1. Bendigo Mosque approved

In one of the most controversial planning issues over the past few years, the Tribunal has, in *Hoskin v Greater Bendigo CC and Anor* [2015] VCAT 1124, approved the 'Bendigo mosque' – comprising a place of assembly, place of worship, minor indoor sports and recreation facility (sports hall) and caretaker's dwelling.

Interestingly, the Tribunal did not 'red dot' the decision but seemed to indicate that is has 'red dot' status. It stated:

> ***RED DOT DECISION SUMMARY***
>
> *The practice of VCAT is to designate cases of interest as 'Red Dot Decisions'. A summary is published and the reasons why the decision is of interest or significance are identified. The full text of the decision follows. This Red Dot Summary does not form part of the decision or reasons for decision.*

There were three main issues considered by the Tribunal:

- Whether procedural fairness had been denied to the group applicants;
- Whether there were any significant social or other effects to the community as a result of the development and use of the mosque; and
- The planning merits of the proposal.

On the first matter, the group applicants raised a series of issues and concerns with respect to the conduct of the hearing generally, with the common theme that they had been denied procedural fairness by the Tribunal or had been prejudiced or disadvantaged in preparing for and presenting their case.

Specifically, they complained that the objectors were reluctant to come before the Tribunal to make submissions because of the wide media coverage and that the Tribunal "has not acted with fairness in conformance with its statutory obligation ... by ensuring parties have proportionate legal representation."

Other issues raised by the group applicants were the need for more time to prepare for the hearing and requests for adjournments; the failure to provide a transcript of proceedings between hearing days; a request for a suppression order; defects in the planning application; alleged conflict by the responsible authority; and that the President should recuse himself as a result of correspondence sent by the Victorian Government Solicitor's Office (VGSO) on behalf of the Tribunal regarding a contempt issue. (The recusal issue is considered in a separate determination *Hoskin v Greater Bendigo CC & Anor* [2015] VCAT 1125)

Further, the group applicants contended their human rights under the *Charter of Human Rights and Responsibilities Act* 2006 had been breached because of denial of procedural fairness.

All in all, the Tribunal stated in relation to procedural issues there was:

> *... no evidence of procedural fairness being denied to the group applicants. Rather, the Tribunal has afforded the group applicants every opportunity to prepare and present their case including lengthy adjournments of the proceeding in order to obtain expert evidence.* [5]

With respect to social issues, the group applicants were critical that no social impact statement had been prepared, and that given the social concerns raised in objections such a report should have been prepared. Turning this on its head, the Tribunal held:

> *While the Tribunal is cognisant that fears and concerns are held by the group applicants, they have produced no expert evidence and very little material of any type to support the assertions that they make. If there were the types of impacts associated with mosques as submitted by the group applicants, and there are numerous mosques in Australia, then there would be evidence of those impacts available for the group applicants to rely upon.* [131]

As to the planning merits, the Tribunal found that it was "an acceptable outcome having regard to the location of the subject land and the suite of planning scheme policies and provisions that apply. It is a good location that, with main road frontages and its relationship to industrial land, will have limited off-site amenity impacts. Nearby residences, some of which are in the Industrial 3 Zone, will not be unreasonably affected by the proposed use and development."

Postscript

In *Hoskin v Victorian Civil and Administrative Tribunal & Anor* [2015] VSCA 270, the Court of Appeal dismissed the group applicants application for a stay and injunction, noting that the grounds of appeal were "innocent of any particulars whatsoever".

Recusal matter

As noted above, there is a separate determination on the recusal matter. Essentially the group applicants contended that the President should recuse himself as a result of correspondence from the VGSO addressed to some members of the group applicants expressing concern about defamatory and potentially contemptuous publications relating to the President and Deputy President of the Tribunal. In refusing to recuse himself, the President stated:

> *In summary, my involvement in the correspondence is zero. I have not, at any stage, had anything at all to do with the letters or directions given to the Victorian Government Solicitor's Office. I had no knowledge at all of the correspondence from the Victorian Government Solicitor's Office or any instructions to that office or of the publications referred to in the correspondence until the group applicants' application to recuse was provided to me on 24 June 2015.* [5]

See also:

- **Guide to Planning Appeals: Place of worship, social effects, natural justice**

2. Internal amenity in lower scale development

We have recently commented on issues of internal amenity in high rise apartment developments as the basis of some Tribunal refusals. It is also noteworthy in the recent reporting period that the Tribunal has refused a number of lower-scale residential developments because of concerns with internal amenity.

