

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
VALUATION, COMPENSATION AND PLANNING LIST

Not Restricted

S ECI 2023 02549

DARREN DICKSON

Plaintiff

v

YARRA RANGES COUNCIL

Defendant

JUDGE: Richards J
WHERE HELD: Melbourne
DATE OF HEARING: 3 August 2023
DATE OF JUDGMENT: 18 August 2023
CASE MAY BE CITED AS: Dickson v Yarra Ranges Council
MEDIUM NEUTRAL CITATION: [2023] VSC 491

LOCAL GOVERNMENT – Powers, functions and duties of councils generally and for land use planning – Council meetings – Strategic planning – Defendant council considering draft Urban Design Framework for Monbulk town centre – Whether council meeting its community engagement obligations in relation to public exhibition of draft Urban Design Framework – Council meeting consultation obligations in relation to exhibition of draft Urban Design Framework – Whether council meetings open to the public – Council meetings open to the public at all relevant times – Standing of plaintiff – Principles concerning standing – Whether plaintiff has a special interest in the subject matter of the proceeding – Plaintiff has no standing – *Constitution Act 1975 (Vic)*, Pt IIA – *Local Government Act 2020 (Vic)*, ss 8, 9, 10, Pt 3, Divs 1–2, ss 60, 61, 66 – *Planning and Environment Act 1987 (Vic)*, Pt 3 – Yarra Ranges Planning Scheme.

HUMAN RIGHTS – Whether public authority acted incompatibly with human rights – Public authority did not act incompatibly with human rights – *Charter of Human Rights and Responsibilities Act 2006 (Vic)*, ss 7(2), 13(a), 18(1), 38(1).

<u>APPEARANCES:</u>	<u>Counsel</u>	<u>Solicitors</u>
For the Plaintiff	In person	
For the Defendant	Mr EA Gisonda	Macquarie Local Government Lawyers

TABLE OF CONTENTS

Local government – relevant legislation.....	4
Monbulk Township Draft Urban Design Framework.....	8
Does Mr Dickson have standing?	13
Consideration.....	14
To what extent is the Council obliged to engage with the community in relation to the UDF?.....	17
Local Government Act.....	17
Planning Act.....	20
Charter.....	21
Common law	23
What community engagement has the Council undertaken in relation to the UDF?.....	24
Has the Council met its community engagement obligations in relation to the UDF?	34
What are the Council’s obligations to open its meetings to the public?	39
Is the Council meeting its obligation to open its meetings to the public?	48
Meetings between 31 January and 11 April 2023.....	50
Were the meetings between 26 April and 27 June 2023 open to the public?	55
Filming Council meetings	57
Registration requirements at Council meetings.....	58
Should the Court answer the additional questions?.....	60
Disposition	61

HER HONOUR:

- 1 The municipal district of Yarra Ranges lies in the outer eastern suburbs of Melbourne. It covers parts of the Yarra Valley and the Dandenong Ranges, including the locality of Monbulk.
- 2 While he does not live in the municipality, Darren Dickson identifies as a member of the Yarra Ranges community. He works within the community, and spends time with friends and family there almost every day. In particular, he cares for his mother, who is a resident of Yarra Ranges.
- 3 On 13 December 2022, a meeting of the Yarra Ranges **Council** resolved to place the draft Monbulk Urban Design Framework (**UDF**) on public exhibition between 16 December 2022 and 12 March 2023. At the same time, the Council noted that findings from the community feedback and proposed amendments to the UDF would be presented to a future Council meeting. The UDF attracted considerable public interest during the exhibition period. On 9 February 2023, in response to feedback, the Council extended the consultation period for a further two weeks, to 26 March 2023.
- 4 Mr Dickson first learned about the UDF in April 2023 from his friend Martin Dieleman, who lives in Lilydale. Mr Dieleman was concerned that the UDF involved a plan by the Council to implement '20-minute neighbourhoods' in the Yarra Ranges area, a concept that he associates with increased housing density and surveillance, and reduced freedom of movement. In March 2023, Mr Dieleman started a petition giving voice to these concerns, and asking the Council to extend the community consultation period for a further 12 months. By mid-June 2023, the petition had over 2,000 signatures from people all over Victoria. Mr Dickson shares the concerns of the petitioners.
- 5 Meetings of the Council are usually held on the second and fourth Tuesday of each month, at the Civic Centre Chamber in Lilydale. Council meetings are typically chaired by the Mayor and are attended by the other Councillors and Council officers.

There is a public gallery in the Chamber, which is usually open for members of the public who wish to attend and observe a meeting in person. The Council's meetings between 31 January and 11 April 2023 were attended by larger than usual numbers of people, some of whom were loud and disruptive, and did not take direction from the Mayor as Chair of the meetings.

6 Mr Dickson attended the Council meeting on 11 April 2023, but said that he was unable to engage with anyone from the Council. According to Mr Dickson, the Councillors were 'quite rude' and refused to engage with him and the many concerned residents in the gallery. According to the Council's Director of Corporate Services, Andrew Hilson, a previous pattern of demonstrated anti-social behaviour in the public gallery escalated at the meeting, to the point where the Mayor adjourned the meeting and the public gallery was cleared.

