



The Consulting Surveyor

The Newsletter of the
Association of Consulting Surveyors (Victoria) Inc

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ARTICLES WANTED AND FPET POINTS AVAILABLE

SRBV ' Guidelines for FPET ' effective from 30 August 2020 provide for allocation to a Licensed Surveyor of 3 points for writing a substantial article, see 6.6.6 extract below:

6.6.6 Writing a journal/magazine article and/or presenting a conference paper of direct relevance to the practises of a licensed surveyor— 3 points in the appropriate category for writing/preparing and presenting a substantial article/presentation, up to a maximum of 6 points in each FPET period.

Articles are accepted at any time and newsletters are collated and published bi-monthly.





Update from your President

2021 Eastern Australian Floods

NSW and to a lesser extent, far south east Queensland, have recently experienced the worst flooding in decades. Fires, COVID-19 and now this extreme flooding. This will test our NSW counterparts and their communities. We are thinking of them in terms of the impact and the recovery efforts.

Easing of restrictions align with increased activity

As anticipated, 2021 has seen a very busy start for most surveying businesses. The National Homebuilder Program (extended), which ceased in March, created a huge surge in the green field market especially. Victoria's "Big Build" has also put ongoing pressure on the Victorian surveying resource to meet demand. Through my observations, it certainly appears there is more work than can be handled across the board, which is great news. With offices back at 100% capacity, this has come at the right time. It would be fair to say that businesses are looking to recruit and demand out-weighs supply. Hats off to all the businesses out there that invest in their people through training and development for career progression. I certainly hope that is you, hopefully it is, and that you are rewarded by loyalty. Your investment, to create good surveyors, comes at a cost and I hope it is valued by everybody and you get to enjoy your ROI. The time spent in lockdown will have curtailed, to some degree, the development of the graduate cohort. Graduate surveyors tend to develop better through the osmosis of a buzzing office environment, and this is what they need (in my view) and hopefully this is what they are returning to in 2021.

I trust by now that all firms will have returned to normal or found their "new normal". For some, it may mean no change at all, for others it may

look like a hybrid model with 2-3 days required in the office. The lockdowns have shown us we can cope with Working from Home, if needed. As to what works for you in your business, I look forward to hearing more about what is working well for you. From my observations, most member firms have made moves to return workers to the office in some capacity. Good luck with settling on what works for you and preparing for the months ahead. As you will be aware, COVIDSafe Plans and Record Keeping in the workplace are required for the long haul.

CSV is in the Tent

CSV remains connected with the Industry Co-ordination Centre, run by the Victorian Government through the Department of Jobs, Precincts and Regions. All updates on restrictions from this source, come directly to us in real time to enable the CSV team to pass on the required government updates. CSV, alongside the other industry stakeholders are expected by government to pass on these government briefings to our members - once we have had the opportunity to ask all the questions we need to ask. CSV is included in the invitations that go out to attend these Industry Stakeholder group briefings from government, as they are called from time to time. The last one was held at 7pm on the Friday prior to the 5 Day Circuit Breaker. I also wish to make it clear that CSV's role in this space is to represent the whole surveying



industry and profession across Victoria. We share the information with the other peak surveying bodies so they can also distribute to their members as well.

Significant Easing of Restrictions

The National Jobkeeper Program ended in March and this naturally aligned with the announcement of 100% return to offices (private and public), which brought Victoria into line with the rest of the country. Employers are no longer required to have their employees working from home (if they can work from home). In general, I am seeing a concerted effort to bring employees back to offices. It also brings vibrancy and recovery back to cafes, shops, bars etc being the businesses that all depend on office workers for trade. It feels good to be around people again. You will have seen recent Member Alerts go out on the easing of restrictions on office workplaces, and gentle reminders on the need for COVIDSafe Plans and Record Keeping in all businesses.



The most recent of these Member Alerts was in relation to how to go about registering for the free Victorian Government QR Code Service, in which CSV encouraged members to consider adopting. It is ultimately up to each business, as to how it wishes to proceed with meeting its requirement for Record Keeping.

Advocacy Under One Voice

“Advocacy under One Voice” is the collaboration between CSV, ISV, SSSI, SIBA/GITA in a formal meeting and reporting structure. This consolidates the impromptu nature of current joint advocacy on areas of shared interest (limited to the big issues) into a formal setting with structure and legacy. Examples of this current joint advocacy has been the representation of the surveying industry to State Government on the COVID-19 Restrictions (continuing), led by CSV; and to RMIT University on the ongoing changes (continuing), led by SSSI and supported by the Surveying Task Force (STF),

This initiative was put up by the CSV Board to the other organisations to consider. Approval from each organisation has been received and “Advocacy Under One Voice” as a structured group has formed, comprising the leaders of each of the said industry and professional bodies – to meet quarterly. In the first meeting held on 24 March 2021, it was agreed that the joint advocacy will target: (1) State Government (including Land Use Victoria); (2) Local Government; and (3) Educational Institutions. The goal of this advocacy is to build relationships, raise profile and obtain advocacy wins on “Cadastral Land Surveying” as the specific joint focus. It was acknowledged that each body will have other numerous advocacy work in play for its own purposes, and it was agreed that this forum can also be used to showcase and receive support on any of that separate and independent advocacy work, as appropriate. The job of this group is purely to work on the targeted joint advocacy on the big issues; to report to the group on completion of actions; and for representatives to report back to their respective Boards. Advocacy updates and wins will be communicated via a communiqué jointly branded for that purpose - to be released simultaneously to respective memberships through the separate organisations.

Please be updated on the joint advocacy currently being undertaken by this group in relation to the ongoing changes at RMIT University. Some of you will have heard about these changes and will be wondering about the detail. The recent collaborative advocacy work undertaken has led to the preparation of a joint communiqué from the “Educational Working Group”, comprising the said group plus the STF and the nominated RMIT University representative (Professor Matt Duckham). This went out on 8 April 2021, to CSV Members by email as a Member Alert. Please [Click here](#) to access the communiqué. Advocacy Under One Voice to Educational Providers (RMIT University in this case) is being led by SSSI and this work is continuing. The said Educational Working Group (to also include a Melbourne University representative) is also set to engage with Melbourne University - to create a structured format for liaison between with the Geomatics / Surveying degree department heads and industry. All This work with RMIT and Melbourne University is important to ensure a work ready pipeline of surveying graduates is available to meet whole of industry needs into the future.

The Advocacy Under One Voice group is in the very early stages of advocacy with Land Use Victoria and Local Government. On Land Use Victoria, the group seeks the protection of the valued historical relationship enjoyed between Land Registry and private practising surveyors. On Local Government, the group seeks Councils support to require that any plan lodged showing cadastral boundaries in support of planning

applications, to be appropriately certified by a Licensed Surveyor, before it can be accepted. This is to respect the fact that only Licensed Surveyors are entitled to define cadastral boundaries on plans. There is a lot of work to be done on both fronts and it will take time to achieve results. Ongoing communication, reaching agreement in principle and being persistent in our efforts will be the key for success.

Long live “Advocacy Under One Voice”. We are too small an industry to have any chance of an effective voice unless we support each other and remain united in our joint purpose.

Seminar Program

The March Seminar at Caulfield Racecourse attracted in the order of 200 attendees, including several representatives from Local Government. It was held 12 months to the day since CSV's last in person event and as such, it was an uplifting experience for our association to be able to come together in person for education and fellowship. CSV will not totally abandon the use of webinars into the future as an option, as there are significant efficiencies in the webinar delivery platform. It will be used from time to time. However, the socializing of ideas and the fellowship fostered at our in person events is an important part of our Seminar Program and needs to continue.

