

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P3135/2010
PERMIT APPLICATION NO. PL09/020214

CATCHWORDS

Section 77 *Planning and Environment Act* 1987, Manningham Planning Scheme, Multipurpose Function Facility, Residential Low Density Zone, Bulk and Height, Need for the Facility, Heritage Place, traffic and Parking.

APPLICANT	Ammache Architects
RESPONSIBLE AUTHORITY	Manningham City Council
REFERRAL AUTHORITY	Department of Sustainability and Environment
RESPONDENT	Donvale Rate Payers Association Inc, Paul Fellows, Graham White, Phil Hubbard, Lisa Ralph, Miss Roberta McCibbon, O & M Baker, Glen Grandy, Christopher Knight and Others.
SUBJECT LAND	88-154 Park Road DONVALE VIC 3111
WHERE HELD	55 King Street, Melbourne
BEFORE	Member E. Bensch, Member F. Dawson
HEARING TYPE	Hearing
DATE OF HEARING	31 January 2011, 1 and 2 February 2011
DATE OF ORDER	16 March 2011
CITATION	

ORDER

- 1 Leave is given to the permit applicant to substitute for the permit application plans, amended plans circulated in accordance with the Tribunal's practice requirements being plans marked AO1-AO9 dated 9 December 2010 prepared by Ammache Architects, and further amended plans AO2 and AO3 dated 17 January 2011 prepared by Ammache Architects.
- 2 The decision of the responsible authority in relation to the permit application number PL09/020214 is set aside. No permit is granted.

Presiding Member
E. Bensch

Member
F Dawson

APPEARANCES:

For the Applicant	Mr Peter O'Farrell, Barrister, by direct brief, he called Mr Rob Milner Town Planner of Ten Consulting Group, Mr Christopher Delaire, Martial Day Acoustics, Mr Stephen Schutt of Hanson Landscape Architecture, Mr Bryce Rayworth of Bryce Rayworth Pty Ltd, Heritage Architecture, and Mr Brett Lane of Brett Lane & Associates Pty Ltd, Environmental Scientists.
For the Responsible Authority	Ms Maria Marshall, Solicitor of Maddocks.
For the Respondent	Mr Christian Tetchencko, President - Donvale Rate Payers Association who called Miss Deborah Donald of O'Brien Traffic. Mr Fellows, Mr White, Mr McLeash, Mr Hubbard, Miss Ralph, Miss Roberta McCibbon, Mr Knight, Mr Grandy all appeared in person.

INFORMATION

Description of Proposal	Buildings and works including vegetation removal associated with the use and development of a multipurpose building (sporting venue and function centre and reduction in car parking).
Nature of Application	Nature of proceeding – application under s 77 of the <i>Planning and Environment Act 1987</i> zone and overlays,
Zone and Overlays	Low Density Residential Zone (LDRZ) Significant Landscape Overlay (SLO) Heritage Overlay (HO128)
Reason(s) Permit Required	Clause 32.03-1: use of land for a section to use in the LDZ Clause 32.03-4: Buildings and works associated with section 2 use Clause 43.03-2: Works to remove native vegetation under SLRO1 Clause 43.01-1: Construction and works to remove native vegetation under HO128 Clause 52.06-1: Reduction in Carparking Clause 52.17: Removal of native vegetation