7 Between 26 April and 27 June 2023, the Council held its meetings online, with the public able to participate in the meetings via Zoom. In person meetings resumed on 11 July 2023, but with new registration requirements for any member of the public wishing to attend a meeting.

8 In this proceeding, Mr Dickson seeks orders prohibiting the Council from approving the UDF, based on a lack of community engagement, and requiring the Council to extend the consultation period by a further 12 months. He also seeks an order in the nature of mandamus requiring the Council to reopen the public gallery for meetings of the Council, and clarification of whether members of the public gallery may film Council meetings. Mr Dickson contends that the Council is not meeting its obligations under the *Local Government Act 2020* (Vic) to engage with the community and to hold meetings that are open to the public. He also contends that the Council is acting incompatibly with human rights protected by the *Charter of Human Rights and Responsibilities Act 2006* (Vic), specifically the rights to privacy, to freedom of expression, and to participate in public life. Mr Dickson seeks answers to two additional questions, specifically:

- (a) whether the Council's role includes power to develop three-storey accommodation for local areas; and
- (b) whether the Council can engage with and adopt United Nations policies.

9 The Council opposes each of these claims. It contends that Mr Dickson does not have standing to seek any of the relief claimed. In relation to the draft UDF it says that, while it is not legally obliged to consult the community, it has in fact engaged in extensive community consultation about the draft UDF. The Council says that its meetings have at all times been open to the public and are conducted in accordance with the requirements of the Local Government Act. It maintains that the Court should not answer the additional questions posed by Mr Dickson.

10 The proceeding came before me in the Practice Court on 4 July 2023, on an application by Mr Dickson for an interlocutory injunction to restrain the Council from adopting the UDF in mid-2023, as it had initially planned to do. When it became clear that the UDF would not be considered at a Council meeting before September 2023, I listed the proceeding for an early trial on 3 August 2023.

11 For the reasons that follow, I have concluded that:

- (a) Mr Dickson does not have standing to seek the remedies claimed. He has not shown that he has a special interest in the subject matter of the proceeding. His interest in the UDF and the conduct of Council meetings is no different from that of any member of the public.
- (b) The Council is meeting its obligations under the Local Government Act and the Charter to engage with the community in relation to the UDF.
- (c) The Council's meetings have at all relevant times been open to the public.
- (d) The additional questions do not arise and should not be answered.
- (e) The proceeding must be dismissed.

Local government – relevant legislation

12 Local government is an integral part of Victoria’s constitutional framework. Part IIA of the *Constitution Act 1975* (Vic), which relates to local government, is among the provisions of the Constitution Act that can only be amended with the approval of a majority of electors voting at a referendum.¹

13 Section 74A of the Constitution Act provides:

Local government

(1) Local government is a distinct and essential tier of government consisting of democratically elected Councils having the functions and powers that the Parliament considers are necessary to ensure the peace, order and good government of each municipal district.

(1A) Subject to section 74B, each Council –

(a) is responsible for the governance of the area designated by its municipal boundaries; and

(b) is constituted by democratically elected Councillors as the governing body which is –

(i) accountable for its decisions and actions; and

(ii) responsible for ensuring good governance; and

(c) includes an administration which –

(i) implements the decisions of the Council; and

(ii) facilitates the performance of the duties and functions of the Council.

(2) An elected Council does not have to be constituted in respect of any area in Victoria –

(a) which is not significantly and permanently populated; or

(b) in which the functions of local government are carried out by or under arrangements made by a public statutory body which is carrying on large-scale operations in the area.

14 Under s 74B, Parliament may make any laws it considers necessary for or with respect to the constitution of councils, their objectives, functions, powers, duties and responsibilities, and any other act, matter or thing relating to local government

¹ *Constitution Act 1975* (Vic), s 18(1B)(j).

administration.

15 The Local Government Act was enacted by the Parliament of Victoria to give effect to s 74A(1) of the Constitution Act.² Part 2 of the Local Government Act provides for councils, including their constitution, role, and powers.

16 A council is a body corporate with perpetual succession,³ which 'is capable of doing and suffering all acts and things which bodies corporate may by law do and suffer and which are necessary or expedient for performing its functions and exercising its powers'.⁴ As a body corporate constituted under the Local Government Act, a council is different and distinct from other kinds of corporations, such as a company formed by its shareholders or an incorporated association formed by its members. A council consists of its councillors, who are democratically elected in accordance with the Local Government Act.⁵

17 A council must have between five and twelve councillors.⁶ The mayor is also a councillor, whose role includes chairing council meetings.⁷ The role of every councillor is to participate in the decision-making of the council, to represent the interests of the municipal community in that decision-making, and to contribute to the strategic direction of the council through the development and review of key strategic documents.⁸

18 Section 8 of the Local Government Act provides:

Role of a Council

- (1) The role of a Council is to provide good governance in its municipal district for the benefit and wellbeing of the municipal community.
- (2) A Council provides good governance if –
 - (a) it performs its role in accordance with section 9;

² *Local Government Act 2020* (Vic), s 1.