The day was also an opportunity to acknowledge the important partnership we enjoy with the 79 Councils in Victoria – through the Council Awards. For details of the results of the Council Awards please refer to the following pages in this newsletter. I am pleased to advise that in the days following the Council Awards, the CSV office was approached separately by two Councils seeking more details about how our members rated them, to help them understand where to focus on improvement. The CSV Board sees this as further validation on the value Council places on our biennial Rating of the Councils. It demonstrates the importance of why CSV encourages members to participate in the ratings survey, because this is the basis for how we determine the Council Awards. A high-level summary of the ratings is available to any Council upon request

Business Academy

The ACSNSW Business Academy was brought to Victoria by Michelle Blicavs and Craig Turner on 18 and 19 March 2021. This initiative is strongly supported by the CSV Board, as it offers focussed training on the effective running of a business. The CSV Professional Development Committee strives to incorporate business learnings in our Seminar Program. This additional offering in the form of the Business Academy has been delivered successfully in NSW and we were very pleased to assist in bringing it to Victoria. This Business Academy training session will be run again in July 2021 for those that missed out and wish to participate in this form of targeted training in business skills – for the quick road to success. I wish to thank Michelle and Craig for their time and efforts. I wish to also thank Board Members, Michael Wilson and Michael Degg, and CSV Member in James Sprott, for volunteering their time in supporting the event with their insights. Please do not hesitate to contact the CSV office for further information.

PTA Workshop Modules

Our PTA Workshop Modules 1, 2 and 3 have been held this year to date. Module 1 is Victorian Cadastral Surveying and Title Principles. Module 2 is Planning and Subdivision. Module 3 is Rural Re-establishment Principles. Training was held at 370 St Kilda Road, Melbourne, Rooftop Conference Room. Module 4, being Fundamentals of Staged

Subdivisions, was postponed due to restrictions. It is fully booked and has been re-scheduled to be held later in May 2021 has has been re-scheduled to be held later in May 2021.

Automatic Mutual Recognition (AMR)

The federal government's Mutual Recognition Amendment Bill 2021 has been passed through the House of Representatives. The legislation is expected to get through the Senate. It will allow workers with occupational licences who are registered for an occupation in their home state to carry out activities in a second state without having to pay for a second licence. The passing of the legislation by government will help open the possibility for faster and greater recovery works across borders. This has been a federal government initiative for the COVID-19 recovery.

As per CSN's original submission, the states are all seeking an exemption for land surveying (Licensed Surveyors) as an occupation to be excluded from AMR. This now appears possible. It will require the appropriate submissions for justification. This will include reference to differences in legislation between jurisdictions and the need to protect the public's interests etc. To be undertaken in due course, following the appropriate collaboration at both state and national industry level, including Surveyor Generals. As you can see, the consensus is that we do not want AMR to apply to surveyors at this time. That may come eventually as uniformity is achieved in surveying degree courses and Licensing systems across all jurisdictions. Until then, the existing MR legislation will suffice.

Legislative Changes to Owners Corporations and Owners Corporation Subdivisions

The Owners Corporation and Other Acts Amendment Bill 2019 was

passed by Parliament in February 2021 and the changes that it enacts are due to come into force on 1 December 2021. The Act makes changes to the Owners Corporation Act 2006, Retirement Villages Act 1986, and the Subdivision Act 1988. [Click here](#) for note to surveyors on the changes.

This is relevant reading for Licensed Surveyors dealing with Owners Corporation subdivisions. Due to the important nature of these changes and ensuring there is an open conversation on it, there will be a panel discussion on this topic at the upcoming Joint CSV/ISV May Seminar at Moonee Valley Racecourse. Please come prepared to participate in that discussion.

Among the changes listed, is the power for establishing the initial settings of Lot Entitlement and Liability on a Plan creating an owners corporation, which now rests with the Licensed Surveyor using the criteria provided. This is a significant responsibility and an expectation on Licensed Surveyors. To be cherished and safeguarded.

CSV is Always Working for You

Please know that CSV takes pride in the service it provides to its members. There is constant work being done behind the scenes, through the efforts of staff and through the dedicated volunteerism of its Board Members. All striving to achieve everything possible to protect our member's interests both present and future.

It gives me great pride in serving my role as President in this work. I hope you enjoy this newsletter.

Leo Bateman
Taylors

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Council Feedback

This year as part of our questionnaire to Councils we again requested feedback from Councils in relation to six components of their dealings with surveyors.

We received responses from 30 Councils of diverse size and location across the state. Of these respondents, 10% indicated they dealt with less than 50 subdivision applications in 2020, 50% with between 50 and 200 subdivision applications and 40% with over 200 subdivision applications

Based on the advices received from these councils, surveyors rated as follows:

DEALINGS COMPONENT	Council Rating of Surveyors' Level of Achievement of Component		
	HIGH	SATISFACTORY	LESS THAN SATISFACTORY
Complete and detailed SPEAR certification applications	74% <i>(+6%)</i>	18% <i>(-8%)</i>	8% <i>(+2%)</i>
Verbal Communication	68% <i>(-7%)</i>	25% <i>(+5%)</i>	7% <i>(+2)</i>
Written Communication	67% <i>(+2%)</i>	26% <i>(-)</i>	7% <i>(-2%)</i>
Understanding of Council Processes	68% <i>(+2%)</i>	20% <i>(-6%)</i>	12% <i>(+4%)</i>
Complete & Detailed Planning Permit Applications	62% <i>(+1%)</i>	26% <i>(-4%)</i>	12% <i>(+3%)</i>
Positive Relationship	78% <i>(-)</i>	14% <i>(-3%)</i>	8% <i>(+3%)</i>

These ratings indicate that most surveyors perform to a very high standard in the areas of positive relationships and complete and detailed SPEAR certification applications and generally to a high standard in the other areas. Complete and detailed planning permit applications and understanding of council processes are identified as areas with more than 10% of surveyors having a less than satisfactory level of achievement.

The percentages in *Italics* indicate the change from 2019, noting that this year's analysis is from a larger response pool (21 in 2019).

Council Awards

General introduction

On the basis of assessment by CSV members, in the categories of:

1. Efficiency
2. Response Time
3. Understanding of the Subdivision Act 1988, and
4. Level of Cooperation,

over 87% of metropolitan and 90% of rated regional municipalities were rated 'good' or better. No municipalities received an overall rating of 'less than acceptable'. It should be noted that responses were received for

less than 60% (rather than 100%) of regional municipalities and that some ratings for regional municipalities are based on limited responses.

It is pleasing to note that these results reflect a continued rise in overall ratings since the inception of the awards in the early 1990's.

Metropolitan municipalities, Casey, Whittlesea and Maroondah were the Councils identified with the highest positive movement in ratings.

It is intended that CSV will write to some of the lower rated Councils offering to work cooperatively with these Councils to review the results and contribute to potential system improvements.

Should any subdivision officer wish to discuss the results for their municipality please email, the CSV Executive Advisor, gerry.shone@acsv.com.au, and he will make telephone contact when available.



Category: Established Urban Municipality
Winner: Brimbank City Council
Accepted by : Sarah Scala



Category: Growth Area Municipality
Winner: City of Casey
Accepted by : Russell Witney



Category: CSV 2020 Award for Municipal Excellence (Best Council in Victoria)
Winner: City of Melbourne
Accepted by : Helen Koulouris



Category: Metropolitan Subdivision Officers Team of the year
Winner: Michelle Scarlett and Russell Witney from City of Casey
Accepted by: Michelle Scarlett



Category: Regional Subdivision Officer Team of the year
Winner: Latrobe City Council Subdivisions Officers Team led by Karen Egan
Accepted by: Aryan Qayumi



Category: Major Regional Municipality
Winner: City of Greater Shepparton
Accepted by : Brad Sanders LS from Chris Smith & Associates Pty Ltd. accepted on behalf of the Council



Category: Bill Carlyle Award (Subdivisions Officer of the Year)
Winner: Brenton Hann from Bayside City Council
 Brenton couldn't join us today and the award is accepted by CSV President Elect – James Canning. This award will be presented to Brenton at a later date.