In *Rosamond Terraces Pty Ltd v Maribyrnong CC* [2015] VCAT 1087, the Tribunal considered a proposal to construct 78 dwellings in a series of two and three storey townhouses. The proposed layout showed three rows of back to back townhouses, with ground floor garages and a central covered drive. Above the driveway were the back walls of the townhouses, and small light courts to the first floor of each dwelling. They were clustered together with a number forming light courts across two, three or four dwellings where there was no exposed side to the townhouse (at ends of the rows). The light courts at first floor were accessible, and provided a small clothes line area and location for plant, such as hot water or air conditioning units. At upper levels bedrooms faced onto the light courts. Each bedroom was screened to avoid overlooking into bedrooms of opposite dwellings or of the service yards and living windows to courtyards below.

In supporting the Council's concerns about the poor level of internal amenity, the Tribunal stated:

> *In a generally unconstrained site of nearly 9,000sqm in an area where intensity of form is not the absolute and only imperative, it is difficult to understand why 30 of the 78 dwellings rely heavily on these light courts. All of these are three bedroom dwellings (and some four bedroom), with all but the main bedroom relying on the light court for light, ventilation and outlook.* [65]

The Tribunal also had some concerns with the equitable development opportunities of the adjoining property.

In *Wang v Glen Eira CC* [2015] VCAT 1096, it was proposed to construct a three storey building accommodating eight dwellings. The Tribunal noted the continuous linear form of the development and the setbacks to the adjoining boundaries resulted in the need for screening to every window at the first and second floor levels to a height of 1.7 metres. The screening was required to protect the adjoining properties from overlooking.

In refusing the proposal, the Tribunal stated:

> *This continuous attached form compromises the internal amenity for future occupants. There is not one window that has an uninterrupted or obscure view to the sky. There is not one window that has an outlook.*
>
> *It is noted that the ground floor bedroom windows are not required to be screened to a height of 1.7 metres but are sited 1.4 metres from the ground as they are located on the pedestrian pathway that provides access to each of the units.*
>
> *It is often put that there is a compromise to be made between providing affordable housing and levels of amenity. It was also put to me by Mr Crawford that '...one must also appreciate that planning decision making is concerned with appropriate, not optimal or ideal, outcomes .....'.*

> *I acknowledge that there is a balance to be struck, but in this case, the internal amenity impacts are a result of the proposed form of the site to develop eight townhouses. Fewer houses on site may enable this issue to be dealt with differently. Fewer houses may enable a design to provide an outlook to at least the living area if not bedrooms. As it is proposed, I find that the level of internal amenity to the future occupants is poor and the design is not a good planning outcome.* [16-20]

In *Quattrocchi v Banyule CC* [2015] VCAT 1185, the Tribunal considered a proposal to construct a two storey building containing 18 apartments.

A feature of the site was its steep slope, which required a significant cut into the land to facilitate the building. The Tribunal commented that "The result is a particularly complex building design that is challenging to understand and appreciate."

In refusing the proposal, the Tribunal stated:

> *I have set out above how the building is cut into the site to such an extent that even at its low side, the lower level floorplates are mostly below natural ground level. Unfortunately this approach has meant that, along the high south-western side of the site, there are apartments that sit significantly below natural ground level. Such a siting has significant impacts on the internal amenity of these apartments, in terms of their outlook, and their access to daylight and sunlight.* [27]

See also:

- **Guide to Planning Appeals: Amenity > Internal amenity**

3. Extension to permit for multi-dwellings near oil refinery refused

In *JB & DP Milgate Property Pty Ltd v Hobsons Bay CC* [2015] VCAT 1167A, the Tribunal refused an extension to a permit for three two storey dwellings located near the Altona Refinery, which is defined as a Major Hazards Facility.

A permit was granted in 2010 for the construction of three two storey dwellings in a residential zone and two requests to grant an extension had been approved since 2010. A third request was made in November 2014, however this was refused by the Responsible Authority. What had changed?

With the third request for an extension, the Council sought advice from WorkCover which objected to the extension to the permit because the subject site was located within an "inner area" of WorkSafe's Guidance Note Land Use Planning Near a Major Hazard Facility.