Relevant Scheme policies and provision	<p>Clause 21.02, 21.03, 21.06, 21.10, 21.11, 21.13 Clause 22.02, 22.03, 22.08 Clause 52.06, 52.07, 52.17, 52.34, 52.65</p>
Land description	<p>The sight is located on the north-eastern corner of the intersection of Park Road and Heads Road, Donvale and is in regular shape with a 520 metre frontage to Park Road, a 288 metre frontage to Heads Road and an overall area of 7.45 hectares. The sight rises from the road frontage to the centre of the subject site and then slopes away to the eastern boundary and contains a monastery, shed, tennis courts, soccer pitch and small cemetery and has a substantial mix of exotic vegetation around a monastery building and large areas of native vegetation along Park and Heads Roads.</p> <p>Access is gained to the site through a set of historic gates at the uni-section of Park and Heads Road. There is also a disused service access from Heads Road, near the eastern boundary.</p> <p>There are 11 low-density residential dwellings that abut the site. The majority of these sites are in the order of 4,000 square metres and the monastery a southern portion of the site subject to Heritage Overlay (HO128).</p> <p>To the north of the site is the Whitefriars College, a catholic boys secondary school located on a 19 hectare parcel on the east side of Park Road. The area is characterized by large stands of native vegetation with dwellings set in this landscape with significant boundary setbacks and the area generally is semi-rural in nature. There is significant roadside vegetation along both Heads Road and Park Road.</p>
Tribunal inspection	<p>The Tribunal carried out inspections of the site on Sunday 30 January 2011 (Member Benz) and Member Dawson visited the site on 2 March 2011.</p>

REASONS

What is this proceeding about?

- 1 In August 2010, Manningham Council refused the application for buildings and works including vegetation removal associated with the use and development of a multipurpose building (sporting venue and function centre and reduction in car parking).on a range of grounds. On the 3 December 2010, the applicant submitted amended plans that sought to address the grounds of refusal. The substituted plans were considered by Council on the 14 December 2010 when Council resolved to grant a permit for the proposed development subject to a range of changes required by permit condition which related to the reduction of the size of the building footprint, further traffic engineering assessment and justification of the internal height clearances for the courts together with the ESD principles incorporated into the design.
- 2 Council then issued a notice of decision with conditions to give effect to their decision. This is a decision that a number of the objectors to the proposal have requested be reviewed by the Tribunal through separate application made by the Donvale Rate Payers Association and a number of individuals.
- 3 We note that Council is not opposed to the use of the land for a multi-purpose building. Rather Council considers that the issues in dispute relate to the intensity and scale of the development and its relationship to the landscaped character of the area and the heritage significance of the adjacent heritage buildings.
- 4 We therefore consider that the issues that we need to consider are;
 - i The need for the proposal,
 - ii Impact upon the heritage listed buildings on the site,
 - iii Impact on the flora and fauna on the site,
 - iv Offsite amenities impact to surrounding residential properties,
 - v Parking and access arrangements.
- 5 The Tribunal must therefore decide whether a permit should be granted and if so what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Manningham planning scheme we have decided to refuse the application. Our reasons are set out below.

The proposal

- 6 Given the complex nature of the application, we consider it is appropriate to set out an outline of their proposal prior to considering the issues set out above. Council provided a useful description of the proposal that is summarized as follows.

The proposal involves a construction of a 3-level, multipurpose building to be utilised by the Coptic Church and the wider community as a sporting venue and function centre. The venue proposes basement level car parking, three basketball courts, four squash courts, a swimming pool and spa, youth lounge, multipurpose room, offices, café, commercial kitchen, storerooms and a gymnasium. It is proposed that the larger ground floor level basketball court could be used for a 1,000 person function centre. The site for the multipurpose venue is relatively level and located to the southwest of the existing monastery complex on a relatively level area that comprises a portion of the existing soccer field and a treed embankment along the eastern side.

This further proposal is used to continue the existing primary vehicle access to the subject site and provide a new access point onto Park Road midway along the site's frontage. The existing access will be retained as a pedestrian access point.

The maximum overall height of the building is indicated to be in the order of 18 metres to the base of the solar chimney stack and will be set back between 37.5 metres and 65 metres from Heads Road, between 130 metres and 118 metres from Park Road and some 50 metres from the monastery and 37 metres from the nearest residential property located at 17 Heads Road. It is noted that some areas of very high conservation significance valley heath forests at 0.2 hectares of high conservation significance valley heath forests and three large old trees of very high conservation significance would be required to be removed as part of the proposal and we note that an offset plan has been prepared to deal with replanting to replace the vegetation to be removed.