Category: Rural Municipality
Winner: Wellington Shire



CSV March 2021 Event - Some photos from the day

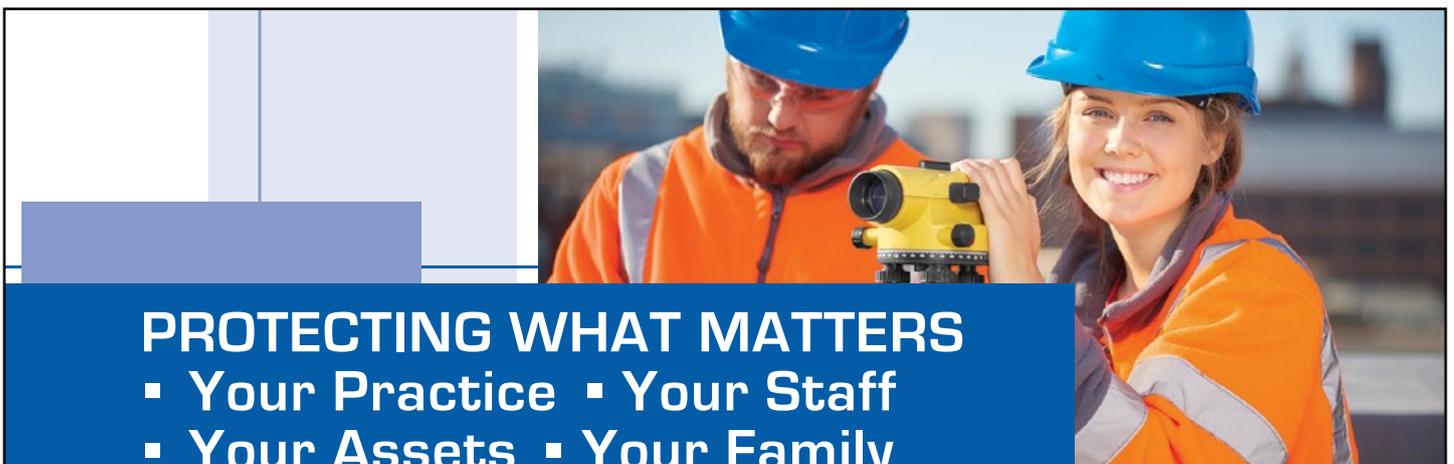


LANDATA now offers a Property Valuation Report!

The Property Valuation Report provides the most recent property valuation information prepared by the Valuer General Victoria determined under the Valuation of Land Act 1960 (Vic) for the purposes of rating authorities. The report includes Land Description, Property Details, and Valuation Information such as valuation date, site value, capital improved value, net annual value. Additionally, the report also provides basic dwelling descriptors such as build date, construction material and other improvements. This report is available for purchase via [LANDATA@](#).



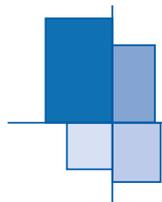
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Planning Scheme Amendments

The following planning scheme amendments may be of interest to some members.

Central Goldfields Planning Scheme Amendment C31 - The proposed amendment applies to 754 properties in both Carisbrook and Dunolly and surrounding rural areas, that have been identified as being liable to flooding from McCallums Creek, Tullaroop Creek, Burnt Creek and their tributaries by the Carisbrook Flood and Drainage Management Plan 2013, the Dunolly Flood Investigation 2014, rural mapping along Tullaroop Creek based on information captured during the January 2011 flood event. The amended flood overlays have taken into account completed flood mitigation works.

A panel Hearing on 23 November 2020 recommended that the Amendment be adopted subject to amending the Municipal Strategic Statement to highlight the importance of managing development within land in the Land Subject to Inundation Overlay and discouraging development on land in the Floodway Overlay in the townships of Carisbrook and Dunolly.

The Amendment also proposes to insert a Schedule to the Floodway Overlay to identify properties that experience flooding greater than 500 millimetres flood depth and provide permit exemptions and identify properties that experience flooding less than 500 millimetres flood depth and provide permit exemptions.

Northern Grampians Planning Scheme Amendment C60 - Proposes to apply the Floodway Overlay and Land Subject to Inundation Overlay on land which is subject to flooding in a 1 in 100 year flood event. This amendment was initially part of the C31 amendment which was gazetted on 14 February 2019 that imposed a Land Subject to Inundation Overlay (LSIO) and Floodway Overlay (FO) to the rest of the administrative areas of Wimmera CMA.

Due to the lapsing of the time to start the part 2 of the C31 amendment, the council is restarting the process by creating a new amendment which proposes to add a Land Subject to Inundation Overlay and Floodway Overlay to land in Halls Gap. Submissions closed on 5th March and a Panel Hearing will commence on 19 July, 2021.

Moreland Planning Scheme Amendment C190 - As part of Amendment VC186 last year, the Minister introduced a code for Secondary Dwellings to enable a streamlined pathway for the development of one additional small dwelling on the same lot as an existing 'principal' dwelling across a range of residential zones.

Planning Panels Victoria has supported amendment C190 to the Moreland

Planning Scheme to introduce an additional class of application into the VicSmart 10day permit process to allow for the construction of a total of two dwellings on lots within the General Residential and Neighbourhood Residential Zones.

The provision includes requirements that the application must be compliant with Rescode Clauses 52.06 and 55 standards of the planning scheme and meet other specified criteria. Two dwelling on a lot proposals which do not meet the provision's requirements will not be eligible for the VicSmart process.

A permit cannot be granted to subdivide the land to create a lot that contains a dwelling constructed under a permit granted by this new provision, however this does open up opportunities for different decision pathways to be developed into Victoria's Planning system

Yarra Planning Scheme Amendment C238 - Inserts Clause 45.06 (Development Contributions Plan Overlay) and new Schedule 1 to the Development Contributions Plan Overlay (DCPO1) and applies to all land in the City of Yarra.

The Development Contributions Plan will require developers to pay a contribution towards essential city infrastructure like roads and footpaths, as well as community facilities to ensure that the cost of providing new infrastructure and upgrading existing infrastructure is shared between developers and the wider community on a fair and reasonable basis.

DELWP Planning has recently released the document [Environmentally sustainable development of buildings and subdivisions: A roadmap for Victoria's planning system](https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/491227/Environmentally-sustainable-development-of-buildings-and-subdivisions-A-roadmap-for-Victorias-Planning-System.pdf) (https://www.planning.vic.gov.au/_data/assets/pdf_file/0025/491227/Environmentally-sustainable-development-of-buildings-and-subdivisions-A-roadmap-for-Victorias-Planning-System.pdf) which outlines the Victorian government's agenda for supporting ESD through Victoria's planning system. The release of the roadmap is accompanied by a new [ESD webpage](https://www.planning.vic.gov.au/policy-and-strategy/environmentally-sustainable-development-of-buildings-and-subdivisions) (https://www.planning.vic.gov.au/policy-and-strategy/environmentally-sustainable-development-of-buildings-and-subdivisions) which will act as a source of information and resources relating to ESD in Victoria's planning system. The webpage will continue to be updated as the project progresses

Members are advised that the above is for information purposes only and is not intended to be a legislation advice service. Members should refer to their own resources to obtain the latest legislative updates.



Never Let a Good Crisis Go To Waste

The British wartime Prime Minister Winston Churchill is famed for coining the notorious saying; 'Never let a good crisis go to waste'. In business, as in life, a crisis usually brings about change. We often don't recognise whether a change was beneficial or detrimental until we can see it from a safe distance in the rear-view mirror as we speed off over the next horizon.

The global Covid 19 pandemic has been nothing short of a crisis and whilst Australia has fared better than most countries to date, there has still been a great deal of personal hardship and most regrettably, the loss of lives.

For the family of lost loved ones, there is no 'good' crisis, so I must qualify the use of Mr Churchill's catchphrase with my most respectful condolences. The point of his phrase is however, to use a crisis as a learning experience and to avoid its waste, by acting positively to counter the problematic effects of a crisis, building strength and capacity to face an uncertain future.

Whilst our industry has been somewhat protected during Covid 19, we have all witnessed a broad range of crisis responses, which have both challenged and inspired our members. In my own workplace, we have implemented or reinforced some business practices which have significantly lessened the impact of Covid 19 and even created some new opportunities.

By sharing some of our learnings, it is my hope that CSV members can reflect on what has worked well, what didn't, and which changes might be carried into their future businesses as the 'new normal' - another catchphrase growing momentum daily...

Leadership

When Covid 19 lockdowns were announced in March 2019, there was an urgent need to provide clear direction to staff, clients, associates and contractors in real time. With press releases coming thick and fast, dissemination of accurate clear instruction was paramount. Frequent leadership meetings were oriented around the receipt of new information and there was plenty forthcoming on a regular basis. We ramped up our monthly leadership meetings to weekly gatherings and then tapered back to fortnightly once we felt that matters were in hand. This calm and frequent situation assessment did provide confidence in uncertain times.