³ *Local Government Act*, s 14(1)(a).

⁴ *Local Government Act*, s 14(1)(e).

⁵ *Local Government Act*, s 12.

⁶ *Local Government Act*, s 13(1). The Yarra Ranges Council in this case has nine councillors.

⁷ *Local Government Act*, ss 13(2), 18(1)(a).

⁸ *Local Government Act*, s 28(1).

- (b) the Councillors of the Council perform their roles in accordance with section 28.
- (3) In performing its role, a Council may –
 - (a) perform any duties or functions or exercise any powers conferred on a Council by or under this Act or any other Act; and
 - (b) perform any other functions that the Council determines are necessary to enable the Council to perform its role.
- (4) If it is necessary to do so for the purpose of performing its role, a Council may perform a function outside its municipal district.

19 Section 9 sets out overarching governance principles and supporting principles for local government. In the performance of its role a council must give effect to the overarching governance principles,⁹ which are set out in s 9(2) as follows:

The following are the overarching governance principles –

- (a) Council decisions are to be made and actions taken in accordance with the relevant law;
- (b) priority is to be given to achieving the best outcomes for the municipal community, including future generations;
- (c) the economic, social and environmental sustainability of the municipal district, including mitigation and planning for climate change risks, is to be promoted;
- (d) the municipal community is to be engaged in strategic planning and strategic decision making;
- (e) innovation and continuous improvement is to be pursued;
- (f) collaboration with other Councils and Governments and statutory bodies is to be sought;
- (g) the ongoing financial viability of the Council is to be ensured;
- (h) regional, state and national plans and policies are to be taken into account in strategic planning and decision making;
- (i) the transparency of Council decisions, actions and information is to be ensured.

20 Section 9(3) provides that, in giving effect to the overarching governance principles, a council must take into account five supporting principles, including the community

⁹ Local Government Act, s 9(1).

engagement principles and the public transparency principles. These two principles are discussed further below.

21 Section 10 confers a general power on councils, in the following terms:

General power

- (1) Subject to any limitations or restrictions imposed by or under this Act or any other Act, a Council has the power to do all things necessary or convenient to be done in connection with the performance of its role.
- (2) The generality of this section is not limited by the conferring of specific powers by or under this Act or any other Act.

22 In addition to this general power, councils have specific powers conferred by provisions of the Local Government Act and many other statutes. Relevantly here, the *Planning and Environment Act 1987* (Vic) (**Planning Act**) gives a council powers and responsibilities for land use planning within its municipal district.

23 Section 8A(1) of the Planning Act provides that a council is a ‘planning authority’ for any planning scheme in force in its municipal district. The duties of a council in its capacity as a planning authority include providing ‘sound, strategic and co-ordinated planning of the use and development of land in its area’ and regularly reviewing the provisions of its planning scheme.¹⁰ In its capacity as a planning authority, a council may ‘do all things necessary to encourage and promote the orderly and proper use, development and protection of land’ in its municipal district.¹¹

24 A council is also the ‘responsible authority’ for the administration and enforcement of the planning scheme within its municipal district.¹² In that capacity, it has duties to administer and enforce the planning scheme, and implement its objectives.¹³ As a responsible authority, a council has all the powers necessary for the purposes of carrying out its functions and duties under the Planning Act, and carrying into effect the objectives of its planning scheme.¹⁴ Those powers include a specific power to

¹⁰ *Planning and Environment Act 1987* (Vic), s 12(1)(b), (c) (**Planning Act**).

¹¹ *Planning Act*, s 12(3)(b).

¹² *Planning Act*, s 13(2)(a).

¹³ *Planning Act*, ss 14(a), (b).

¹⁴ *Planning Act*, s 171(1).

‘carry out any other use or development necessary for the orderly and proper development of the area covered by the planning scheme’.¹⁵

Monbulk Township Draft Urban Design Framework

25 The Council has undertaken strategic planning for the community of Monbulk in several stages. The first was the development of the Monbulk Community Plan 2015–2020 between 2014 and 2017. The second was the more detailed Monbulk Structure Plan, which was adopted by the Council in 2017. The third and current stage is the development of an Urban Design Framework for Monbulk that builds on the direction set in the Monbulk Structure Plan.

26 An Urban Design Framework is a strategic planning tool that sets out a design vision for the future development of a place. It includes aims for the future area that may be implemented by a planning scheme amendment.

27 The UDF that the Council resolved to place on public exhibition is titled ‘Monbulk Township Draft Urban Design Framework 2023’ and is stamped ‘DRAFT FOR CONSULTATION’.¹⁶ An overview in the introduction to the UDF sets out its purpose as follows:¹⁷

The Urban Design Framework (UDF) builds upon the strategic work of the Monbulk Structure Plan in 2017. Its purpose is to provide clear design guidance regarding the development and structuring of land within the Monbulk Activity Centre along Main Road (Central Monbulk).

The preferred character, guidelines and illustrations contained in this document provide directions to landowners, designers, Yarra Ranges Council and the wider Monbulk Community regarding the expected place based outcomes to be achieved by the development of land in Central Monbulk.

