

**BASS COAST PLANNING SCHEME
PERMIT APPLICATION P2162/2009 –
119-135 THOMPSON AVENUE, COWES
PERMIT APPLICATION P2506/2009 –
114-122 THOMPSON AVENUE, COWES**

ADVISORY COMMITTEE REPORT

APRIL 2010

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ADVISORY COMMITTEE REPORT



.....
Mark Marsden, Chair



.....
David Merrett, Member



.....
Tim Nott, Member

APRIL 2010

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1. Summary

Application No P2162/2009 at 119-135 Thompson Avenue, Cowes (the Fabcot application) proposes:

- Supermarket – 3,200 sq m;
- Speciality shops – 1,408 sq m;
- Liquor shop – 253 sq m; and
- Car parking spaces – 198.

Application No P2506/2009 at 114-122 Thompson Avenue, Cowes (the Morgan & Griffin application) proposes:

- Supermarket – 2,530 sq m;
- Speciality shops – 640 sq m;
- Internal mall – 465 sq m;
- Amenities/services – 65 sq m; and
- Car parking spaces – 126.

The Minister for Planning appointed an Advisory Committee on 20 November, 2009 to consider the two applications and make recommendations as to whether the applications should be approved and, if so, under what conditions.

The Advisory Committee comprised Mark Marsden (Chair), David Merrett and Tim Nott. A Public Hearing was conducted in Melbourne between 15 and 19 February, 2010. The Committee members undertook site inspections of the two sites and surrounds on 26 February, 2010.

Objections were lodged against both applications. Many of the objections from local residents to both proposals concerned issues about the need for further retail development, loss of low cost accommodation (with the replacement of the caravan park on the Fabcot site), loss of vegetation, traffic congestion, lack of car parking and lack of notice regarding the proposed pedestrian crossing.

In addition, Morgan & Griffin objected to the Fabcot proposal largely on the grounds that access arrangements were not satisfactory and that it should not be approved until a proposed north south link that would run at the rear of the Fabcot site was developed. Fabcot did not object to the Morgan & Griffin application.

Council supported both applications. It sought a number of conditions to address its concerns with proposed access arrangements to the Fabcot site and also sought a number of conditions to address its concerns with urban design matters relating to the Morgan & Griffin proposal.

The Advisory Committee considers both applications should be approved subject to conditions. In relation to both applications, we find that:

- with the approval of Amendment C88 to the Bass Coast Planning Scheme, there is now strategic and policy support for the two supermarket and speciality shops proposals as they will be located in the Business 1 Zone;
- the additional retail floor space that will be introduced into the BIZ will have an acceptable economic impact and result in net community benefit; and
- the two new applications resolve the design and access issues identified by the Victorian Civil & Administrative Tribunal in the previous applications.

In relation to the Fabcot proposal, we find that:

- the design and layout of the proposal is satisfactory, and meets relevant design objectives and guidelines;
- arboriculture and landscaping issues have been adequately addressed;
- there is a significant opportunity to improve the interface between the proposed buildings and the Thompson Avenue footpath;
- adequate car parking provision has been provided on-site;
- increased traffic volume on Thompson Avenue will have an acceptable impact on congestion on the surrounding road network;
- proposed access arrangements with two vehicle access points to Thompson Avenue with the southern access left in/left out/right in for all users and the northern access left in/ left out/ right out for customers and right in only for loading vehicles is satisfactory;
- the proposed pedestrian crossing will improve access arrangements to the site as well improve safety for pedestrians and should have no adverse impact on the Golden Cypress trees;
- should the right hand turn from the site at northern access point result in saturation, it is likely that there will be a change of behaviour of motorists in terms of shopping at alternative locations, using different transport modes or choosing to shop at different times; and
- the application is not premature as the proposed access arrangements are satisfactory without the proposed north south link.

In relation to the Morgan & Griffin application, we find that:

- the siting and design of the proposed development is satisfactory;
- the proposal provides adequate active frontages to both Thompson Avenue and Church Street and the proposed condition requiring an additional opening to Church Street is not warranted;
- no justification to setback the building along the Thompson Avenue frontage to protect the Golden Cypress trees has been provided;
- the Applicant should seek to retain existing vegetation along the southern boundary to provide some level of screening of the car park to adjoining residential properties;
- a 2 metre high paling fence along the southern and western boundaries should be provided by the Applicant to reduce the amenity impacts to the adjoining residential properties;
- there is a significant opportunity to improve the interface between the proposed buildings and the Thompson Avenue footpath;
- adequate car parking provision has been provided on-site;
- the development of 89 Church Street for parking for the site at some future point is supported but not necessary at this point;
- heavy vehicle access and manoeuvring within the site is appropriate provided:
 - the internal kerb alignment is modified in line with the recommendations of Mr Walsh; and
 - the width of the crossover to Thompson Avenue is increased to 8 metres.

Draft conditions for the Fabcot permit are in **Appendix B** and draft conditions for the Morgan & Griffin permit are in **Appendix D**.

2. Background

2.1 The Permit Applications

Application No P2162/2009 at 119-135 Thompson Avenue, Cowes (the Fabcot application) proposes:

- Supermarket – 3,200 sq m;
- Speciality shops – 1,408 sq m;
- Liquor shop – 253 sq m; and
- Car parking spaces – 198.

Application No P2506/2009 at 114-122 Thompson Avenue, Cowes (the Morgan & Griffin application) proposes:

- Supermarket – 2,530 sq m;
- Speciality shops – 640 sq m;
- Internal mall – 465 sq m;
- Amenities/services – 65 sq m; and
- Car parking spaces – 126.

The Responsible Authority for both applications is Bass Coast Shire Council.

2.2 The Advisory Committee

This Advisory Committee was appointed on the 20 November, 2009 pursuant to 151 of the *Planning and Environment Act 1987* to hear and consider submissions in respect of the two applications.

The Advisory Committee consisted of:

- Chair: Mark Marsden;
- Member: David Merrett; and
- Member: Tim Nott.

Terms of Reference

The Minister for Planning issued terms of reference for the Advisory Committee on 30 November, 2009.

The tasks of the Advisory Committee are to:

- assess all relevant planning issues relating to the two applications for review;

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- assess the submissions to the Advisory Committee;
 - prepare a recommendation and reasons in relation to the two applications for review, including recommendations as to whether permits should issue and if so, under what conditions;
 - consider any other relevant matters raised in the course of the Advisory Committee hearing; and
 - provide a list of persons consulted and/or heard.

Procedural issues

Ms Pauline Taylor requested at the commencement of the Hearing a seven day adjournment because she had not received the expert reports prepared on behalf of Fabcot in accordance with the Advisory Committee directions and because the local community was not aware that the Fabcot proposal included a signalised pedestrian crossing in Thompson Avenue. Fabcot opposed the request.

Following a brief adjournment, the Committee advised that the adjournment would not be granted on the basis that Fabcot had posted the reports in accordance with the Advisory Committee's directions and that the parties to the Hearing could respond to the issues raised about the pedestrian crossing in a right of reply. Given that not all parties were in attendance for the full duration of the Hearing, the Committee provided parties 7 days from the completion of the Hearing to submit a written right of reply in relation to the pedestrian crossing.

Hearings and inspections

A Directions Hearing was held on 3 December, 2009 at Planning Panels Victoria, Level 1, 8 Nicholson Street, East Melbourne. The Advisory Committee Hearings were held on Monday 15 February, 2010 to Friday 19 February, 2010 at the same venue.

We inspected the sites and surrounding areas on Friday 26 February 2010, making an unaccompanied visit to Thompson Avenue and its environs.

Notice

Fabcot application

Notice of the application was given on 9 June, 2009 by notifying owners and occupiers of adjoining properties, by erecting two signs on the land and publishing a notice in local newspapers.

Thirty five objections were received.

Morgan & Griffin application

Notice of the application was given on 18 June, 2009 by notifying owners and occupiers of adjoining properties, by erecting two signs on the land and publishing a notice in local newspapers.

Twenty six objections were received.

Submissions

We have considered all written and oral submissions and all material presented to us in connection with this matter.

We heard the parties listed in Table below.

Table 1

Submitter	Represented By
Bass Coast Shire Council	Mr Greg Tobin of the firm DLA Phillips Fox who called the following witnesses: <ul style="list-style-type: none"> • Mr Craig Czarny, urban designer, from Hansen Partnership Pty Ltd
Friends of the Koalas	Ms Patricia Hunt
Ms Pauline Taylor	
Ms Sue Chadwick	Ms Margaret Hancock
Mr Russell Good	
Mr Trevor Ware	
Phillip Island Conservation Society	Ms Margaret Hancock
Mr Glenn Crutchley	
Fabcot Pty Ltd	Mr Jeremy Gobbo QC with Mr Nick Tweedie of counsel instructed by Rigby Cooke, who called the following witnesses: <ul style="list-style-type: none"> • Mr Jamie Govenlock, town planner, Urbis; • Mr John Kiriakidis, traffic engineer, GTA Consultants; • Mr Deiter Lim, landscape architect, Tract; and • Mr Dean Simonsen, arboriculturist, Treelogic Pty Ltd

Submitter	Represented By
Morgan & Griffin Pty Ltd	Mr Michael Wright QC with Mr Peter O'Farrell of counsel instructed by Kenny Legal, who called the following witnesses: <ul style="list-style-type: none"><li data-bbox="858 331 1286 405">• Mr Andrew Biacsi, town planner, Contour Consultants;<li data-bbox="858 421 1286 495">• Mr Jason Walsh, traffic engineer, Cardno Grogan Richards; and<li data-bbox="858 510 1286 580">• Dr Peter Yau, arboriculturist, PSY Investments Pty Ltd.

In addition, Mr Stuart Fenech, statutory planning officer with VicRoads made a brief submission to the Advisory Committee on VicRoads' position on the access issues relating to the Fabcot proposal and the proposed pedestrian crossing.

3. What is proposed?

3.1 The two applications

3.1.1 Fabcot application - 119-135 Thompson Avenue

The proposal seeks to develop the subject land for the purposes of a supermarket (Woolworths) and speciality retail shops, with associated car parking and business signage. Key features of the development are:

- supermarket of 3,2000 sq m including 870 sq m of 'back of house' areas;
- nine speciality retail stores with a combined area of 1,408 sq m;
- one liquor store of 253 sq m;
- provision of an at grade car park comprising 198 spaces (including provision for disabled parking, trailer parking and loading bays for the retail tenancies);
- two crossovers in Thompson Avenue;
- provision of a supermarket loading dock located at the rear of the site; and
- landscaping (including tree removal and pruning) on site comprising a mixture of new and retained indigenous vegetation).

In addition, a signalised pedestrian crossing is proposed to be located between the two crossovers in Thompson Avenue. The crossing is a requirement of VicRoads in their role as a referral authority under section 55 of the *Planning & Environment Act, 1987*.

3.1.2 Morgan & Griffin application – 114-122 Thompson Avenue

The proposal seeks to develop the subject land for the purposes of a supermarket, speciality retail shops with associated car parking and landscaping. Key features of the development are:

- supermarket of 2,530 sq m to be located on the south-west corner of Thompson Avenue and Church Street;
- speciality shops fronting both Thompson Avenue and Church Street of 640 sq m;
- an internal mall along the Church Street frontage of 465 sq m;
- provision of an at grade car park comprising 126 spaces;
- a crossover in Church Street towards the north-west corner of the site and a crossover in Thompson Avenue towards the south-east corner of

the site. The Thompson Avenue crossover is for left turn ingress movements only, except for delivery vehicles which would be permitted to leave the site via a right turn movement to Thompson Avenue;

- a dedicated loading bay at the rear of the supermarket building together with refuse and building services; and
- removal of all existing vegetation on the site, as well as a street tree in Church Street.

The original proposal for this development included 89 Church Street. This site would have been used for car parking. However, the C88 Panel concluded a car park on this site was prohibited under the current Residential 1 Zone. Morgan & Griffin amended the application to remove No 89 Church Street from this site from the proposal. The redesign of the proposal has resulted in the:

- number of lots reduced from 3 to 2;
- site area reduced from 9769m² to 8094m²;
- site coverage has increased from 37.9% to 45.7%;
- total carpark/pavement area has reduced from 55.1% to 48.7%;
- total landscaped areas has reduced from 7% to 5.6%;
- number of car parking spaces has reduced from 190 to 126; and
- location of car park entry/exit on Church Street has moved 21m east towards Thompson Avenue.

3.2 The subject sites and surrounds

3.2.1 Fabcot application – 119-135 Thompson Avenue

The subject site is approximately 1.416 hectares, with a frontage of 140.82 metres to Thompson Avenue and a depth of approximately 110.58 metres. The site comprises the following lot: Certificate of Title Vol. 10205 Folio's 640, 641, 642, 643 and 644. There is a 3.06 metre wide sewerage and drainage easement along the southern portion of the site. The site is currently occupied by the Boomerang Caravan Park. It is in a mid block location between Church Street to the north and Settlement road to the south.

To the north of the subject site is a single storey shop; to the east is the Bushy Park Caravan Park; to the south a single storey brick house and the Islander Caravan Park; and to the west, on the opposite side of Thompson Avenue, are two and single storey shops, a service station and access to a local street.

3.2.2 Morgan & Griffin application – 114-122 Thompson Avenue

The subject site is approximately 8,094 sq m with a frontage to Thompson Avenue of approximately 80.48 metres and to Church Street of approximately 100.58 metres. The site comprises the following lots: Crown Allotments 1 & 2, Section 13 Vol 06948 Folio 463. The site is currently vacant and was previously developed with a motel.

Land uses within the immediate area include:

- to the west, a vacant lot (89 Church Street, Vol 9332 Folio 062) also owned by Morgan & Griffin;
- to the south, a petrol station fronting Thompson Avenue and residential properties fronting Hollydene Court;
- to the north of the site, on the opposite side of Church Street, a church and hall; and
- to the east of the site, on the opposite side of Thompson Avenue, a range of commercial and tourist uses, including caravan parks.

3.3 Background to the proposals

3.3.1 Fabcot application – 119-135 Thompson Avenue

Application was made for the proposal on 18 May, 2009. Council directed the notice of the application on 9 June, 2009. A review against failure to make a decision within the statutory time period was lodged on 19 August, 2009. The Minister for Planning 'called-in' the application on 30 November, 2009.

The Victorian Civil & Administrative Tribunal (the Tribunal) had previously refused a use and development application for a supermarket, speciality stores and dwellings on 24 May, 2006 (VCAT Ref P3265/2005 and 3111/2005).

3.3.2 Morgan & Griffin application – 114-122 Thompson Avenue

Application was made for the proposal on 24 December, 2008. Council sought additional information from the Applicant on a number of occasions between December, 2008 and May, 2009. Council directed the giving of notice on 18 June, 2009. A review against failure to make a decision within the statutory time period was lodged on 22 September, 2009. The Minister for Planning 'called-in' the application on 30 November, 2009.

The Tribunal had previously refused a use and development application for a supermarket and speciality stores on 26 September, 2006 (VCAT Ref P869/2006).

4. Planning context

This section identifies relevant State and local planning policies, relevant strategic planning studies, guidelines and planning provisions.

4.1 Policy framework

4.1.1 State Planning Policy Framework

Clause 11 – Net community benefit

The State Planning Policy Framework seeks to ensure that the objectives of planning in Victoria (as set out in Section 4 of the Planning and Environment Act 1987) are fostered through appropriate land use and development planning policies and practices which integrate relevant environmental, social and economic factors in the interests of net community benefit and sustainable development.

Clause 12 – Metropolitan Development

While this clause applies to metropolitan Melbourne, this clause states that:

The objectives and strategies also influence municipalities beyond Metropolitan Melbourne and should be taken into account where relevant.

Relevant provisions under this clause include:

Urban design

Promote good urban design to make the environment more liveable and attractive by:

- *Ensuring new development or redevelopment contributes to community and cultural life by improving safety, diversity and choice, the quality of living and working environments, accessibility and inclusiveness and environmental sustainability.*
- *Requiring development to respond to its context in terms of urban character, cultural heritage, natural features, surrounding landscape and climate.*

Cultural identity and neighbourhood character

Recognise and protect cultural identity, neighbourhood character and sense of place by:

- *Ensuring development responds and contributes to existing sense of place and cultural identity.*
- *Ensuring development recognises distinctive urban forms and layout and their relationship to landscape and vegetation.*
- *Ensuring development responds to its context and reinforces special characteristics of local environment and place by emphasising:*
 - *The underlying natural landscape character.*
 - *The heritage values and built form that reflect community identity.*
 - *The values, needs and aspirations of the community.*

Safety

Improve community safety and encourage neighbourhood design that makes people feel safe by:

- *Ensuring the design of buildings, public spaces and the mix of activities contribute to safety and perceptions of safety.*
- *Supporting initiatives that provide safer walking and cycling routes and improved safety for people using public transport.*

Heritage

Protect heritage places and values by:

- *Encouraging appropriate development that respects established cultural heritage values.*

Clause 15 – Environment

The objective of this clause is:

To assist the protection and conservation of biodiversity, including native vegetation retention and provision of habitats for native plants and animals and control of pest plants and animals.

The policy provides that:

Planning and responsible authorities must have regard to Victoria's Native Vegetation Management – A Framework for Action (Department of Natural Resources and Environment 2002). If a permit is required to remove native vegetation, or an amendment to this scheme or an application for subdivision could result in the removal of native vegetation, planning and responsible authorities should follow the three-step approach as defined in the Framework. This is achieved firstly, as a priority, by avoiding the removal of native vegetation; secondly, if the removal of native vegetation cannot be avoided, by minimising the loss of

native vegetation through appropriate consideration in planning processes and expert input into project design or management; and thirdly, by identifying appropriate offset actions.

The objective of Clause 15.11:

To assist the conservation of places that have natural, environmental, aesthetic, historic, cultural, scientific or social significance or other special value important for scientific and research purposes, as a means of understanding our past, as well as maintaining and enhancing Victoria's image and making a contribution to the economic and cultural growth of the State.

The policy provides that:

Planning and responsible authorities should identify, conserve and protect places of natural or cultural value from inappropriate development. These include:

- ...
- *Important buildings, structures, parks, gardens, sites, areas, landscapes, towns and other places associated with the historic and cultural development of Victoria, including places associated with pastoral expansion, gold mining, industrial development and the economic expansion and growth of Victoria.*

The objective of Clause 15.12 is:

To encourage land use and development that is consistent with the efficient use of energy and the minimisation of greenhouse gas emissions.

The policy provides that:

Planning and responsible authorities should:

- *Promote energy efficient building and subdivision design.*
- *Promote consolidation of urban development and integration of land use and transport.*
- *Encourage retention of existing vegetation or revegetation as part of subdivision and development proposals.*

Clause 17 – Economic development

The objective of Clause 17.01 is:

To encourage the concentration of major retail, commercial, administrative, entertainment and cultural developments into activity

centres (including strip shopping centres) which provide a variety of land uses and are highly accessible to the community.

The policy provides that:

Activity centres should be planned to:

- Provide a range of shopping facilities in locations which are readily accessible to the community.*
- Incorporate and integrate a variety of land uses, including retail, office, education, human services, community facilities, recreation, entertainment and residential uses where appropriate.*
- Provide good accessibility by all available modes of transport (particularly public transport) and safe pedestrian and cycling routes, and to encourage multi-purpose tripmaking to such centres.*
- Facilitate ease of pedestrian movement between components of centres, public transport interchanges and parking areas.*
- ...*
- Minimise the effects of commercial development on the amenity of residential and parkland areas, for example as a result of traffic congestion, noise or overshadowing.*
- Provide attractive environments for community activities.*

Clause 18 – Infrastructure

The objective of Clause 18.02 is:

To ensure access is provided to developments in accordance with forecast demand taking advantage of all available modes of transport and to minimise impact on existing transport networks and the amenity of surrounding areas.

The policy provides that:

Consideration should be given to all modes of travel, including walking, cycling, public transport, taxis and private vehicles (passenger and freight) in providing for access to new developments.

Public transport services and infrastructure should be integrated into new development having regard to the Public Transport Guidelines for Land Use and Development (Department of Transport 2008). In allocating or requiring land to be set aside for car parking, planning and responsible authorities should:

-
- *Have regard to the existing and potential modes of access including public transport, the demand for off-street car parking, road capacity and the potential for demand management of car parking.*
 - *Encourage the efficient provision of car parking through the consolidation of car parking facilities.*
 - *Planning and responsible authorities should prepare or require parking precinct plans for the design and location of local car parking to:*
 - *Protect the role and function of nearby roads, enable easy and efficient use and the movement and delivery of goods.*
 - *Achieve a high standard of urban design and protect the amenity of the locality, including the amenity of pedestrians and other road users.*
 - *Create a safe environment for users, particularly at night.*
 - *Facilitate the use of public transport.*
 - *The amenity of residential precincts should be protected from the effects of road congestion created by on-street parking.*

Clause 19 – Particular uses and development

Clause 19.03 – Design and built form.

The objectives of this Clause are:

To achieve high quality urban design and architecture that:

- *Reflects the particular characteristics, aspirations and cultural identity of the community.*
- *Enhances livability, diversity, amenity and safety of the public realm.*
- *Promotes attractiveness of towns and cities within broader strategic contexts.*

The policy provides that:

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

Responsible authorities should require that all permit applications for:

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

Residential development other than residential development of four or more storeys or which is not covered by Clause 54, Clause 55 or Clause 56 include a site analysis and descriptive statement explaining how the proposed development responds to the site and its context.

....

For development proposals for non-residential development or residential development not covered by Clause 54, Clause 55 or Clause 56, planning and responsible authorities must have regard to the following design principles:

Context

- Development must take into account the natural, cultural and strategic context of its location.*
- A comprehensive site analysis should be the starting point of the design process and form the basis for consideration of height, scale and massing of new development.*

The public realm

- The public realm, which includes main pedestrian spaces, streets, squares, parks and walkways, should be protected and enhanced.*

Safety

- New development should create urban environments that enhance personal safety and property security and where people feel safe to live, work and move in at any time.*

Landmarks, views and vistas

- Landmarks, views and vistas should be protected and enhanced or, where appropriate, created by new additions to the built environment.*

Pedestrian spaces

Design of the relationship between buildings and footpaths and other pedestrian spaces, including the arrangement of adjoining activities, entrances, windows, and architectural decoration, should enhance the visual and social experience of the observer.

Heritage

- New development should respect, but not simply copy, historic precedents and create a worthy legacy for future generations.*

Consolidation of sites and empty sites

New development should contribute to the “complexity” and diversity of the built environment.

Site consolidation should not result in street frontages that are out of keeping with the “complexity” and “rhythm” of existing streetscapes. The development process should be managed so that sites are not in an unattractive, neglected state for excessive periods and the impacts from vacant sites are minimised.

Light and shade

- *Enjoyment of the public realm should be enhanced by a desirable balance of sunlight and shade.*
- *This balance should not be compromised by undesirable overshadowing or exposure to the sun.*

Energy and resource efficiency

- *All building, subdivision and engineering works should promote more efficient use of resources and energy efficiency.*

Architectural quality

- *New development should aspire to the high standards in architecture and urban design.*
- *Any rooftop plant, lift over-runs, service entries, communication devices, and other technical attachment should be treated as part of the overall design.*

Landscape architecture

- *Recognition should be given to the setting in which buildings are designed and the integrating role of landscape architecture.*
- *Planning authorities should emphasise urban design policies and frameworks for key locations or precincts.*

4.1.2 Local Planning Policy Framework

Municipal Strategic Statement

Clause 21.02-3 – Settlement patterns

The major population centres are Wonthaggi, Cowes, San Remo and Inverloch. Aside from Wonthaggi the larger centres are coastal communities with large population fluctuations during holiday and summer periods.