Agenda

No-one in our business had experienced a pandemic before. We were all in new territory. The Covid 19 pandemic presented us with a myriad of distractions. It was useful to test every executive decision against a few core principles. Our leadership team set three lofty goals at our first Covid19 response meeting. It was our primary aim to avoid the 'noise' from all negative sources and to focus our energy on three key objectives. Our three goals set in March 2020 were to:

- a. keep all staff 100% healthy
- b. keep all staff 100% employed
- c. keep all our client's projects at 100% production

We could then frame all of our crisis responses accordingly.

Advice

During the Covid 19 lockdowns, we were bombarded with information from many local, state and federal sources. By far the most useful advice



for managing our business operations came from Consulting Surveyors Victoria Member Alerts. If ever a business association had a role to play it was during this crisis. I am deeply grateful for the participation of CSV

executive in government briefings, Q&A's, workshops and close liaison with industry bodies such as Civil Contractors Federation and UDIA. I feel our CSV membership subscription has been exceptionally valuable this year and I feel even more committed to supporting the dedicated CSV team.

Messaging

To ensure that staff were always receiving the right information at the right time in the right context, all staff announcements and Covid updates were made by one dedicated communications leader for our company. This system was employed to minimise the confusion of mixed messaging when multiple parties start calling the shots. It worked well and gave our team some comfort when they could see a consistent and cohesive approach to company announcements.

Communication

Although most of the younger generation are familiar with group messaging tools like Facebook, Skype, WhatsApp and the like, our company had never implemented those tools as a business platform. With the prospect of sending most staff to a home office and many lacking a company phone, we needed a communication solution and we needed it fast.

We enrolled our entire team onto Skype accounts and setup several chat groups for company-wide and smaller departmental groups for surveyors, planners, engineers and design teams. This tool proved to be a great success, firstly to replace the 'water cooler conversations' that we all love (and need) and secondly to ask a quick question, organise some equipment or just check in on a team member.

It has been really pleasing, entertaining and (believe it or not) productive to watch the 'banter' on our Surveyor's group Skype feed. It has managed to keep our team reasonably sane and well connected whilst apart. Group messaging has been a great solution for both social connection and business communications.

Teamwork

As we were frequently reminded by our politicians during 2020 lockdowns; we were all 'in this together'. By encouraging our team to do the right thing, to roll with the punches and to be responsible for themselves, their families, and their colleagues we managed to endure 2020 without any staff illness due to Covid 19. It may be a happy co-incidence that



none of our work 'family' were infected but I would like to think that by encouraging good compliance and employing sensible covid-safe plans, we might have helped to keep our team out of harms way.

Dynamic

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7:20 AM

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Good Morning All - Please note that the sledge hammer in the Hilux has a broken handle. i will fix it up on Wednesday but in the meantime if you need to do pegging take the spare. Cheers

KLM
SPATIAL

7:45 AM

😊

Morning



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8:11 AM

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8:11 AM

😊

Morning

😂

Whilst our business leadership group met more frequently than usual, we also found it necessary to pivot and turn on a regular basis. Old decisions could not always be maintained. New information demanded dynamic plans to navigate the uncertain waters ahead. In a prime example, we issued worker permits to our field staff for the last Circuit Breaker lockdowns on a Friday night, then rescinded those permits and issued new instructions to staff within 24 hours. Just because a decision was right when it was made, does not mean that it continues to be correct.

Isolation

Surveyors are typically not strangers to the idea of working in isolation. Perhaps some of us were even attracted to the profession for the simple pleasure of working outdoors in a small team, traversing through remote spaces and taking in the landscape. For the more extrovert members of our profession, isolation can be a real issue. The need to connect with humanity is a universal necessity and not everyone copes well in extended periods of isolation. Regularly checking in on staff with a personal phone call, a skype message or a Friday Night 'virtual drinks' session on Zoom was a welcome connection for many of our team. I have noticed that even in a busy workplace environment it is possible for some staff to feel isolated by a lack of communication with their colleagues. The Covid crisis has made us acutely aware of isolation and helped us to recognise when our people need more contact.

Trust Sending all our staff home to work remotely with a few days' notice was not something our leadership team had ever contemplated as a probable business decision. How do we manage the computer licensing? Have we got the bandwidth to connect everyone? How would we know if the work is being done? How could we keep everyone motivated? As it turned out, not only did we have a bright team to manage the technical challenges, we also had made some good decisions in the past, to hire the right people. After watching our team excel in this new paradigm, my conclusion was this; If you had a problem trusting your staff to perform in your absence, then you probably had the wrong staff in the first place.

Flexibility If the covid crisis has taught us anything, it is to be flexible. We had some staff working at odd hours to manage family commitments, some that have enjoyed better work-life balance in a home office, some that never want to be at home any longer than necessary and some that have made some decent financial and time savings by avoiding a daily commute. Covid 19 has forced us to do things differently for a while and to think about how we will continue to operate in a post Covid environment. As CSV Exec Michael Degg commented in his December 2020 newsletter article; "On reflection we all have a few "iso" habits we'd like to hold on to".

In conclusion We are not yet out of the woods and will all continue to be affected by the Covid19 crisis and its aftermath. We do however get to choose how we wish to respond. By adopting an attitude that we can learn from a crisis, we can each play a role to reduce the physical, mental and financial suffering that a crisis may inflict. I believe our business is stronger than it has ever been. We have all made some sacrifices for the greater good and that simple fact unites our people in a way that may have never occurred, without a crisis.

James Canning
KLM Spatial





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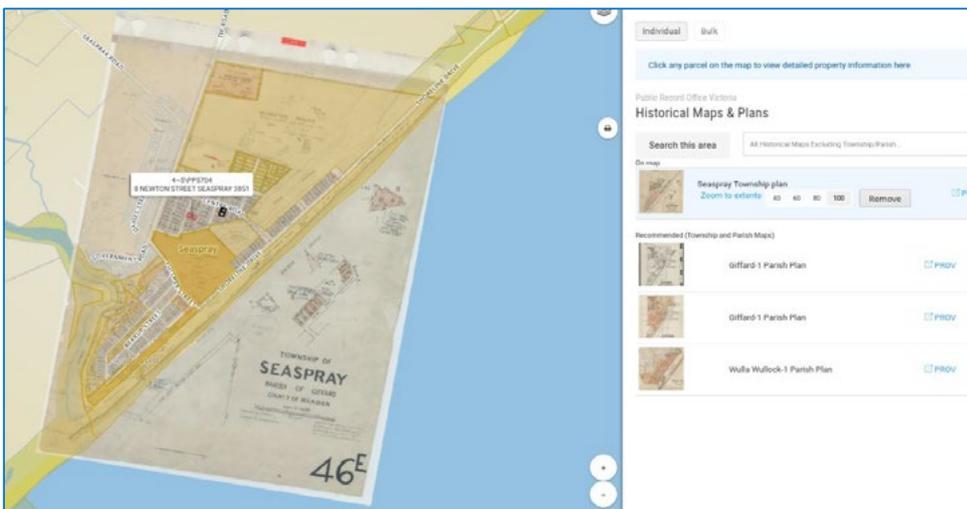
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VCAT

1. More on underdevelopment – a different approach

Concerns with underdevelopment continues to be an issue in recent Tribunal cases involving townhouses in activity centres. We commented at VCAT Volume 8 No 1 in relation to four cases where Councils had refused townhouse proposals because they considered higher yields could be achieved with apartment developments, and better meet planning objectives for intensification. The Tribunal had approved three of the four proposals, and while it refused the remaining proposal it did not conclude the proposal should be refused because of underdevelopment.

Two more cases involving questions of underdevelopment have been considered by the Tribunal in the latest reporting period. This time the Tribunal supported the Council decisions and refused the applications because of concerns with underdevelopment.

In *Wan v Maroondah CC* [2020] VCAT 724, Council had refused an application for six attached double-storey dwellings in the Ringwood Activity Centre largely because of underdevelopment. In supporting Council's decision, the Tribunal stated:

My principal finding is that six double-storey townhouses does not achieve the relevant strategic objectives, being an underdevelopment of residential land in a Metropolitan Activity Centre. Site consolidation would allow a more appropriate built form. Even if that is not possible, the current design does not optimise the development potential of the review site. While I do not agree with most of the Council's criticisms about the design and layout, the underdevelopment is a poor planning outcome. Accordingly, I have decided to refuse to grant a permit. [9]

In *Chittagong Developments and Constructions Pty Ltd v Kingston CC* [2020] VCAT 681, Council refused an application for four three storey attached dwellings in the Cheltenham Activity Centre. In supporting Council's refusal on strategic grounds, the Tribunal stated:

I do not agree with the applicant's submissions that the purpose of seeking a certain typology is only for built form and landscaping outcomes. I find it is also to realise the full potential of the ACZ1 to accommodate future housing needs and growth but with acceptable integrated built form and landscaping outcomes.