A series of character statements and guidelines are provided to achieve integrated urban design outcomes throughout Central Monbulk to ensure that consistent and preferred built form and public realm outcomes are achieved.

...

¹⁵ Planning Act, s 171(2)(i).

¹⁶ Yarra Ranges Council, *Monbulk Township Draft Urban Design Framework 2023* (Draft for Consultation, December 2022), exhibited to the affidavit of Andrew Hilson dated 3 July 2023 (UDF).

¹⁷ UDF, 5.

- 28 The overview explains that the design framework of the UDF will be transferable into the Yarra Ranges Planning Scheme, through a planning scheme amendment.
- 29 The study area for the UDF is about 18.5 hectares of land in central Monbulk, focused on the Main Road Activity Centre and adjacent open space areas along Moores Road. The area contains a mix of commercial, industrial, community, and recreation uses that service Monbulk and adjoining areas. Almost all of Monbulk’s residential area lies outside the study area, as shown in **Figure 1** below.

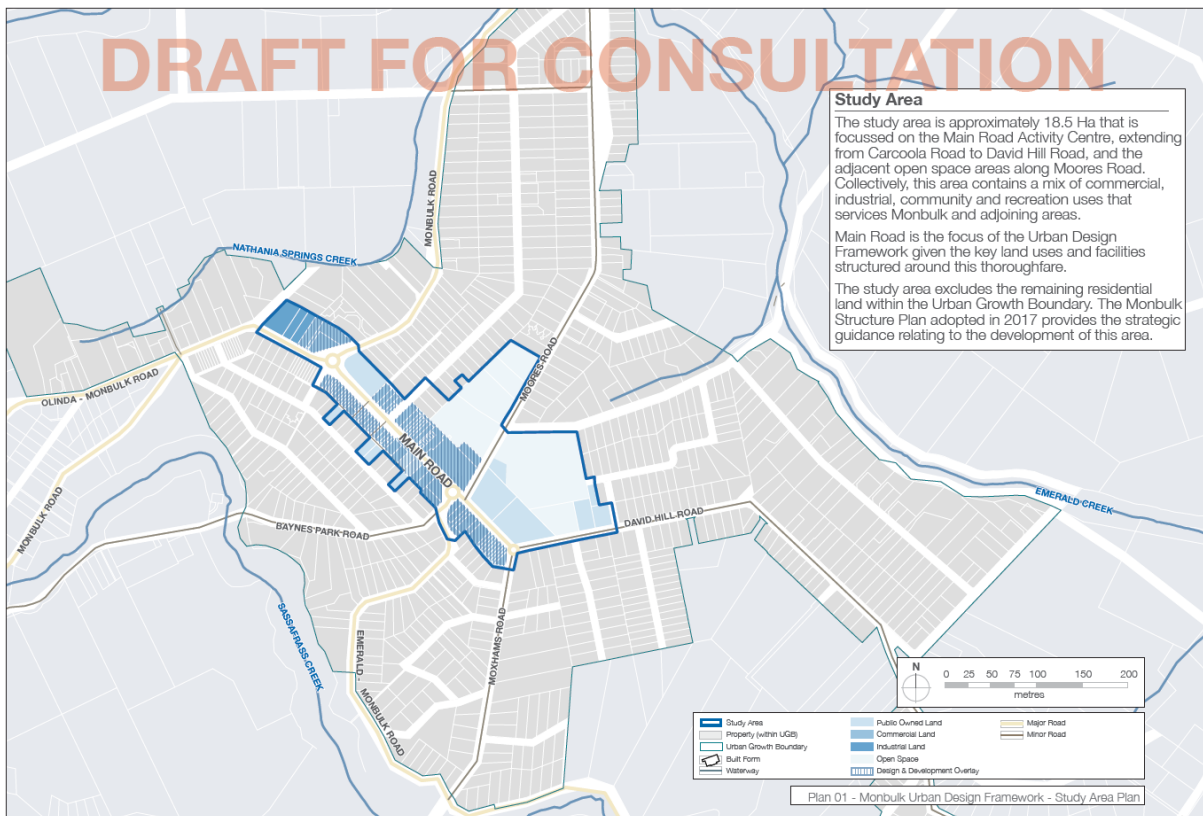


Figure 1: Study Area Plan, *Monbulk Township Draft Urban Design Framework*, December 2022, 9, exhibited to the affidavit of Andrew Hilson dated 3 July 2023.

- 30 The UDF identifies three separate precincts within central Monbulk. Precinct 1 is Main Road; Precinct 2 is Moores Road; and Precinct 3 is Monbulk Civic. The three precincts are shown in **Figure 2** below.