Clause 21.02-4 - Land uses

Bass Coast had an estimated resident population of 27,524 at 30 June 2006 and has experienced a population growth rate of 1.4 percent over a five-year period, from 2001 to 2006.

Wonthaggi, Inverloch, and Cowes are the major towns within Bass Coast Shire.

Clause 21.02-5 – Economic development

Wonthaggi is the region's main centre for administrative, retail, commercial, industrial and community facilities, serving communities as far away as Grantville and Phillip Island. It provides for a range of health practitioners, retail and office services, schools, community facilities (library, court house) and municipal offices.

Other business centres include Cowes, San Remo, Grantville and Inverloch. These centres provide retailing and community facilities for the local and wider population. The role and function of these commercial areas are changing in line with increased population and visitation rates. Smaller centres provide the day to day needs of the local community as well as acting as a social gathering point.

Clause 21.03 Key issues

Relevant issues include:

Settlement

- Protecting areas of environmental, landscape, agricultural, cultural or recreational significance.*
- Managing significant pressure from population growth and visitors.*
- Avoiding development in inappropriate locations.*

Land uses – commercial

- Growing the local economy and encouraging local employment.*
- Increasing the supply of commercial land in the main business centres of the municipality.*
- Providing business services that cater to both residents and visitors.*
- Managing the implications of being a premier tourist destination.*

Environment

- Balancing the competing interests of protecting existing habitat and development pressures.*

Landscape and built form

- Maintaining individual settlement identity.*
- Protecting coastal and hinterland landscapes and views.*
- Managing the pressures to develop land in locations of high scenic value.*

-
- *Seeking high quality design outcomes that incorporate Environmentally Sustainable Design principles.*

Infrastructure

- *Creating an efficient public and community transport system.*

Clause 21.04 – Vision

Economic development

- *Vital and diverse commercial centres providing year-round services and commercial opportunities.*

Environment

- *A high quality built environment enhancing the surrounding natural environment and landscape values.*

Landscape and built form

- *Architecture and building design responding to the environment, character and coastal setting.*
- *Development consistent with Environmentally Sustainable Design (ESD) principles.*
- *Built form in coastal areas with sustainable and sympathetic siting and design.*
- *New developments designed and sited to complement the specific context in which they sit and take account of existing land form, vegetation and urban character.*

Infrastructure

- *Effective and efficient road, pedestrian, cycling and drainage networks provided throughout the Shire.*

Clause 21.05 – Growth of towns

A Settlement Hierarchy has been developed which seeks to set out the strategic directions and development opportunities in the Shire. This is set out in the table below, and in the Strategic Directions Framework Plan for Bass Coast Shire on the following page.

SETTLEMENT	EXPANSION AND INFILL CAPACITY
<i>Cowes/Ventnor/Silverleaves/San Remo/Newhaven</i>	<i>District Towns with moderate spatial growth capacity. Will be encouraged to accommodate some growth beyond existing urban zoned land and through infill development.</i>

Relevant objectives and strategies include:

Objective 1: To identify towns that are suitable for urban growth and to provide for sufficient land in these towns for growth until 2030.

Strategy 1.1: Ensure that the growth and consolidation of settlements is consistent with the Settlement Hierarchy included in this Clause.

Strategy 1.3 Restrict urban development to existing urban areas except:

- Where the land is identified in an adopted Structure Plan as being within a future settlement boundary, or as part of a comprehensive review of the relevant Structure Plan for a town;*

Clause 21.06 – Land use

Relevant provisions include:

Commercial

Overview

The role and function of commercial areas is changing as population and visitation increases. Smaller commercial centres provide the day to day needs of the local community as well as acting as a social gathering point. Some businesses are home based which also provide an economic benefit to the municipality.

Relevant objectives and strategies include:

Objective 1: To support the development of new and existing businesses within the municipality.

Strategy 1.1: Provide opportunities for increased business diversification and expansion, including the development of export income streams.

Strategy 1.2: Facilitate the establishment and further development of new enterprises and provide opportunity for increased business diversification.

Objective 2: To have attractive, functional, and viable business centres.

Strategy 2.1: Encourage commercial and community uses to establish on undeveloped business zoned land in the smaller townships throughout the municipality.

Clause 21.08-2 - Landscape and built form

It is important that the valued aspects of the municipality's character are not lost through redevelopment.

Where the built form character of an area is established and valued (and the area has not been identified for substantial change), new development should respect this character and add to the overall quality of the urban environment. In areas where built form change will be more substantial, high quality and site responsive design should add to the diversity of the built environment, enhance the sense of place and incorporate the principles of Environmentally Sensitive Design.

Relevant objectives and strategies include:

Objective 1: To achieve a high standard of architecture and urban design for built form and public spaces throughout the municipality.

Strategy 1.1: Encourage high quality buildings and public spaces that are environmentally, economically, and socially sustainable.

Strategy 1.2: Design and site development to complement the context in which it sits.

Strategy 1.3: Ensure the siting of buildings contributes positively to the public realm and respects the character of the area.

Objective 2: To maximise energy saving, water conservation, and the principles of Environmentally Sustainable Design.

Strategy 2.1: Ensure development considers energy, water and natural resource efficiency in the construction and operation.

Strategy 2.2: Encouraging passive solar design, especially where there are views to the north or south.

Specific implementation criteria includes:

All roof elements, including plant, lift over-runs, and other building services should be absorbed within the overall building form, or included as part of overall roof design.

Visible service areas (and other utility requirements) of a building should be treated as an integral part of the overall design and fully screened from public areas.

All visible facades (including the rear and sides of buildings) should provide a positive contribution to public areas and interact with the public realm.

Long expanses of solid walls should be avoided.

Buildings should incorporate design elements and a variety of materials that create articulation and visual interest.

Development along main traffic routes should incorporate design elements that add visual interest to the front and rear of the buildings.

Commercial, public or large residential developments should incorporate public art.

The built form and materials used for development should reflect the coastal setting and coastal architecture (where relevant).

Clause 21.09-1 Transport

The majority of residents and visitors to the Shire rely on cars for transportation, although bus loads of tourists visit Phillip Island daily.

Bicycling is a popular mode of transport for residents and tourists, particularly on Phillip Island. Public transport in the municipality is minimal, although there has been an increase in public transport since 2006, particularly within Wonthaggi.

Objective 2: To have an effective and efficient road network throughout the municipality.

Objective 3: To provide adequate car parking facilities in proximity to tourist attractions, recreation destinations, the coastline, and commercial activity centres.

Clause 21.10 Local areas

Clause 21.10-5- Cowes

The Cowes Structure Plan establishes a clear direction for the future physical form of Cowes and the foreshore precinct. These plans define a town boundary for residential development and precincts for consolidated commercial areas.

Settlement

- Reinforcing the role of Cowes as the major commercial and residential centre on Phillip Island.*

Land uses

- *Developing Thompson Avenue as an attractive, dynamic and robust main street precinct.*
- *Consolidating the commercial areas to the existing retail spine along Thompson Avenue.*
- *Establishing Thompson Avenue and The Esplanade as a dining and entertainment precinct.*
- *On the key development site at the corner of The Esplanade and Thompson Avenue ensuring that new developments contain uses that will enliven the area such as cafes, restaurants and galleries.*
- *Concentrating mixed use and tourism friendly developments within the northern section of Thompson Avenue and along The Esplanade from Warley Avenue to Steele Street.*

Landscape and built form

- *Designing new buildings to reflect the intimate, small-scale character and landscape surrounds of Cowes.*
- *Avoiding building forms that are out of scale with their surroundings and ensure that the tree line along the foreshore is not dominated by built form.*
- *Ensuring that new development including residential, industrial and commercial complies with the Design Guidelines set out in Section 5 of the Phillip Island and San Remo Design Framework and Cowes Foreshore Precinct, Urban Design Report Appendix.*
- *Ensuring that any new buildings in Thompson Avenue and The Esplanade are well designed and contribute positively to the environment.*
- *Maximising the opportunities for views between the building and outside.*

Within Thompson Avenue – General policies:

- *Encouraging the redevelopment of buildings along Thompson Avenue from The Esplanade to Settlement Road.*
- *Maximising street frontage opportunities by ensuring that corner site developments actively address both streets.*
- *Establishing a high level of interaction between indoors and outdoors by encouraging commercial development such as cafes and convenience retail at ground floor along Thompson Avenue.*
- *Encouraging active retail and entertainment uses at street level to create a vibrant pedestrian environment.*

- *Ensuring that all commercial development is of a high standard and complies with the Design guidelines of Phillip Island and San Remo Design Framework.*
- *Ensuring that new buildings along Thompson Avenue are designed to a high architectural standard that maximise opportunities for active street frontages.*
- *Maintaining the existing common parapet line along Thompson Avenue.*

Within Thompson Avenue – between Church Street and Settlement Road:

- *Encourage the development of high quality accommodation with commercial activity at the street level and first floor.*
- *Maintain existing streetscape character by positioning buildings with setbacks reflecting existing buildings.*

Infrastructure

- *Co-ordinating car parking provision within the Cowes commercial area and integrating it with developments.*
- *Maximising the efficient use of all car parking provided within the Cowes commercial area.*
- *Providing a high level of public access to car parking areas.*
- *Minimising adverse traffic movement within the Cowes commercial area in relation to parking.*

Local planning policy

Clause 22.01 – Stormwater Management Policy

4.2 Planning scheme provisions

4.2.1 Zones

Application No 090244 – 119-135 Thompson Avenue, Cowes

- Mixed Use Zone

Application No 080845 – 114-122 Thompson Avenues, Cowes

- Mixed Use Zone

4.2.2 Overlays

Application No 090244 – 119-135 Thompson Avenue, Cowes

- Design and Development – Schedule 4 (Business and Mixed Use Zones, Cowes and San Remo).
- Heritage Overlay on Thompson Avenue road reserve Golden Cypress pines.

Application No 080845 – 114-122 Thompson Avenues, Cowes

- Design and Development – Schedule 4 (Business and Mixed Use Zones, Cowes and San Remo).
- Heritage Overlay on Thompson Avenue road reserve Golden Cypress pines.

4.2.3 Particular provisions

- Clause 52.05 – Advertising signs;
- Clause 52.06 – Car parking;
- Clause 52.07 - Loading and unloading of vehicles;
- Clause 52.17 – Native vegetation;
- Clause 52.29 – Land adjacent to a Road Zone, Category 1 or a Public Acquisition Overlay for a Category 1 Road;
- Clause 52.34 – Bicycle facilities; and
- Clause 65 – Decision guidelines.

4.3 Other planning strategies

Amendment C88

The purpose of Amendment C88 is to implement the recommendations of the Cowes, Silverleaves, Ventnor & Wimbledon Heights Structure Plan (the Structure Plan). It has been recommended by the Panel that considered C88 the Amendment be approved subject to changes. Relevant aspects of an updated Clause 21.05 are as follows:

Reinforce the role of Cowes and in particular Thompson Avenue as the major municipal, retail, service, recreation and health & community services centre on Phillip Island.

Encourage the following land uses along Thompson Avenue:

Between Church Street and Settlement Road – high quality accommodation with commercial activity at street level and first floor.

Thompson Avenue – General policies.

- *Encourage the redevelopment of buildings along Thompson Avenue from the Esplanade to Settlement Road.*
- *Maximize street frontage opportunities by ensuring that corner site developments actively address both streets.*
- *Establish a high level of interaction between indoors and outdoors by encouraging commercial development such as cafes and convenience retail at ground floor along Thompson Avenue.*
- *Encourage active retail and entertainment uses at street level to create a vibrant pedestrian environment.*
- *Encourage shop top dwellings on level three or higher within the commercial areas to activate the street at night time.*
- *Ensure that all commercial development is of a high standard and complies with the Design guidelines of Phillip Island and San Remo Design Framework.*
- *Ensure that new buildings along Thompson Avenue are designed to a high architectural standard that maximize opportunities for active street frontages.*
- *Maintain the existing common parapet line along Thompson Avenue.*

Council adopted the Amendment C88 on 17 February, 2010 in accordance with the Panel's recommendations.

Relevant policy documents

Phillip Island and San Remo Design Framework (February 2003). This a reference document under Clause 21.12 in the Bass Coast Planning Scheme.

Cowes, Silverleaves, Ventnor and Wimbleton Heights Structure Plan (Draft, July 2008). As noted above, this Structure Plan is to be implemented into the Bass Coast Planning Scheme by Amendment C88.

5. Identification of issues

5.1 Issues dealt with in this Report

We have considered all written submissions, as well as submissions presented to us during the Hearing. In addressing the issues raised in those submissions, we have been assisted by the information provided to us as well as our own observations from inspections of the two subject sites and surrounds.

This Report deals with the issues under the following headings:

- Issues relevant to both applications, including strategic justification, economic impact, net community benefit, previous VCAT decisions and car parking rates;
- Fabcot application – design and layout; impact on footpath; arboriculture and landscaping; traffic, access and car parking; and planning permit conditions; and
- Morgan & Griffin application - design and layout; active frontages; impact on footpath; arboriculture and landscaping; traffic, access and car parking; and planning permit conditions.

6. Issues relevant to both applications

6.1 Strategic planning

6.1.1 What is the issue?

Previous applications for the two sites were refused by the Victorian Civil & Administrative Tribunal (the Tribunal) in 2006. The Tribunal cited the lack of strategic support for the proposals as both sites were not in the retail precinct of the Cowes Activity Centre and were in the Mixed Use Zone. The issue is whether there is now strategic support given the completion of the Cowes, Ventnor, Silverleaves and Wimbledon Heights Structure Plan (the Structure Plan) and the adoption of Amendment C88 by Council.

6.1.2 Policy context

Relevant State and local policy including the updated MSS is set out in Chapter 4 of this report.

The main policy relevant to the Amendment is Amendment C88, which includes a recommendation to rezone the sites from the Mixed Use Zone to the Business 1 Zone (B1Z).

A Panel that considered Amendment C88 supported the recommendation to rezone the sites to B1Z and Council resolved to adopt the Amendment in accordance with the Panel's recommendation on 17 February, 2010.¹

6.1.3 Evidence and submissions

Advocates for Fabcot, Morgan & Griffin and Council considered the previous strategic obstacles identified by the VCAT had now been overcome with the proposed rezoning of the sites to the B1Z.

A number of other submitters considered the proposed supermarkets were not needed, were in the wrong location and were not supported by the planning scheme. Further, some of these submitters were concerned with the loss of the caravan park, which provided low cost holiday accommodation for families. A number of these submitters expressed general concern with the changing character of Cowes, which was changing from a peaceful

¹ The Advisory Committee comprised the same members as the Panel that considered Amendment C88 to the Bass Coast Planning Scheme.

coastal village into a busy urban area that was effecting both the environment and the fabric of the community.

6.1.4 Discussion

Strategic support for the two proposals is provided by Amendment C88 which implements the recommendations of the Structure Plan. A key change proposed in Amendment C88 that is relevant to both applications is the rezoning of land on either side of Thompson Avenue between Church Street and Settlement Road from Mixed Use Zone to Business 1 Zone (B1Z). This is an important step as applications for similar supermarket proposals were refused by the VCAT largely on the basis that this type of use was more appropriate for and supported by policy in the B1Z as the core retail precinct². At the time the only B1Z along Thompson Avenue was north of Church Street (and north of the subject sites).

While Amendment C88 has not yet been approved by the Minister for Planning, it has been supported with changes by a Panel and adopted by Council³. It is for this reason we consider the B1Z is highly likely to be applied on the two sites and should be the primary reference for strategy and policy support.

Council stated in its submission⁴:

It is Council's submission that C88 constitutes a 'seriously entertained planning proposal' and as such should be afforded considerable weight by the Advisory Committee in determining the applications.

The submission went on to cite Tribunal decisions⁵ that set out a list of factors to be considered when deciding the weight to be given to planning activities. These factors included the form of the proposal, the stage which has been reached in the planning approval process, the seriousness with which the responsible authority is pursuing the planning proposal, whether the grant of a permit would limit the objectives of the planning proposal and the nature of use or development for which a permit is sought.

Council and the advocates for the two supermarket proposals considered the changes proposed by Amendment C88 overcame the strategic concern expressed in the previous VCAT decisions.

² Page 3 *Morgan and Griffin PL v Bass Coast SC* [2006] VCAT 1961.
Page 8 *Willow Corporation PL v Bass Coast SC* [2006] VCAT 976.

³ Bass Coast SC adopted all C88 Panel recommendations on 17 February 2010.

⁴ Page 22 Council submission to Advisory Committee.

⁵ *O'Connell Street Developments PL v Yarra CC* [2003] VCAT 448 30 April 2003 cited *Lyndale and Black Pty Ltd and I O Black v MMBW* (P82/1729 and P82/1730) (1983) 7 APAD at 470.

We believe Amendment C88 and its adoption by Council and the nature of the proposals has effectively responded to these factors. On this basis we consider there is strong strategic support for the land on Thompson Avenue between Church Street and Settlement Road to accommodate supermarket proposals of this nature.

We note once the land is rezoned to B1Z then an application to use the land for a shop is not required. The Panel for Amendment C88 did not support any floor space restrictions for a shop in the schedule to the B1Z.

Contained within the updated MSS is a range of statements that would support the proposals, including:

- Cowes is identified as a District Town on the settlement hierarchy;
- Cowes is one of four major population centres in the Shire that will absorb the majority of future growth and has a major business centre; and
- the need to consolidate commercial areas to the existing retail spine of Thompson Avenue.

We agree with Council and the applicants that Amendment C88 has overcome the significant hurdle identified by earlier VCAT determinations by supporting the rezoning of the land to B1Z. We also agree the rezoning has progressed significantly on the approval path and should be considered as a seriously entertained planning proposal. We note Council resolved to adopt the Amendment in accordance with the Panel's recommendations on 17 February, 2010 and will be submitted to the Minister for Planning for approval.

6.1.5 Conclusion

We conclude that:

Amendment C88 proposes to rezone the subject sites to Business 1 Zone which overcomes any strategic policy shortfalls identified by the VCAT in its previous decisions for similar proposals on the sites.

Amendment C88 is a seriously entertained planning proposal because it has been subject to extensive community consultation, considered by a Panel and adopted by the responsible authority.

6.2 Economic impact

6.2.1 What is the issue?

Amendment C88 considered the retail floor space projections for the Cowes Activity Centre. The issue is whether the cumulative retail floor space from these proposals is consistent with these projections.

6.2.2 Evidence and submissions

Mr Tobin for Bass Coast Shire Council, Mr Wright for Morgan & Griffin and Mr Gobbo for Fabcot considered there was no significant issue from an economic impact perspective given this was discussed at length in the C88 Panel Report.

Mrs Taylor, Mr Good and Mr Ware considered Cowes could not support two new supermarkets.

6.2.3 Discussion

An issue that was considered by the Panel for Amendment C88 was whether the Cowes Activity Centre had the capacity to absorb additional retail floor space that would be facilitated by the extension of the B1Z. This was not challenged at the Advisory Committee hearing. However, we believe we should reconfirm our consideration of this issue as background.

The C88 Panel stated⁶:

We recognise that there is no certainty in prediction and that the best that can be hoped for in this instance is an estimate about the order of magnitude of likely commercial growth in Cowes and surrounds over the study period. When faced with a variety of forecasts about growth in commercial floor space, we must fall back on logic: which forecast(s) appear to have addressed the variables in a thorough and fair manner? Which present the most plausible picture of the future given all the data at hand?

With this in mind we concluded⁷:

There is broad consensus on the overall level of retail demand likely to be accommodated in Cowes over the period to 2021. This amounts to 9,000 to 11,000 sq m.

⁶ Page 67 Bass Coast Planning Scheme Amendment C88 Panel Report.

⁷ Page 71 Bass Coast Planning Scheme Amendment C88 Panel Report.

Overall growth in commercial floor space in Cowes (retail and non-retail) is likely to total in the range 9,000 to 15,000 sq m over the period to 2021.

Unmet demand is not immediately sufficient to sustain the two supermarket proposals without some re-organisation of the food and grocery sector which could include closure of some smaller shops, the change of some shops to non-food goods and/or a lower retail turnover density. Nevertheless by the end of the forecast period (2021) the supply and demand for food and groceries is likely to be in balance.

The C88 Panel also did not support the need to trigger a planning permit for a supermarket in the B1Z.

In this context the two proposals currently before the Advisory Committee provide a total of nearly 8,500sqm of retail floor space. This is within the forecasts supported by the C88 Panel.

6.2.4 Conclusions

The additional retail floor space in the two supermarket proposals can be accommodated within the expanded B1Z.

6.3 Net community benefit

6.3.1 What is the issue?

The issue of net community benefit was discussed in the C88 Panel Report. The issue is will both proposals result in a net community benefit?

6.3.2 Evidence and submissions

Mr Tobin, Mr Gobbo and Mr Wright all commented briefly on the discussion contained in the C88 Panel Report on net community benefit. All considered this was not a significant issue given the conclusions drawn in the C88 Panel Report and that both proposals would provide a net community benefit.

Mrs Hunt, Mr Good and Mrs Hancock considered the loss of inexpensive central accommodation (caravan park) would have a negative social impact.

6.3.3 Discussion

Related to the above economic discussion is the notion of net community benefit. Clause 17.02 (Business) of the SPPF states it is policy:

To encourage developments which meet community's needs for retail, entertainment, office and other commercial services and provide net community benefit in relation to accessibility, efficient infrastructure use and the aggregation and sustainability of commercial facilities.

We support Council's submission that there are a number of factors in the assessment of net community benefit which are present in both applications. These include⁸:

- *Increased competition and consumer choice;*
- *Retention of escape expenditure;*
- *Increased employment and multiplier effects;*
- *Increased rate contributions;*
- *Implementation of local strategic planning objectives;*
- *Renewal of underutilised sites at prominent locations;*
- *Revitalisation of a portion of/ or town centre; and*
- *Provision of onsite carparking.*

Strategically, these new proposals will enhance the retail offer for residents and visitors alike. However, this new development will inevitably result in some redefinition of the activity centre. Some existing activities, such as caravan parks, will be displaced to areas with less strategic value for commercial and community service development. Some retailers may go out of business as similar goods and services are provided more effectively elsewhere within the activity centre. As we discussed in the C88 Panel Report⁹ this only becomes a concern of Council if, following the development, there will be a net loss of retailing. We consider the proposals will generate a net growth in the level of retail provision in the centre. This then confirms in our mind that both proposals will have a net community benefit.

⁸ Page 34 of Bass Coast Shire Council submission.

⁹ Page 81-82 of the Bass Coast Planning Scheme Amendment C88 Panel Report.

6.3.4 Conclusions

Both proposals will result in a net community benefit either individually or cumulatively.

6.4 Previous VCAT decisions

6.4.1 What is the issue?

As noted previously, the Tribunal refused previous applications for supermarkets on the two sites.¹⁰ Are we considering substantially different proposals than the original proposals which the Tribunal refused?

6.4.2 Evidence and submissions

Mr Tobin for Council and the advocates for each Applicant noted that both applications had been refused by the Tribunal primarily on strategic and policy grounds. However, it was noted that the Tribunal had commented on design, layout and access matters on each application. Mrs Hunt, representing Friends of the Koalas, considered the proposals did not address all of the significant design and amenity concerns raised by previous VCAT decisions.

6.4.3 Discussion

While the parties did not focus on this issue in detail, we consider it important to respond to the reasons for refusal provided by the Tribunal. If the proposals were the same then our response may have been similar to that of the Tribunal.

It is clear the Tribunal refused both applications primarily based on the strategic and policy concerns. However, there were other reasons for their refusal.

