible authority must consider, as appropriate:

- The vegetation protection objectives of this schedule.
- The value of the native vegetation to be removed in terms of its habitat, landscape and environmental values, age, physical condition, rarity or variety.
- The need for a report, by a properly qualified person and to the satisfaction of the responsible authority, on the vegetation and habitat significance of the vegetation to be removed.
- Whether there is any reasonable alternative means of siting buildings and works in order to conserve the native vegetation of the area.
- The extent of the proposed vegetation removal and its likely effect on the stability of the site, particularly along streamlines or in erosion prone areas.
- The extent to which the removal of vegetation is necessary to achieve proper fire management.
- The benefit of conditions providing for the relocation of significant species prior to development of a site, having particular regard to the occurrence of native orchids.
- The benefit of conditions requiring planting, replanting and other treatment of the land, having regard to the relationship between buildings and the landscape and the maintenance, where possible, of shared view lines.
- The need for replacement vegetation to be of an appropriate species and to exclude environmental weeds.
- The need for a condition requiring the payment of a bond as part of a development approval to ensure that no unauthorised removal of vegetation occurs.

- The comments of any relevant coastal management, fire prevention, land management or soil conservation authority.