The proposed building is to be of a contemporary architectural style, with rendered external walls with a mixture of dark grey, grey, cream, light cream and brown finishes, a section of stonework at the front entry, timber screening along the south elevation and a glass wall to the northern elevation with an acoustically treated glass roof. Solar chimneys and evacuator tubes are to be placed on the roof.

Need for the facility

7 Need for the facility or the lack thereof was an issue raised by a number of the parties to this hearing and it is Council's position that there is a demonstrated need for such recreation facilities in the area. The council put forward that there is presently an under-supply of basketball facilities in the city and with the line marking on the proposed courts there is also the opportunity for badminton games. Council's 'Active for Life Strategy' at section 2.4 recognises that "the central component for recreation related service provision in Manningham" is that provided by private providers.

8 It was put to the Tribunal that need is a concept discussed in *Tulcan Pty Ltd v Knox City Council* [2003] VCAT 1627 where it is quoted:

need is a fundamental concept in town planning because town planning is essentially concerned the shaping out physical

environment to meet the social economic environmental needs of the community. However, in individual development applications the role of need is complex

On the other hand there are important community based uses where the Tribunal has found that the need for the use can outweigh other important issues and an ordinarily decisive planning considerations. An often quoted example of this latter case is the helipad at the Alfred Hospital.

- 9 It is proposed that the development would cater for a range of community and sporting uses not directly associated with the church and will be a valuable recreation resource for the city. As part of the permit application the church indicated that the facility was to be used for their own members but would also be available to the broader community and in fact three letters of support from various basketball clubs in the city were put forward.
- 10 Mr O'Farrell on behalf of the Permit applicant also relied upon the concept of net community benefit and indicated that with this is a proposal where real, meaningful and genuine benefit would be derived by the community from the facilities that are proposed. They also indicated another significant benefit derived by the community will that the facilities will be provided at no cost to the public purse.
- 11 Some of the objectors to the application considered that need was not relevant as the facility was not needed. However we are persuaded that the council has identified a need for this facility which is set out in council's Active for Life Strategy that even though with the provisions of some facilities by council there is still unidentified need particularly in this part of the municipality. We therefore support the view put forward in Tulcany as set out above.
- 12 We are satisfied in this instance that a need has been identified and the facility such as this development proposed will go towards meeting the need on the basis that it will be made available to the broader community. Having established the need for this development that need still needs to be balanced against the other issues in this case.
- 13 There is a vagueness in the proposal in relation as to how the public would access and use the complex .We consider that there would need to be to 173 Agreement attached to the land regarding public use, number of occasions, numbers of participants, hours of operation etc. We consider that this would be required so that there is a reasonable community expectation that all facets of the proposal would be resolved and fully understood.

Heritage impacts

- 14 The site is affected by heritage overlay in the low-density residential zone that applies to the monastery buildings and the area surrounding the buildings. It is local policy at clause 21.11 (Heritage) That Council seeks to:

minimise impacts on heritage places as a result of changes to adjoining land uses and development.

15 Council's Heritage Advisor describes the importance of the monastery thus:

the former Carmelite monastery, a 1930's striped Romanesque complex in salmon coloured brick is of regional architectural significance as an early design by architect Tom Payne who later designed the Newman College Chapel. Its simple, strong massing, its complemented by gable and hipped forms, the long arch arcade with carved capitals, and rejecting chapel with a large Romanesque arch entrance with complex receding stone mouldings. It is of local significance as an important landmark. Its architectural landmark significance is markedly enhanced by its setting, elevated above an expansive lawn forecourt enclosed by the circular driveway and the sunken grass soccer oval flanking the entrance drive.

16 We agree with the permit applicant that there are benefits of using this site for a religious institution rather than the land being purchased by a private developer who would probably subdivided the surrounding land.