In relation to the previous Morgan & Griffin application, the Tribunal said:

The corner of Thompson Avenue and Church Street is a focal intersection within Cowes and this is therefore a very significant site. We consider that the built form of the proposed development represents a lost opportunity to pursue other planning objectives.

For example, there are no shop frontages or entrances along Thompson Avenue, only supermarket walls. There is no public interaction for

¹⁰ *Morgan & Griffin Pty Ltd v Bass Coast SC* [2006] VCAT 1961 and *Wilbow Corporation Pty Ltd v Bass Coast SC* [2006] VCAT 976.

approximately 60 metres of main street frontage. The same goes for Church Street. Shops turn their back on the street and have their access only from the internal arcade. The development does not sufficiently address either street frontage only the corner. There are problems too with the landscaping areas of the type envisaged along Thompson Avenue because plants rarely flourish in this type of environment. Rather, such landscaping areas tend to become unsightly repositories for litter.

The Tribunal also raised concern with urban design, built form, access and parking.

We were provided with copies of previous plans for both sites and it is clear the applications we are considering now differ in a number of substantial areas. We make this point to demonstrate we are not comparing 'apples with apples' and that there has been a significant attempt to address the concerns expressed on the previous applications to the point where we are considering significantly different proposals.¹¹

In our view, the design proposal to place the supermarket behind the speciality shops so they have direct access to Thompson Avenue largely addresses the Tribunal's concerns on this matter.

We are also satisfied that the design proposal provides adequate active frontages in Church Street. We comment on this issue in more detail in section 8.4 of this report.

In relation to the previous application at the Fabcot site, the Tribunal expressed concern about the vehicular access which involved "*multiple turning movements and relatively convoluted vehicle movements.*"¹²

We note the previous application for the Fabcot site proposed only one vehicle access point, compared to two with the current proposal.

Both applications are substantially different to the previous applications that were refused by the Tribunal, and we consider that both applications successfully resolve the design and access issues identified by the Tribunal. We provide more detailed analysis of the design and access issues in the following chapters.

¹¹ Paragraphs 58 and 60 of the Morgan & Griffin decision.

¹² Paragraph 72 of the Wilbow Corporation decision.

6.4.4 Conclusions

Both applications are substantially different to the previous applications that were refused by the Tribunal and successfully resolve the design and access issues identified by the Tribunal.

6.5 Car Parking

6.5.1 What is the issue?

What car parking rate should be used for both proposals?

6.5.2 Evidence and submissions

Council advised a recent parking study for the Cowes Activity Centre (prepared in 2008 by the Traffix Group) recommended a rate of 5 spaces/100m² LFA for supermarkets and 4 spaces/100m² of leasable floor area (LFA). Council's report of October 2009 considered the Morgan & Griffin proposal (without 89 Church Street) provided a rate of 4.5 spaces/100m² LFA and was "inadequate for the proposed use"¹³. However it did not consider this was such a significant issue as to warrant a refusal.

Mr Walsh, who was called to provide traffic and car parking evidence for Morgan & Griffin, advised that the rate provided by the current proposal is 4 spaces per 100m² of LFA for the supermarket and 3.5 spaces for the specialty shops. He also presented a number of other supermarket examples at regional centres in Rosebud, Wonthaggi, Healesville and Hastings where empirical survey data showed the rate varied between 3.0 – 3.8 spaces per 100m² of LFA. Mr Walsh also noted the Clause 52.06 Car parking Advisory Committee had recommended a rate of 5 spaces per 100m² of LFA. Mr Walsh commented¹⁴:

It has been my experience that regional supermarkets typically generate lower car parking demands than metropolitan supermarkets, and consequently I am comfortable adopting a rate of 4.0 spaces per 100 square metres in this circumstance.

Likewise Mr Kiriakidis, for Fabcot, considered the draft Clause 52.06 rates (and the Cowes Parking Study 2008) were on the high side as the Traffix surveys were not conducted in 'peak repeatable' conditions or at the 85th percentile for the busiest 7-8 occurrences through the year, were not representative of lower empirical surveys for similar non-metropolitan

¹³ Page 14 of the Council October 2009 report.

¹⁴ Page 7 of the Walsh expert evidence statement.

centres and were relevant for retail uses located in non-activity centres. He considered they should rely on the lesser rates for activity centre based uses as opposed to the standard development rates. He stated¹⁵:

It remains inappropriate to design parking to accommodate the absolute peak demands.

Mr Kiriakidis also reviewed other non-metropolitan operating supermarkets in Traralgon, Rye, Wonthaggi, Hastings, Moe, Bendigo and Geelong. He concluded¹⁶:

..... the surveyed supermarkets generated parking at average and 85th percentile peak rates of 3.6 and 4.6 spaces per 100sqm respectively.

On this basis Mr Kiriakidis concluded the proposed supermarket and specialty shops could be expected to generate parking at rates of up to 4.2 and 3.5 car spaces per 100 sq m respectively.

Both experts recognised that the efficient use of commercial land was a factor in allowing for parking dispensations and that there are significant peak demands for parking on a seasonal and event-based basis.

Mrs Taylor, Mr Ware and Mrs Hancock all considered the full parking rate should be applied to ensure there was sufficient parking on site to accommodate the supermarket uses.

6.5.3 Discussion

Clause 52.06 provides a rate of 8 spaces per 100m² for a shop. We recognise these rates are used rarely, if ever. The Cowes Parking Study completed by the Traffix Group in 2008 recommended the following rates:

- Supermarket 5 spaces/100m² of LFA; and
- Shop 4 spaces/100m² of LFA.

These rates accord with the Clause 52.06 Advisory Committee Report issued in August 2007. It is likely these rates will then form the basis of an amended clause 52.06.

Table 2 below summarises the various views:

¹⁵ Page 22 of the Kiriakidis evidence statement.

¹⁶ Page 22 of Kiriakidis evidence statement.

Table 2 Car parking summary

Use	Clause 52.06	Draft 52.06	Kiriakidis	Walsh
Supermarket	8/100sqm	5/100sqm	4.2/100sqm	4/100sqm
Specialty shops	8/100sqm	3.5 – 4/100sqm ¹⁷	3.5/100sqm	3.5/100sqm

We do not wish to be too prescriptive about the appropriate car parking rates. What the empirical data shows for similar non-metropolitan developments is the use of rates that are less than those recommended in the draft Clause 52.06. We are satisfied these data sets should guide us in determining what is appropriate for Cowes. We are not concerned with the small variations between Mr Walsh and Mr Kiriakidis. What they agree on is the need to avoid the use of the standard Clause 52.06 rate and be guided by empirical data for other similar uses. On this basis we consider an appropriate rate for supermarkets and specialty retail is 4-4.2 spaces/100sqm and 3.5/100sqm respectively.

A detailed assessment of the parking requirement for each application is provided in the following chapters.

6.5.4 Conclusions

We conclude:

It is appropriate to vary the standard car parking rates contained in Clause 52.06.

An appropriate rate for these proposals is:

- **for the supermarket component - 4-4.2 spaces/100sqm; and**
- **for specialty retail - 3.5/100sqm.**

¹⁷ Depending on whether standard or activity centre rates are used.

7. Fabcot application – 119-135 Thompson Avenue, Cowes

7.1 What are the issues?

We have identified the following issues for consideration:

- design and layout;
- impact on footpath;
- arboriculture and landscaping;
- traffic, access and car parking; and
- conditions of permit.

We have based this chapter on these five issues.

The section on traffic and access includes a discussion on the proposed pedestrian crossing in Thompson Avenue.

In addition, in this Chapter we respond to Morgan & Griffin's contention that the Fabcot proposal is premature.

7.2 Policy context of the issue

An overview of relevant State and local policy is presented in Chapter 4. We refer to the most relevant State and local policies in the analysis.

7.3 Design and layout

7.3.1 Evidence and submissions

Mr Govenlock, on behalf of Fabcot, provided planning evidence that included a design response. In his evidence¹⁸ Mr Govenlock stated, among other matters:

- *The proposal will significantly improve the level of interaction, engagement and surveillance of the streetscape from the site, which is currently inhibited by a 1.8m high paling fence along the bulk of the frontage;*
- *Existing Avenue of Honour Cypress pines are to be retained;*

¹⁸ Page 13-15 of the Govenlock evidence statement.

- *The specialty shops screen the large supermarket building from Thompson Avenue, feature glazing and trade out to Thompson Avenue;*
- *The proposal is generally consistent with the variable 10.5m height limit contained in the DDO4;*
- *The lower scale shops, their canopies and sheltered pedestrian entries assist in the creation of an amenable pedestrian environment;*
- *The materials comprise a suitable mix of glazing, expressed timber beam, stacked stone cladding and well designed entries;*
- *There is good accessibility with seamless alignment of floors;*
- *Trees are retained where appropriate with additional native landscaping;*
- *The proposal has been designed to integrate into a north south road link to the rear of the site once it has been constructed; and*
- *Loading and unloading for the supermarket is to the rear of the site.*

While Council called Mr Czarny to provide expert evidence on urban design aspects of the Morgan & Griffin proposal, it did not instruct Mr Czarny to review the Fabcot proposal. In relation to Fabcot, Council did not require any design modifications including setbacks from Thompson Avenue.

While Morgan & Griffin made opposing submissions to Fabcot's proposal, this did not include matters relating to design.

Mrs Taylor considered there should be setbacks of around 5 metres along the Thompson Avenue frontage.

Mr Good, while opposed to the proposed use, commended the architects for the building's form and function.

7.3.2 Discussion

With the completion of the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan and the adoption of Amendment C88, Council policy is that the land between Church Street and Settlement Road is now part of the core retail precinct within the Cowes Activity Centre. With this comes an expectation the current uses, form and layout of buildings abutting Thompson Avenue will undergo change and renewal. The Fabcot proposal is one example of this change and rejuvenation.

The C88 Panel supported the removal of the statements from the MSS that focussed on the need to respect existing parapet lines not because it

considered a 'build to boundary' approach was appropriate in all circumstances, but to require a suitable merits based assessment instead of using setbacks and parapet lines as the starting point. We also note the B1Z decision guideline to protect active frontages to pedestrian areas is better achieved by building to the property boundary.

Against this background, we consider it was not inappropriate for Fabcot to lodge an application that proposes 'zero lot lines' to the Thompson Avenue boundary.

We support the evidence provided by Mr Govenlock on urban design and believe the Fabcot proposal also responds favourably to the *Design Guidelines for Large Format Retail Premises* in the following manner:

- the largest supermarket building is 'sleeved' by specialty retailers that effectively screen it from Thompson Avenue;
- the specialty retailers provide an active street frontage to Thompson Avenue;
- the design of the proposal and use and colour of materials is modern, engaging and appropriate for a coastal environment;
- the built form is located to the north of the block to provide continuity in form from north to south along Thompson Avenue;
- the two plaza areas off Thompson Avenue will provide suitable pedestrian access and an inviting amenity with retained vegetation and materials treatment; and
- the proposal has been designed to integrate with the proposed north south road link when it is constructed.

In our view, the only justification for setting back the building along Thompson Avenue would be to protect the Golden Cypress trees. However, as we discuss in the following section, the arboricultural expert called by Fabcot considered the proposed building would not impact on these trees, subject to conditions to protect the trees during construction.

We also consider the proximity of the Golden Cypress trees and the mid block position of the Fabcot proposal lends itself to a zero setback to Thompson Avenue. As Mr Czarny stated¹⁹ in his evidence:

The site at 119-135 Thompson Avenue, Cowes, considered in VCAT P3265 and 3111/2005 do not require setbacks and is notably different to

¹⁹ Page 13 of the Czarny evidence statement.

the subject land due to its mid block position with varying Golden Cypress conditions.²⁰

We note the proposal to build to the Thompson Avenue property boundary is consistent with the Tribunal's 2006 comment, which did not support a 5 metre setback to Thompson Avenue.

With respect to building height, DDO4 states that building height should not exceed three storeys (or 10.5 metres to top of wall) in total from natural ground level. The proposed building marginally exceeds this requirement, however, does not have any adverse streetscape or amenity implications. Accordingly, we consider the proposed development is consistent with the intent of the overlay control.

7.3.3 Conclusion

We conclude:

The design and layout of the proposal is satisfactory and meets relevant design objectives and guidelines.

7.4 Impact on footpath

7.4.1 Discussion

The Fabcot site has a 140m frontage to Thompson Avenue. We observed that the current footpath is narrow and raised in areas with a dirt strip between the car parking spaces and the footpath.

While there were no submissions regarding the interface between the proposed buildings and the Thompson Avenue footpath, as a result of our site inspections we consider there is a significant opportunity to improve pedestrian connectivity, amenity and safety along Thompson Avenue.

In our view, with the proposal to construct the buildings to the Thompson Avenue front property boundary, it is likely that the existing footpath will be affected by construction activity. Given the likely impact on the footpath, we consider there is an opportunity to re-construct and widen the footpath and to also improve the area between the on-street car parking and the footpath. While this area is in the public realm, we consider the Fabcot proposal would benefit significantly from this initiative by improving pedestrian access to the

²⁰ Mr Czarny's reference to 'subject land' was in relation to the Morgan & Griffin site. Mr Czarny was contrasting the Morgan & Griffin site from the Fabcot site to justify why a setback was not required for the Fabcot site.

site. Accordingly, we think it is reasonable that Fabcot should meet the costs of the upgrade of this part of the public realm and we have included a condition of permit to address this matter. It should be noted we recommend the same condition on the Morgan & Griffin permit.

7.4.2 Conclusion

We conclude that:

There is a significant opportunity to improve the public realm between the proposed buildings and the Thompson Avenue footpath and Fabcot should meet these costs.

7.5 Arboriculture and landscaping

7.5.1 Evidence and submissions

Arboriculture

The Fabcot application involves the following:

- Remove a total of 57 trees; 10 of which are indigenous and require a planning permit for their removal; and
- Prune four Golden Cypress trees located in the Thompson Avenue road reserve which requires a planning permit as they are covered by Schedule 57 of the Heritage Overlay.

Mr Simonsen from Treelogic provided arboricultural evidence and a report supporting the application on behalf of Fabcot.

Mr Simonsen described each of the indigenous trees to be removed as having a fair, poor or fair to poor health and structure. Of the 85 trees reviewed both on (58) and off site, three trees are proposed to be retained onsite, most notably the *Angophora costata* as a feature in the main entry plaza. Forty five (45) of the onsite trees were rated as having 'low' or 'no' arboricultural merit. Mr Simonsen advised the removal of the trees rated highly can be largely attributed to the constraints of developing the site for retail purposes²¹.

In relation to the Golden Cypress trees, Mr Simonsen recommended some pruning of trees (Nos 98, 99, 100 and 101) to provide for safe customer and heavy vehicle access and egress. These trees are located either side of the two proposed access points to the site.

²¹ Paragraph 9.6, Page 4 of the Simonsen evidence statement.

Mr Simonsen provided a following table that detailed the extent of pruning required. He considered²²:

The level of pruning required to provide appropriate property and vehicle clearances for the design response is similar to the routine pruning that has evidently been performed on the existing trees as part of the normal clearing process.

Mr Simonsen recommended:

- a condition be required on the permit for a tree management plan to provide specific strategies for the protection of the Golden Cypress trees at every development stage;
- tree protection fencing should be installed for all trees prior to the demolition and construction phase of any development; and
- porous paving or floating pavement in the vicinity of Trees 16, 54, 55, 56, 85, 86, 87 and 88.

Council did not call its own evidence on this matter, and accepted Mr Simonsen's evidence and recommendations.

The DSE in their consideration of the application provided conditional support (off set plan required).

Mrs Hunt from the Friends of the Koalas and Mrs Hancock from the Phillip Island Conservation Society raised concerns with the amount of vegetation loss from the site, and considered there was a poor response to both the Net Gain principle and the health of the Golden Cypress trees.

Mrs Taylor considered the protection of the Golden Cypress pine trees should be a priority and no pruning should be allowed.

Landscaping

Mr Lim from Tract provided landscape design evidence on behalf of Fabcot. He advised that the following principles guided the landscape master plan for the site:

- *Reconciling the existing character of Thompson Avenue frontage and the location of the site within Cowes, a predominantly coastal township;*
- *Provide an important connection from Thompson Avenue in the development;*

²² Paragraph 9.9, Page 6 of the Simonsen evidence statement.

- *Provide best possible planting treatment to the carpark with the intent to provide shade with tree canopies and attractive shrub planting at ground level, including ESD principles in the form of bio-retention swales;*
- *Retain existing trees as nominated by the arborist and create a buffer/ screen to the proposed fences along the southern and eastern boundaries; and*
- *Incorporate native, drought tolerant, hardy and low maintenance species when selecting plant materials. Equally important is the colour and texture inherent in the plant materials to create inviting public plaza spaces.*

Mr Lim supported the use of swale landscaping to minimise the need for irrigation.

7.5.2 Discussion

Arboriculture

As with our earlier discussion on the inevitable change in built form that should be expected for this area, it follows that a change in landscape character including loss of on-site vegetation should be expected. We note that in relation to the Fabcot proposal, loss of vegetation will be relatively significant given the long-standing use of the land for a caravan park which has extensive vegetation for shade and amenity.

Accordingly, loss of on-site vegetation is one of the unavoidable outcomes irrespective of what type of development was proposed. However, we note that the DSE has required a condition of permit to off-set the loss of native vegetation in accordance with State Government policy to achieve Net Gain and we also consider there has been a reasonable attempt by the Applicant to retain some existing vegetation, particularly the *Angophora costata* in the south plaza entry.

All the Golden Cypress trees adjoining the site are mature, large species. None are proposed to be removed to facilitate the development and only minor pruning is required to support the development of the land. We consider this will not impact on the form of the trees which has principally been derived from structural pruning anyway to avoid powerlines and create a prostrate appearance. The depictions Mr Simonsen presented to us in his evidence showing how much pruning would be required demonstrates that this minor pruning can be accommodated.

At the Hearing we and others expressed concern with the potential impact of the pedestrian crossing in Thompson Avenue on the Golden Cypress trees. On inspection we observed a sufficient gap in the tree canopy (as can be seen in the photos) where the proposed pedestrian crossing would be located and that minimal, if any pruning, would be required. Accordingly, we consider the construction of the pedestrian crossing would not result in a significant impact on the Golden Cypress trees.



Photo 1 Approximate location of the pedestrian crossing, view to the east.



Photo 2 Approximate location of the pedestrian crossing, view to the west

Landscaping

The proposed plant species and their location is not a major issue of contention. We support the proposed species and consider they are suitable to their coastal environment. We also support the retention of some trees, particularly the *Angophora costata* in the south plaza entry. We also note the landscape proposals to plant drought tolerant species and the use of swales to minimise watering.

7.5.3 Conclusion

We conclude:

Arboriculture and landscaping issues have been adequately addressed.

7.6 Traffic, access and car parking

7.6.1 Evidence and submissions

Mr Kiriakidis, the traffic expert called by Fabcot, provided an overview of the proposal in terms of car parking, access and traffic as follows:

- 198 car spaces;
- two vehicle access points to Thompson Avenue with the southern access left in/left out/right in for all users and the northern access left in/left out/ right out for customers and right in only for loading vehicles;
- a signalised pedestrian crossing in Thompson Avenue located between the two access points and linked to detector loops under the pavement of the north access point;
- bike facilities in the north east corner of the site and bicycle rails near the pedestrian entries;
- the loading dock for the supermarket is adjacent to the rear boundary and accessed via the northern access point. Two loading bays are provided opposite the liquor store; and
- any kerb reinstatement will result in an additional 6 spaces on street with two new accesses deleting 10 spaces and a net loss of 4 spaces. The pedestrian crossing would result in the loss of 10 spaces or a net overall loss of 14 spaces on street.

He also provided an overview of the current network characteristics, as follows:

- Thompson Avenue is zoned Road Zone – Category 1 and is under the control of VicRoads;

- Thompson Avenue carries an average of 12,350 and 16,840 vehicles per weekday and weekend respectively²³;
- the intersections of Thompson Avenue/Church Street and Thompson Avenue/Settlement Road currently operate well with minimal queues and delays on all approaches;
- a report by the Traffix Group in 2008²⁴ identified a number of vacant on street car spaces between Church Street and Settlement Road;
- Thompson Avenue has a linemarked bike lane in either direction adjacent to a single lane of traffic; and
- angled parking is provided either side of Thompson Avenue with spaces over-dimensioned to allow for reversing to observe on coming traffic.

Should both the Fabcot and Morgan & Griffin applications be approved, Mr Kiriakidis also provided an overview of the post-development network impacts as follows:

- a repeatable peak (85th percentile) traffic volume that shows a movement north along Thompson Avenue of 665 per hour and south of 572 per hour. These represent the Saturday midday peak hour;
- at the Saturday midday peak hour it is expected the Woolworths supermarket will generate 500 vehicles per hour (vph) and the specialty shops 177vph based on 14.7 vehicle movements per 100sqm for the supermarket and 10.7 vehicle movements per 100sqm for the specialty shops. The Morgan & Griffin comparative figures would be 372vph and 68vph respectively. This provides a cumulative generation of 1117vph for both developments including approximately 1000vph new to the road network surrounding the sites;
- the width of the road reserve provides for the opportunity for cars to take an inside pass up the left hand side through the bicycle lane to overtake vehicles propped to turn right into the development;
- using the VISSIM²⁵ model the following is expected:
 - new development will be accompanied by a commensurate level of traffic delay. The pedestrian crossing will have a negligible effect on increasing network delays between Church Street and Settlement Road;

²³ Based on 24 hour pneumatic tube counts collected on behalf of TTM consulting between Friday 10 April and Thursday 16 April 2009.

²⁴ Cowes CBD Parking Study Report 2008.

²⁵ VISSIM is a software package that provides traffic, public transport and pedestrian simulation modelling.

- the Church Street/Thompson Avenue and Settlement Road/Thompson Avenue roundabouts will experience increased delays and queues. The level of increase is considered satisfactory having regard to performance levels and capacity which remains on the network. The traffic network operates satisfactorily with and without the pedestrian crossing; and
- at the two access points for the Fabcot proposal the pedestrian crossing will reduce delays for all movements. A 10 year post development design scenario indicates the benefits of the pedestrian crossing will be maintained.
- a comparative analysis using aaSIDRA²⁶ for Fabcot indicates:
 - an ideal limit of 0.90 degree of saturation (DOS) is appropriate for the intersections. SIDRA indicates a DOS between 0.33 and 0.88 for Thompson Avenue/Settlement Road and 0.11 and 0.68 for Thompson Avenue/Church Street; and
 - both intersections can be expected to operate satisfactorily with manageable queues and delays on all approaches.
- a future review of transport infrastructure should be completed for Thompson Avenue south of Church Street, the form and function of the two roundabouts and the proposed north south link.

Mr Kiriakidis concluded²⁷:

- *The proposed development and the 'M and G Proposal' could be expected to generate up to approximately 1120 vehicle movements during the Saturday midday peak hour, including approximately 1000 vehicle movements that are new to the road network surrounding the sites;*
- *There is adequate capacity in the surrounding road network to cater for the traffic generated by the Fabcot and M&G developments;*
- *The access points have been designed with restricted movements and can be expected to operate safely and efficiently – particularly if the signalised pedestrian crossing across Thompson Avenue is constructed and 'linked' to traffic on the site access points;*
- *The preparation of transport planning and infrastructure would be appropriate to better understand broader land use planning implications associated with Amendment C88;*

²⁶ aaSIDRA is a software package used to consider intersection capacity performed by levels of service.

²⁷ Page 26 of the Kiriakidis evidence statement.

