

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P709/2023

<b>APPLICANT</b>	Hillview Rise Pty Ltd
<b>RELEVANT AUTHORITY</b>	South Gippsland Shire Council
<b>SUBJECT LAND</b>	99 Bena Road KORUMBURRA 3950
<b>HEARING TYPE</b>	Practice day hearing
<b>DATE OF HEARING</b>	23 February 2024
<b>DATE OF ORDER</b>	29 February 2024
<b>CITATION</b>	Hillview Rise Pty Ltd v South Gippsland SC [2024] VCAT 188

## ORDER

### Joinder application refused

- 1 For the reasons provided at the practice day hearing, Dr Gary John Wilkie is **not** joined as a party to the proceeding.

### Remittal of application

- 2 Pursuant to section 51(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) the decision of the South Gippsland Shire Council ('Council') with respect to the proposed development plan submitted for approval pursuant to the requirements of the Development Plan Overlay, Schedule 6 (Korumburra Residential Growth Area), in the South Gippsland Planning Scheme, is set aside and the matter is remitted to the Council for consideration with the following directions:
  - a. The Council is to consider the set of plans comprising the amended proposal which was filed with the Tribunal in application P709/2023 on 8 February 2024.
  - b. By no later than **5pm on 8 March 2024**, the Council is to provide to the applicant:
    - i. a list of all plans, documents, reports which it believes are necessary to determine the request to approve the development plan.
    - ii. a statement
      1. specifying any aspects of the development plan or supporting materials which are not to the Council's satisfaction; and



2. outlining any concerns of the Council with the proposed development plan.
- c. By no later than **5pm on 5 April 2024**, the applicant is to provide to the Council any further plans or materials responding to the Council's requests and concerns and a response to its statement.
- d. The development plan and supporting documents, as provided to the Council by 5 April 2024, is to be considered by the Council at its ordinary Council meeting to be held in May 2024, where the Council will determine whether or not the development plan has been prepared to its satisfaction.

### **Hearing vacated**

- 3 The 3 day hearing scheduled at **10.00am on 4 March 2024** is vacated. No attendance is required.

J Perlstein  
**Member**

### **APPEARANCES:**

For applicant	Mr Paul Chiappi, Barrister, instructed by Glenn Kell of Planning Central Pty Ltd.
For responsible authority	Ms Chantal Lenthall, senior strategic planning officer, and Mr Sebastian Lorenzo, town planner, South Gippsland Shire Council
For Gary John Wilkie	In person.



## REASONS

- 1 Oral reasons were provided for the decision not to join Dr Wilkie as a party to the proceeding.
- 2 The question of joinder was the only matter scheduled to be considered at the practice day hearing.
- 3 However, there were several items of correspondence on the Tribunal file concerning the applicant's desire to rely on an amended development plan and accompanying documents at the hearing of this application scheduled to commence on 4 March 2024, for three days. Given the proximity to the hearing date, it was necessary to also utilise the practice day to consider the question of how this matter could be dealt with.
- 4 There was also discussion of the effect of the Tribunal decision in *Development 1201 High St Rd Wantirna South Pty Ltd v Knox CC* [2023] VCAT 1382 ('*Development 1201*') which, similarly, concerned an application for review of a decision with respect to a development plan, and raised the question of whether the Tribunal has the jurisdiction to consider a development plan that differs from the original development plan on which the application to the Tribunal was based.
- 5 The effect of this decision is that if the applicant wishes to proceed to hearing on a plan other than the development plan that formed the basis for the application for review, the Tribunal must consider the form and content of that plan to determine whether it has the jurisdiction to consider the alternative plan. This would require an additional practice day or preliminary hearing, and a decision on that question, before the matter could proceed to hearing.
- 6 Following extensive discussion, the parties agreed that the best course of action would be to set aside the council decision, vacate the hearing dates and remit the matter back to the council for its consideration of the version of the plans filed with the Tribunal on 8 February 2024 and any further amendments that are made by the applicant following the response of the council to those plans, as directed by Tribunal orders.
- 7 The parties provided proposed directions to accompany the remittal that I have included in this order, subject to amendments discussed during the practice day hearing and minor grammatical changes that do not change the intent of the directions.
- 8 The decision to remit the application back to the council will avoid the need for the Tribunal to consider the jurisdictional question raised in the *Development 1201* decision, and allow the council to assess, and make a decision, with respect to the plan on which the applicant wishes to proceed. The council has committed to making a decision on that plan during its ordinary council meeting scheduled for May 2024.

J Perlstein  
Member