In my view, the correct way to approach this decision is to determine whether there is strategic support for the proposal before considering the merits of other aspects such as built form, landscaping and amenity.

Whilst I agree that there is nothing in the planning scheme that prohibits any form of development other than apartments or additions to existing dwellings, when the planning scheme as a whole is considered, I find the proposal does not meet the overall planning aspirations for this site at a strategic level.

The planning scheme is seeking a certain typology of development on this site, and others within the ACZ1 area, in order to maximise the provision of housing, as well as for built form outcomes.

The ACZ1 encourages consolidation of sites and for apartment developments to be the typology of housing sought. The specific aspiration of the ACZ1 in the Precinct 6 Decision Guidelines states:

Development should provide for a mix of dwelling options in an apartment format rather than villa units or townhouses.

One of the precinct objectives for Precinct 6 states:

To provide opportunities for a mix of dwelling types in the precinct. Whilst on one view, this could be confusing having regard to the Decision Guidelines for precinct 6 which effectively seeks apartments, I find that when read collectively, the aspirations sought under the ACZ1 are seeking a more intense form of development on the subject site.

In this case, this might necessitate consolidation of the land with adjoining land to achieve a proposal that is a viable planning outcome. Such an approach is also encouraged under the ACZ1 provisions. [44-51]

While each case must be considered on the merits having regard to specific policies and controls that apply to the relevant land, it would seem to your editors that in the two cases above the Tribunal has adopted a different approach to the cases referred in the VCAT Vol 8 No 1 editorial. Councils pressing for development commensurate with strategic objectives should be pleased with the latest decisions.

See also:

- **Guide to Planning Appeals: Underdevelopment**

2. Relevance of planning and the health impacts of shisha smoking

The Tribunal has in *Bahrami v Greater Dandenong CC* [2020] VCAT 635 allowed an amendment to a permit that allows for the smoking of shisha in a place of assembly. Adopting *Hunt Club Commercial Pty Ltd v Casey CC (Red Dot)* [2013] VCAT 725 that "Town planning is not a panacea for all perceived social ills", the Tribunal stated:

In this proceeding, the issue at hand is not the potential health impact of over-eating, it is not the potential health effects of electromagnetic radiation from telecommunication towers, nor is it the broad impacts of alcohol abuse. Instead, the issue or concern raised by Council is the health impacts associated with smoking shisha. It is not the role of this Tribunal to start to regulate the smoking of shisha within the State of Victoria, or determine that its health effects are too significant to allow the smoking of shisha from the review site. Adopting the words set out in the Hunt Club decision, it is not for this decision maker to pioneer my own standard about the accessibility of smoking shisha in this neighbourhood.

Rather, it is for the Federal and State Governments to set the regulations around such activities.

At the time of this decision, the smoking of shisha is a legal and legitimate activity, and I am not aware of any attempts by any regulators to restrict its use in the manner that is proposed on the review site. Essentially what the Council is asking the Tribunal to do, is to find that the health impacts of smoking shisha is so significant, that I should usurp the law making role and authority of both Federal and State Government, and effectively outlaw in the Greater

Dandenong municipality, a legal and legitimate activity. That is not the role of the Tribunal, or the planning system as a whole, for the reasons set out in the Hunt Club decision. [10-11]

The Tribunal's rather strident comments about the scope of planning and its relevance to social and health impacts on individuals does not appear to fully acknowledge the planning objectives that explicitly seek to address social and health issues, namely (and as argued by Council in the proceeding, and referred to by the Tribunal), the reference to 'healthy neighbourhoods' and 'healthy lifestyles' within Outcome 5 of Plan Melbourne 2017-2050, as well as other State and local policies and strategies about shisha smoking and health impacts. As such, Council was well within its rights to argue that part of its assessment was based upon broader social and social impacts. The difficulty for decision makers is how to assess broader social and health impacts in individual cases.

See also:

- **Guide to Planning Appeals: Economic and social impacts**

3. Tribunal refuses demolition of Esme Johnston House

Heritage protection of mid-century buildings is currently a vexed issue in the Bayside municipality, with the local community divided in its opinion of whether heritage controls of mid-century buildings should be pursued. Amendment C178bays, which at the time of writing is with the Minister for Planning for authorisation, proposes the "voluntary" protection of potentially significant mid-century buildings – i.e. the Amendment will only apply to those property-owners who want it.

In *Pothitos v Bayside CC* [2020] VCAT 613, the Tribunal considered an application for the demolition of a midcentury Esme Johnston house. Esme Johnston was a journalist and built the dwelling as her own

residence which was constructed in 1929. She acted as project manager for the works, procuring materials, engaging and supervising the various builders and tradesmen while undertaking some of the work herself. The site is subject to an Interim Heritage Overlay that was introduced in November 2019 (Bayside C174bays) and is due to expire in October 2020, with Council resolving earlier this year to request the Minister to appoint a Panel to consider the submissions on the interim amendment.

The key issue in the proceeding was not so much the heritage significance of the dwelling, but whether the dwelling was structurally unsound and restorative costs prohibitive. In considering the application for demolition under Council's local policy, the Tribunal came to the following conclusions:

The building is structurally unsound – the expert evidence does not support a conclusion that the building is structurally unsound, even though there are identified defects.

Having regard to the way in which some Tribunal decisions have addressed this matter, the Tribunal found that the building is not structurally unsound for the purposes of this clause.

The original fabric of the building has deteriorated to such an extent that a substantial reconstruction would be required to make the building habitable – works associated with the roof and chimney, as well as some timbers, are the most substantial required based on current information. However, the expert evidence does not support a conclusion that the original fabric of the building has deteriorated to such an extent that a substantial reconstruction would be required to make the building habitable – existing defects do not prevent the building from being inhabited and it is currently inhabited.

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The replacement building displays design excellence – demolition extinguishes the values of the heritage place. The replacement does not form part of a heritage precinct so as to influence the heritage values of a broader area. The replacement building is acceptable.

It is understood that Council has now decided to undertake a full analysis of the municipality's mid-century buildings and will no longer pursue C178bays as an amendment containing only mid-century buildings that property owners have consented to.

See also:

- **Guide to Planning Appeals: Heritage > Demolition > Structural condition**

4. The Clause 55 objectives/standards dilemma again rears its ugly head

Over the past few years we have commented on a number of cases involving Clause 55 applications where there has been debate as to whether compliance with a standard automatically meets the objective. In our view, the Tribunal has adopted a clear-cut position that compliance with a standard automatically must meet the objective in order for approval to be given in *Chak Lai Li v Whitehorse CC* [2005] VCAT 1274, *Red Star Beaumaris Pty Ltd v Bayside CC* (Correction) [2015] VCAT 305 and *Belokozovski v Port Phillip CC* [2015] VCAT 1046.

Cases in which there has been less of an endorsement of the above approach include *Lamaro v Hume CC & Anor (Red Dot)* [2013] VCAT 957 and *Ye v Boroondara CC* [2015] VCAT 1051. In these cases, the Tribunal has highlighted the fact that not all standards have numerical requirements (so it is “open” whether there is compliance) and that there is a need to consider relevant decision guidelines, which go beyond consideration of Clause 55 standards and objectives. As stated in *Ye*:

I am not persuaded that if numeric compliance with the relevant Clause 55 standard meets the corresponding objective, by extension the neighbourhood character arm of the relevant objective must also be met. Rather, as many other divisions of the Tribunal have done so I prefer to follow the Tribunal's findings in Lamaro that the decision guidelines “need to be considered in all cases irrespective of whether the standard is met” given the qualitative nature of neighbourhood character considerations and the drafting of provisions related to the application of decision guidelines in the planning scheme. [54]

We wrote in the editorial at VCAT Volume 3 No 3:

This is, in our reading and as the Tribunal here itself suggests, essentially follows the position in Lamaro. While there is some doubt expressed in this sequence of decisions as to whether the Lamaro/ Ye and Li / Red Star approaches are in conflict, it remains our view that the positions cannot be reconciled. The passage above clearly contemplates a scenario in which a decision-maker has determined a standard to be met and then nevertheless has also formed a view that the objective is not met; whereas the Li/Red Star approach does not allow for a decision-maker to find that the objective is not met.