Therefore, the site having been acquired by the Coptic Church will ensure it remains intact at this point and it is Mr Raworth's evidence that the proposed additional building being located away from the main heritage fabric will have no impact upon the heritage fabric of the site.

17 His main conclusions were that there was space between the new and the old building that there was a degree of difference in terms of size and siting and that the new building will not unreasonably intrude into the line of sight of the old. Mr Raworth made the important point that the main value of this building was its social heritage and that the main view of the building was from the existing access point on the corner of Park and Heads Road. When one enters the driveway either in a vehicle or on foot a vista is opened showing the buildings situated in their established exotic and native vegetated surrounds. During cross examination Mr Raworth was queried about whether the proposed changes required by council in the notice of decision regarding making the building lower or smaller and he was satisfied that the current proposal with its height and location is acceptable from a heritage point of view.

18 Council did concede that they were mindful of competing objectives with this application and that they were of the view that the proposal should proceed in the amended form proposed in the draft conditions.

19 The Tribunal is satisfied based on the only heritage evidence put forward by the permit applicant and there being none from council that the proposal, as put forward at the hearing was a sufficient distance from the main monastery buildings, it will not impact upon the main view lines. The visual arrival point to the site is further downhill and to the south east and from a heritage perspective we are satisfied that the proposed building and its location will not impact detrimentally upon the monastery buildings.

Flora and fauna impacts

- 20 The impact on the flora and fauna values of the site was of particular concern to a number of the residents and the Donvale Ratepayer's Association a majority of whom reside abutting it or very near the site. From Council's view point clause 22.02-Indigenous Flora and Fauna policy is relevant due to the subject site's inclusion and the Significant Landscape Overlay. The policy seeks to protect and enhance the municipality's indigenous vegetation and fauna populations. The policy requires that new development does not diminish the integrity of the municipality's biodiversity encouraging applicants for buildings and works to develop proposal that result in a net increase in indigenous vegetation.
- 21 Brett Lane's findings in his evidence were that the site lies within the Gippsland Plain bioregion and falls within the Port Phillip and Westernport Catchment and in relation to native vegetation:
- the study areas found to support 12 caches of intact native vegetation in the form of Valley Heathy Forest (EVC127) totalling 4.56 hectares in area. Forty (40) remnant scattered trees were also recorded in the eastern and southern section of the study areas amongst planted trees and of landscaping. The Valley Heathy Forest in the study's areas is classified by the Department of Sustainability and Environment(DSE) as endangered in the Gippsland Plain bioregion. Vegetation quality (habitat hectare) assessments categorising this vegetation as being high and very high conservation significance under Victoria's native vegetation framework.
- 22 Mr Lane also found that the remainder of the study area mainly in the southern area (that is, the soccer field) has been cleared of native vegetation and was dominated by introduced grasses and planted with non indigenous trees and shrubs. The areas of high value vegetation are impacted in two parts of the site, one to provide the proposed access road through to Park Road and the second being a patch in the south east corner of the site which will require removal for the construction of the proposed building.
- 23 With regard to the likelihood of occurrence of threatened flora species Mr Lane concluded that with regard to threatened flora field research indicated 52 species of rare or threatened plants listed on the DSE advisory list occur in the search region generally however no such species were recorded in the study area during any of the field surveys.
- 24 With regard to threatened fauna he found that there were no fauna species were found to occur in the area however two species listed under the Fauna and Flora Guarantee Act were found, these being the Powerful Owl and the Common Bent Wing Bat. Based on the appearance of the Powerful Owl in the area a targeted survey was undertaken and two sightings were recorded. A number of the residents in the area were particularly concerned about the impact of the proposed development on the Powerful Owl and cross examined Mr Lane quite extensively on this issue.