Since the preparation of the Guidance Note and having regard to a number of Tribunal decisions which had refused applications near Major Hazards Facilities, the Council had developed and adopted a policy guideline known as the *Interim Management of Land Use Planning around Major Hazard Facilities Guidelines*. This Guideline was initially adopted in June 2013 and a revised Guideline adopted in October 2014. The Guideline had not been incorporated into the planning scheme nor was it a reference document.

While the Tribunal acknowledged that the WorkSafe Guidance Note had been around since 2010 (the time of the original application for the dwellings), it was evident that more weight had been given to it. Hence, the Tribunal held:

> *The risks posed by the refinery and the location of the land's location within the inner advisory area appear to be matters that were not considered in the initial grant of the permit nor in the following two requests for extensions.*
>
> *My consideration and findings about these risks issues raise the very real probability that in weighing up such matters against other policy for residential development, there is a real prospect of a fresh permit for the same development of three dwellings not being granted. At the very least there is an arguable case against such a development proceeding. If it were to proceed without consideration of such a case then the outcome may well be an unacceptable and disorderly planning outcome.*
>
> *There is also the fact that there is very likely to be an objector, the refinery operator. An opportunity should be afforded such a party to put its case given the seriousness and relevance of the risk posed by its operations.*
>
> *These conclusions add weight to refusing the extension. If the Applicant wishes to pursue the development, a more orderly planning outcome will be achieved by testing the appropriateness of the development through a fresh permit application. Given the gravity of these risk issues and policy matters that are in play, these are strong reasons to refuse the request for an extension.* [41-44]

In response to submissions made by the Applicant regarding fairness and the objectives for planning in Victoria, the Tribunal stated:

Taking such objectives into account I cannot consider the Applicant's plea for fairness in isolation from other objectives. In so far as one person's position for fairness might be brought forward in this case I must also consider and balance the needs and fairness of the decision for the broader community. These needs include securing and facilitating a pleasant and safe living environment. I cannot set aside such objectives for the benefit of one party. As much as the Applicant has sought fairness in this case, those who may reside in any future development that might occur on this land deserve for these objectives to be upheld. [48]

See also:

- **Guide to Planning Appeals: Extension to permit > Kantor principles**

4. More on reimbursement of fees and costs

Reimbursement of fees

At VCAT Volume 3 No 3 we commented on a number of recent decisions where the Tribunal had required the reimbursement of application fees under section 115CA of the *Victorian Civil and Administrative Tribunal Act* 1998 having regard to the presumption in the legislation that applicants are entitled to a refund of fees for failure appeals.

More recent decisions have followed the adopted approach including, in one case, where the Tribunal affirmed a Council refusal to grant a permit. In this case, *Raydan v Bayside CC* [2015] VCAT 1184, while acknowledging that the Council had sought to resolve the areas of concern with the proposal, that its delays in the processing of the application did not justify the failure of the Responsible Authority to make a decision within the prescribed time, and hence ordered the reimbursement of the application fees.

As we have stated previously, it will not surprise if these decisions will lead councils to take a more arbitrary approach to making decisions in order to meet the statutory time period than seeking to facilitate positive outcomes.

It was the result that mattered in *Boroondara CC v Dugdale* [2015] VCAT 1182, where the Tribunal ordered the reimbursement of fees to the Council under section 115B(3) in an enforcement matter, but refused to make an order as to costs.

The Tribunal had previously granted an enforcement order that a building cease use as a rooming house. Council was seeking costs under section 109 as well as a reimbursement of application fees under section 115B.

While the awarding of costs are more common in enforcement matters, the Tribunal in this instance considered there was a genuine legal argument as to the lawfulness of the rooming house and refused to make an award of costs.

However, in referring to section 115B(3)(c), which states that fees may be reimbursed having regard to the result of the proceeding, the Tribunal stated that "the balance tilts in favour of an order requiring the reimbursement of the application fees paid by the responsible authority…"

On the resourcing front, there is good news for Councils with the Department of Environment, Land, Water and Planning's announcement that there is to be a review of planning permit application fees (after 15 years). The bad news is that implementation will not occur until the last quarter of 2016 (after rate capping is introduced mid 2016).

Costs

In a recent case that generated some media coverage, *The Drysdale Clifton Springs Community Association (DCSCA) Inc v Greater Geelong CC* [2015] VCAT 1208, the Tribunal made an order that a local community group pay the costs of a service station applicant.