- *The proposed development generates a statutory car parking requirement of 405 spaces;*
- *The proposed supply of 198 car spaces is considered to be appropriate having consideration to the relevant decision guidelines and the modest level of parking dispensation required in support of the proposal;*
- *The proposed car parking layout has been designed with car space and aisle dimensions that exceed the requirements outlined in the Bass Coast Planning Scheme and can be expected to operate safely and efficiently;*
- *It is recommended that should a permit issue for the proposed development, this Permit should include a Condition which requires the provision of 9 staff bicycle spaces, 10 shopper bicycle spaces and a shower and change room for supermarket staff;*
- *The proposed loading provisions exceed the statutory requirements and can be expected to be sufficient for the proposed development.*

Mr Wright, for Morgan & Griffin, called evidence from Mr Walsh of Cardno Grogan Richards. Mr Walsh considered that the development would generate 760 movements during the Saturday peak. Using the aaSIDRA model, Mr Walsh found that the DOS was 0.36 for Thompson Avenue north, was 0.43 for Thompson Avenue south and was 1.03 for site access. He concluded that the results of the analysis show that at peak times. Motorists egressing the site will experience significant delays and long queues will lengthen within the site.

In addressing the right turn from Thompson Avenue into the site. Mr Walsh stated²⁸:

I consider that right turns in to the site would be disruptive to through traffic in Thompson Avenue, which is the main street in Cowes, without the provision of dedicated turning lanes. In relation to the provision of turning lanes, I concur with the view expressed in paragraph 5.6 of the TTM traffic report²⁹ of 9 March 2009.

²⁸ Paragraph 6.7 of the Walsh evidence statement.

²⁹ Paragraph 5.6 considers turning lanes should not be introduced as it will result in the removal and pruning of the Cypress trees, reduced number of on street car spaces, increased vehicle speeds, and reduced number of gaps in downstream traffic stream..

In relation to the delivery vehicle access, Mr Walsh commented³⁰:

The ingress movement may have an impact on the canopy of an existing tree as the truck sweeps within the bicycle lane on the western side;

The egress movement may have an impact on the existing tree immediately to the south of the northern crossover; and

It is undesirable for the truck to sweep across the north bound traffic lane of Thompson Avenue upon egress.

Council support for Fabcot's application was subject to resolving vehicle access arrangements to the satisfaction of VicRoads and Council, that there is no right turn access to the site from Thompson Avenue, and that an alternative access to the site should be provided via Church Street. However, Council did not call traffic evidence and relied upon the Applicant's supporting report prepared by TTM consultants.

VicRoads initially objected to the application on the basis of lack of information. However, VicRoads subsequently advised that it had no objection subject to the following conditions:

- 1. *The driveway must be designed and constructed to the satisfaction of the Responsible Authority and VicRoads;*
- 2. *The construction of the pedestrian crossing must form part of the development and be in operation prior to the commencement of the commercial operation of the complex.*
- 3. *Detailed plans of the roadworks must be provided to VicRoads for approval;*
- 4. *VicRoads in responding to this application, is not deemed to have been notified of, or having given consent to undertake any works within the road reserve proposed in this permit application.*
- 5. *The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or seeking consent from VicRoads to undertake the works in the road reserve.*

Despite VicRoads' subsequent approval, Council still opposed the right hand entry into the site from both access points and also opposed the right hand turn from the site from the northern access point.

³⁰ Paragraph 6.8 of the Walsh evidence statement.

Council's concerns were:

- while an auxiliary right hand turn would be technically feasible, it would not in practice be feasible because higher vehicles in particular would impact on the low lying Golden Cypress trees in Thompson Avenue;
- access to the development must therefore be from the existing lane with vehicles propping and then waiting for an opportunity to turn right into the development;
- as stated in the TTM report, propping of vehicles in Thompson Avenue would result in queue lengths beyond 100 metres. Such lengths would have significant flow on effects for traffic flows in Thompson Avenue as well as have an impact on access to on-street car parking;
- it would not be appropriate for vehicles to undertake an inside pass of vehicles propping in Thompson Avenue, because they would intrude into the dedicated bicycle lane and undermine planning objectives to promote cycling;
- inside passing of propped vehicles would also conflict with vehicles backing out of the angled on-street car parking in Thompson Avenue; and
- a right hand turn from the site from the northern access point would result in long internal queue lengths and make vehicle access to the parking spaces more difficult as well as reduce pedestrian connectivity and ultimately safety.

In Council's view, there should be a left in/left out only arrangement for all vehicles, including delivery trucks. Accordingly, vehicles would enter the site from the north, turn left into the site at the northern access point, and when leaving the site, would turn left at the southern access point.

Mrs Taylor, Mrs Hancock and Mr Ware considered the proposal would generate too much additional traffic and lead to more congestion in Thompson Avenue, the pedestrian crossing was in the wrong location without other businesses aware of its proposed location and associated loss of on street parking and all required parking should be provided on site.

7.6.2 Discussion

We consider the main issues that require our consideration are:

- adequacy of car parking provision;
- effect on the traffic network;
- access to the site;

- rationale for the pedestrian crossing; and
- internal traffic management.

Adequacy of car parking provision

In Chapter 6.5 we have adopted the reduced parking rate for supermarkets and specialty retail as 4-4.2 spaces/100sqm and 3.5/100sqm respectively. The proposal provides for 198 on site spaces and the evidence presented to us from Mr Kiriakidis and Mr Walsh indicate the Fabcot proposal provides sufficient parking for the proposed use. Any further loss of parking would be undesirable. We support the proposed provision of parking on site.

Effect on the traffic network

Mr Kiriakidis provided an assessment of the individual impact of the Fabcot proposal on the local road network as well as an assessment of the cumulative impact of both the Fabcot and Morgan & Griffin proposals on the local road network.

Both proposals together will introduce around 1000 vph at the Saturday morning peak to the local network. To understand the effect of this, Mr Kiriakidis used the VISSIM microsimulation software. We understand this was used in preference to SIDRA as it enabled the entirety of Thompson Avenue between Church Street and Settlement Road roundabouts to be assessed in a single model that allows the impacts of 'platooning' and queuing to be assessed. He concluded that the intersections could be expected to operate satisfactorily with manageable queues and delays on all approaches.

Mr Walsh advised SIDRA Version 4 (released July 2009) also allowed for the consideration of bunching or queuing of traffic and was an appropriate software model to assess the traffic implications.

We are not concerned with which model has been used largely because Mr Walsh considered SIDRA's application would not have resulted in a significantly different outcome. The important consideration is the practical effect of both proposals on the network. The VISSIM model indicates:

- there will be additional delays for traffic along Thompson Avenue between Church Street and Settlement Road (27 second delay with reduced average speed)³¹; and
- the two bookend intersections will have additional delays and queues³². The queue lengths at the Church Street roundabout will increase from

³¹ Table 4.2, Page 15 of the Kiriakidis evidence statement.

42m to 137m for traffic approaching from the south and the Settlement Road roundabout from 33m to 174m for traffic approaching from the north.

Given these conclusions, there will be a significant impact upon the local road network. Mr Kiriakidis stated this was satisfactory as the resultant delays at the two roundabouts would be acceptable. This was reinforced by a SIDRA analysis³³ of the intersection performance for both proposals which showed a degree of saturation (DOS) for the Church Street roundabout of no greater than 0.68 and for the Settlement Road roundabout of no greater than 0.88³⁴. We consider the local traffic network can support the traffic growth resulting from the two proposals.

Nonetheless, we also support the further traffic review proposed by Mr Kiriakidis for this area and note that at some stage the form of the Church Street and Settlement Road roundabouts may need to be upgraded to a signalised intersection. Thompson Avenue is the main road that services Cowes and if development is to increase traffic then Thompson Avenue should have the capacity to manage it. The alternative would be to divert traffic into residential streets that have limited capacity which we would not support without the construction of the north south link road.

We note that Mr Kiriakidis stated there would be a positive, yet negligible, impact of the pedestrian crossing on the operation of the roundabouts.

In response to Mr Walsh's concerns that it is undesirable for trucks egressing the site to sweep across the north bound traffic in Thompson Avenue, we note there is an opportunity to address this matter by VicRoads and Council by the VicRoads condition No 1 that:

The driveway must be designed and constructed to the satisfaction of the Responsible Authority and VicRoads.

Access to the site

There are two key issues:

- do the proposed access arrangements from Thompson Avenue address the concerns identified by the Tribunal in the previous application?; and
- should a right turn into the site be permitted?

³² Tables 4.3 and 4.4, Page 15 of the Kiriakidis evidence statement.

³³ Tables 4.7 and 4.8, Page 17 of the Kiriakidis evidence statement.

³⁴ A DOS of no greater than 0.90 is ideal for the two roundabout intersections.

Proposed access arrangements

The previous application that was refused by the Tribunal proposed a single access point, re-configuring the lanes and painting chevrons and other line markings to create a right turn entrance into the site for vehicles travelling north and a right turn for vehicles accessing Hollydene Court travelling south.

In response to this arrangement, the Tribunal stated³⁵:

Our principle concerns with this proposal are.....

- *The site's mid block position does not have convenient vehicular access.*
- *There is a need to create a de-facto traffic intersection mid block to deal with all vehicle movements to and from the site.*
- *Some of the vehicle access treatments are tight and seem to rely on changing the fundamental street configuration in order to accommodate turning movements.*

In our view, the current proposal which proposes two separate access points largely addresses the concerns raised by the Tribunal with the previous application. The two access points provide options for motorists and will assist to disperse the traffic movements into and from the site.

Should a right hand turn be permitted?

The issue of whether a right hand turn should be permitted into the Fabcot site was perhaps the most contentious issue arising from the traffic evidence.

In summary, Fabcot propose left in/left out/right in for all users for the southern access and left in/ left out/ right out for customers and right in only for loading vehicles the northern access; Morgan & Griffin suggest that if a right turn is permitted an auxiliary right turn lane should be provided; and Council opposes any right turn into the site.

VicRoads initially objected to the right turn. However, it now supports this movement subject to the provision of the pedestrian crossing.

The main concerns with the right turn relates to potential safety impacts on the conflict with the bicycle lane and vehicles reversing out of the on-street car spaces as well as with the impact of higher vehicles impacting on the Golden Cypress trees.

³⁵ Paragraph 24, page 8 *Wilbow Corporation P/L v Bass Coast SC* [2005] VCAT 976.

In our view, Fabcot's proposal for left in/left out/right in for all users for the southern access and left in/ left out/ right out for customers and right in only for loading vehicles the northern access is acceptable for the following reasons:

- an inside pass from stationary vehicles making the right turn into the bicycle lane is not an unusual movement in urban situations and is not prohibited by the Victorian road regulations. Obviously both motorists and cyclists will need to take caution when such a movement occurs;
- the extended length of the angled car parking spaces in Thompson Avenue provides scope for motorists to stop and prop to check whether there are vehicles making an inside pass; and
- any impact on the Golden Cypress trees would be limited to the taller trucks. However, common sense would dictate that drivers of such vehicles would not be able to make an inside pass and would need to prop and wait until south-bound vehicles in Thompson Avenue passed through. We note the proposed pedestrian crossing would provide some scope to break the traffic either by the loop sensor within the site or pedestrians wanting to use the crossing.

Given our view that a right turn is acceptable using the existing lane, we do not believe an auxiliary right lane in Thompson Avenue is necessary (and indeed, may not be physically possible given the width of the carriageway and the overhanging Golden Cypress trees).

Rationale for the pedestrian crossing

There was some controversy in relation to the proposed pedestrian crossing at the Hearing. Local residents were particularly aggrieved as they were not made aware of the proposal (which was due to VicRoads' letter of support only arriving days before the Hearing). Concern was also expressed that the crossing would result in the loss of on-street car parking, and that the businesses most affected had no opportunity to object to the proposal. The residents had been campaigning for a pedestrian crossing south of Settlement Road in the vicinity of the Cowes Primary School, without success. Yet the supermarket was successful in getting apparent quick VicRoads approval.

Mr Wright for Morgan & Griffin also questioned the purpose of the pedestrian crossing and asked whether the VicRoads' warrants for vehicle and pedestrian had been satisfied. Mr Wright considered the pedestrian crossing was approved for an ulterior purpose – namely, to address access issues to the Fabcot site, and not to address pedestrian safety. Mr Wright suggested that the approval of the pedestrian crossing for an ulterior motive may violate administrative law principles.

Mr Walsh, the traffic expert called by Morgan & Griffin, referred to the VicRoads standard warrants for a pedestrian crossing as:

- 60 pedestrians per hour and 500vph in the same hour for a zebra crossing with flashing lights;
- 100 pedestrians per hour and 500vph in the same hour for a pedestrian operated lights crossing and
- accidents problems that require a need to be addressed.

Mr Walsh was concerned that neither of these warrants would seem to have been met.

Mr Fenech, from the regional VicRoads office, advised the authority was involved in early discussions with the development of the land. He noted the authority was concerned with the congestion that was likely to arise from the development of the land for queuing inside the land and on Thompson Avenue and that it supported the use of a pedestrian crossing to create additional gaps in the stream of traffic for turning vehicles that was linked to sensors at the northern access point. He accepted that the crossing was not required against the authority warrants and that final design and location would be a condition of permit.

In our view, it is clear the proposed crossing is not required against standard warrants or indeed located in the most appropriate location considered by some members of the community and has been proposed to address the access issues identified by VicRoads and the Applicant.

However, we consider the proposed pedestrian crossing has merit. It will provide a pedestrian link at no cost to the community mid block between Church Street and Settlement Road. Improving pedestrian links on both the east and west sides of Thompson Avenue will improve access not only to the Fabcot site but to the businesses on the west side. As commercial development occurs in this part of the Cowes Activity Centre, there will be increasing vehicle congestion and more pedestrians. A signalised pedestrian crossing will provide for pedestrian safety that does not currently exist. We cannot think of any downsides to this proposal.

Further, as we noted in section 7.5.2, there is a gap between the Golden Cypress trees where the crossing is planned which means there would be minimal impact on these trees.

While the loss of around 10 on street parking spaces is unavoidable to provide for the crossing, we consider that aside from some of the peak periods there is sufficient on street and off-street car parking in this area and

that the loss of these 10 spaces will not have a significant adverse impact to local businesses.

Finally, we note that further VicRoads approval is required to install the pedestrian crossing and that this will provide an opportunity to ensure the design details and compliance with relevant standards are met.

Whether or not VicRoads' approval for the pedestrian crossing violates administrative law principles is not a matter for this Committee.

Internal traffic arrangements

A major issue for Council was the impact of the right hand turn at the northern access point on internal traffic arrangements. It was concerned that lengthy internal queuing would result in unacceptable congestion which could have flow on effects into the surrounding network as well as present problems to pedestrians in the car park.

We note that there was a significant difference in the results between the two traffic experts on this matter. Mr Kiriakidis concluded under the VISSIM model there would be an average delay of 67 seconds and a delay of 58 metres. In contrast, Mr Walsh concluded that under the SIDRA model there would be an average delay of 152 seconds and a queue of 152 metres. This was a DOS of 1.03, above the acceptable limit of 0.90.

We cannot be certain which scenario is likely. However, we consider that:

- should saturation occur shoppers will 'learn' to make a choice in terms of visiting other supermarkets, not taking the car or doing their shopping at different times;
- VicRoads has not objected and therefore does not consider there will be an inappropriate wider impact on the traffic network; and
- the potential construction of the north south link could eventually relieve traffic congestion at this access point.

7.6.3 Conclusions

We conclude that:

Adequate car parking provision has been provided on-site;

Increased traffic volumes on Thompson Avenue as a result of the Fabcot proposal will have an acceptable impact on congestion on the surrounding road network;

The proposed arrangements to have two vehicle access points to Thompson Avenue instead of one address the concerns raised by the Tribunal in the previous application;

Proposed access arrangements with the southern access left in/left out/right in for all users and the northern access left in/ left out/ right out for customers and right in only for loading vehicles is satisfactory;

The proposed pedestrian crossing will improve access arrangements to the site as well improve safety for pedestrians and should have no adverse impact on the Golden Cypress trees; and

Should the right hand turn from the site at northern access point result in saturation, it is likely that there will be a change of behaviour of motorists in terms of shopping at alternative locations, using different transport modes or choosing to shop at different times.

7.7 Is the Fabcot proposal premature?

7.7.1 Evidence and submissions

Mr Wright for Morgan & Griffin opposed the Fabcot proposal on the basis that there were significant problems of access to the Fabcot site and that the application should not be considered until the north south link has been constructed. He also considered the proposed pedestrian crossing was an inappropriate solution to resolve the access issues. He contended the application was therefore premature.

Mr Gobbo for Fabcot in his closing submission stated³⁶:

The link road, while a good idea, is not yet a seriously entertained planning proposal, and there can be no guarantee it will ever be realised, regardless of what the Council hopes would happen.

Mr Walsh did not contend that the application should be refused as premature because it cannot immediately access the link road. Remarkably, he was not even asked to express an opinion on the proposition.

³⁶ Paragraph 25 & 26 Pages 7 & 8 of the Fabcot closing submission

7.7.2 Discussion

The north south link is an initiative in the Cowes, Ventnor, Silverleaves and Wimbledon Heights Structure Plan and has been proposed to provide an alternative north south access to the Cowes Activity Centre running parallel with Thompson Avenue to the east. It would provide a link between The Esplanade to the north and Settlement Road to the south. While some of the potential link currently exists (Bass Avenue) and some land is in Council ownership (between Chapel Street and Church Street), Council would need to acquire more land to complete the connection (between Church Street and Watchorn Road).

The C88 Panel considered this was important infrastructure for the future development of the Activity Centre, particularly if the new car ferry from the Stony Point commenced operation.

Given that Council has endorsed the Structure Plan that includes the proposed north south link and has also adopted Amendment C88 which includes the Structure Plan as a reference document in the planning scheme, we consider that, contrary to Mr Gobbo's view, it is a seriously entertained planning proposal.

However, we recognise that to achieve the link Council needs to undertake a number of further statutory steps including introducing a Public Acquisition Overlay over the land and purchasing the land under the relevant provisions of the Local Government Act. We are also aware that the proposal is controversial in the local community, as indeed is the proposal for the car ferry. In short, there are a number of significant of statutory and decision-making steps before the link could be implemented.

While we consider the north south link would improve access arrangements for the site, particularly for loading/unloading, we have concluded in the preceding section that the proposed access arrangements under the existing design and layout are satisfactory. We also note that the current layout and design of the proposal would not preclude future access to the north south link at the rear.

Accordingly, we consider the north south link is not a prerequisite for the Fabcot development and therefore is not a ground that the application is premature.

We also consider for reasons stated earlier that the proposed pedestrian crossing is satisfactory. Therefore, we consider the pedestrian crossing is not a ground that the application is premature.

7.7.3 Conclusion

The application is not premature as the proposed access arrangements are satisfactory without the proposed north south link.

7.8 Preamble and conditions of permit

7.8.1 Discussion

Appendix A contains the final 'without prejudice' conditions tabled by Council. We have included this version for the record. We received comments on the draft conditions from the Applicant and other submitters. **Appendix B** contains the version of the permit conditions we consider appropriate. We do not propose to analyse all submissions on the conditions in detail.

We support the following wording for the preamble for the Fabcot permit:

The use and development of a supermarket and specialty retail, dispensation for car parking, alteration and access to a road in a road Zone Category 1 and removal of native vegetation and pruning of heritage trees at 119-135 (Lot 1 TP 81324 and CA 3, 4 and 5 Section 14) Thompson Avenue, Cowes.

The reference to the use of the land will depend upon the timing of the approval of Amendment C88 which rezones the land to Business 1 and the approval of this planning permit. If the latter occurs first then a reference to use must be retained however if the permit trigger for use is removed by the approval of Amendment C88 then it is no longer necessary.

It is perhaps worthwhile to note some of the key differences in the various versions put to us:

- the latest version deleted any reference to a cash contribution for parking not provided on site. If this was retained then we would have deleted this anyway as the correct mechanism is not in place to impose such a requirement;
- Condition 1 (l) required the indenting of pedestrian accesses to Thompson Avenue. Mr Gobbo objected to this on behalf of Fabcot stating there would be no conflict. We support this view as there would be limited conflict with pedestrians on the footpath. The streetscape works proposed required by us will also alleviate this possibility;
- Condition 6 requires construction plans for drainage, car parking and vehicle and pedestrian access. Fabcot objected on the basis the current plans meet the requirements for car parking and there is no need for a

mid aisle pathway linking the parking to shops 8 and 9. We agree there should be only one set of endorsed plans that demonstrate compliance with parking and vehicle and pedestrian access. Any required amendments to plans should be consolidated into the one condition at the front of the permit that seeks amended plans. In this regard we have transferred some additional plan requirements to condition 1, deleted reference to parking plans as the current plans show this detail and renamed this condition 'stormwater drainage';

- Condition 18 restricts deliveries and waste collection. Fabcot objected to the outright prohibition on deliveries after 10.00 am and proposed evening deliveries between 6.00 pm and 10.00 pm and submitted an amended condition that provided any change outside these times to be subject to Council consent;
- Condition 19 restricted on site deliveries to only one truck at any time. Fabcot objected on the basis vans that deliver to the specialty shops should not be restricted. We support the proposed new wording presented by Fabcot that refers to only one articulated vehicle; and
- Condition 20 prohibits deliveries by vehicles that are parked in Thompson Avenue and the use of reversing beepers. Fabcot objected on the basis the specialty shops that front Thompson Avenue should be able to take deliveries from vehicles in front of their shops. We support this as the alternative would be goods being trolleyed or carried a longer distance from dedicated loading areas on site. The restricted delivery hours will ensure amenity for the caravan park residents is not impacted by reversing beepers. We agree they may be required as an Occupational Health & Safety requirement and use of reversing cameras would not warn of an approaching truck.

7.9 Recommendations

We recommend that:

Application 2162/2009 be approved subject to conditions set out in Appendix B.

8. Morgan & Griffin application – 114-122 Thompson Avenue, Cowes

8.1 What is the issue?

We have identified the following issues for consideration:

- siting and design;
- active frontages;
- impact on footpath;
- arboriculture and landscaping;
- traffic, access and car parking; and
- conditions of permit.

We have based this chapter on these six issues.

8.2 Policy context of the issue

An overview of relevant State and local policy is presented in Chapter 4. We refer to the most relevant State and local policies in the following analysis.

8.3 Siting and design

8.3.1 Evidence and submissions

Council supports Morgan & Griffin's application. However, it has a number of concerns and called Mr Czarny, an urban design expert, to give evidence of the deficiencies of the proposal. Mr Tobin for Council submitted³⁷:

In respect of the MG Application, Council considers that the proposal fails, in an urban design context, to adequately respond to the site potential and opportunities. Council considers that the site offers opportunities for greater activation of frontages and creation of public spaces. There also exists policy support for a more intensive development particularly above ground floor. In this regard Council relies on the evidence of Mr Czarny.

Council's decision reflects that a satisfactory design outcome can be achieved through appropriate conditions.

³⁷ Paragraph 16-17, Page 4, Council submission.

Mr Czarny referred to the Interim Design Guidelines for Large Format Retail Premises (DPCD 27) which seek to, amongst other matters:

- *Develop a good quality external environment;*
- *Ensure public spaces are comfortable and engaging for all users; and*
- *Improve safety and promote natural surveillance of public spaces and street activity. This can be achieved by ensuring buildings address streets and other public spaces and contain active uses for all users.*

Council³⁸ summarised the evidence of Mr Czarny as follows:

- the design response on the site should be tailored to respond to the “particular civic, community and heritage assets to the north”. Mr Czarny states that this calls for “careful setbacks, interface and junction treatments.”;
- the glazed treatments along the northern boundary of the site limit the capacity for “active interplay or movement between the private and public realm at this location.”;
- the Structure Plan calls for a 2-3 storey urban form, however, the proposal includes only a circular steel structure that provides the effect but not the function outlined in the Structure Plan;
- while the Panel considering C88 called for removal of reference to setbacks within the B1Z, there still should be a design specific analysis and in this case that calls for a setback. In this case a six metre setback is proposed to create the potential for an active space between the building and the public realm; and
- a redesign of the proposal is called for which demonstrates:
 - access points to the northern interface;
 - removal of glazed walling to Church Street;
 - setback of 6 metres to Thompson Avenue; and
 - additional floor space above ground floor.