- 25 The Tribunal is satisfied following the cross examination of Mr Lane that sightings of the Powerful Owl have occurred within the subject site but in the evidence he provided he persuaded us that this site will be used for foraging purposes, not for nesting purposes as such. This is due to the area itself is not large enough to support nesting sites for the Powerful Owl and he considers that the most likely nesting sites will be down the Mullum Mullum creek corridor which has wider buffers to established low density residential dwellings. Mr Lane also concluded that light spill and noise from the facility would also be unlikely to impact upon the Powerful Owl's foraging habits in the area and therefore proposed no risk to them.
- 26 He did however put forward suggestions in relation to minimising disturbance on the site and the feeding habitats, particularly during the breeding season being from May to October to ensure there was minimal impact on the birds. He did point out that in fact a number of native animals would pass through and use this area for feeding and or habitat generally have over time adapted themselves well to a mixture of native and local vegetation and presence of cars, people and housing, and in fact some such as the Brush and Ring Tailed Possum have been found to thrive in urban and semi urban areas.
- 27 In conclusion Mr Lane suggested further investigation is required of potential impacts of the proposal under the Flora and Fauna Guarantee Act listed as species the Powerful Owl and the Common Bent Wing Bat (southern form) under guidance from the Department of Sustainability and Environment to ensure that these impacts are managed satisfactorily. If a permit were to issue we consider this an important element of any conditions placed on the permit
- 28 With regard to offset targets, Mr Lane recommended that for scattered large tree removal some 20 additional plants were required to offset the loss of vegetation and that the overall offset target in habitat hectares for the whole site is 0.33. Offset targets were the removal of large and very large trees from habitat zones requires a replacement of some 120 trees.
- 29 Mr Lane was taken to the landscape plans prepared by Mr Schutt of Hansen Partners who proposed intensive canopy tree planting between the south east of the building and the boundaries of the property at 17 Heads Road and the rear of the dwellings in White Frairs Way. This is together with some augmentation planting of Ornamental Pears around the perimeter of the driveway to the main building and along the front of the proposed building. Mr Schutt proposed that most planting types will be those that are indigenous to the area and have the ability to grow some half a metre per year and these include Tea Tree, Long Leaf Box, Yellow Box and Stringybark.
- 30 One important element of the landscape plan is that the proposed landscape treatments are respectful of and make a positive contribution to the cultural and significant landscape to the monastery through the use of similar

species to those identified to the original planting plan prepared by a Mr Hugh Linaker in the late 1930's to complement the monastery buildings themselves. Under cross examination Mr Schutt was firm in his position that the proposed landscape treatment particularly along the eastern and south eastern boundaries will provide significant screening to the properties in this location and that the quantum of planting will satisfy the offsets required under the Flora and Fauna Guarantee Act 1987.

- 31 In overall terms the Tribunal is satisfied with the habitat replacement planting scheme and with the assessment of the specific flora and fauna on the site as being capable of suitable protection. The proposed planting on the southeast of the site, when mature, will satisfactorily screen the building from adjoining properties. We consider that the proposed landscaping plan put forward is satisfactory in general terms and detail regarding habitat protection and individual tree protection could be dealt with via condition if required.

Car parking

- 32 There are 301 on site car spaces proposed in two locations; 123 in a basement car park under the new building and 178 within the grounds. Application of the planning scheme parking requirements (Table to Clause 52.06-5) generates a requirement for 429 spaces for all of the proposed uses.
- 33 Traffic evidence of Mr Kiriakidis (GTA Consultants) informed us that the level of 'co-incidental' car parking demand led him to the opinion that "a car parking provision of 301 spaces will satisfactorily meet anticipated peak requirements." Ms Marshall concurred that this is also the view of the Responsible Authority.
- 34 The issue of concurrent use by the function centre and sporting facilities is raised in traffic evidence from Ms Donald (O'Brien Traffic), leading to the contrary opinion that the "overall parking requirement would be greater than 300 spaces." Ms Donald concludes, there are an insufficient number of spaces provided on the site for to cater for the predicted peak parking demands associated with the use of the multi-purpose venue.
- 35 We agree that concurrent use of the existing and proposed facilities is probable, but not to the degree requiring a full statutory provision of spaces. We also agree with Ms Donald that when fully operational, peak demand is likely to exceed 300 spaces. As the subject land comprises more than 9 hectares, we consider there should be sufficient space to meet an on-site parking demand in excess of 300 spaces. We note that the constraint on the number of spaces provided in the existing design appears to derive from the configuration of the internal road network.
- 36 Objectors to the proposal, primarily represented by the Donvale Rate Payers Association, are concerned that there will be overflow parking into the surrounding streets, particularly Heads Road and Park Road. We were taken