In 16 *Taylor Pty Ltd v Nillumbik SC* [2020] VCAT 673, which involved an application for eight dwellings on a lot in Eltham, a street front setback of 7.618 metres was proposed, which exceeded the minimum setback of 5.5 metres. The Permit Applicant contended that compliance with Clause 55 standards ordinarily meets the objective. However, the Tribunal questioned this contention, stating that:

In the case of meeting standards of clause 55 and whether doing so means there is automatic satisfaction of the corresponding objective,

this continues to be unresolved. It was Mr Glossop's evidence that meeting the standard ordinarily meant that the objective was met. However, he also conceded that simply meeting the ‘barn’ diagram in standard B17 of clause 55.04-1, for example, was not the only determiner of whether a side and rear setback of a proposal was acceptable. He agreed that there are qualitative elements to that clause.

In my view, qualitative considerations are included in the objectives and decision guidelines of clause 55. If Mr Glossop's logic were applied regarding compliance with the standard equals compliance with the objective, then what becomes of the Decision Guidelines under each clause 55 sub-clause if the standard under each were met? Are they simply ignored? This cannot be the case. Under every clause 55 sub-clause, there are a suite of decision guidelines and the preamble to each states:

“Before deciding on an application, the responsible authority must consider:.....”

It does not include any qualifying prefix such as ‘If the standard is not met...’ or words to that effect.

The ultimate guidance, in my view, comes from clause 55, where, under the ‘Operation’ section, it sets out the following:

Decision guidelines.

The decision guidelines set out the matters that the responsible authority must consider before deciding if an application meets the objectives.

Clause 55 does not set out that if the standard is met, the decision guidelines are not applicable.

The decision guidelines must be considered before deciding an application. [72-78]

The Tribunal acknowledged that there had been different approaches to this issue. It stated:

I accept that there are differing views amongst various divisions of the Tribunal on this issue. I also accept that decisions by legal members in the past have differed from my views and those of other Tribunal decisions.

The objectives, standards and decision guidelines in clause 55 provisions must be read together in order to arrive at a decision about whether the objective has been met.

The objective of clause 55.03-1 seeks buildings that respect the preferred character and make efficient use of the site. Standard B6 related to this objective seeks that walls of buildings be setback at least the distance specified in the schedule to the zone. The decision guidelines under clause 55.03-1 include:

Any relevant neighbourhood character objective, policy or statement set out in this scheme.

The design response.

Whether a different setback would be more appropriate taking into account the prevailing setbacks of existing buildings on nearby lots.

The visual impact of the building when viewed from the street and from adjoining properties.

Clearly, there is a balance to be struck between meeting the preferred character outcome and efficiently using land which has been designated for greater density, given the application of the ACZ1. [79-82]

Having regard to the decision guidelines, the Tribunal was not satisfied that despite compliance with the numerical standard for the setback, that it was an acceptable outcome on the streetscape.

Your editors have long held that it would be appropriate for DELWP to provide some clarity in this matter through an amendment to Clause 55 or an Advisory Note, which they have failed to do. It is undesirable to have conflicting approaches on an issue that has been festering for many years now.

See also:

- **Guide to Planning Appeals: ResCode**

5. Whether works constituted a private tennis court

In *Sneath v Boroondara CC* [2020] VCAT 638, the Tribunal considered an application for an enforcement order sought by a neighbour that works that had been undertaken on a property in Hawthorn was for a private tennis court, for a which a permit was required and not obtained.

A permit is required for the works by virtue of the Heritage Overlay applying to the land. Retrospective approval had been granted by the Council for the works.

However, the neighbours sought the enforcement order on the basis that

the works had been undertaken for the purpose of a private tennis court and that no planning permit had been obtained.

The Respondent originally applied for permission to use, construct and illuminate a tennis court, but withdrew that application well before starting the works.

It was conceded by the Respondent that when the works started it was intended to construct a private tennis court. However, before the works started, during the carrying out of the works and after the works were completed, it was now contended that there is no intention of using the works as a private tennis court.

Notwithstanding, the Respondent conceded that she does not wish to foreclose the possibility of further works in the future to use, construct or illuminate a private tennis court, and that if she proposes to carry out those further works, she would first require additional permission under Clause 52.21 of the Scheme.

The Tribunal found the Applicants have not discharged the evidentiary burden of proof that the works were carried out for the purpose of a private tennis court. It stated at [30]:

It suffices to find that the plans endorsed to form part of the dwelling permit are not evidence of a private tennis court. The plans shows the rear yard generally between the pool (near the patio) and the retained peppercorn tree (near the south boundary of the land) having a grassed surface (with a finished level of nominally 29.04 metres AHD). The rear yard also bears the following notation on the plans:

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Landscaping works to rear yard – provide nominally 1:100 fall – to existing stormwater (legal point of discharge at southwest corner of site).

As to the Applicant's intentions, the Tribunal stated:

The subjective and objective intent of a person carrying out works can be relevant to determining the purpose of the use of the works.

The withdrawal of the original tennis court application and no re-lodging of a fresh application in circumstances in which the respondent knew that permission was required for a private tennis court is prima facie objective evidence that the respondent did not intend to construct a private tennis court when she started the works. [55-56]

No doubt the Respondent is fully aware of her obligations should she choose to convert the works into a private tennis court.

See also:

- **Guide to Planning Appeals: Enforcement order, Tennis court**

6. Supreme Court dismisses appeal against landfill expansion

The Mount Atkinson landfill located within the City of Melton is the largest landfill in Victoria, accepting millions of tonnes of putrescible waste each year from municipalities and commercial customers. The Tribunal in *Melton City Council v Landfill Operations Pty Ltd* [2019] VCAT 882 granted approval for an expansion of the landfill under section 33 of the Environment Protection Act 1970 (EP Act).

In *Mount Atkinson Holdings Pty Ltd v Landfill Operations Pty Ltd & Ors* [2020] VSC 345, five developers of surrounding land lodged an appeal to the Supreme Court on the basis that the Tribunal erred in failing to give proper, genuine and realistic consideration to whether the proposal complies with, and gives effect to elements of the State Environment Protection Policy (SEPP) Air Quality Management (AQM) relating to odour. Other grounds were also pursued.

In essence, the surrounding developers' submissions were summarised by the Court as follows:

- air emissions modelling was obligatory, and must show that the design criterion 1 OU for general odour was attained at the boundary of the landfill and beyond;*
- because the proponent could not show compliance with the design criterion of 1 OU, the Tribunal was obliged to refuse the works approval application;*
- the Tribunal did not give effect to the SEPP (AQM), the WMP (SDM) or the BPEM;*
- a health risk assessment was the only 'get out of gaol card' if the 1 OU standard was not met, and was not appropriate;*
- the Tribunal used the expression 'risk assessment' inaccurately in its reasons and should have referred to 'health risk assessment';*
- the Tribunal applied the wrong test as to an adverse effect on amenity by requiring that the impact on*
- residential amenity be so great that residents could not live in their own homes;*
- the Tribunal denied the developers procedural fairness when it did not accept the evidence of the resident witnesses; and*
- the Tribunal should have required the proponent to provide a 500m buffer.*

In dismissing the appeal, the Court stated:

Clause 28(1) of the SEPP (AQM) was not engaged in the present case. Clause 2(d) is not an exhaustive code. A proponent may adduce evidence other than a health risk assessment to show that there will be no adverse impact from a proposal. It would be inconsistent with cl 16(5) if this were not the case. There is no apparent reason why the draftsman of the SEPP (AQM) would intend that a proponent be denied

the opportunity to provide a risk assessment or to adduce evidence that a proposal, while not achieving 1 OU at the boundary of the premises or beyond, would not adversely affect local amenity by reason of offensive odour.

Clause 28(1) and sch A and C should be given a practical and workable interpretation consistent with the purposes of the EP Act and the SEPP (AQM). A proponent is entitled to use expert evidence, risk assessment, best practice or other means to show that local amenity will not be adversely affected by offensive odours.