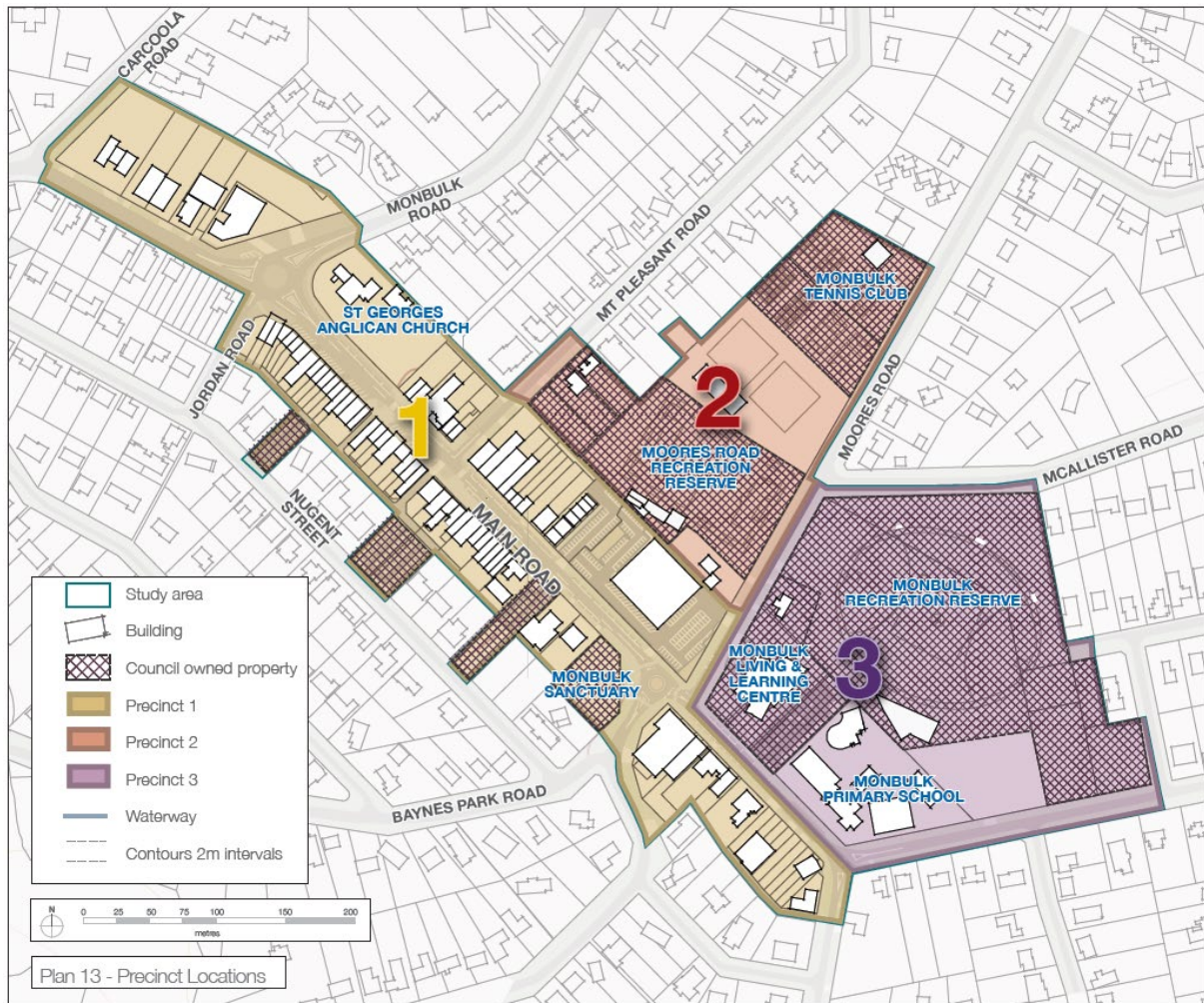


Figure 2: Precinct Locations, *Monbulk Township Draft Urban Design Framework*, December 2022, 33, exhibited to the affidavit of Andrew Hilson dated 3 July 2023.

31 Part 3 of the UDF provides an analysis of each precinct. Part 4 provides framework design principles for the future role and function of each precinct. Part 5 provides concept designs for the future character of each precinct. Actions and estimated costings are set out in Part 6. Part 7 was added in January 2023, and contains a glossary of terms used in the UDF. An addendum sets out four options for consultation in relation to the proposed future design of the ‘Village Green’ site on Moores Road.

32 While Mr Dickson and a number of his witnesses are concerned about the concept of 20-minute neighbourhoods, the UDF does not use the term ‘20-minute neighbourhood’ or refer to the 20-minute neighbourhood principle. The principle is found in *Plan Melbourne 2017–2050: Metropolitan Planning Strategy*, which is the

Victorian Government's long-term planning strategy for metropolitan Melbourne.¹⁸ Plan Melbourne is a planning policy document referred to in the Yarra Ranges Planning Scheme, in particular cl 11.01-1S – Settlement. Plan Melbourne is guided by nine principles, including Principle 5:¹⁹

Living locally – 20-minute neighbourhoods

Creating accessible, safe and attractive local areas where people can access most of their everyday needs within a 20-minute walk, cycle or local public transport trip, will make Melbourne healthier and more inclusive. Due to the specialised and diverse nature of work, many people will still need to travel outside of this 20-minute neighbourhood for their jobs.