to photographs showing overflow parking on both sides of Heads Road on the 7th and 24th December 2010 coinciding with major events on the Coptic religious calendar. Mr Kiriakidis, in his evidence, offered the view that: On site observations suggest that on-street parking demands are very low, particularly along Park Street. Construction of additional on-site parking, as proposed in the application design, may alleviate some of the demand for future off-site parking, however we anticipate that visitors to the site will continue to use the surrounding streets for parking if the internal capacity and circulation is inadequate or access to the site via a single entry/exit point becomes congested. Therefore, we agree that while ‘day to day’ use of the facilities on the site is unlikely to generate significant off-site parking demand, visitors to major functions and events may still park in the surrounding streets.

- 37 We note that the traffic information available at the time of the decision to refuse [TTM Consulting (Vic) Pty Ltd] nominated on-site parking comprising:

Basement car parking	120 vehicles
Formalised surface car parks	70 vehicles
<u>Informal car parking</u>	<u>200 vehicles</u>
<u>Total:</u>	<u>390 vehicles</u>

- 38 The substituted plans considered by the Responsible Authority on 14 December 2010 resulted in a decision to advise the Tribunal of support for the revised proposal subject to a number of conditions, including:

A traffic engineering assessment to demonstrate the revised access, circulation and car parking arrangements for the basement level comply with Australian Standards.

- 39 The most recent substituted plans dated the 17 January 2011 nominate 178 on-site spaces in ‘temporary’ car parks, in addition to 123 basement spaces. Mr Kiriakidis attached this plan to his evidence. At the end of the hearing, Mr. O’Farrell for the Applicant suggested that the proposed conditions include renaming the ‘temporary’ car park as ‘overflow’ parking, with 90 spaces provided
- 40 The temporary/overflow on-site parking utilises the existing internal roads, with parking areas split into ‘corridors’ requiring vehicles to turn within the lanes to exit each parking area. Provision for turning movements is limited and the design does not allow for continuous circulation. We conclude that the overflow parking area is unlikely to operate effectively during times of heavy demand.

Traffic

- 41 The Tribunal notes that traffic evidence is contradictory. The refusal by the Responsible Authority on the 31 August 2010 included the ground that:

The proposal will contribute to increased traffic generation and parking issues which will impact on the unsignalised intersection of Park Road and Heads Road, Donvale and place additional traffic on local feeder roads.

- 42 Substituted plans considered by the Responsible Authority in December 2010 resulted in a decision to support the application, subject to a number of conditions, including:
- Requiring a Traffic and Parking Management Plan, which amongst other things details the road works proposed in Park Road and the parking control arrangements to be put in place for events that will attract more than 500 people to the site.
 - Requiring that no more than 1000 people be accommodated on the site at any one time without Council consent.
- 43 Evidence from Mr. Kiriakidis is focussed on site parking capacity, the performance of the proposed new entrance from Park Road and the post development traffic capacity of Park Road during expected event times. There is less information to assist our assessment of the present condition of Park Road and Heads Road for accommodating parking, bicycle or pedestrian movement – all of which can be expected to increase post development.
- 44 Evidence from Ms Donald noted that neither Park Road nor Heads Road is suitable for overflow on-street parking, and therefore it is essential that parking generated by the site be contained within the site. This will clearly not be the case under the current proposal.
- 45 Council’s requirement for a *Traffic and Parking Management Plan* as a proposed condition leaves resolution of the suitability of Park Road and Heads Road to accommodate the increased activity open ended. Creating a new entrance and turning lanes on Park Road is in our view only part of the solution, as roadside parking, pedestrian movement and bicycle traffic remain unresolved. These matters can no doubt be addressed in a *Traffic and Parking Management Plan*; however, we consider that it is premature to consider endorsing the proposed development without this information.
- 46 The proposed facilities will invite events that are likely to result in incidental and overflow parking in the surrounding streets. As noted above, traffic evidence from Mr Kiriakidis does not address the function and condition of these roads, other than to describe their specification and note the lack of pedestrian and bicycle facilities. Our site observations confirm that both roads are used as ‘through routes’ and are currently not designed for parking, bicycle or pedestrian use. For example:
- Parking spaces are not defined.
 - Deep drainage ditches occur along significant sections of both roads, making kerbside parking difficult.