Mr Wright for Morgan & Griffin called evidence from Mr Biacsi from Contour Consultants. Mr Biacsi concluded³⁹:

I believe that the site layout is logical and has been well resolved in the design. It provides for an appropriate building edge to the main shopping street (being Thompson Avenue), provides a focus for the corner in terms if (sic) its main entry and is composed of both shops and a major anchor store. Access for both pedestrians and vehicles has been

³⁸ Paragraph 175, Page 59-60 of Council submission.

³⁹ Part paragraph 87 of the Biacsi evidence statement.

suitably designed and appropriate regard has been given to the sensitivity of the residential interface along the southern boundary with provision for a generous landscape buffer.⁴⁰

Both street elevations provide for transparency and a sense of engagement at street level supported by cantilevered awnings over the footpath for weather protection. The street elevation to Thompson Avenue in particular is to be broken in to individual tenancies that address the street with glazed shopfronts.

Mrs Taylor considered the proposal did not take account of the attractive setbacks of the two other corners at this intersection (north-west and north-east) and that there should be a setback from Thompson Avenue. She also submitted that the on-site Golden Cypress tree should not be removed.

Mr Good considered the corner location was more suitable to a mixed use development for residential and restaurants and cafes and not suited to a supermarket. He considered there should be more interaction with the Church Street frontage than a blank wall and setbacks would be required to protect the Cypress pine trees. Mr Good supported the evidence of Mr Czarny.

8.3.2 Discussion

Siting and design

From a design perspective we consider the critical issues to be setback from Thompson Avenue.

Setbacks from Thompson Avenue

The subject site is a very prominent site not only due to its corner location within Thompson Avenue corridor but also because of the size of the site. We agree with Mr Czarny and Council that this site deserves a superior design outcome. We support the need for a signature building to define this site. This can firstly be demonstrated by a significant built form at the north east corner of the site.

We have been assisted by the evidence of Mr Czarny in providing an additional level of design detail that is currently lacking in other work prepared by or on behalf of Council⁴¹. We agree with Mr Czarny⁴² that the:

⁴⁰ Paragraph 85 of the Biasci evidence statement.

⁴¹ Mr Czarny expressed concern that a urban character of design guideline review had not been completed for Thompson Avenue.

⁴² Paragraph 10, Page 5 of the Czarny evidence statement.

Corner of Thompson Avenue and Church Street represents a critical threshold in the experience of passage to and from Cowes. The setback alignment of the Civic and Church buildings (some in Heritage Overlays) ensures that this crossing will remain open in profile.

However, we believe this open profile only exists to the north of the intersection and the view to its south can be described more accurately as a tunnelling effect due to the dominance and form of the Golden Cypress trees that line Thompson Avenue. In our view, the impact of the Golden Cypress trees negates the need for any setback at the south-west corner of the Thompson Avenue and Church Street intersection and we note it is when travelling from the south into Cowes that is the most significant experience for new visitors.

The other significant consideration for us is what impact would a 6 metre setback (or lesser, as Mr Czarny was not wedded to a 6 metre setback) from Thompson Avenue have in achieving a signature built form on the corner? The current proposal has a built form located centrally at the corner, which provides symmetry to this positioning. In our view, a 6 metre setback would off set this built form from the central pivot and have an adverse impact on the streetscape.

The proposal will result in greater built form compared to the two other corners to north-east and north-west. However, we consider that the proposed building will not detract from the streetscape and landscaping that exists at these two other corners. If anything, the more significant built form proposed at the south-west corner will highlight the 'relief' provided by the landscaping on the north-east and north-west corners.

While there are some buildings setback from Thompson Avenue both to the north and south, there is no defining setback characteristic of development south of the subject site that would suggest a setback is appropriate in this instance. The current DDO4 that was introduced after the completion of the Design Framework in 2003 does not require any setback of buildings from Thompson Avenue, it only contains a height control. If Council had considered this to be a critical issue it would have used this Overlay schedule to impose this requirement.

Another reason for setting back the building raised by Mr Czarny was to protect the Golden Cypress trees. In relation to this matter, Mr Czarny⁴³ said:

⁴³ Paragraph 20, page 9 Czarny evidence statement.

The development must minimise impacts upon the adjacent Golden Cypress trees in Thompson Avenue and ensure their protection from impacts from the permitted uses of the site.

However, we note Council did not call expert arboricultural evidence which we thought would have been appropriate given Council's submissions on this matter. This matter is further discussed in the Chapter 8.5.

8.3.3 Conclusions

The siting and design of the proposed development is satisfactory.

8.4 Active frontages

The plans show an internal mall with speciality shops along the Church Street frontage and speciality shops along the Thompson Avenue frontage. The supermarket sits behind these two speciality shop areas. It is proposed to provide access to the internal mall at the corner of Thompson Avenue and Church Street and from the rear car park (towards the northern end of the building). It is also proposed to provide pedestrian access to the speciality shops in Thompson Avenue (although this was not clear on the plans). Access to the speciality shops along Church Street would be from the internal mall.

8.4.1 Evidence and submissions

Council was critical that the Morgan & Griffin proposal did not provide active shop frontages to Church Street. In his expert report, Mr Czarny said that the development should make more effective use of the northern and eastern frontages of the site for interactive spaces between the footpath and speciality shops. He said⁴⁴:

While I support the overall framework for site planning on the land, being the presentation of retail frontages to the street with parking located to the rear, the execution of the design to each frontage is not in my view adequately resolved. This is evident to the north on Church Street where the frontage is in effect 'impermeable'. A glazed wall is positioned to the north on boundary between the corner and proposed speciality shops with a narrow fringe of low level planting (in the public realm) at ground level.

⁴⁴ Page 11 of the Czarny evidence statement.

Mr Czarny therefore proposed the following condition:

Provide at least one northern access point into speciality shops fronting Church Street, rather than presentation of a solid wall without openings or access.

In response Mr Czarny's comments on this matter, Mr Wright said⁴⁵:

It is a nonsense to suggest that the development will not provide active street frontages. Active street frontages are not synonymous with a multitude of access points. What an active street frontage requires is connectivity, either visual ie looking in and looking out, or physical. The speciality shops on both Church Street and Thompson Avenue will provide this. The Thompson Avenue shops will have direct access from Thompson Avenue, and the Church Street shops will provide shops windows facing Church Street and, if desired by the shopkeeper, an entrance from Church Street.

In response to questions, Mr Biacsi submitted that the proposal provided active frontages and that the proposed condition suggested by Mr Czarny was not necessary.

8.4.2 Discussion

In our view, Council has over-stated its concerns in relation to active frontages and that the proposal adequately meets urban design objectives to encourage active frontages.

We consider that the design proposal to provide the main pedestrian entry at the corner of Thompson Avenue and Church Street will become a major focal point for pedestrians entering and leaving the building. The architectural design feature proposed on this corner, described as a 'circular steel entry structure' or more colloquially as a 'disc', will provide the architectural 'clue' to this access point.

While there are no further entry points along the Church Street frontage, the floor to ceiling glazing along the internal mall and the extensive pedestrian-level glazing of the proposed speciality shops will provide permeability even if it is not physical.

Given the size of the internal mall and experience at other shopping complexes, it is likely to accommodate some level of retail or community displays as well dining and seating facilities.

⁴⁵ Page 8 of Mr Wright's submission.

In addition, as advised by Mr Wright, the speciality shops along the Church Street frontage is likely to provide some scope for a café/restaurant, further entrenching the extent of pedestrian and patron activity occurring along this frontage.

We also note that the design of the northern wall where the proposed speciality shops are to be located does not preclude an option of providing access to the footpath.

While we consider the extent of active frontage to be adequate, we consider that Church Street will play a more secondary role to street activity given the major focus of the Cowes Activity Centre is in Thompson Avenue. In other words, activation of Church Street is not as important as Thompson Avenue.

With respect to the speciality shops along the Thompson Avenue frontages, Mr Wright explained the openings to the street have not been identified on the plans because it was not clear at this stage how many individual shops will be developed. However, Mr Wright was willing to accept a condition that any shops along this frontage must provide a door opening.

8.4.3 Conclusion

We conclude that:

The proposal provides adequate active frontages to both Thompson Avenue and Church Street and the proposed condition requiring an additional opening in Church Street is not warranted.

8.5 Impact on footpath

8.5.1 Discussion

Like the Fabcot site, the Morgan & Griffin site also has an extensive frontage to Thompson Avenue and similar to the east side of Thompson Avenue we observed that the current footpath is narrow and raised in areas with a dirt strip between the car parking spaces and the footpath. Accordingly, we consider there is a significant opportunity to improve the pedestrian connectivity, amenity and safety along this side of Thompson Avenue.

As for the Fabcot proposal, we consider the Morgan & Griffin proposal would benefit significantly by improving pedestrian access, amenity and safety and that it would not be unreasonable for Morgan & Griffin to meet the costs. We have included a condition of permit to address this matter.

8.5.2 Conclusion

We conclude that:

There is a significant opportunity to improve the interface between the proposed buildings and the Thompson Avenue footpath.

8.6 Arboriculture and landscaping

8.6.1 Evidence and submissions

Golden Cypress trees

In respect of the Golden Cypress trees, Council resolved in its October 2009⁴⁶ report that it is possible that construction works above and below ground will physically affect these trees. Mr Tobin advised one of the design modifications required by Council was based on the following:

The development must minimise impacts upon the adjacent Golden Cypress trees in Thompson Avenue and ensure their protection from impacts from the permitted uses on the site.⁴⁷

Mr Czarny noted there is a logical relationship between the location of structures and the health of vegetation, and supported the need for a setback to retain the health of the adjacent Golden Cypress trees.

Dr Yao was engaged by Morgan & Griffin to provide arboricultural evidence. He noted there were construction methods available to ensure any construction within a tree protection zone did not adversely impact on tree health.

Other vegetation

Mr Crutchley, who owns a dwelling in Hollydene Court, was concerned the proposal would result in the removal of established trees within the Morgan & Griffin site (and near the common boundary) that will have the effect of screening the proposal from their elevated rear deck.

Mrs Hunt from the Friends of the Koalas and Mrs Hancock considered the two trees to the north and others in the south west corner should be retained. Ms Chadwick was concerned over the loss of native trees on site and the immature Golden Cypress tree and potentially threatens the health of the avenue of Golden Cypress trees.

⁴⁶ Page 112 of Council meeting agenda 21 October 2009.

⁴⁷ Paragraph 169 page 57 of Council submission.

8.6.2 Discussion

Golden Cypress trees

It would seem to us that any concern the proposals had on the Golden Cypress trees should be equally relevant to both the Fabcot and Morgan & Griffin applications unless there was evidence led that suggested there were specific issues relating to one or the other sites. However, there was no such evidence.

With this in mind, it seems odd to us that Council and Mr Czarny suggest that a setback is required on the Morgan & Griffin proposal to protect the health of trees and yet this is not an issue with the Fabcot proposal. From our inspections the trees have a similar setback to the adjacent lot boundaries and seem to be in equal health. Dr Yao confirmed the trees were relatively healthy, around 90-100 years old and may live for another 100 years. He also confirmed they are resilient to disturbance. We were advised by Council the tree replacement strategy would see these trees replaced within 10-20 years as is evidenced with immature trees further south in the road reserve.

As with the Fabcot proposal, we consider that there should be measures consistent with the Australian Standard to use suitable construction methods within the tree protection zone. In regard to pruning it was evident from our inspections the trees were already pruned to provide power line clearance and additional pruning would only be required on the tree closest to the intersection. We cannot therefore support the need to setback the buildings to protect the health of the trees.

Other vegetation

A point of difference with the Fabcot proposal is this proposal has fewer on site trees. Where they are present they are located at the periphery. This provides an opportunity to retain them within the landscape setbacks that surround the car parks. We recognise the sensitive residential interface this land has to the south for the residents of Hollydene Court. We consider any trees that can be retained to provide a screen to the residential area should be retained. We support the concern expressed by Mr Crutchley that most of owners in this court have built to maximise the northern elevation of their properties. A 3 metre wide landscaping strip is proposed on the southern boundary. This will provide a reasonable width for quality landscaping to establish.

We consider the landscaping should provide a screen with a mix of trees and bushes. We note from the plans that a landscaping plan has not be provided

and there is no indication of the fencing proposed. The plan does indicate, however, a line of canopy trees in this landscaping strip.

In our view, it would also be appropriate that given the future commercial use of the site and increased activity associated with car parking that it would not be unreasonable for the Applicant to be required to provide a new 2 metre high paling fence along the southern boundary adjacent to the residential properties at the Applicant's expense.

8.6.3 Conclusion

We conclude that:

No justification to setback the building along the Thompson Avenue frontage to protect the Golden Cypress trees has been provided;

The Applicant should seek to retain existing vegetation along the southern boundary to provide some level of screening of the car park to adjoining residential properties; and

A 2 metre high paling fence along the southern and western boundaries should be provided by the Applicant to reduce the amenity impacts to the adjoining residential properties.

8.7 Traffic, access and car parking

8.7.1 Evidence and submissions

Mr Tobin on behalf of Council did not call traffic evidence and relied upon the evidence of the proponent. Council advised the plans were amended prior to the hearing to remove 89 Church Street from the application. Council advised traffic and parking issues could be summarised as:

- provision of 126 car spaces;
- staff parking to be located to the south of the building;
- main access point located in the north west corner of the site with two-way movement provided from a 7.75 m wide crossover;
- secondary access point for left turn in only (all traffic) and right out only for heavy delivery vehicles angled to discourage right turn from the north; and
- heavy vehicle manoeuvres conducted via the main entry off Church Street, then reversing into loading bay at the south side of building and exiting via Thompson Avenue in a forward direction to travel south.

Mr Tobin referred to the previous VCAT decision which cited an inadequacy with parking as one reason for refusing the proposal. At that stage it had 136 car spaces. He referred us to the Council report⁴⁸ which referred to parking in the following manner:

The applicant has provided a traffic and car parking assessment prepared by Cardno Grogan Richards. The assessment supports the number of spaces on the site (5.7 parking spaces/100m²) based on a previous study of car parking within the Cowes CBD undertaken by Traffix Group in April 2008. This report recommended that for the Business and Mixed Use Zone areas of Cowes parking be provided at a rate of 5 spaces/100m² of floor area for a supermarket use and 4 spaces/100m² for other shop uses.

The provision of car parking on the site is considered adequate for the proposed uses of the site.

In case of the allotment at 89 Church Street not being used for the development, the rate of parking provision will be 4.5 spaces/100m² of shop. This rate is lower than the range recommended in the Traffix Group report and is therefore considered inadequate for the proposed use. It is likely that if the residential allotment was removed from the development site, the car parking spaces provided on site would be further reduced as an access point would be required in the location of car spaces currently shown in the remaining allotments.

Mr Tobin also advised⁴⁹:

It is further noted that the proposed access to Thompson Avenue has been reduced to an apparent single carriageway. It is Council's submission that this creates a real risk of conflict between cars entering the site from this point and the articulated vehicles leaving the site. It is Council's submission that this matter should be addressed.

Morgan & Griffin called evidence from Mr Walsh of Cardno Grogan Richards. Mr Walsh concluded⁵⁰:

The provision of 4 spaces per 100 square metres of retail floor area will be sufficient to accommodate the projected car parking demands of the proposed development;

The layout of the car park provides for convenient and efficient access to individual spaces and throughout the site;

⁴⁸ Page 114 of the Council report dated 21 October 2009.

⁴⁹ Page 56-57 of the Council submission.

⁵⁰ Page 15 of the Walsh evidence statement.

The development will generate in the order of 480 movements during peak operation;

The proposed access arrangements can suitably accommodate the projected levels of traffic with only modest delays and queues experienced by motorists;

The existing roundabout at Church Street and Thompson Avenue provides motorists opportunity to enter the Thompson Avenue traffic stream easily;

Subject to a minor amendment to the southern parking aisle, as illustrated in Annex 3, the proposed loading arrangements are adequate and allow convenient access for semis;

There are no traffic or car parking grounds that should prohibit the issue of a permit.

As the Applicant, Morgan & Griffin supported the recommendation of Council.

Mr Gobbo on behalf of Fabcot called evidence from Mr Kiriakidis. The relevance of this evidence to Morgan & Griffin is that it provided a cumulative impact perspective on the local road network of both proposals. Refer to Chapter 7 for this discussion.

Mrs Taylor, Ms Chadwick, Mr Good and Mr Ware considered that all required parking should be provided on site and no egress provided to Thompson Avenue.

8.7.2 Discussion

We do not wish to repeat our discussion of the impact of the two proposals on the street network. This is contained in Chapter 7.4 and addresses these issues for the Morgan & Griffin proposal. Issues that are then relevant only to the Morgan & Griffin proposal are car parking and traffic management at the site.

Car parking

In Chapter 6.5 we have adopted the reduced parking rate for supermarkets and specialty retail as 4-4.2 spaces/100sqm and 3.5/100sqm respectively. The proposal provides for 126 on site spaces and the evidence presented to us from Mr Walsh indicate the proposal provides sufficient parking for the proposed use. Any further loss of parking would be undesirable. The future inclusion of 89 Church Street into the proposal will provide additional parking. This is encouraged however its current exclusion does not create a

situation where the parking is inadequate. We support the provision of parking on site.

Traffic management at the Morgan and Griffin site

Mr Walsh advised that VicRoads provided conditional approval for direct access off Thompson Avenue. VicRoads will only allow left turn ingress to the site except for delivery vehicles which are permitted to leave the site via a right turn movement. At this access point Council has sought the Advisory Committee's guidance on the width of the access point. We note the plans indicate a single carriageway width of around 5.8m. We consider this to be inadequate and should be widened to provide sufficient width for the both delivery vehicles and customers. The heavy vehicles deliveries will be limited, however, to avoid any further queuing outside the site the width of the crossover should be sufficient to accommodate both vehicles at the same time. We noted on our inspections there would be sufficient room for this to be widened without loss of on street parking or impact on the Golden Cypress trees. It is recommended the crossover be widened to 8 metres.

We also support the alterations proposed by Mr Walsh internally for better heavy vehicle manoeuvring.

8.7.3 Conclusions

Adequate car parking provision has been provided on-site;

The development of 89 Church Street for parking for the site at some future point is supported but not necessary at this point;

Heavy vehicle access and manoeuvring within the site is appropriate provided:

- **The internal kerb alignment is modified in line with the recommendations in Annexure 3 of the Cardno Grogan Richards evidence statement dated 4 February, 2010; and**
- **The width of the crossover to Thompson Avenue is increased to 8 metres.**

8.8 Preamble and conditions of permit

8.8.1 Discussion

Appendix C contains the final 'without prejudice' conditions tabled by Council. We have included this version for the record. We received comments on the draft conditions from the Applicant and other submitters. **Appendix D** contains the version of the permit conditions we consider appropriate. We do not propose to analyse all submissions on the conditions in detail.

We support the following wording for the preamble for the Morgan & Griffin permit:

The use and development of a supermarket and specialty retail, dispensation for car parking, alteration and access to a road in a road Zone Category 1 and removal of native vegetation and pruning of heritage trees at 114-122 Thompson Avenue, Cowes.

The reference to the use of the land will depend upon the timing of the approval of Amendment C88 which rezones the land to Business 1 and the approval of this planning permit. If the latter occurs first then a reference to use must be retained however if the permit trigger for use is removed by the approval of Amendment C88 then it is no longer necessary.

As with the Fabcot conditions we will highlight some of the key conditions that were discussed at the end of the hearing. Mr O'Farrell on behalf of Morgan & Griffin advised us of several concerns with some conditions. Some of these concerns were the same as those expressed by Mr Gobbo for Fabcot for similar conditions.

Condition 1 requires amended plans and lists the following issues to be addressed:

- 1(f) requires a location and design of a public art feature. While not stated Council sought a contribution of \$25,000 for the public art. We do not believe a figure is required and note the amended plans must be to the satisfaction of the responsible authority anyway which provides a high degree of control;
- 1(l), (m), (n), (o) and (p) propose changes on the premise front setbacks are supported. As we have not supported front setbacks these conditions automatically fall away;
- 1(q) requires the construction of the roof structure to an engineering standard that would enable future above ground development without

the need for demolition and reconstruction. We have previously agreed to a modification of this requirement and the permit should reflect this accordingly; and

- as with the Fabcot proposal we do not support the need for indented entrances to the specialty shops.

Condition 6 requires construction plans. As this condition is the same for Fabcot our response is the same. We agree there should be only one set of endorsed plans that demonstrate compliance with parking and vehicle and pedestrian access. Any required amendments to plans should be consolidated into the one condition at the front of the permit that seeks amended plans. In this regard we have transferred some additional plan requirements to condition 1, deleted reference to parking plans as the current plans show this detail and renamed this condition 'stormwater drainage'.

A condition that was struck out by Council required a cash contribution for parking. As with the Fabcot permit, we support the deletion of this put forward by Council.

Condition 12 requires a section 173 agreement that secures public access over the carpark areas at all times of the day. Mr O'Farrell objected as it applied control over private land. We were not advised Morgan & Griffin would secure their site outside of operating hours. It seems to us that many national operators in activity centres that have large areas of parking generally have it available for use outside of operating hours unless there was a compelling reason not to. The proximity of the residential areas to the south is one factor in resolving this condition. We believe the requirement for a 2m high paling fence and good landscaping indicates this sensitive interface is adequately treated. Therefore the car park should remain unrestricted.

Condition 13(c) requires street lighting consistent with the Bass Coast Street Lighting Policy. Mr O'Farrell stated there was street lighting already provided and that it should be deleted. We are aware that most long established streets now have under provided street lighting against current standards. We do not however consider this should be a burden borne by the development. The condition can be deleted.

Condition 18 applies restrictions for deliveries to not occur between 8.00 am and 6.00 pm. Morgan & Griffin sought the deletion of this condition. We believe there should be consistency with the restrictions applied to Fabcot in light of the sensitive residential interface.

Condition 20 requires all loading and unloading to occur on site. Mr O'Farrell requested the deletion of this condition as loading could occur on

from the street. In Fabcot we deleted a similar condition. On street loading could occur in Thompson Avenue or Church Street. This condition should be deleted.

Conditions 26, 27 and 28 are requirements imposed by VicRoads. Mr O'Farrell suggested they could form permit notes instead of conditions. We agree as they do not relate directly to the consent given.

8.9 Recommendations

We recommend that:

Application 2506/2009 be approved subject to conditions set out in Appendix D.