33 Nathan Islip, the Council's Manager Design and Place, explained that the intention of the 20-minute neighbourhood principle is to help people be closer to activity centres that meet their daily needs, so that they have access to services regardless of their income, wealth, or access to a private vehicle. He described it as basic good urban design with good community outcomes. It is embedded in all planning schemes in Victoria and is not unique to the Yarra Ranges. He said that while the 20-minute neighbourhood principle is Victorian government policy, it is not a United Nations policy. Mr Islip confirmed that the UDF does not mention 20-minute neighbourhoods or cities.

34 An aspect of the UDF that has alarmed Mr Dickson and some of his witnesses is the section dealing with building frontages and interfaces in Precinct 1. Mr Dickson exhibited to one of his affidavits some drawings from the UDF, depicting three-storey developments on Main Road.²⁰ He relied on these drawings as evidence that the UDF 'clearly is a plan to create 3 storey townhouses in Monbulk which the community is opposed to'. Belinda Bernardini carried out an online survey asking questions based

¹⁸ Victorian Government, Department of Environment, Land, Water and Planning, *Plan Melbourne 2017–2050: Metropolitan Planning Strategy* (March 2017). Plan Melbourne is published on the website of the Victorian Planning Authority at www.planning.vic.gov.au/guides-and-resources/strategies-and-initiatives/plan-melbourne. The Victorian Planning Authority is established under the *Victorian Planning Authority Act 2017* (Vic), with the primary object of providing advice and assistance that is in accordance with the objectives of planning in Victoria set out in s 4(1) of the Planning Act.

¹⁹ Plan Melbourne, 10.

²⁰ Affidavit of Darren Dickson dated 10 June 2023, Exhibit 6. The drawings appear on page 50 of the UDF, illustrating section 4.4.1 Building Design.

on her understanding of the UDF. Question 5 asked whether respondents supported densification, which it described as '[h]igh density living including 3 story multi use purpose properties'. Of the 1,741 respondents to her survey, 1,490 or 85.59% answered 'no' to this question.

35 Mr Islip explained that the Yarra Ranges **Planning Scheme** already provides for three-storey buildings in the centre of Monbulk. Schedule 12 to cl 43.02 of the Planning Scheme applies a Design and Development Overlay to the town centres of Healesville, Monbulk, Seville, Warburton, Yarra Glen, and Yarra Junction. Clause 4.0 - Design requirements includes design requirements for town centre character, including the following in relation to building heights:

Building heights should not exceed two storeys (7.5 metres). A third level may be permitted where the overall height of the building will match that of an adjacent building or where it is set back so as not to be easily discernible from the opposite side of the street.

For the purpose of this schedule 'Building height' means the vertical distance between the highest point of the building and the natural ground level immediately below that point. It does not include architectural features and building services.

36 The Council has already received applications for permits to build three-storey buildings in the Monbulk town centre. Mr Islip said that the Planning Scheme was currently unclear about the circumstances in which three-storey buildings could be permitted. The UDF provides more specific guidance about building design in Precinct 1, as follows:²¹

4.4.1 Building Design

High quality new development activates Main Road and improves the built environment interface with adjoining residential and public realm areas. The existing country town character is retained and enhanced by the design of new development that responds to local conditions.

New development will achieve this by:

...

4.4.1.p Requiring buildings that exceed the maximum preferred building heights to hide upper levels from street view.

²¹ UDF, 50.

37 Similar provision is made in relation to the design of building frontages and interfaces in Precinct 1, which include a requirement that any new building above 7.5 metres must be set back four metres to reduce visibility from the footpath on the opposite side of the road.²²

38 Mr Dickson understood the drawings that illustrate these design requirements to be evidence that the Council is planning to develop three-storey townhouses in the centre of Monbulk. This appears to be a misunderstanding. On the evidence before me, the Yarra Ranges Planning Scheme already allows for developments of that kind. The UDF includes design requirements that will, if adopted by the Council, set back the upper levels of any three-storey buildings that may be built, so that they are more in keeping with the existing country town character of Monbulk.

39 These building design requirements will have to be the subject of a planning scheme amendment before they can be implemented. According to Mr Islip, it is proposed to amend the Yarra Ranges Planning Scheme to apply the Design and Development Overlay specifically to the Monbulk town centre, with the UDF to be an incorporated document. Any such amendment would involve a separate process under the Planning Act, which is described at [64] to [65] below. Unless and until the planning scheme amendment takes effect, the UDF will not have legal effect; it will be no more than a policy of the Council.

Does Mr Dickson have standing?

40 Mr Dickson submitted that he has standing to seek the relief claimed because he is part of the Yarra Ranges community. He is concerned about the UDF and the extent of the Council's community consultation about the UDF. He attended a Council meeting on 11 April 2023 to voice those concerns, but was unable to engage with anyone from the Council.

41 The Council did not dispute Mr Dickson's claim to be part of the Yarra Ranges community, even though he does not live in the municipality. However, it contended

²² UDF, 52–3.

that being part of the community is not sufficient to give him standing to seek public law remedies in relation to the approval of the UDF, the conduct of Council meetings, and the additional questions.