- Pedestrian paths do not exist.
 - There are no bicycle paths or lanes.
- 47 When completed, the proposed development will attract a wide range of users, many of whom will be local residents using the recreation facilities. The fact that Park Road and Heads Road are not presently designed for an increase in pedestrian and bicycle movement underlines the need to resolve their future design as part of the development proposal.
- 48 When the issues of unresolved on-site parking, site access, street parking, pedestrian and bicycle movement are considered as a whole, the need for a comprehensive master plan is apparent on traffic issues alone.
- 49 The subject site is too big and the proposed range of facilities too comprehensive to be based on a ‘piece meal’ plan. We consider that development approval should proceed on the basis of a fully resolved master plan that considers both on-site and off-site design issues, with the stages of development in step with infrastructure improvements to the local road system.

Noise

- 50 Evidence on noise levels provided by Mr. Delaire assesses the noise levels likely to be generated by the various activities proposed for the site. The current background noise level is used as a base for the noise levels anticipated at the venue, which are based on typical noise measurements for music events, sporting events and vehicle movements at various times of the day and night. The evidence sets out the measures that may be needed to control noise levels based on assumptions about the type of construction materials to be used in the proposed buildings.
- 51 Mr. Delaire’s evidence includes statements such as:
- For music provided internally, the provision of suitable building envelopes allows higher levels of internal music noise levels. The actual requirements for the building envelope design of the venue can be finalised once the anticipated use in regards to music entertainment in the venue has been decided, i.e. the type of live music to be provided or whether moderately amplified music or background music only will be played.¹
- Mr. Delaire also describes the option for a noise limiting device to ensure that the music noise does not exceed a pre set internal level, noting that: Music noise emissions can always be controlled by adjusting volumes to appropriate levels.
- 52 As with many aspects of this proposal, the Tribunal is being asked to accept that solutions can be addressed once the venue is operation. In the case of noise, this can be achieved through a *venue noise management plan*. Again,

¹ Delaire C. EV001 2011021 Statement of Evidence Marshall Day Acoustics 20 January 2011. Page 15.

we regard this approach as being symptomatic of design that has not been fully resolved.

Amenity

53 The proposed conditions stipulate the *external lighting must be designed so to limit the loss of amenity to residents of adjoining properties....* This reads more as a design brief than a control on the proposed design and is symptomatic of our observation that many of the amenity conditions have only a vague correlation with the proposed design. By this we mean that many of the amenity conditions are development ‘generic’ rather than design specific.

54 The Donvale Rate Payers Association (DRPA) and a number of individual objectors (including P and S Fellows at 17 Heads Road, abutting to the east) expressed a range of amenity concerns:

- Noise (refer to earlier discussion).
- Light ‘spillage’ due to the height of the building and the amount of glazing. The Objectors’ argument centres on the contention that the extent of night activities at the proposed centre will contrast the existing low ambient light levels within the Low Density Residential Zone, where “adjoining residents enjoy a dark environment.”
- Building bulk and height. The multipurpose building, at approximately 17 metres high, will exceed the height of the surrounding trees and be visible from Heads Road and therefore interrupt the existing unbroken skyline.