A health risk assessment is likely to be apposite in the case of Class 1, 2 or 3 indicators involving substances potentially injurious to health rather than general odours that do not ordinarily involve a physical health risk.

I accept that s 37A(c) of the EP Act required the Tribunal to give effect to the SEPP (AQM) and SEPP (AAQ) and to implement them as policies. This requires the policies to be construed and applied to the facts of the present case. This is what the Tribunal did. [142-145]

See also:

- **Guide to Planning Appeals: Landfill**

7. Supreme Court upholds appeal requiring drainage levy

In *Bayside City Council v Stockland Development Pty Ltd* [2020] VSC 354, the Supreme Court has upheld an appeal lodged by the Council against a Tribunal decision in *Stockland Development Pty Ltd v Bayside City Council* [2019] VCAT 147 to delete a permit condition requiring the payment of a drainage levy for a retirement village. The Tribunal had deleted the condition on the basis that a retirement village was not a dwelling.

In concluding that the Tribunal erred on a question of law, the Court stated:

Adopting the Tribunal's language, the definition of 'dwelling' in the Bayside DDCP has two arms. The first arm includes premises that are a 'dwelling' as defined in the planning scheme.

'Dwelling' is defined in the planning scheme to mean:

A building used as a self-contained residence which must include:

- kitchen sink;*
- food preparation facilities;*
- bath or shower; and*
- a toilet and wash basin.*

The second arm of the definition states that 'dwelling' includes any dwelling contained in the Accommodation Group identified under cl 75.01 of the planning scheme.

As a general principle, all words and sentences must be given some

meaning or effect. In the present case, it is appropriate in construing the second arm of the definition of 'dwelling' in the Bayside DDCP to give it full meaning and effect. It is not open to treat the second arm of the definition as superfluous or meaningless.

When it looked at the second arm of the definition of 'dwelling', the Tribunal had assumed that the draftsman of the Bayside DDCP intended the word to be confined to the statutory definition contained in the planning scheme. This could not have been the case because the planning scheme meaning of 'dwelling' constituted the first arm of the definition of 'dwelling'.

The Tribunal's interpretation disregarded the fact that the second arm included dwellings contained within the Accommodation Group of the planning scheme. In construing the definition of 'dwelling' in this manner, the Tribunal failed to ascribe a practical and reasonable meaning to the second arm of the definition.

In my view, it is clear that the draftsman of the Bayside DDCP used the term 'dwelling' in its ordinary meaning of 'place of residence or abode' or 'a room or suite designed to be used as a separate domicile', or in other words 'a living unit'. 'A place of accommodation' would have been another proper construction having regard to the reference in the definition of 'dwelling' to the Accommodation Group. [60-66]

See also:

- **Guide to Planning Appeals: Conditions, Dwelling**

8. Tribunal refuses to amend a permit to extend the expiry date for a sign

The Tribunal has reaffirmed in *Roads Corporation v Stonnington CC* [2020] VCAT 658 that it can determine an application for review notwithstanding that the decision of the primary decision maker was beyond power.

A planning permit was issued on 12 May 1998 for the construction of a sound attenuation fence, emergency access gate, two promotional signs and landscaping. The permit contained a condition that the permit would expire in 20 years, ie 12 May 2018. Following a Practice Day hearing, the Tribunal invited submissions on the question of the expiry of the permit.

The Applicant relied on the decisions of the Supreme Court of Victoria and Supreme Court of Appeal in *Harvey v Mutsaers* [2011] VSC 23 and *Harvey v Mutsaers* [2012] VSCA 69 to support its position that the Tribunal has the jurisdiction to determine the application.

Since these decisions, the Tribunal noted that section 81(3) of the *Planning and Environment Act 1987* (P&E Act) has been amended so that the Tribunal can no longer use clause 62 of schedule 1 of the *Victorian Civil and Administrative Appeals Act 1998* (VCAT Act) to disregard any failure to apply within the timeframe for an extension of time of a permit. Notwithstanding, the Tribunal, in referring to the Harvey Court of Appeal decision, which considered *Trill v Rural City of Wodonga* (1989) 3 AATR 107, held that even if the decision of the primary decision maker was beyond power, the Tribunal nonetheless had the power to determine the application.

While the Tribunal considered it had power to disregard the Applicant's failure to seek an amendment to the permit to extend the expiry time, it decided it did not wish to do so noting, amongst other things, that the application to amend the permit was made 15 months after the permit expired.

See also:

- **Guide to Planning Appeals: Permit > Extension of time**

9. Does the Tribunal have jurisdiction to consider an appeal against a public open space contribution?

In *Jones v Port Phillip CC* [2020] VCAT 714, the Tribunal considered the following question of law:

- Does the Tribunal have jurisdiction to consider the application of the third exemption in clause 53.01-1 of the Port Phillip Planning Scheme in an application under section 80 of the *Planning and Environment Act 1987* (P&E Act)?

The application involved a boundary alignment that had the effect of creating one larger lot and one smaller lot. Council imposed a condition of permit requiring a 5% public open space contribution pursuant to the schedule to Clause 53.01.

Council contended that the condition is mandatory and that Clause 53.01 is a provision that has effect independent of the grant of a permit or inclusion of a condition in a permit requiring a public open space contribution payment. Further, it contended that the question whether the exemption relating to whether each lot will be further subdivided is a question of fact and that Clause 53.01 is authorised by section 18A of the *Subdivision Act 1988* and not by section 6 of the P&E Act. Hence, it was argued that the Tribunal does not have jurisdiction under section 80 of the P&E Act to review a determination on a question of fact by an entity that is not a responsible authority.

The Tribunal held that while the requirement in the schedule to Clause 53.02 cannot be reduced or varied on a merits review of a decision on an application for permit to subdivide, that does not affect the application of the exemption in relevant circumstances. Accordingly, a municipal council needs to 'reach' a 'view' as to whether further subdivision of each lot is unlikely which is a decision within the meaning of section 4 of the *Victorian Civil and Administrative Act 1998* (VCAT Act).

The Tribunal also dismissed Council's contentions that a declaration under section 149 of the P&E Act was the appropriate remedy because, amongst other matters, it would not require consideration of the real and underlying issue (i.e. the merits); that the Tribunal is not bound to cancel a permit if the subdivision was found to be exempt from the public open space contribution because section 85(1) of the P&E Act clearly contains a discretion; and that the P&E Act does not expressly state a condition requiring a public open space contribution could not be included on a permit to subdivide land if a public open space contribution requirement was specified in a planning scheme.

As to whether Clause 53.01 would remain a mandatory provision if the Tribunal deleted the condition and did not cancel the permit, the Tribunal considered this point goes beyond the scope of the question of law in this proceeding. The Tribunal declined to address this issue in any detail, other than to state: "if the Tribunal on an application under section 80 of the PE Act found a subdivision was exempt under clause 53.01-1 and deleted a condition requiring a POSC payment, a municipal council would be acting unreasonably and perversely if it maintained a subdivision was not exempt under an independent operation of clause 53.01."

See also:

- **Guide to Planning Appeals: Conditions, Public Open Space Contributions, Tribunal jurisdiction**

The CSV Office

The March 2021 Seminar 'CSV Moving Victoria Forward, was CSV's first face to face seminar, the seminar which included the Council awards was well attended, It was so good to see everyone network. The day proved to be a huge success with registrants enjoying many interesting topics. Our next FPET seminar is the CSV/ISV Seminar to be held on Friday, 21 May 2021 at Moonee Valley Racecourse.

In February CSV held three training modules. Modules 1, 2 and 3 booked out very quickly, on the 6 May 2021 we are running Module 4, there are still a few spots available. If you are interested in participating in Module 4 – Introduction to Staged Subdivisions, please email your details to admin@acsv.com.au. Just a reminder that these sessions fill very quickly, I suggest if you do have a PTA candidate that may benefit from the training, to ensure they register as soon as registrations open.

In March CSV partnered with ACSNSW and ran the Business Academy, this program is designed by Surveyors for Surveyors which included presentations from Surveyors who have been successful in their own consultancy. The Business Academy ran for two days and all participants return in July, the break in the middle allows time to implement the learnings. Each participant will have the opportunity to prepare their final assessment on how they will improve their business and present the assessment to the group. I would like to take this opportunity to thank Craig Turner from SDG Group and Michelle Blicavs from ASCNSW for coming to Victoria to run the Business Academy.