42 The Council relied on the Court of Appeal's reasoning in *Macguire v Parks Victoria*,²³ in which Mr Macguire claimed that Parks Victoria was obliged to engage or consult with the community before deciding to cull feral horses in the Alpine National Park. The Court of Appeal held that Mr Macguire did not have the necessary 'special interest' in the decision, although he intended to participate in the consultation if it took place, had a strong emotional and intellectual attachment to the horses, owned land abutting the national park, and benefitted from the horses grazing on his land because they reduced fuel loads.

43 The Council submitted that the reasoning in *Macguire* applies equally in this case. It argued that the statutory scheme under which it operates does not identify or recognise Mr Dickson, or a class of persons of which he is a member, as having a special interest in the UDF, the conduct of its meetings, or the additional questions. It said that Mr Dickson's interest was indistinguishable from any other member of the community. The Council further submitted that there was no evidence from Mr Dickson that approval of the UDF would have any legal or practical effect on his interests, or that he wishes to participate in any future consultation.

Consideration

44 The standing of a private person to seek public law remedies depends on that person having a special interest in the subject matter of the proceeding, beyond a 'mere intellectual or emotional concern' or a strongly felt belief that the law should be observed.²⁴ A special interest involves 'an interest or a position that is different from the public at large'.²⁵

²³ [2020] VSCA 172 (*Macguire*).

²⁴ *Australian Conservation Foundation Inc v Commonwealth* (1980) 146 CLR 493, 530-1 (Gibbs J); see also *Maguire*, [63].

²⁵ *VicForests v Kinglake Friends of the Forest Inc* (2021) 66 VR 143, [60](b) (*VicForests*).

45 The Court of Appeal has recently approved the following summary of the principles governing public law standing:²⁶

- (a) The special interest test is flexible, and its content in a given case depends on the nature and subject matter of the litigation. There is no precise formula as to what amounts to a special interest in the subject matter of a particular proceeding; the application of the test is fact and context specific.
- (b) A 'special interest' sufficient to invoke the Court's jurisdiction to supervise the exercise of public power is not limited to the legal, proprietary or financial interests that are protected by the private law.
- (c) The requirements of standing serve to keep the exercise of judicial power within proper bounds, namely the resolution of legal controversies between parties who are affected by the outcome.
- (d) The special interest test requires an intersection between the interest identified by the plaintiff and the subject matter of the proceeding. It is necessary to assess how the plaintiff's interest may be affected by the matter in respect of which it seeks relief.
- (e) The statutory context is important. It will be relevant whether and to what extent the statute accommodates the plaintiff's interest, and how it intersects with that interest. However, the statutory context does not control standing: a 'plaintiff may have standing to challenge the exercise of power because of its practical or legal effect'.

46 Mr Dickson has not demonstrated that he has a special interest in the UDF, or that its approval by the Council would have any practical or legal effect on him. I accept that he is concerned about aspects of the UDF, although these concerns seem to be based on misunderstandings of the UDF's content and effect.²⁷ An intellectual or emotional concern, however strongly held, is not enough to give Mr Dickson standing to obtain public law remedies in relation to the Council's consideration of the UDF. The statutory context of the Local Government Act contemplates community engagement in a general sense, but does not accommodate or intersect with any particular interest that Mr Dickson claims to have. Indeed, in his submissions at trial, Mr Dickson frankly acknowledged that his interest in the UDF is no different from that of any other member of the Victorian community.

²⁶ *The People of the Small Town of Hawkesdale Inc v Minister for Planning* (2022) 407 ALR 160, [43]-[44]. The summary was derived from the Court of Appeal's earlier decisions in *Maguire*, [64]-[67], [76]-[80] and *VicForests*, [31], [60]-[61].

²⁷ See [32]-[39] above.

47 I have reached the same conclusion in relation to Mr Dickson’s ability to seek remedies in relation to the Council’s conduct of its meetings, and its obligations to open its meetings to the public. His interest is no different from that of the public at large. He has demonstrated no special interest in the Council’s decision to hold its meetings online between 26 April and 27 June 2023, and does not say that he had any difficulty viewing the Council’s meetings during that time. Mr Dickson did not himself seek to record the Council meeting he attended on 11 April 2023, and has not sought the consent of the Chair to record any Council meeting.²⁸ He was not one of the witnesses who expressed concern about the arrangements the Council put in place when it resumed in-person meetings on 11 July 2023.

48 At its highest, Mr Dickson’s interest is a strongly held belief that the Council should conduct its meetings in a particular way. On its own, that is not enough to establish standing to obtain orders compelling the Council to conduct meetings in that way.

49 It follows from those conclusions that I do not consider that Mr Dickson has standing to seek answers to the additional questions posed in his originating motion. There is no legal controversy between him and the Council that might be settled by declarations answering those questions.²⁹

50 The Charter does not provide a freestanding cause of action for judicial review on Charter grounds. At a minimum, an applicant must have standing to seek public law remedies in respect of the administrative conduct in question.³⁰ Because Mr Dickson lacks standing to obtain the public law remedies claimed in his originating motion, he may not seek that relief or remedy on a ground of unlawfulness arising because of the Charter.

²⁸ See [146] below.

²⁹ See further [192]–[197] below.