9. Recommendations

Based on the reasons set out in this Report, we recommend that the Minister for Planning approve:

- 1. Application 2162/2009 subject to conditions set out in Appendix B**
- 2. Application 2506/2009 subject to conditions set out in Appendix D.**

Appendix A Draft permit conditions for Fabcot tabled by Council

119-135 Thompson Avenue Conditions

1. Before the works commence, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size).

The plans must be generally in accordance with the plans submitted with the application but modified to show:

- (a) Location of air conditioners and solar hot water systems;
- (b) Colours for all external surfaces of the development;
- (c) Details of signage, including access signage;
- (d) External lighting scheme baffled to ensure that no light spill falls on adjacent properties and otherwise in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (e) Location of waste and recycling bins in the pedestrian areas. The bins should be to the same design and quality standard as those located along Thompson Avenue, Cowes;
- (f) Proposed location and design of a public art feature;
- (g) A permanent vehicle/pedestrian exclusion zoned around the Golden Cypress trees located in front of the subject site, ~~in the form of a concrete garden bed~~;
- (h) All roof elements including plant, lift over-runs, and other building services, to be absorbed within the overall building form, or included as part of the roof design;
- (i) The visible service area (and other utility requirements) of the building to be treated as an integral part of the overall design and fully screened from public areas and the adjoining property to the east; and
- (j) An acoustic fence located along the eastern boundary spanning from the northern boundary to a southern point aligning with the access lane area that will be used for manoeuvring delivery vehicles;
- (k) An additional pedestrian access from the car park to the pathway abutting the southern elevation of the supermarket located directly to the east of the ~~speciality loading bays~~ disabled parking bays; and

- (l) [The specialty shop entrances located on the site boundary abutting Thompson Avenue indented to facilitate safe pedestrian egress from these premises.](#)

Alteration to Plans

2. The development as shown on the endorsed plans shall not be amended, altered or modified (whether or not in order to comply with any statute, statutory rule or, for any other reason) without the written consent of the Responsible Authority.

Environmentally Sustainable Design

3. The development must incorporate principles of Environmentally Sustainable Design (ESD) including energy management together with water conservation and re-use to the satisfaction of the Responsible Authority.

Landscape Plan

4. Before the works commences, a landscape plan prepared by a landscape architect or suitably qualified person or firm must be submitted to the satisfaction of the Responsible Authority for approval. When approved, the plans will be endorsed and form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size). The plans must show:

- (a) Areas to be landscaped;
- (b) A schedule of proposed species that are to be planted on the site including quantities, size at maturity and scientific names;
- (c) Minimum 80% locally indigenous species; and
- (d) Paving treatments and finishes including the provision of seating and planter boxes in the pedestrian walkway.

All species are to be non-invasive and not include any environmental weeds as listed within the publication titled *Common Weeds of Gippsland*, Bass Coast Shire 2002.

Landscaping Maintenance

5. The development hereby approved must not be occupied until the landscaping shown on the endorsed plans has been completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed plans must be planted, established and thereafter maintained to the satisfaction of the Responsible Authority, [including the replacement of failed plants.](#)

Construction Plans

6. Before the works commence, detailed Civil Construction Plans must be prepared to the satisfaction of the Responsible Authority for approval and endorsement by the Responsible Authority.

All construction plans submitted for approval, must be consistent with this permit and must conform to the requirements of all relevant servicing and road authorities, and in particular water, sewerage, drainage, telephone power, VicRoads and Council. The plans must be drawn to scale with dimensions and three (3) copies of final plans must be provided for endorsement. The plans must specifically address the following matters:

6.1 Drainage

- a) Compliance with the Best Practice Environmental Management Guidelines for Urban Stormwater and Bass Coast Shire Stormwater Management Plan (2003). Any quality treatment proposed in accordance with these Guidelines;
- b) A drainage retardation system on the subject land allowing an unrestricted flow path for 1 in 100 year extreme event storm flows or storage of these flows on site. The drainage retention system must discharge to the existing underground drainage system and comply with Best Practice Environmental Management Guidelines for Urban Stormwater including any quality treatment proposed in accordance with these Guidelines. Extreme event overflow paths and any underground drainage proposed through downstream property not in existing easements shall be identified, designed and constructed to the satisfaction of the Responsible Authority in consultation with affected property owners;
- c) Consideration of any buildings and works and landscaping in relation to any detrimental impacts to underground drainage pipes located on any existing or proposed drainage or sewerage easement; and
- d) Subsoil investigations to the satisfaction of the Responsible Authority.

6.2 Car Parking

- a) Car parking dimensions to be in accordance with the Bass Coast Planning Scheme and constructed to the satisfaction of the Responsible Authority;
- b) Car parking areas and pedestrian walkways to be sealed with an all-weather seal pavement to the satisfaction of the Responsible Authority;
- c) Bicycle spaces designated in accordance with Clause 52.34 of the Bass Coast Planning Scheme and [detail of spaces, shower and change room facilities](#);
- d) A minimum of four car spaces must be provided for use by disabled residents; and
- e) Two small vehicle loading bays on-site to service the specialty shops, [to be located to the east of specialty shop 9. The design of the bays must accommodate the 95%ile vehicle identified in AS2890 within its line markings.](#)

6.3 Vehicle and Pedestrian Access

- a) Vehicle and pedestrian access to the subject land and on-site car-parking;
- ~~b) Vehicle access provided from Church Street – this is now covered by the section 173 agreement;~~
- ~~e)b) No right hand turn into the site from Thompson Avenue for any vehicles;~~
- [c\) No right hand turn from the site into Thompson Avenue for any vehicles.](#)
- d) Car-parking spaces and delivery vehicle access designed to cater for turning requirements in accordance with AS2890.1-2004 the Australian Standard for off-street car-parking and AS2890.2 – 2002 for commercial vehicles;
- e) Restriction of vehicular loading or unloading from the front of the site from Thompson Avenue;
- f) The provision of traffic management devices and signage to the satisfaction of the Responsible Authority; and
- [g\) Keep clear line markings located in the southbound lanes on Thompson Avenue opposite both proposed access points.](#)

h) A mid aisle pathway linking through the western parking aisle providing a pedestrian link to specialty shops 8 and 9.

The Civil Construction Plan, once endorsed, will form part of the permit. All works constructed or carried out must generally be in accordance with the approved Civil Construction Plan. Once endorsed, the Civil Construction Plan must not be altered except with the written consent of the Responsible Authority.

Construction Management Plan

7. Before the development works commences, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CMP will be endorsed and will then form part of the permit. The plan must address, but not be limited to addressing the following:
 - a) Procedures to protect adjacent land uses during the construction of the development, including pedestrians and users of land surrounding the subject site;
 - b) All vehicle movements involved in construction works for the development hereby approved must be undertaken from the southern access point located within Thompson Avenue, unless further permission is given in writing by the Responsible Authority. The entrance must be constructed with a temporary seal pavement or better to the satisfaction of the Responsible Authority and maintained to ensure that no sediment or debris spills over into Thompson Avenue;
 - c) A truck wheel-wash must be installed and used so vehicles leaving the site do not deposit mud or other materials on the roadways;
 - d) The CMP must provide construction hours in accordance with EPA guidelines. All deliveries, unloading and collection of materials associated with the construction phase of the development must occur within the hours of construction work, unless further permission is given in writing by the Responsible Authority;
 - e) A plan for the management of construction vehicles during peak daily times and key events, including but not limited to the V8 Supercar Championships, Australian Motorcycle Grand Prix, and peak periods must be submitted to the Responsible Authority for approval;

-
- f) Management of all building and construction waste, including any measures to recycle materials generated during construction;
 - g) Locations of cut and fill stockpiles;
 - h) A liaison officer for contact by residents and the Responsible Authority in the event of relevant queries or problems experienced;
 - i) No mud, dirt, sand, soil, clay, stones, oil, grease, scum, litter, chemicals, sediments, gross pollutants, animal waste or domestic waste shall be washed into, allowed to enter, or discharged to the stormwater drainage system, receiving waters or surrounding land and road reserves, during the construction works hereby approved to the satisfaction of the Responsible Authority;
 - j) Methods for the protection of the trees and tree roots of the trees to be retained as recommended in Appendix 4 (General Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009). This includes the protection of the Golden Cypress Trees located along the western frontage of the subject site;
 - k) Should damage occurs to the Golden Cypress during construction, the trees must be repaired to the satisfaction of the Responsible Authority prior to the approved uses commencing on the site;
 - l) A monitoring and reporting system to demonstrate compliance with the following:
 - EPA Guidelines for Major Construction Sites and Techniques for Sediment Pollution Control and other provisions of the approved EMP;
 - Best Practice Environmental Management Guidelines for Urban Stormwater;
 - Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995); and
 - Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991).
 - m) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority.

Once endorsed, the CMP will form part of the permit. All construction works must be undertaken in accordance with the approved CMP. All care must be taken to minimise the effect of construction activity on the amenity of the

surrounding neighbourhood. Once endorsed the CMP must not be altered except with the written consent of the Responsible Authority.

Environmental Management Plan

8. Before the works commence, an Environmental Management Plan (EMP) for the operational phase, must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

The EMP must be developed in accordance with the following documents:

- Best Practice Environmental Management Guidelines for Urban Stormwater;
- Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
- Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and
- Other Best Practice approaches, including the Bass Coast Shire Council Urban Stormwater Best Management Practice Guidelines.

The plan must address, but not be limited to the following:

- (a) Methods of water re-use and minimisation of water consumption;
- (b) Utilisation of water sensitive urban design practices including reuse of grey water;
- (c) Maintenance of drainage systems. The operator/owner of the development hereby approved is responsible for the upkeep and maintenance of the stormwater drainage and sewerage infrastructure supporting the site;
- (d) Land use and development should be consistent with efficient use of energy and minimisation of greenhouse gas emissions as stipulated in Clause 15.12 of the *Planning & Environment Act 1987*;
- (e) Land use and development should incorporate renewable energy practice where possible, as stipulated in Clause 15.14 of the *Planning & Environment Act 1987*;
- (f) Pruning of Golden Cypress trees must be undertaken as recommended in Appendix 4 (General Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009); and
- (g) General maintenance of the site.

The operator/manager of the site will be responsible for the Environmental Management Plan and its implementation. All construction and post construction activities must generally be conducted in accordance with the approved Environmental Management Plan.

Waste Management Plan

9. Before the use commences, a Waste Management Plan (WMP) must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

Once endorsed, the WMP will form part of the permit. All waste collection and disposal must be undertaken in accordance with the approved WMP. Once endorsed the WMP must not be altered except with the written consent of the Responsible Authority.

~~Car parking Contribution~~

- ~~10. Before the use commences, the developer/permit holder must pay a car parking cash contribution for the car parking spaces that will be lost within the road reserve as a result of the development. For each space lost a sum of \$5,600 must be paid to the Responsible Authority to enable the spaces to be replaced elsewhere within Cowes.~~

Public Art Contribution

- ~~10.~~ Within six (6) months of the commencement of the use hereby approved, a piece of public art must be provided on the land to the satisfaction of the Responsible Authority.

Section 173 Agreement

- ~~11.~~ Prior to completion of the development hereby approved, the owner/applicant must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* to the satisfaction of the Responsible Authority that provides for:

- (a) Securing public access at all times over the public areas as shown on the endorsed plans; and
- (b) The development must make provision for the possibility of a north-south vehicle road link connecting Settlement Road with Church Street to the east of the development (generally in accordance with the link described in Figure 3 of the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan). Within 6 months of construction of the north-south link in this position by Council or any other person, the owner of the land must construct a minimum of one vehicle access way at its cost to

connect the development to the north-south ~~link~~ [road](#) to the satisfaction of the Responsible Authority and offset any loss of car parking on the development site elsewhere on its land or other land [servicing the development](#) to the satisfaction of Council.

Prior to completion of the development hereby approved, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act 1987*.

The reasonable costs associated with the preparation, execution and registration of the Agreement shall be borne by the owner.

Occupation of Development

~~13~~[12](#). The development hereby approved must not be occupied until:

- (a) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority;
- (b) All works required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority;
- (c) Street lighting provided in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (d) Public waste/recycling bins must be provided within the pedestrian areas to the satisfaction of the Responsible Authority; and
- (e) All works and contributions required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority.

Amenity

~~14~~[13](#). Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. 1-1.

~~15~~[14](#). All external plant and equipment must be acoustically treated or placed in soundproof housing to reduce noise to a level satisfactory to the Responsible Authority.

~~16~~[15](#). The use of the premises must not be operated to the detriment of the amenity of the area to the satisfaction of the Responsible Authority, including through the loading and unloading of delivery vehicles and playing of amplified music.

- ~~17~~16. No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.
- ~~18~~17. Truck and van deliveries and waste collection must not occur on Sundays and must not occur before ~~8.00~~7.30am and after ~~6.00pm~~10.00am, Monday to Saturday.
- ~~19~~18. Only one truck undertaking deliveries is permitted on site during business hours. The size of the truck must not be larger than a standard 'B-Double' ('Higher Mass Vehicles' and/or '25 Metre B-Doubles' must not undertake deliveries).
- ~~20~~19. All loading, unloading and deliveries must occur on site and vehicles are not permitted to use reversing beepers for access to the loading bays and dock. All supermarket loading must occur from the dedicated supermarket loading bay.
- ~~21~~20. Car parking and access lanes must be kept available for these purposes at all times.
- ~~22~~21. Only coin operated trolleys may be provided for patron use.
- ~~23~~22. Trolleys must be regularly collected and maintained so as not to become a nuisance or block traffic movements to the satisfaction of the Responsible Authority.

Time

- ~~24~~23. This permit will expire if the development is not commenced within two (2) years and completed within four (4) years of the date of this permit.

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

Department of Sustainability and Environment Conditions

- ~~25~~24. Before the vegetation removal starts, an offset plan showing appropriate off-sets for the removal of 13 trees in accordance with Victoria's Native Management – A Framework for Action and to the satisfaction of the Department of Sustainability and Environment must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit.

Maps or plans forming part of the offset plan must be drawn to scale with dimensions (where appropriate).

- i. vegetation to be removed, including details of:
 - (a) the location of the vegetation including details of the Bioregion;

- (b) the Ecological Vegetation Class (EVC) of the vegetation;
 - (c) the Bioregional Conservation Status of the EVC;
 - (d) the number of trees to be removed; and
 - (e) conservation significance.
- ii. gain targets.
 - iii. offsets to compensate for the vegetation removal, including details of:
 - (a) type of offsets to be provided in each location;
 - (b) location of the offsets including details of the Bioregion;
 - (c) Ecological Vegetation Class of the offset vegetation;
 - (d) Habitat Hectare score (out of 1) of the offsets;
 - (e) Number of large and medium old trees to be protected (where applicable); and
 - (f) Conservation significance of the offset.
 - iv. gains in vegetation and habitat quality to be achieved by the offsets.
 - v. details of any revegetation including number of trees, shrubs and other plants, species mix, and density included in a Schedule of Works.
 - vi. methods of managing and restoring the existing vegetation to be retained included in a Schedule of Works.
 - vii. methods of interim protection for newly established offsets.
 - viii. methods for permanent protection for established offsets.
 - ix. persons responsible for implementing and monitoring the offset plan.
 - x. time frame for implementing the offset plan.

Vegetation removal and the provision of offsets must accord with the endorsed plan.

VicRoads Conditions

~~26~~25. The driveway must be designed and constructed to the satisfaction of the Responsible Authority and VicRoads.

~~27~~26. The construction of the pedestrian crossing must for part of the development and be operation prior to the

commencement of the commercial operation of the complex.

~~28~~27. Detailed plans of the roadworks must be provided to VicRoads for approval.

~~29~~28. VicRoads in responding to this application, is not deemed to have been notified of, or having given consent to undertake any works within the road reserve proposed in this permit application.

~~30~~29. The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or seeking consent from VicRoads to undertake works in the road reserve.

Post development traffic report (Bass Coast Shire conditions should right turn in be permitted)

1. Within three years of occupation of the development the permit holder must, upon written request of Council, prepare a post development impact traffic report (PDI Report).
2. The PDI report must be to VicRoads and Council's satisfaction and consider the functioning of the right hand turn movement into and out of the development and where appropriate make recommendations for further traffic treatments necessary to improve the function of the movement/Thompson Avenue ~~or~~ including if required the prohibition of right turn movements into and out of the development.
3. The PDI report must be prepared at the cost of the permit holder and the permit holder must implement the recommendations of the PDI report, at its cost, to VicRoads' and Council's satisfaction.

Condition should the pedestrian crossing be approved

1. The design detail of the pedestrian crossing loop must be submitted to and approved by the Responsible Authority and VicRoads prior to the commencement of the development.

Appendix B Permit conditions for Fabcot recommended by the Advisory Committee

119-135 Thompson Avenue Conditions

This permit allows

The use and development of a supermarket and specialty retail, dispensation for car parking, alteration and access to a road in a road Zone Category 1 and removal of native vegetation and pruning of heritage trees at 119-135 (Lot 1 TP 81324 and CA 3, 4 and 5 Section 14) Thompson Avenue, Cowes.

1. Before the works commence, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size).

The plans must be generally in accordance with the plans submitted with the application but modified to show:

- (a) Location of air conditioners and solar hot water systems;
- (b) Colours for all external surfaces of the development;
- (c) Details of signage, including access signage;
- (d) External lighting scheme baffled to ensure that no light spill falls on adjacent properties and otherwise [generally](#) in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (e) Location of waste and recycling bins in the pedestrian areas. The bins should be to the same design and quality standard as those located along Thompson Avenue, Cowes;
- (f) Proposed location and design of a public art feature;
- (g) [Tree guards](#) ~~A permanent vehicle/pedestrian exclusion zoned~~ around the Golden Cypress trees located in front of the subject site, [generally in accordance with those proposed by Tract Consultants Pty Ltd in Appendix 3 of the Landscape Design evidence of Mr Deiter Lim dated 19 November 2009](#);
- (h) All roof elements including plant, lift over-runs, and other building services, to be absorbed [or screened](#) within the overall building form, or included as part of the roof design;
- (i) The visible service area (and other utility requirements) of the building to be treated as an integral part of the overall design and fully screened from public areas and the adjoining property to the east; ~~and~~

- (j) An acoustic fence located along the eastern boundary spanning from the northern boundary to a southern point aligning with the access lane area that will be used for manoeuvring delivery vehicles;
- (k) An additional pedestrian access from the car park to the pathway abutting the southern elevation of the supermarket located directly to the east of the disabled parking bays;
- ~~(l) The specialty shop entrances located on the site boundary abutting Thompson Avenue indented to facilitate safe pedestrian egress from these premises.~~
- (l) The proposed details of the treatment of the footpath area of Thompson Avenue in front of the site to include the widening of the footpath and landscaping of the area between the kerb and building frontage;
- (m) Two small vehicle loading bays on-site to service the specialty shops, to be located to the east of specialty shop 9. The design of the bays must accommodate the 95%ile vehicle identified in AS2890 within its line markings;
- (n) Keep clear line markings located in the southbound lanes on Thompson Avenue opposite both proposed access points;
- (o) The provision of bicycle parking, shower and change room facilities in accordance with Clause 52.34 of the Bass Coast Planning Scheme; and
- (p) The location and design detail of the pedestrian crossing loop to the satisfaction of the Responsible Authority.

Alteration to Plans

2. The development as shown on the endorsed plans shall not be amended, altered or modified (whether or not in order to comply with any statute, statutory rule or, for any other reason) without the written consent of the Responsible Authority.

Environmentally Sustainable Design

3. The development must incorporate principles of Environmentally Sustainable Design (ESD) including energy management together with water conservation and re-use to the satisfaction of the Responsible Authority.

Landscape Plan

4. Before the works commences, a landscape plan [generally in accordance with the Landscape Master Plan prepared by Tract Consultants Pty Ltd which has been](#) prepared by a landscape architect or suitably qualified person or firm must be submitted to the satisfaction of the Responsible Authority for approval. When approved, the plans will be endorsed and form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size). The plans must show:
- (a) Areas to be landscaped;
 - (b) A schedule of proposed species that are to be planted on the site including quantities, size at maturity and scientific names;
 - (c) Minimum 80% locally indigenous species; and
 - (d) Paving treatments and finishes including the provision of seating and planter boxes in the pedestrian walkway.

All [plant](#) species are to be non-invasive and not include any environmental weeds as listed within the publication titled *Common Weeds of Gippsland*, Bass Coast Shire 2002.

Landscaping Maintenance

5. The development hereby approved must not be occupied until the landscaping shown on the endorsed plans has been completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed plans must be planted, established and thereafter maintained to the satisfaction of the Responsible Authority, including the replacement of failed plants.

[Golden Cypress Trees](#)

6. [Any pruning of the Golden Cypress trees must be undertaken as recommended in Appendix 4 \(general Tree Protection Guidelines\) of the report prepared by Tree Logic Pty Ltd \(June 2009\).](#)

Construction [Stormwater Drainage](#) Plans

- ~~6.7. [Prior to the commencement of the approved development, a drainage plan to the satisfaction of the Responsible Authority must be prepared and submitted for approval. When approved, the plan will be endorsed and form part of this permit. The plan, to the satisfaction, of the Responsible Authority must: Before the works commence, detailed Civil Construction Plans must be prepared to the satisfaction of the Responsible Authority for approval and endorsement by the Responsible Authority.](#)~~

~~All construction plans submitted for approval, must be consistent with this permit and must conform to the requirements of all relevant servicing and road authorities, and in particular water, sewerage, drainage, telephone power, VicRoads and Council. The plans must be drawn to scale with dimensions and three (3) copies of final plans must be provided for endorsement. The plans must specifically address the following matters:~~

~~6.1~~ **Drainage**

- a) ~~Be~~ Compliant with the Best Practice Environmental Management Guidelines for Urban Stormwater and Bass Coast Shire Stormwater Management Plan (2003) ("the Guidelines") and ~~Any~~ any quality treatment proposed must be generally in accordance with these Guidelines;
- b) Include a drainage retardation system on the subject land allowing an unrestricted flow path for 1 in 100 year extreme event storm flows or storage of these flows on site;
- c) Include a ~~The~~ drainage retention system that must discharge to the existing underground drainage system ~~and comply with Best Practice Environmental Management Guidelines for Urban Stormwater including any quality treatment proposed in accordance with these Guidelines.~~ Extreme event overflow paths and any underground drainage proposed through downstream property not in existing easements shall be identified, designed and constructed to the satisfaction of the Responsible Authority ~~in consultation with affected property owners;~~
- d) Give ~~Consideration of any buildings and works and landscaping in relation~~ to any detrimental impacts to underground drainage pipes located on any existing or proposed drainage or sewerage easement; and
- e) Include any necessary ~~s~~Subsoil investigations to the satisfaction of the Responsible Authority.