The matter involved a request by the local community group to cancel a permit for a service station. The Tribunal stated that it had made it clear on numerous occasions that a request to cancel a permit was a very serious proceeding that may have significant consequences for a permit holder and others. In making the award for costs, the Tribunal found that:

- The application was, in effect, "manifestly hopeless" and "doomed to fail"– more specifically;
- The applicant association could not reasonably satisfy any ground under section 87 of the *Planning and Environment Act* 1987. This was the legal threshold for a request to cancel the permit; and
- Factors pertaining to the exercise of the Tribunal's discretion were strongly weighted against the association's claim.

As to the relevance of the community nature of the group (i.e. comprising volunteers who have an interest protecting the character and environment of the area), the Tribunal noted the importance of providing access to the Tribunal but in this case it did not raise legitimate issues for determination. It stated:

Rather, it was a delayed attempt to challenge the grant of the permit in circumstances where it had passed up direct opportunities to lodge an appropriate proceeding with the Tribunal. What is more, these defects could have been readily identified from the outset if professional advice had been obtained by it. [32]

See also:

- **Guide to Planning Appeals: Costs, Reimbursement of fees**

5. Car stackers: workability and functionality

It would seem that nearly all multi-level apartment proposals in the inner city include car stackers in order to utilise much needed space to provide on-site car parking. Two recent cases have involved issues about the workability of certain types of stackers and noise impacts.

In *Kopelis v Glen Eira CC* [2015] VCAT 1352, the Tribunal considered a proposal to make a number of amendments to a permit for a four storey building comprising a ground floor shop and five apartments. One of the amendments was to modify the type of car stackers and therefore the dimensions and operational details of the car stacker systems. It was a retrospective approval.

Council opposed the proposed car stacker systems as the platform widths of both car stacker systems did not meet the Australian Standard AS2890.1 minimum car space width of 2.4 metres. The Council was also concerned about whether the 5.4 metre setback from the laneway remained.

As Council was not able to elaborate on its concerns at the hearing, an accompanied on-site inspection was arranged with both the Council and Applicant's traffic engineers in attendance.

Having regard to Clause 52.06, Australian Standard AS2890.1:2004 and the particular facts and circumstances of this case, the Tribunal held that the proposed mechanical parking design should be considered on its own merits because:

- The Standard's foreword about achieving an efficient design that considers the speed and quality of parking service, car manoeuvring and convenience for the drivers;
- Design standard 4 of Clause 52.06-8 that states the design and operation of mechanical parking is to the satisfaction of the responsible authority; and
- The decision guidelines of Clause 52.06 about the ease and safety with which vehicles access and circulate within the parking area; and the workability and allocation of spaces in the mechanical parking arrangement.

Applying this approach, the Tribunal was satisfied that the workability, convenience and safety of the design and layout of the mechanical parking was acceptable in this case.

In *Steg v Moreland CC* [2015] VCAT 1247, which involved a proposal for the extension to an existing two-storey building to accommodate an additional 10 dwellings, it was proposed to install a car stacker in the undercroft at the rear of the building. The Tribunal observed that the northern side was defined by a wall of ground floor dwellings, so the stacker would be invisible from this direction. It was proposed to enclose the east and west sides with what appeared to be a solid wall with an applied render finish. The stackers would, however, be open to the south, facing the adjoining access way. Views from the neighbouring property would be screened by the boundary fence and by the acoustic barrier which extended downward around the edge of the base of the first floor level. The stackers would have minimal, if any visibility from adjoining land.

Surrounding neighbours were concerned about the potential noise impacts of the stackers, and noted that such facilities were more common in basements in buildings along main roads.

The Applicant's evidence was that, subject to the provision of solid walls rather than screens adjacent to the car stackers, 2.0 metre high boundary fences (with overlapping palings and no gaps), and the construction of the acoustic barrier around the eastern, southern and western edges of the undercroft, the noise impact would be acceptable. Indeed, the evidence concluded that the resultant noise from the car stacker operation would be no greater than the noise emissions from the existing car park, and may be less. In rejecting this evidence, the Tribunal stated:

The evidence was notably lacking in data to support this conclusion. Importantly, no assessment of the existing noise levels of the car park was undertaken. There is no information as to what noise emanates from vehicles utilising the car park, or what the noise level is when measured from the adjoining dwellings taking into account such matters as distance/separation, the attenuating effect of boundary fences, and of the windows and walls of the dwellings themselves. There is no assessment of the background noise level (although in response to a question it was stated that this would be in the order of 40-50dB depending on

the time of day) or the extent to which the car stacker noise will be audible above this. The evidence does not distinguish between the acoustic environment during daytime, evening or night-time periods.