55 All of these matters can be managed through building design, and Mr. Milner addressed this in his evidence:

The proposed multi-purpose venue, while substantially higher and larger than the built form in the surrounding area, will be sited so as to minimise visual bulk; appropriately set back behind vegetation, screened from view from adjoining residences; and ensure the ongoing protection and enhancement of the subject site’s existing heritage features.

56 While we agree that Mr. Milner’s comment describes a desirable outcome, and we concur on the matter of heritage protection, we consider the existing design falls short in respect for the amenity of the Low Density Residential Zone.

57 Mr. Milner takes his argument a step further by suggesting:

Given that the proposed use differs from the established pattern of low density residential land use, it is not reasonable to expect that the proposal will achieve a built form outcome that is in keeping with surrounding residential development.

58 On this point, we agree that a multi-purpose function centre cannot be expected to mimic the scale and form of the residential elements of the

zone; however, it is not appropriate to ignore the fact that the proposal is located within a Low Density Residential Zone (LDRZ) and subject to a Significant Landscape Overlay (SLO).

59 These planning controls contain quite explicit statements of purpose, supported by objectives and decision guidelines. For example, the LDRZ has the purpose to

provide for low-density residential development... and the objective to give protection and enhancement of the natural environment and character of the area including the retention of vegetation and faunal habitat....

60 Similarly, the SLO has the purpose to conserve and enhance the character of significant landscapes, and Schedule 1 to the SLO seeks to encourage development in keeping with the character and appearance of the area and to discourage development which is intrusive to the landscape character of the area.

61 Finally, the SLO decision guidelines at Clause 42.03-4, include consideration of:

- The impact of the proposed buildings and works on the landscape due to height, bulk, colour, general appearance or the need to remove vegetation.
- The extent to which the buildings and works are designed to enhance or promote the landscape character objectives of the area.
- The impact of buildings and works on significant views.

62 Taken together, there is clear emphasis on the protection of landscape character. In our view, this overrides Mr. Milner's contention that it is not reasonable to expect that the proposal will achieve a built form outcome that is in keeping with surrounding residential development. We consider there is an obligation to recognise and respect the existing low density residential character, a matter best addressed in a master plan that resolves both internal design and the external impacts.

The use of an Incorporated Plan Overlay or a Development Plan Overlay.

63 The size of the subject site, its existing use, the proposed development and the external traffic and amenity implications of the development all point to the need for a comprehensive design framework to guide the future development of the site. Information provided by the Applicant at the hearing made it clear that the Coptic Church intends to make their Donvale site the community and recreation centre of the Coptic community in Melbourne, with the recreation and function facilities also available to the surrounding community.

64 Given the location of the site in a Low Density Residential Zone and the degree of third party interest in the proposed development, the case for a comprehensive plan for the whole site is compelling. The scale of the site

also warrants recognition within the planning scheme. The most obvious planning tools to support the plan are an Incorporated Plan Overlay (IPO) or a Development Plan Overlay (DPO). We consider the IPO to be the appropriate choice, given that third party interests are likely to pace every stage of development. The effective use of an IPO is achieved when based on a fully resolved design solution for the site. Staging can be included, but significant change can only occur by planning scheme amendment.

Conclusion

- 65 This is a complex proposal on a significant site, and while we conclude that the need for such a facility has been demonstrated, the heritage and flora and fauna impacts can be satisfactorily managed we hold concerns regarding in particular the unresolved parking and traffic management issues generated by the proposal. Therefore, until these matters have been satisfactorily dealt with the application must be refused.
- 66 We consider that the preparation of an IPO or DPO for this site is an appropriate way forward to provide the opportunity to take an integrated approach to the development site in its totality into the future.

Presiding Member
E. Bensz

F Dawson,
Member