~~6.2~~ **Car Parking**

- a) ~~Car parking dimensions to be in accordance with the Bass Coast Planning Scheme and constructed to the satisfaction of the Responsible Authority;~~

~~b)8~~ Car parking areas and pedestrian walkways to be sealed with an all-weather seal pavement to the satisfaction of the Responsible Authority;

~~c) Bicycle spaces designated in accordance with Clause 52.34 of the Bass Coast Planning Scheme and detail of spaces, shower and change room facilities;~~

~~d)9~~ A minimum of four car spaces must be provided for use by disabled ~~persons residents; and~~

~~e) Two small vehicle loading bays on site to service the specialty shops, to be located to the east of specialty shop 9. The design of the bays must accommodate the 95%ile vehicle identified in AS2890 within its line markings;~~

~~6.3 Vehicle and Pedestrian Access~~

~~a) Vehicle and pedestrian access to the subject land and on-site car parking;~~

~~b) Vehicle access provided from Church Street this is now covered by the section 173 agreement;~~

~~c)b) No right hand turn into the site from Thompson Avenue for any vehicles;~~

~~c) No right hand turn from the site into Thompson Avenue for any vehicles.~~

~~d) Car parking spaces and delivery vehicle access designed to cater for turning requirements in accordance with AS2890.1 2004 the Australian Standard for off street car parking and AS2890.2 2002 for commercial vehicles;~~

~~e) Restriction of vehicular loading or unloading from the front of the site from Thompson Avenue;~~

~~f) The provision of traffic management devices and signage to the satisfaction of the Responsible Authority; and~~

~~g) Keep clear line markings located in the southbound lanes on Thompson Avenue opposite both proposed access points.~~

~~h) A mid aisle pathway linking through the western parking aisle providing a pedestrian link to specialty shops 8 and 9.~~

~~The Civil Construction Plan, once endorsed, will form part of the permit. All works constructed or carried out must generally be in accordance with the approved~~

~~Civil Construction Plan. Once endorsed, the Civil Construction Plan must not be altered except with the written consent of the Responsible Authority.~~

10 Car parking and access lanes must be kept available for these purposes at all times.

Construction Management Plan

~~7~~11. Before the development works commences, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CMP will be endorsed and will then form part of the permit. The plan must address, but not be limited to addressing the following:

- a) Procedures to protect adjacent land uses during the construction of the development, including pedestrians and users of land surrounding the subject site;
- b) All vehicle movements involved in construction works for the development hereby approved must be undertaken from the southern access point located within Thompson Avenue, unless further permission is given in writing by the Responsible Authority. The entrance must be constructed with a temporary seal pavement or better to the satisfaction of the Responsible Authority and maintained to ensure that no sediment or debris spills over into Thompson Avenue;
- c) A truck wheel-wash must be installed and used so vehicles leaving the site do not deposit mud or other materials on the roadways;
- d) The CMP must provide construction hours in accordance with EPA guidelines. All deliveries, unloading and collection of materials associated with the construction phase of the development must occur within the hours of construction work, unless further permission is given in writing by the Responsible Authority;
- e) A plan for the management of construction vehicles during peak daily times and key events, including but not limited to the V8 Supercar Championships, Australian Motorcycle Grand Prix, and peak periods must be submitted to the Responsible Authority for approval;
- f) Management of all building and construction waste, including any measures to recycle materials generated during construction;
- g) Locations of cut and fill stockpiles;

- h) A liaison officer for contact by residents and the Responsible Authority in the event of relevant queries or problems experienced;
- i) No mud, dirt, sand, soil, clay, stones, oil, grease, scum, litter, chemicals, sediments, gross pollutants, animal waste or domestic waste shall be washed into, allowed to enter, or discharged to the stormwater drainage system, receiving waters or surrounding land and road reserves, during the construction works hereby approved to the satisfaction of the Responsible Authority;
- j) Methods for the protection of the trees and tree roots of the trees to be retained as recommended in Appendix 4 (General Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009). This includes the protection of the Golden Cypress Trees located along the western frontage of the subject site;
- k) Methods for responding to, and where appropriate making good, should any damage which occurs to the Golden Cypress during construction, ~~the trees must be repaired to the satisfaction of the Responsible Authority prior to the approved uses commencing on the site;~~
- l) A monitoring and reporting system ~~to demonstrate which is~~ compliant with the following:
- EPA Guidelines for Major Construction Sites and Techniques for Sediment Pollution Control and other provisions of the approved EMP;
 - Best Practice Environmental Management Guidelines for Urban Stormwater;
 - Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995); and
 - Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991).
- m) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority.

Once endorsed, the CMP will form part of the permit. All construction works must be undertaken in accordance with the approved CMP. All care must be taken to minimise the effect of construction activity on the amenity of the surrounding neighbourhood. Once endorsed the CMP must not be altered except with the written consent of the Responsible Authority.

Environmental Management Plan

~~8~~12. Before the works commence, an Environmental Management Plan (EMP) ~~for the operational phase~~, must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority. Once approved the EMP will be endorsed and form part of this permit.

The EMP must be developed ~~in accordance with~~ having regard to the following documents:

- Best Practice Environmental Management Guidelines for Urban Stormwater;
- Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
- Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and
- Other Best Practice approaches, including the Bass Coast Shire Council Urban Stormwater Best Management Practice Guidelines.

The ~~plan~~ EMP must address, but not be limited to the following:

- (a) Methods of water re-use and minimisation of water consumption;
- (b) Utilisation of water sensitive urban design practices including reuse of grey water;
- (c) Maintenance of drainage systems. The operator/owner of the development hereby approved is responsible for the upkeep and maintenance of the stormwater drainage and sewerage infrastructure supporting the site;
- (d) Land use and development should be consistent with efficient use of energy and minimisation of greenhouse gas emissions as stipulated in Clause 15.12 of the *Planning & Environment Act 1987*;
- (e) Land use and development should incorporate renewable energy practice where possible, as stipulated in Clause 15.14 of the *Planning & Environment Act 1987*; and
- ~~(f) Pruning of Golden Cypress trees must be undertaken as recommended in Appendix 4 (General Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009); and~~
- (~~g~~f) General maintenance of the site.

The operator/manager of the site will be responsible for the Environmental Management Plan and its implementation. All construction and post construction activities must generally be conducted in accordance with the approved Environmental Management Plan.

Waste Management Plan

~~9~~13. Before the use commences, a Waste Management Plan (WMP) must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

Once endorsed, the WMP will form part of the permit. All waste collection and disposal must be undertaken in accordance with the approved WMP. Once endorsed the WMP must not be altered except with the written consent of the Responsible Authority.

Public Art Contribution

~~10. Within six (6) months of the commencement of the use hereby approved, a piece of public art must be provided on the land to the satisfaction of the Responsible Authority.~~

Section 173 Agreement

~~11~~14. Prior to completion of the development hereby approved, the owner/applicant must enter into an agreement under Section 173 of the *Planning and Environment Act 1987* to the satisfaction of the Responsible Authority that provides for:

- (a) ~~Securing public access at all times over the public areas as shown on the endorsed plans; and~~ The owner of the subject land to, at its own cost, connect the car park of the approved development (b) ~~The development must make provision for the possibility of a~~ to any north-south vehicle road link connecting Settlement Road with Church Street to the east of the development which is ~~(generally in accordance with the link described in Figure 3 of the Cowes, Silverleaves, Ventnor and Wimbledon Heights Structure Plan)~~ ("the proposed road link"). ~~Within 6 months of construction of the north-south link in this position by Council or any other person, the owner of the land must construct a minimum of one vehicle access way at its cost to connect the development to the north-south link road to the satisfaction of the Responsible Authority and offset any loss of car parking on the development site elsewhere on its land or other land servicing the development to the satisfaction of Council.~~

- (b) Any connection to the proposed road link to be constructed and in operation within six months of the opening of the proposed road link; and
- (c) The landowner to offset on its land or some other land, or otherwise respond appropriately to, any loss of car parking on the development site to the satisfaction of Council.

Prior to completion of the development hereby approved, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act 1987*.

The reasonable costs associated with the preparation, execution and registration of the Agreement shall be borne by the owner.

Occupation of Development

~~4~~215.The development hereby approved must not be occupied until:

- (a) All redundant infrastructure associated with the development is removed and the affected area reinstated to the satisfaction of the Responsible Authority;
- (b) All works required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority;
- (c) Street lighting provided in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (d) Public waste/recycling bins must be provided within the pedestrian areas to the satisfaction of the Responsible Authority; and
- (e) All works and contributions required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority.

Amenity

~~4~~316.Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. 1-1.

~~4~~417.All external plant and equipment must be acoustically treated or placed in soundproof housing so as to reduce noise to a level which complies with any applicable State Environment Protection Policy ~~satisfactory to the Responsible Authority~~.

- ~~15~~18. The use of the premises must not be operated ~~to the~~ in a manner which causes any unreasonable detriment of the amenity of the area ~~to the satisfaction of the Responsible Authority~~, including through the loading and unloading of delivery vehicles and playing of amplified music.
- ~~16.~~ ~~No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.~~
- ~~17~~19. Unless with the written consent of the Responsible Authority, all Truck and van deliveries and waste collection:
- (a) which are associated with the supermarket must only not occur between the hours 7.00 am and 10.00 am and 6.00 pm and 10.00 pm on Sundays and must not occur before 7.30am and after 10.00am, Monday to Saturday; and
 - (b) which are associated with the specialty shops, between the hours of 7.00 am to 7.00 pm Monday to Saturday.
- ~~18~~20. ~~Only one truck undertaking deliveries~~ No more than one articulated truck is permitted to be on the site ~~during business hours~~ at any one time while the supermarket or shops are open to trade. ~~The size of the truck must not be~~ No truck which is larger than a standard 'B-Double' (including 'Higher Mass Vehicles' and/or '25 Metre B-Doubles' ~~must not~~ may undertake deliveries to the site without the written consent of the Responsible Authority).
- ~~19~~21. ~~All loading, unloading and deliveries must occur on site and vehicles are not permitted to use reversing beepers for access to the loading bays and dock.~~ Unless with the written consent of the Responsible Authority ~~All~~ supermarket loading must occur ~~from~~ within the dedicated supermarket loading bay.
- ~~20~~22. Car parking and access lanes must be kept available for these purposes at all times.
- ~~21~~23. Unless with the written consent of the Responsible Authority ~~O~~only coin operated trolleys may be provided for patron use.
- ~~22~~24. Trolleys must be regularly collected and maintained so as not to become a nuisance or block traffic movements to the satisfaction of the Responsible Authority.
25. No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.

Time

~~23~~26. This permit will expire if the development is not commenced within two (2) years and completed within four (4) years of the date of this permit.

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

Department of Sustainability and Environment Conditions

~~24~~27. Before ~~the~~ any native vegetation ~~removal starts~~ is removed, an offset plan showing appropriate off-sets for the removal of 13 trees in accordance with Victoria's Native Management – A Framework for Action and to the satisfaction of the Department of Sustainability and Environment must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit.

Maps or plans forming part of the offset plan must be drawn to scale with dimensions (where appropriate).

- i. vegetation to be removed, including details of:
 - (a) the location of the vegetation including details of the Bioregion;
 - (b) the Ecological Vegetation Class (EVC) of the vegetation;
 - (c) the Bioregional Conservation Status of the EVC;
 - (d) the number of trees to be removed; and
 - (e) conservation significance.
- ii. gain targets.
- iii. offsets to compensate for the vegetation removal, including details of:
 - (a) type of offsets to be provided in each location;
 - (b) location of the offsets including details of the Bioregion;
 - (c) Ecological Vegetation Class of the offset vegetation;
 - (d) Habitat Hectare score (out of 1) of the offsets;
 - (e) Number of large and medium old trees to be protected (where applicable); and
 - (f) Conservation significance of the offset.

- iv. gains in vegetation and habitat quality to be achieved by the offsets.
- v. details of any revegetation including number of trees, shrubs and other plants, species mix, and density included in a Schedule of Works.
- vi. methods of managing and restoring the existing vegetation to be retained included in a Schedule of Works.
- vii. methods of interim protection for newly established offsets.
- viii. methods for permanent protection for established offsets.
- ix. persons responsible for implementing and monitoring the offset plan.
- x. time frame for implementing the offset plan.

Vegetation removal and the provision of offsets must accord with the endorsed plan.

VicRoads Conditions

- ~~25~~28. ~~The driveway~~ Any driveway which connects the development to Thompson Avenue must be designed and constructed to the satisfaction of the Responsible Authority and VicRoads.
- ~~26~~ ~~The construction of the pedestrian crossing must for part of the development and be operation prior to the commencement of the commercial operation of the complex.~~
- ~~27.~~ ~~Detailed plans of the roadworks must be provided to VicRoads for approval.~~
- ~~28.~~ ~~VicRoads in responding to this application, is not deemed to have been notified of, or having given consent to undertake any works within the road reserve proposed in this permit application.~~
- 29 The permit operator must, at its own cost, design and construct to the satisfaction of VicRoads, a signaled pedestrian crossing (including any device or loop on the subject land which activates that crossing) in a location approved by VicRoads between the northern and southern access points to the development. The signaled pedestrian crossing must be in operation prior to the commencement of the approved development.
30. The permit operator must install keep clear line markings located in the southbound lanes on Thompson Avenue

opposite both proposed access points to the satisfaction of VicRoads.

~~2931~~. The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or seeking consent from VicRoads to undertake works in the road reserve.

Post development traffic report (Bass Coast Shire conditions should right turn in be permitted)

~~432~~ Within three years of ~~occupation of the development~~ the commencement of the use hereby permitted the permit holder must, upon receipt of the written request of Council, prepare and submit to the Council a post development impact traffic report (PDI Report) which addresses the right turn movements into and out of the approved development.

~~233~~ The PDI report must be to VicRoads and Council's satisfaction and ~~must consider the functioning of the right hand turn movement into and out of the development and where appropriate~~ make recommendations as to whether the right turn movements are functioning satisfactorily, and, if they are not, for recommend any for further traffic treatments necessary to improve the function of ~~the~~ that movement/~~Thompson Avenue including if required~~ing the prohibition of right turn movements into and out of the development.

~~334~~ The PDI report must, if requested to do so by Council, be prepared at the cost of the permit holder and the permit holder must implement the recommendations of the PDI report, at its cost, to VicRoads' and Council's satisfaction.

~~Condition should the pedestrian crossing be approved~~

~~1. The design detail of the pedestrian crossing loop must be submitted to and approved by the Responsible Authority and VicRoads prior to the commencement of the development.~~

**Appendix C Draft permit conditions for
Morgan & Griffin tabled by
Council**

114-122 Thompson Avenue Conditions

The permit allows

The use and development of a supermarket and specialty retail, dispensation for car parking, alteration and access to a road in a Road Zone Category 1 and removal of native vegetation and pruning of heritage trees at 114-122 Thompson Avenue, Cowes.

1. Before the works commence, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size).

The plans must be generally in accordance with the plans submitted with the application but modified to show:

- a) Location of air conditioners and solar hot water systems;
- b) Colours for all external surfaces of the development;
- c) External lighting scheme [baffled to ensure that no light spill fall on adjacent properties and otherwise](#) in accordance with the Bass Coast Shire Council Street Lighting Policy;
- d) [Details on internal and external direction signage for pedestrian and car parking movement.](#)
- e) Location of waste and recycling bins in the pedestrian areas. The bins should be to the same design and quality standard as those located along Thompson Avenue, Cowes;
- f) Proposed location and design of a public art feature;
- g) A permanent vehicle/pedestrian exclusion zone around the Golden Cypress trees located in front of the subject site ~~in the form of a concrete curb garden bed.~~;
- h) All roof elements including plant and other building services, to be absorbed within the overall building form, or included as part of the roof design;
- i) The visible service area (and other utility requirements) of the building to be treated as an integral part of the overall design and fully screened from public areas and the adjoining properties to the south;

- j) An acoustic fence located along the western boundary and part of the southern boundary shared by residential properties;
- k) Plan detail of the bicycle parking, change room and shower facilities as required by Clause 52.34 of the Bass Coast Planning Scheme;
- l) Incorporation of street-front entrances and outdoor spaces to the shop tenancies which front Church Street and Thompson Avenue;
- m) The front wall of the development fronting Thompson Avenue set back six metres from the title boundary;
- n) The inclusion of at least one northern access point providing access to the specialty shops fronting Church Street; - ~~this is somewhat covered in condition 1(k)~~
- o) The removal of the landscaping at ground level currently shown along the development's Church Street frontage;
- p) The retention of the golden cypress located within close proximity to the eastern property boundary of the property; and
- q) Construction of the roof structures to an engineering standard that would accommodate future development above ground floor (to a maximum of three levels) without the need for total demolition and reconstruction of the building.

Note: if the Advisory Committee does not accept the proposed setback from Thompson Avenue, Council would then seek a condition on the following terms:

The specialty shop entrances located on the site boundary abutting Thompson Avenue indented to facilitate safe pedestrian egress from these premises.

Alteration to Plans

2. The development as shown on the endorsed plans shall not be amended, altered or modified (whether or not in order to comply with any statute, statutory rule or, for any other reason) without the written consent of the Responsible Authority.

Environmentally Sustainable Design

3. The development must incorporate principles of Environmentally Sustainable Design (ESD) including energy management together with water conservation and re-use to the satisfaction of the Responsible Authority.

Landscape Plan

4. Before the works commences, a landscape plan prepared by a landscape architect or suitably qualified person or firm must be submitted to the satisfaction of the Responsible Authority for approval. When approved, the plans will be endorsed and form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size). The plans must show:
 - (a) Areas to be landscaped;
 - (b) The planting of at least thirty (30) indigenous canopy trees (capable of reaching a mature height of at least 5 metres) throughout the site;
 - (c) A schedule of proposed species that are to be planted on the site including quantities, size at maturity and scientific names;
 - (d) Minimum 80% locally indigenous species;
 - (e) Specifications for landscape works including soil preparation and improvement, planting methods, mulching, and plant replacement;
 - (f) Tree and shrub planting diagrams; and
 - (g) Paving treatments and finishes including the provision of seating and planter boxes in the pedestrian walkways.

All species to be planted are to be non-invasive and not include any environmental weeds as listed within the publication titled *Common Weeds of Gippsland*, Bass Coast Shire 2002.

Landscaping Maintenance

5. The development hereby approved must not be occupied until the landscaping shown on the endorsed plans has been completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed plans must be planted, established and thereafter maintained to the satisfaction of the Responsible Authority, [including the replacement of failed plants.](#)

Construction Plans

6. Before the works commence, detailed Civil Construction Plans must be prepared to the satisfaction of the Responsible Authority for approval and endorsement by the Responsible Authority.

All construction plans submitted for approval, must be consistent with this permit and must conform to the requirements of all relevant servicing and road authorities,

and in particular water, sewerage, drainage, telephone power, VicRoads and Council. The plans must be drawn to scale with dimensions and three (3) copies of final plans must be provided for endorsement. The plans must specifically address the following matters:

6.1 Drainage

- (a) Compliance with the Best Practice Environmental Management Guidelines for Urban Stormwater and Bass Coast Shire Stormwater Management Plan (2003). Any quality treatment proposed in accordance with these Guidelines;
- (b) A drainage retardation system on the subject land allowing an unrestricted flow path for 1 in 100 year extreme event storm flows or storage of these flows on site. The drainage retention system must discharge to the existing underground drainage system and comply with Best Practice Environmental Management Guidelines for Urban Stormwater including any quality treatment proposed in accordance with these Guidelines. Extreme event overflow paths and any underground drainage proposed through downstream property not in existing easements shall be identified, designed and constructed to the satisfaction of the Responsible Authority in consultation with affected property owners;
- (c) Consideration of any buildings and works and landscaping in relation to any detrimental impacts to underground drainage pipes located on any existing or proposed drainage or sewerage easement; and
- (d) Subsoil investigations to the satisfaction of the Responsible Authority.

6.2 Car Parking

- (a) Car parking dimensions to be in accordance with the Bass Coast Planning Scheme and constructed to the satisfaction of the Responsible Authority;
- (b) Car parking areas and pedestrian walkways to be sealed with an all-weather seal pavement to the satisfaction of the Responsible Authority;
- (c) Bicycle spaces designated in accordance with Clause 52.34 of the Bass Coast Planning Scheme

~~include~~ [and detail of spaces, shower and change room facilities;](#)

- (d) A minimum of four car spaces must be provided for use by disabled residents;
- (e) Offsite car parking abutting the development and in the immediate vicinity. Matters for approval including 60% angled car parking along the eastern frontage of the site, and parallel car parking on the north side of Church Street from Thompson Avenue to Genesta Street; and
- (f) Two small vehicle loading bays on-site to service the specialty shops. [The design of the bays must accommodate the 95%ile vehicle identified in AS2890 within its line markings.](#)

6.3 Vehicle and Pedestrian Access

- (a) Vehicle and pedestrian access to the subject land and on-site car-parking;
- (b) No right hand turn into the site from Thompson Avenue for patrons' vehicles;
- (c) Car-parking spaces and delivery vehicle access designed to cater for turning requirements in accordance with AS2890.1-2004 the Australian Standard for off-street car-parking and AS2890.2 – 2002 for commercial vehicles;
- (d) Restriction of vehicular loading or unloading from the front of the site from Thompson Avenue;
- (e) The provision of traffic management devices and signage to the satisfaction of the Responsible Authority;
- (f) Safe pedestrian access ways provided through car park areas to ensure pedestrian linkages are separated and protected from traffic;
- (g) A concrete footpath on the Church Street and Thompson avenue frontages of the subject site with pram crossings to linkages to back of kerb; and
- (h) The preparation of a traffic management plan to the satisfaction of Council to ensure the safe egress of delivery vehicles/ingress of private vehicles from the ~~site into~~ Thompson Avenue [access point](#).

The Civil Construction Plan, once endorsed, will form part of the permit. All works constructed or carried out must generally be in accordance with the approved Civil

Construction Plan. Once endorsed, the Civil Construction Plan must not be altered except with the written consent of the Responsible Authority.

Construction Management Plan

7. Before the development works commences, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CMP will be endorsed and will then form part of the permit. The plan must address, but not be limited to addressing the following:
 - (a) Procedures to protect adjacent land uses during the construction of the development, including pedestrians and users of land surrounding the subject site;
 - (b) All vehicle movements involved in construction works for the development hereby approved must be undertaken from the southern access point located within Thompson Avenue, unless further permission is given in writing by the Responsible Authority. The entrance must be constructed with a temporary seal pavement or better to the satisfaction of the Responsible Authority and maintained to ensure that no sediment or debris spills over into Thompson Avenue;
 - (c) A truck wheel-wash must be installed and used so vehicles leaving the site do not deposit mud or other materials on the roadways;
 - (d) The CMP must provide construction hours in accordance with EPA guidelines. All deliveries, unloading and collection of materials associated with the construction phase of the development must occur within the hours of construction work, unless further permission is given in writing by the Responsible Authority;
 - (e) A plan for the management of construction vehicles during peak daily times and key events, including but not limited to the V8 Supercar Championships, Australian Motorcycle Grand Prix, and peak periods must be submitted to the Responsible Authority for approval;
 - (f) Management of all building and construction waste, including any measures to recycle materials generated during construction;
 - (g) Locations of cut and fill stockpiles;
 - (h) A liaison officer for contact by residents and the Responsible Authority in the event of relevant queries or problems experienced;

-
- (i) No mud, dirt, sand, soil, clay, stones, oil, grease, scum, litter, chemicals, sediments, gross pollutants, animal waste or domestic waste shall be washed into, allowed to enter, or discharged to the stormwater drainage system, receiving waters or surrounding land and road reserves, during the construction works hereby approved to the satisfaction of the Responsible Authority;
- (j) A monitoring and reporting system to demonstrate compliance with the following:
- EPA Guidelines for Major Construction Sites and Techniques for Sediment Pollution Control and other provisions of the approved EMP;
 - Best Practice Environmental Management Guidelines for Urban Stormwater;
 - Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
 - Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and
- (k) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority.

Once endorsed, the CMP will form part of the permit. All construction works must be undertaken in accordance with the approved CMP. All care must be taken to minimise the effect of construction activity on the amenity of the surrounding neighbourhood. Once endorsed the CMP must not be altered except with the written consent of the Responsible Authority.

Environmental Management Plan

8. Before the works commence, an Environmental Management Plan (EMP) for the operational phase, must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

The EMP must be developed in accordance with the following documents:

- Best Practice Environmental Management Guidelines for Urban Stormwater;
- Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
- Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and

- Other Best Practice approaches, including the Bass Coast Shire Council Urban Stormwater Best Management Practice Guidelines.

The plan must address, but not be limited to the following:

- (a) Methods of water re-use and minimisation of water consumption;
- (b) Utilisation of water sensitive urban design practices including reuse of grey water;
- (c) Maintenance of drainage systems. The operator/owner of the development hereby approved is responsible for the upkeep and maintenance of the stormwater drainage and sewerage infrastructure supporting the site;
- (d) Land use and development should be consistent with efficient use of energy and minimisation of greenhouse gas emissions as stipulated in Clause 15.12 of Planning & Environment Act 1987;
- (e) Land use and development should incorporate renewable energy practice where possible, as stipulated in Clause 15.14 of the Planning & Environment Act 1987; and
- (f) General maintenance of the site.