As I understand it, the recommended measures are intended to block 'line of sight' from the car stacker mechanism to the nearest noise-sensitive locations or receptors. Further, treatment of the undercroft is recommended to provide sound absorption qualities and avoid any reverberation.

The evidence includes details of noise levels measured on an existing car stacker unit in another development. It states that that unit has a very similar layout to what is proposed here. The noise measurements shown are what would be expected if a person were standing just outside the undercroft opening, at approximately one metre from the edge of the car stacker. The measured noise levels during operation ranged from 70dBA to 60dBA, with occasional noise peaks up to 74-78dBA when the stops were hit. Notwithstanding the oral evidence that the expected resultant internal noise level within neighbouring rooms would be in the order of 30dB with the windows closed and between 35dB and 40dB with the windows open, the assessment does not demonstrate how these noise projections were calculated. Nor is there any explanation as to which of the neighbouring dwellings these noise levels would apply to, how these compare to existing conditions, or to what extent a variation may be expected between the dwellings given the differences in their design and siting relative to the review site. [27-29]

See also:

- **Guide to Planning Appeals: Car parking > Car parking stackers**

6. Amendment to permit: Whether transformation is not a 'pub' test but a legal test

Amendments to permits and whether or not they are transformational has been subject to a number of significant cases over the years. The general principle is that for a proposal to be considered transformational, when viewing the matter broadly and fairly, what results is a different permit as opposed to a modified permit.

In *Silberscher v Stonnington CC* [2015] VCAT 1204, application was made for a number of changes to amend a permit including dividing each apartment into two so as to create seven additional apartments and a total of fourteen apartments. Council refused to endorse the amendments and considered the changes to be transformational.

The Council submitted the amendments would be a transformation of the permit because, in summary, a doubling in the number of dwellings was a significant intensification of the use, the amendments were extensive in number and changes to the building envelope were significant. The Respondents adopted these submissions and particularly emphasised the doubling in the number of apartments would pass the colloquial 'pub test' for being a 'completely different' permit.

The Tribunal commented that it must apply the legal test of a transformation and not a 'pub test'. In so doing, it stated:

Without discussing all the authorities on transformation, it suffices to state that changes can be substantial without being a transformation. They include not only changes to the endorsed plans but changes (consequential or otherwise on the plans) to what the permit allows, the land description and the conditions. The statute recognises persons may be affected by changes and extends normal notice requirements to an application to amend.

First, the raw number of individual amendments is not part of the test. A detailed catalogue of each individual amendment may be voluminous but if the outcome remains substantially the same as the permit, there is no transformation. Here, the development remains a three-storey apartment building with a very similar built form.

Second, the changes to the building envelope are insignificant viewed broadly and fairly. There are only two changes to the envelope that are material. The first change is the greater setback of the basement from the Robert Menzies reserve boundary. There is no discernible impact of this change, other than a beneficial one to increasing the unaffected area of the tree protection zone for a mature lemon scented gum in the reserve and to increasing the in-ground planting area for the apartments along this boundary. The second change is the 150 mm additional width in both the north and south wings of the building and consequential narrowing of the ravine by 300 mm. I accept the opinion of Mr McGurn that the ordinary person in the street change will not appreciate this change.

This leaves whether the additional seven apartments (being a doubling of the number of apartments) is a transformation of the permit.

The reference to 'seven dwellings' in what the permit currently allows is not determinative. That is an issue of form rather than substance because it begs the question of whether a change to eight, fourteen or twenty-four apartments might be a transformation. The substance of the amendments, principally as shown in the amended plans, must be assessed.

The increase in the number of apartments does not transform the permit because the increase is effectively contained within the existing building envelope. The ResCode objectives and the parking requirements for the additional apartments are met. There are no unreasonable traffic impacts of the additional apartments, as I find later in these reasons.

When the permit was issued, the use of the land for seven apartments (indeed, any number of apartments) was permitted. It remains the case, despite the introduction of the GRZ, that the use of land for seven additional apartments (indeed, any number of additional apartments) is permitted. The GRZ, unlike some other residential zones, does not restrict the number of dwellings on a lot. The additional apartments may be an intensification of the use but the use is permitted and thus the intensification cannot amount to a transformation.

