

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1836/2020
PERMIT APPLICATION NO.YR-2019/418

APPLICANT	Gage Rossiter
RESPONSIBLE AUTHORITY	Yarra Ranges Shire Council
RESPONDENT	Azura Investments Pty Ltd
SUBJECT LAND	28 Central Avenue, (Lot 37 LP11290) Mooroolbark
HEARING TYPE	Hearing
DATE OF HEARING	16 July 2021
DATE OF ORDER	16 July 2021

ORDER

- 1 Pursuant to section 51(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998*, the decision of the responsible authority is set aside and the application is remitted to the Yarra Ranges City Council for reconsideration.
- 2 If the permit applicant pursues the application to vary the easement the responsible authority is directed to give notice to all beneficiaries of the covenant prior to its reconsideration of the application.
- 3 In its reconsideration of the application for planning permit the responsible authority is directed to consider whether the proposal complies with clause 32.08-4 of the Yarra Ranges Planning Scheme.

Katherine Paterson
Member

APPEARANCES

For applicant	Mr Gage Rossiter, in person
For responsible authority	Ms Thushari Wollbrandt, Town Planner, Yarra Ranges Shire Council
For respondent	Mr Simon Merrigan, Town planner, Miller and Merrigan



REASONS

- 1 Azura Investments Pty Ltd wish to construct six dwellings on land at 28 Central Avenue Mooroolbark. The proposal includes the partial removal of an easement on the land.
- 2 During the hearing, it became apparent that not all beneficiaries to the easement had been given notice of the application. Clause 52.02 states that before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people. As not all affected people had been made aware of the application, this provision had not been complied with during the application process.
- 3 The land is a site that has considerable fall, and the application proposes to construct a number of retaining walls to create raised gardens for the dwellings, on which a deck is to be constructed. There is a question as to whether these raised areas can be considered as part of the Garden area calculation of the scheme. If these areas are determined to be terraces, then they must be no more than 800m in height to be included within the garden area. The plans indicate that these sections raise the natural ground level up to a height of approximately 2 metres between dwellings two and three. Whilst the Tribunal ultimately makes no findings as to whether the application complies with garden area, this is a matter that needs to be resolved, and should also be considered as part of the reconsideration of the application.
- 4 As a notice of decision to grant a permit has been issued by the responsible authority these matters are not easily resolved. Whilst the permit applicant requested that the application be amended to remove the application to vary the easement this raises a number of procedural issues.
- 5 In the end the Tribunal considers that the best course of action is for the decision of the responsible authority to be set aside, and the matter remitted to the responsible authority for further consideration of the application.

Katherine Paterson
Member