I have sent out a number of member alerts keeping members up to date on the easing of restrictions. Leo Bateman and I have attended

meetings held by DHHS. The last meeting I attended focused on the QR Code and how each business should register and download the posters. If you require assistance, please don't hesitate to contact me and I am more than happy to provide assistance.

In early March CSV moved their accounting system from MYOB to Xero, we decided to move across as Xero is a true on the cloud software. Since moving across we have been able to streamline a lot of the work processes. This year we also moved our phone system to TEAMS. Like anything new it took us a little while to familiarise ourselves with how it works, thankfully after training we are able to provide a better service as we can answer the phone from wherever we are working. The CSV Website is coming along nicely, in the next month we hope to have a rollout date as well as commence training all the CSV staff. Once we do go live, members will have the opportunity to update their own information and have a greater access to the members' site.

Many of you would know that Gary White from ISV has retired, Cherie, Trish, Rita and I would like to wish Gary all the best, Gary and I have had a great working relationship with much banter and supporting each other, (sadly I still don't get Gary's jokes)! As we head into winter and the days get shorter, stay safe and as always if I can be of assistance, please email me on carmen@acsv.com.au

Carmen Olson
Executive Officer



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MEDIA RELEASE

Inaugural Director of Business and Projects for Survey Task Force Inc

12 March 2021

MELBOURNE—Survey Task Force Inc. announced that it has appointed Kellee Ireland as Director of Business and Projects (Vic). Kellee's appointment aims to increase the visibility of surveying as a career, encourage and increase industry involvement and help to develop the long-term financial sustainability of the Task Force.

Kellee is a recognised strategic business leader for the spatial and surveying industry with a track record in successfully leading businesses, building relationships and delivering results.

George Havakis, the Survey Task Force Inc. Chairman says:

"Kellee is a passionate, enthusiastic and energetic leader. Her collaborative style and practical approach to problem solving is exactly what the Survey Task Force needs to continue to grow and make a difference"

Prior to joining the Survey Task Force, Kellee worked as the SSSI Vic Executive Officer and SIBA/GITA Executive Director.

In 2017 she was a finalist for the Telstra Business Woman of the Year Award (Vic) and was the inaugural winner of the SSSI Victorian Women's Leadership Award.

Kellee is also an active volunteer and contributor to Smart Cities Council Australia New Zealand Digital Twin Strategy and an honorary fellow member of the Centre for Spatial Data Infrastructures and Land Administration.

She has already launched our new Partner program which has been created to provide return on investment to supporters by leveraging our connections and mentoring programs. Auspat Land Survey Australia are first to come on-board as a Diamond Partner.

The Surveying Task Force Inc. was established as an independent not-for-profit organisation, in 2008. Over the past twelve years, with financial and in-kind support from Victorian surveying stakeholders and Victorian surveying businesses and individuals, it has raised and expended over \$1 million. This has included the development of the *A Life Without Limits* brand, website and systems approach which has been broadly recognised as a highly successful campaign.

More Information, stfvicexecutive@gmail.com

www.alifewithoutlimits.com.au



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The VCE and Careers Expo 2021 29th April to the 2nd of May 2021

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The Medallion Room, Norman Robinson Stand, Caulfield Racecourse

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We've already got the surveying resources ready to go, now **we are requesting your support to make this event a success. We are searching for industry ambassadors** who can build enthusiasm for surveying. Students will love to hear about this amazing profession directly from the experts - experts like you. Click 'Volunteer Now' to sign-up.

[Volunteer Now](#)

Feel free to pass this request on to anyone from your office too.

Kind Regards

Kellee Ireland

Director of Business, Survey Task Force (Vic)

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Heading & Associates

Our History

Heading & Associates have operated in the Cadastral and Engineering Survey space for over 20 years. We are well-rounded, experienced surveyors focused on producing high-quality innovative solutions for our clients.

Our business was established through humble beginnings, founded by our Managing Director, Maurice Heading, originating as a small engineering survey-oriented firm tackling large infrastructure projects. Involvement in key projects for Metropolitan Melbourne's early northern developments, such as the construction of the Craigieburn Bypass, being one of many projects we were involved in at the time.

Through the success of this earlier work, we foresaw the need to be multi-disciplined, and offer a variety of services to our client base, one being Cadastral Survey. By envisioning the growth Heading & Associates would experience in project workload, we built a team of well-experienced Cadastral Surveyors, adding immensely to our value proposition.

Heading & Associates Today

Fast forward to 2021, Heading & Associates continues to add to this value proposition, and win work based off our customer service and quality offering.

Our Licensed Surveyor, Byron Starkey, leads our Cadastral team, with one currently undertaking a PTA, further adding to our team's repertoire. With our years of experience and depth, we service projects from large multi-stage developments through to the smaller-scale subdivisions. We re-establish, mark and create title boundaries, provide great customer service, and believe we have the highest-quality outputs of any survey



firm in Victoria. We have great pride and passion in what we do.

Our Cadastral Survey team works in-unison with our Engineering Survey team, managed by Ian Jamieson, offering their services to complement our continued work on Victoria's Level Crossing Removal Projects. The work we have won, based off relationships, and continued quality offering in the market, have allowed us to be a supplier and key player in delivery of survey data for Victorian Big Build projects. The ability for us to not only service Clients' construction survey needs, but also their cadastral survey needs including SP Plans, re-establishment, and title boundaries, enables us to better service our market.

With growth brings the need to update. We have developed a new, updated website to reflect the organisation we are today. We have made changes to our internal process and worked to improve the way we deliver quality to our customers. During the COVID-19 lockdowns and restrictions on business, we found this to be the perfect time to reflect on what and how we currently operate and make necessary improvements to better position us to return stronger than ever.

Our Value Proposition

We are specialists in the industry who continue to lead innovative change and deliver excellence. Our continuous push for new technology advancements such as automated monitoring, laser scanning, leverages off the confidence we have in our technical ability to innovate. Our multi-disciplinary expertise coupled with our focus on stakeholder engagement and client satisfaction, ensures we are servicing our clients with what they exactly need.

Our Future

The next few years brings with it a lot of opportunity for our business to continue to sustainably grow and expand in the market. An increasing demand for infrastructure work, in addition to our continued large and smaller, unique subdivision works, will feed our appetite for continued success as a key supplier of innovative survey solutions in Victoria



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We are thrilled to announce a partnership between Consulting Surveyors Victoria (CSV) and the Victorian Chamber of Commerce and Industry (VCCI). Right now Victorian businesses are doing it tougher than most, this partnership can provide you with an extra layer of support through a heavily discounted membership.

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2021 SOCIAL / OTHER EVENTS:

Date	Event Name
Thursday, 4 March	International Women's Day Breakfast Venue: Crown Melbourne, Southbank
18 & 19 March and 27, 28 & 29 July	Business Academy Venue: CSV Rooftop Meeting Room, Melbourne
Friday, 30 July	CSV / ISV Gala Dinner Venue: Crown Melbourne, Southbank
Thursday, 2 September	Industry Network Evening Venue: Grand Hyatt Hotel, Melbourne
Friday, 15 October	CSV AGM Venue: Sandhurst Club, Sandhurst
Friday, 22 October	30th Allan Van Tennis Challenge Venue: Kooyong Lawn Tennis Club
Friday, 5 November	The Presidents Lunch Venue: The Emerald Hotel, Melbourne
Friday, 19 November	CSV Golf Day Venue: Woodlands Golf Club, Mordialloc



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2021 FPET EVENTS:

At least one month's notice will be given on any changes made. Every effort will be made to keep to the draft

Date	TOPIC/FPET POINTS
Friday, 12 March	CSV Moving Victoria Forward - CSV Full Day Seminar & Biennial Council Excellence Awards Venue: Caulfield Race Course, Caulfield
Friday, 21 May	CSV/ISV Joint Seminar Venue: Moonee Valley Racecourse, Moonee Ponds
17 & 18 June	National Congress 2021 Venue: TBA
August 2021 – 10 August – 12 August – 17 August – 19 August	Webinar Series
Friday, 15 October	October Seminar & AGM Venue: Sandhurst Club, Sandhurst



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