A useful guide to what is a transformation is whether the amendments are totally unrelated to the permit and would require completely new conditions. Looking at the matter fairly and broadly, the permit will retain significant elements of its content and simply adds to, expands or alters what has been permitted. [20-27]

See also:

- **Guide to Planning Appeals: Permit > Amendment to permit > Whether transformational**

7. Are the Clause 52.10 buffer thresholds mandatory for Note 2 uses?

The purpose of Clause 52.10 of the VPPs is:

To define those types of industries and warehouses which if not appropriately designed and located may cause offence or unacceptable risk to the neighbourhood.

The provisions of the Clause set out threshold distances that are the minimum distance between land to be used for specified uses that have adverse amenity potential and land in other identified zones, including a residential zone. The table to the zone includes three columns that refer to the type of production, use or storage (purpose), the threshold distance in metres and notes. The notes are defined. Note 1 is where the threshold distance is variable, dependent on the processes to be used and the materials to be processed and stored. Note 2 specifies that an assessment of risk to the safety of people located off the land may be required.

In *C & G Steel Fabrications Pty Ltd v Wyndham CC* [2015] VCAT 1221, the Council had refused a steel fabrication and welding business on the basis that the proposal failed to comply with the minimum threshold distance from a residential zone specified at Clause 52.10. It was Council's view that the threshold distances for Note 2 uses were mandatory. Had it not been for these provisions, the Council considered that the proposed use was appropriate for the site.

In rejecting the Council's position that the Note 2 uses were mandatory, the Tribunal stated:

I do not agree with Council's interpretation and I say this for the following reasons.

There is no 'trigger' for a permit for use or development under Clause 52.10. Furthermore, the Clause does not specify that where a set threshold distance is not met, the use or development is prohibited. Instead, it is a provision that seeks to define those types of industries that if not appropriately designed and located have the potential to cause adverse amenity impacts.

The provisions of the applicable zone, in this case the Industrial 3 zone, determine whether a permit is required for the use. The use of the land for steel fabrication is included in the definition of industry which is subject to a permit in the Industrial 3 zone. The Industrial 3 zone provisions do not include any conditions that must be met for industry but do set out matters that must be considered in determining whether a permit should be granted for use. These include the amenity of the neighbourhood and the effect on nearby existing residential areas. Thus, in the Industrial 3 zone, I consider a permit is required for the use but there is no specific requirement that the threshold distance in Clause 52.10 must be met. It therefore follows that the use is not prohibited in that zone for being located within 100 metres of a residential zone.

This is to be contrasted with the provisions of the Industrial 1 zone where industry is allowed without a permit if it falls within a purpose without a Note 1 or Note 2 in the table to Clause 52.10 and meets

the relevant threshold distances specified in Clause 52.10. This means that if an industry use that is not subject to Note 1 or Note 2 under the Table to Clause 52.10 fails to meet the threshold distance set in that Clause, a permit is required. The proposed use then becomes the subject of a planning permit process with attendant analysis and discretion.

Failure to meet the threshold distance specified in Clause 52.10 is also determinative of whether an application requires referral under Clause 66.02. This Clause does not specify what uses and developments are subject to a permit but set out the circumstances under which permit applications must be referred to various authorities. For example, an application to use land for an industry or warehouse for a purpose listed in the table to Clause 52.10 shown with a Note 1 or if the threshold distance is not to be met must be referred to the Environment Protection Authority (EPA). This referral provision supports the view that Clause 52.10 does not act to prohibit a use if the threshold distance is not met since there would be no point referring an application for a use that is prohibited. The application the subject of this review was referred to the EPA under this provision of the Planning Scheme and no objection was offered, subject to inclusion of permit conditions.

It is my view that Clause 52.10 is to be read in conjunction with the applicable zone and overlay controls and the referral and notice provisions and in itself does not generate the need for a permit or prohibit uses or developments due to failure to meet specified threshold distances. I note this view is consistent with the findings in Alysandratos v Moreland CC, a relatively recent decision of the Tribunal. I note the decisions referred to by Council are all over 12 years old and I have not been advised if the provisions of the Scheme were the same as currently apply. [25-30]

See also:

- **Guide to Planning Appeals: Buffer distances**