The operator/manager of the site will be responsible for the Environmental Management Plan and its implementation. All construction and post construction activities must generally be conducted in accordance with the approved Environmental Management Plan.

Tree Protection and Management Plan

9. Before the works commence, a Tree Protection and Management Plan must be prepared by a qualified arboriculturist and submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The Tree Protection and Management Plan must be prepared in accordance with AS 4970-2009 (Protection of trees on development sites). The plan must provide protection measures for trees to be retained on site, trees on adjacent sites that are within 5 metres of common boundaries, and street trees adjacent to the site. The plan must also detail proposed pruning works to existing trees on the site and on adjoining properties and road reserves. These works must be carried out by a qualified arboriculturist in accordance with the recommendations of the plan.

Waste Management Plan

10. Before the use commences, a Waste Management Plan (WMP) must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

Once endorsed, the WMP will form part of the permit. All waste collection and disposal must be undertaken in accordance with the approved WMP. Once endorsed the WMP must not be altered except with the written consent of the Responsible Authority.

~~Car parking Contribution~~

- ~~11. Before the use commences, the developer/permit holder must pay a car parking cash contribution for the car parking spaces that will be lost with the road reserve as a result of the development. For each space lost, a sum of \$5,600 must be paid to the Responsible Authority to enable the spaces to be replaced elsewhere within Cowes.~~

Public Art Contribution

- ~~11~~ Within six (6) months of the commencement of the use hereby approved, a piece of public art must be provided on the land to the satisfaction of the Responsible Authority.

Section 173 Agreement

- ~~12~~ Prior to completion of the development hereby approved, the owner/applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority that provides for:

- (a) Securing public access at all times over the public areas as shown on the endorsed plans.

Prior to completion of the development hereby approved, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act* 1987.

The reasonable costs associated with the preparation, execution and registration of the Agreement shall be borne by the owner.

Occupation of Development

- ~~13~~ The development hereby approved must not be occupied until:

- (a) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority;

- (b) All works required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority;
- (c) Street lighting provided in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (d) Public waste/recycling bins must be provided within the pedestrian areas to the satisfaction of the Responsible Authority; and
- (e) All works and contributions required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority.

Amenity

- ~~15~~14 Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. 1-1.
- ~~16~~15 All external plant and equipment must be acoustically treated or placed in soundproof housing to reduce noise to a level satisfactory to the Responsible Authority.
- ~~17~~16 The use of the premises must not be operated to the detriment of the amenity of the area to the satisfaction of the Responsible Authority, including through the loading and unloading of delivery vehicles and playing of amplified music.
- ~~18~~17 No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.
- ~~19~~18 Truck and van deliveries and waste collection must not occur on Sundays and must not occur before 8.00am and after 6.00pm, Monday to Saturday.
- ~~20~~19 Only one truck undertaking deliveries is permitted on site during business hours.
- ~~21~~20 All loading, unloading and deliveries must occur on site.
- ~~22~~21 Car parking and access lanes must be kept available for these purposes at all times.
- ~~23~~22 Only coin operated trolleys may be provided for patron use.
- ~~24~~23 Trolleys must be regularly collected and maintained so as not to become a nuisance or block traffic movements to the satisfaction of the Responsible Authority.
- ~~25~~24 External lighting must be designed, baffled and located so as to prevent any adverse impacts upon residents of surrounding

properties to the satisfaction of the Responsible Authority. [All supermarket loading must occur from the dedicated supermarket loading bay.](#)

Time

~~26~~[25](#) This permit will expire if the development is not commenced within two (2) years and completed within four (4) years of the date of this permit.

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

VicRoads conditions

~~27~~[26](#) Appropriate signage and traffic management is to be provided as part of the development to regulate the above condition.

~~28~~[27](#) VicRoads, in responding to this permit application, is not deemed to have been notified of, or given consent to undertake any works within the road reserve proposed in this permit application.

~~29~~[28](#) The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or seeking consent from VicRoads to undertake works in the road reserve.

Appendix D Permit conditions for Morgan & Griffin recommended by the Advisory Committee

114-122 Thompson Avenue Conditions

The permit allows

The use and development of a supermarket and specialty retail, dispensation for car parking, alteration and access to a road in a Road Zone Category 1 and removal of native vegetation and pruning of heritage trees at 114-122 Thompson Avenue, Cowes.

1. Before the works commence, amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size).

The plans must be generally in accordance with the plans submitted with the application but modified to show:

- a) Location of air conditioners and solar hot water systems;
- b) Colours for all external surfaces of the development;
- c) External lighting scheme baffled to ensure that no light spill fall on adjacent properties and otherwise in accordance with the Bass Coast Shire Council Street Lighting Policy;
- d) Details on internal and external direction signage for pedestrian and car parking movement.
- e) Location of waste and recycling bins in the pedestrian areas. The bins should be to the same design and quality standard as those located along Thompson Avenue, Cowes;
- f) Proposed location and design of a public art feature;
- g) [Tree guards](#) ~~A permanent vehicle/pedestrian exclusion zone~~ around the Golden Cypress trees located in front of the subject site [generally in accordance with those proposed by Tract Consultants Pty Ltd in Appendix 3 of the Landscape Design evidence of Mr Deiter Lim dated 19 November 2009 prepared for the Fabcot application](#);
- h) All roof elements including plant and other building services, to be absorbed [or screened](#) within the overall building form, or included as part of the roof design;
- i) The visible service area (and other utility requirements) of the building to be treated as an integral part of the overall design and fully screened from public areas and the adjoining properties to the south;

- j) An 2 metre high acoustic fence located along the western boundary and part of the southern boundary shared by residential properties;
 - k) ~~Plan detail~~ The provision of the bicycle parking, change room and shower facilities as required by Clause 52.34 of the Bass Coast Planning Scheme;
 - ~~l) Incorporation of street front entrances and outdoor spaces to the shop tenancies which front Church Street and Thompson Avenue;~~
 - ~~m) The front wall of the development fronting Thompson Avenue set back six metres from the title boundary;~~
 - ~~n) The inclusion of at least one northern access point providing access to the specialty shops fronting Church Street;~~
 - ~~e) The removal of the landscaping at ground level currently shown along the development's Church Street frontage;~~
 - ~~p) The retention of the golden cypress located within close proximity to the eastern property boundary of the property; and~~
 - q) Construction of the roof structures to an engineering standard that would accommodate future development above ground floor (to a maximum of three levels) without the need for total demolition and reconstruction of the building.
- (m) The proposed details of the treatment of the footpath area of Thompson Avenue in front of the site to include the widening of the footpath and landscaping of the area between the kerb and building frontage;
 - (n) The internal kerb alignment is modified in line with the recommendations of the Cardno Grogan Richards expert evidence statement in Annex 3; and
 - (o) The width of the crossover to Thompson Avenue is increased to 8 metres

~~Note: if the Advisory Committee does not accept the proposed setback from Thompson Avenue, Council would then seek a condition on the following terms:~~

~~The specialty shop entrances located on the site boundary abutting Thompson Avenue indented to facilitate safe pedestrian egress from these premises;~~

Alteration to Plans

2. The development as shown on the endorsed plans shall not be amended, altered or modified (whether or not in order to comply with any statute, statutory rule or, for any other reason) without the written consent of the Responsible Authority.

Environmentally Sustainable Design

3. The development must incorporate principles of Environmentally Sustainable Design (ESD) including energy management together with water conservation and re-use to the satisfaction of the Responsible Authority.

Openings to Thompson Avenue

4. All individual specialty shops fronting Thompson Avenue must have an opening to that street.

Landscape Plan

- 45 Before the works commences, a landscape plan prepared by a landscape architect or suitably qualified person or firm must be submitted to the satisfaction of the Responsible Authority for approval. When approved, the plans will be endorsed and form part of the permit. The plans must be drawn to scale with dimensions and three (3) copies must be provided (one copy must be A3 size). The plans must show:
 - (b) Areas to be landscaped;
 - (c) The planting of at least thirty (30) indigenous canopy trees (capable of reaching a mature height of at least 5 metres) throughout the site;
 - (d) A schedule of proposed species that are to be planted on the site including quantities, size at maturity and scientific names;
 - (e) Minimum 80% locally indigenous species;
 - (f) Specifications for landscape works including soil preparation and improvement, planting methods, mulching, and plant replacement;
 - (g) Tree and shrub planting diagrams; and
 - (h) Paving treatments and finishes including the provision of seating and planter boxes in the pedestrian walkways.

All plant species to be planted are to be non-invasive and not include any environmental weeds as listed within the publication titled *Common Weeds of Gippsland*, Bass Coast Shire 2002.

Landscaping Maintenance

- ~~5~~6 The development hereby approved must not be occupied until the landscaping shown on the endorsed plans has been completed to the satisfaction of the Responsible Authority. The landscaping shown on the endorsed plans must be planted, established and thereafter maintained to the satisfaction of the Responsible Authority, including the replacement of failed plants.

Golden Cypress Trees

7. Any pruning of the Golden Cypress trees must be undertaken as recommended in Appendix 4 (general Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009) prepared for the Fabcot application.

~~Construction Plans~~

- ~~6— Before the works commence, detailed Civil Construction Plans must be prepared to the satisfaction of the Responsible Authority for approval and endorsement by the Responsible Authority.~~

~~All construction plans submitted for approval, must be consistent with this permit and must conform to the requirements of all relevant servicing and road authorities, and in particular water, sewerage, drainage, telephone power, VicRoads and Council. The plans must be drawn to scale with dimensions and three (3) copies of final plans must be provided for endorsement. The plans must specifically address the following matters:~~

~~6.1— Drainage~~

Stormwater Drainage Plans

8. Prior to the commencement of the approved development, a drainage plan to the satisfaction of the Responsible Authority must be prepared and submitted for approval. When approved, the plan will be endorsed and form part of this permit. The plan, to the satisfaction, of the Responsible Authority must:

~~Before the works commence, detailed drainage plans must be prepared to the satisfaction of the Responsible Authority for approval and endorsement by the Responsible Authority. All drainage plans submitted for approval, must be consistent with this permit and must conform to the requirements of all relevant servicing and road authorities, and in particular water, sewerage, drainage, telephone power, VicRoads and Council. The plans must be drawn to scale with dimensions and three (3) copies of final plans must be provided for~~

~~endorsement. The plans must specifically address the following matters:~~

- (a) ~~be C~~compliant~~tee~~ with the Best Practice Environmental Management Guidelines for Urban Stormwater and Bass Coast Shire Stormwater Management Plan (2003) ("the Guidelines") ~~and. A~~ any quality treatment proposed must be generally in accordance with these Guidelines;
- (b) Include a ~~A~~ drainage retardation system on the subject land allowing an unrestricted flow path for 1 in 100 year extreme event storm flows or storage of these flows on site.
- (c) Include a ~~The~~ drainage retention system must discharge to the existing underground drainage system ~~and comply with Best Practice Environmental Management Guidelines for Urban Stormwater including any quality treatment proposed in accordance with these Guidelines.~~ Extreme event overflow paths and any underground drainage proposed through downstream property not in existing easements shall be identified, designed and constructed to the satisfaction of the Responsible Authority ~~in consultation with affected property owners;~~
- (~~ed~~) Give c~~Consideration of any buildings and works and landscaping in relation~~ to any detrimental impacts to underground drainage pipes located on any existing or proposed drainage or sewerage easement; and
- (~~de~~) Include any necessary ~~s~~subsoil investigations to the satisfaction of the Responsible Authority.

~~6.2~~ Car Parking

- ~~(a)~~ ~~Car parking dimensions to be in accordance with the Bass Coast Planning Scheme and constructed to the satisfaction of the Responsible Authority;~~
- (~~b~~)9 Car parking areas and pedestrian walkways to be sealed with an all-weather seal pavement to the satisfaction of the Responsible Authority;
- ~~(c)~~ ~~Bicycle spaces designated in accordance with Clause 52.34 of the Bass Coast Planning Scheme and detail of spaces, shower and change room facilities;~~
- (~~d~~)10 A minimum of four car spaces must be provided for use by disabled persons ~~residents~~;
- ~~(e)~~ ~~Offsite car parking abutting the development and in the immediate vicinity. Matters for approval including 60% angled car parking along the eastern~~

~~frontage of the site, and parallel car parking on the north side of Church Street from Thompson Avenue to Genesta Street; and~~

- ~~(f)11~~ Two small vehicle loading bays on-site to service the specialty shops. The design of the bays must accommodate the 95%ile vehicle identified in AS2890 within its line markings.

6.3 Vehicle and Pedestrian Access

- ~~(a) Vehicle and pedestrian access to the subject land and on-site car parking;~~
- ~~(b)12~~ No right hand turn into the site from Thompson Avenue for patrons' vehicles is permitted;
- ~~(c)13~~ Car-parking spaces and delivery vehicle access must be designed to cater for turning requirements in accordance with AS2890.1-2004 the Australian Standard for off-street car-parking and AS2890.2 – 2002 for commercial vehicles;
- ~~(d) Restriction of vehicular loading or unloading from the front of the site from Thompson Avenue;~~
- ~~(e)14~~ The provision of traffic management devices and signage must be provided to the satisfaction of the Responsible Authority;
- ~~(f)15~~ Safe pedestrian access ways provided through car park areas to ensure pedestrian linkages are separated and protected from traffic;
- ~~(g) A concrete footpath on the Church Street and Thompson avenue frontages of the subject site with pram crossings to linkages to back of kerb; and~~
- ~~(h) The preparation of a traffic management plan to the satisfaction of Council to ensure the safe egress of delivery vehicles/ingress of private vehicles from the Thompson Avenue access point.~~

~~The Civil Construction Plan, once endorsed, will form part of the permit. All works constructed or carried out must generally be in accordance with the approved Civil Construction Plan. Once endorsed, the Civil Construction Plan must not be altered except with the written consent of the Responsible Authority.~~

Construction Management Plan

- ~~7~~16 Before the development works commences, a Construction Management Plan (CMP) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the CMP will

be endorsed and will then form part of the permit. The plan must address, but not be limited to addressing the following:

- (a) Procedures to protect adjacent land uses during the construction of the development, including pedestrians and users of land surrounding the subject site;
- (b) All vehicle movements involved in construction works for the development hereby approved must be undertaken from the southern access point located within Thompson Avenue, unless further permission is given in writing by the Responsible Authority.

The entrance must be constructed with a temporary seal pavement or better to the satisfaction of the Responsible Authority and maintained to ensure that no sediment or debris spills over into Thompson Avenue;

- (c) A truck wheel-wash must be installed and used so vehicles leaving the site do not deposit mud or other materials on the roadways;
- (d) The CMP must provide construction hours in accordance with EPA guidelines. All deliveries, unloading and collection of materials associated with the construction phase of the development must occur within the hours of construction work, unless further permission is given in writing by the Responsible Authority;
- (e) A plan for the management of construction vehicles during peak daily times and key events, including but not limited to the V8 Supercar Championships, Australian Motorcycle Grand Prix, and peak periods must be submitted to the Responsible Authority for approval;
- (f) Management of all building and construction waste, including any measures to recycle materials generated during construction;
- (g) Locations of cut and fill stockpiles;
- (h) A liaison officer for contact by residents and the Responsible Authority in the event of relevant queries or problems experienced;
- (i) No mud, dirt, sand, soil, clay, stones, oil, grease, scum, litter, chemicals, sediments, gross pollutants, animal waste or domestic waste shall be washed into, allowed to enter, or discharged to the stormwater drainage system, receiving waters or surrounding land and road reserves, during the construction works hereby approved to the satisfaction of the Responsible Authority;

- (j) Methods for responding to, and where appropriate making good, should any damage which occurs to the Golden Cypress during construction, the trees must be repaired to the satisfaction of the Responsible Authority prior to the approved uses commencing on the site.
- (k) A monitoring and reporting system ~~to demonstrate which is~~ compliant with the following:
- EPA Guidelines for Major Construction Sites and Techniques for Sediment Pollution Control and other provisions of the approved EMP;
 - Best Practice Environmental Management Guidelines for Urban Stormwater;
 - Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
 - Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and
- (l) All redundant infrastructure associated with the development is removed and the area reinstated to the satisfaction of the Responsible Authority.

Once endorsed, the CMP will form part of the permit. All construction works must be undertaken in accordance with the approved CMP. All care must be taken to minimise the effect of construction activity on the amenity of the surrounding neighbourhood. Once endorsed the CMP must not be altered except with the written consent of the Responsible Authority.

Environmental Management Plan

§17 Before the works commence, an Environmental Management Plan (EMP) ~~for the operational phase~~, must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority. Once approved the EMP will be endorsed and form part of this permit.

The EMP must be developed ~~in accordance~~ having regard with the following documents:

- Best Practice Environmental Management Guidelines for Urban Stormwater;
- Environmental Guidelines for Urban Stormwater (EPA Publication No 480, December 1995);
- Construction Techniques for Sediment Pollution Control (EPA Publication No 275, May 1991); and

- Other Best Practice approaches, including the Bass Coast Shire Council Urban Stormwater Best Management Practice Guidelines.

The ~~plan~~ EMP must address, but not be limited to the following:

- (a) Methods of water re-use and minimisation of water consumption;
- (b) Utilisation of water sensitive urban design practices including reuse of grey water;
- (c) Maintenance of drainage systems. The operator/owner of the development hereby approved is responsible for the upkeep and maintenance of the stormwater drainage and sewerage infrastructure supporting the site;
- (d) Land use and development should be consistent with efficient use of energy and minimisation of greenhouse gas emissions as stipulated in Clause 15.12 of Planning & Environment Act 1987;
- (e) Land use and development should incorporate renewable energy practice where possible, as stipulated in Clause 15.14 of the Planning & Environment Act 1987;
and
- ~~(f) Pruning of Golden Cypress trees must be undertaken as recommended in Appendix 4 (General Tree Protection Guidelines) of the report prepared by Tree Logic Pty Ltd (June 2009); and~~
- ~~(g)~~ General maintenance of the site.

The operator/manager of the site will be responsible for the Environmental Management Plan and its implementation. All construction and post construction activities must generally be conducted in accordance with the approved Environmental Management Plan.

Tree Protection and Management Plan

~~9~~18 Before the works commence, a Tree Protection and Management Plan must be prepared by a qualified arboriculturist and submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The Tree Protection and Management Plan must be prepared in accordance with AS 4970-2009 (Protection of trees on development sites). The plan must provide protection measures for trees to be retained on site, trees on adjacent sites that are within 5 metres of common boundaries, and

street trees adjacent to the site. The plan must also detail proposed pruning works to existing trees on the site and on adjoining properties and road reserves. These works must be carried out by a qualified arboriculturist in accordance with the recommendations of the plan.

Waste Management Plan

~~10~~¹⁹ Before the use commences, a Waste Management Plan (WMP) must be prepared to the satisfaction of the Responsible Authority for endorsement by the Responsible Authority.

Once endorsed, the WMP will form part of the permit. All waste collection and disposal must be undertaken in accordance with the approved WMP. Once endorsed the WMP must not be altered except with the written consent of the Responsible Authority.

Public Art Contribution

~~11~~ Within six (6) months of the commencement of the use hereby approved, a piece of public art must be provided on the land to the satisfaction of the Responsible Authority.

Section 173 Agreement

~~12~~ Prior to completion of the development hereby approved, the owner/applicant must enter into an agreement under Section 173 of the Planning and Environment Act 1987 to the satisfaction of the Responsible Authority that provides for:

~~(a) Securing public access at all times over the public areas as shown on the endorsed plans.~~

~~Prior to completion of the development hereby approved, application must be made to the Registrar of Titles to register the Section 173 Agreement on the title to the land under Section 181 of the *Planning and Environment Act 1987*.~~

~~The reasonable costs associated with the preparation, execution and registration of the Agreement shall be borne by the owner.~~

Occupation of Development

~~13~~²⁰ The development hereby approved must not be occupied until:

(a) All redundant infrastructure associated with the development is removed and the affected area reinstated to the satisfaction of the Responsible Authority;

- (b) All works required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority;
- (c) Street lighting provided in accordance with the Bass Coast Shire Council Street Lighting Policy;
- (d) Public waste/recycling bins must be provided within the pedestrian areas to the satisfaction of the Responsible Authority; and
- (e) All works and contributions required by the conditions of this permit have been completed to the satisfaction of the Responsible Authority.

Amenity

- ~~1421~~ Noise levels emanating from the premises must not exceed those required to be met under State Environment Protection Policy (Control of Noise from Commerce, Industry and Trade), No. 1-1.
- ~~1522~~ All external plant and equipment must be acoustically treated or placed in soundproof housing so as to reduce noise to a level which complies with any applicable State Environment Protection Policy ~~satisfactory to the Responsible Authority.~~
- ~~1623~~ The use of the premises must not be operated ~~to the~~ in a manner which causes any unreasonable detriment of the amenity of the area ~~to the satisfaction of the Responsible Authority~~, including through the loading and unloading of delivery vehicles and playing of amplified music.
- ~~17~~ ~~No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.~~
- ~~1824~~ Unless with the written consent of the Responsible Authority, ~~all~~ Truck and van deliveries and waste collection;
- (a) which are associated with the supermarket must ~~not~~ only occur between the hours 7.00 am and 10.00 am and 6.00 pm and 10.00 pm ~~on Sundays and must occur between 7.30am and 10.00am or 7pm and 10pm,~~ Monday to Saturday; and
 - (b) which are associated with the specialty shops, between the hours of 7.00 am to 7.00 pm Monday to Saturday.
- ~~1925~~ ~~Only one truck undertaking deliveries~~ No more than one articulated truck is permitted to be on the site at any one time while the supermarket or shops are open to trade ~~during business hours. The size of the truck must not be~~ No truck

which is larger than a standard 'B-Double' (including 'Higher Mass Vehicles' and/or '25 Metre B-Doubles' ~~must not~~ may undertake deliveries to the site without the written consent of the Responsible Authority).

~~2026. All loading, unloading and deliveries must occur on site.~~

Unless with the written consent of the Responsible Authority, all supermarket loading must occur within the dedicated supermarket loading bay.

~~2127~~ Car parking and access lanes must be kept available for these purposes at all times.

~~2228~~ Unless with the written consent of the Responsible Authority

Only coin operated trolleys may be provided for patron use.

~~2329~~ Trolleys must be regularly collected and maintained so as not to become a nuisance or block traffic movements to the satisfaction of the Responsible Authority.

~~24 External lighting must be designed, baffled and located so as to prevent any adverse impacts upon residents of surrounding properties to the satisfaction of the Responsible Authority. All supermarket loading must occur from the dedicated supermarket loading bay.~~

30. No building or works shall be constructed on any existing (including implied sewer and water easement) or proposed easement without the future approval in writing of the Responsible Authority and/or relevant service provider.

Time

~~2531~~ This permit will expire if the development is not commenced within two (2) years and completed within four (4) years of the date of this permit.

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

VicRoads conditions

~~26 Appropriate signage and traffic management is to be provided as part of the development to regulate the above condition.~~

~~27 VicRoads, in responding to this permit application, is not deemed to have been notified of, or given consent to undertake any works within the road reserve proposed in this permit application.~~

~~28 The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or~~

~~seeking consent from VicRoads to undertake works in the road reserve.~~

Notes:

Appropriate signage and traffic management is to be provided as part of the development to regulate the above condition.

VicRoads, in responding to this permit application, is not deemed to have been notified of, or given consent to undertake any works within the road reserve proposed in this permit application.

The proponent must meet the requirements of the Road Management Act 2004 with respect to notifying and/or seeking consent from VicRoads to undertake works in the road reserve.