³⁰ *Charter of Human Rights and Responsibilities Act 2006* (Vic), s 39(1) (**Charter**). Standing is required to seek a public law remedy on Charter grounds, regardless of whether the question is amenable to judicial review in the ‘abstract’ or the plaintiff in fact seeks the remedy on a non-Charter ground: see *Bare v Independent Broad-based Anticorruption Commission* (2015) 48 VR 129, [394] (Tate JA), citing Mark Moshinsky QC, ‘Bringing Legal Proceedings Against Public Authorities for Breach of the *Charter of Human Rights and Responsibilities*’ (2014) 2 *Judicial College of Victoria Journal* 91, 96.

51 For completeness, I will go on to consider whether he has made out a basis on which someone with standing might obtain those remedies.

To what extent is the Council obliged to engage with the community in relation to the UDF?

52 I consider in the following paragraphs the Council's obligations to engage with the community in relation to planning policy under the Local Government Act, the Planning Act, the Charter, and at common law.

Local Government Act

53 Section 55 of the Local Government Act requires the Council to adopt and maintain a community engagement policy, which must give effect to the community engagement principles and be capable of being applied in relation to the Council's policy development.³¹ The policy must include deliberative engagement practices that are capable of being applied to the development of the Community Vision, Council Plan, Financial Plan, and Asset Plan.³² A council is also obliged to develop a Community Vision, a Council Plan, a Financial Plan, and an Asset Plan with its municipal community, in accordance with its deliberative engagement practices.³³

54 The community engagement principles are set out in s 56:

- (a) a community engagement process must have a clearly defined objective and scope;
- (b) participants in community engagement must have access to objective, relevant and timely information to inform their participation;
- (c) participants in community engagement must be representative of the persons and groups affected by the matter that is the subject of the community engagement;
- (d) participants in community engagement are entitled to reasonable support to enable meaningful and informed engagement;
- (e) participants in community engagement are informed of the ways in which the community engagement process will influence Council decision making.

³¹ Local Government Act, ss 55(1), (2)(b), (d).

³² Local Government Act, s 55(2)(g).

³³ Local Government Act, ss 88, 90, 91, 92.

55 As required by s 55 of the Local Government Act, the Council has adopted a Community Engagement Policy, which ‘applies to the planning, design, implementation and evaluation of community engagement activities as directed by Council, recommended by staff or legislated by the Local Government Act 2020’.³⁴ The policy has sections setting out why, who, when, and how the Council engages with the community.

56 Under the heading ‘Who we engage?’, the Community Engagement Policy provides:³⁵

Community engagement will seek to connect with a diverse range of community members and stakeholders to create a balanced and inclusive engagement process, ensuring those impacted by council decisions are given the opportunity to be heard.

While some of the projects we engage on might impact the whole community, other projects or decisions might impact more specific parts of our community.

Engagement processes should be designed to ensure feedback captured represents the people or groups that will be impacted by a decision. Stakeholder mapping is a key part of the planning process for any community engagement process, and must be undertaken to ensure we reach all groups and individuals in the community, including those whose views are less often heard, or who are more difficult to reach through traditional engagement approaches, including:

- children and young people
- senior citizens
- First Nations people
- people from culturally and linguistically diverse backgrounds
- people who live with a disability and their carers
- people who are geographically isolated
- people experiencing social isolation or socio-economic disadvantage.

It is also important to understand that some groups in our community may have barriers to engaging with us such as language, abilities, work commitments, age or technology literacy and access. To ensure we hear a full range of perspectives, we will design engagement processes so that everyone has an opportunity to participate and provide their input.

³⁴ Yarra Ranges Council, *Community Engagement Policy* (2021), 5 (**Community Engagement Policy**).

³⁵ *Community Engagement Policy*, 11.

57 The policy then sets out a list of examples of community groups and stakeholders the Council may engage with.

58 Under the heading ‘When we engage?’, the Community Engagement Policy provides:³⁶

We will engage with the community when:

- Making plans - such as developing major capital works and infrastructure projects.
- Changing something – for example, changes to a service where those changes may have an impact on the community.
- Decision making – where a decision is likely to impact the community in terms of health and wellbeing, environment, lifestyle or economy
- Designing and delivering new and existing services.
- Statutory obligations - when we are directed to do so under the Local Government Act 2020 such as developing a long-term Community Vision, four-year Council Plan, Financial Plan and Asset Plan or a Health and Wellbeing Plan under the Public Health and Wellbeing Act 2008.
- Addressing a sensitive or divisive community issue that requires Council action or response.

We may also seek to engage with community when Council:

- requires more information and evidence to make an informed decision.
- requires assistance to identify community needs or aspirations.
- Identifies that the broader community has raised, or expressed an interest in, a policy, initiative or service
- seeks new, or wishes to strengthen, existing relationships with the community.

Community and stakeholders will be engaged early in our planning process. This will provide the opportunity to influence decisions by participating in a more meaningful way. Timely engagement also enables us to identify opportunities and challenges early in the planning process and respond accordingly.

Community and stakeholders will also be given adequate time to participate in engagement initiatives. Wherever possible, engagement will take place during times most convenient to community and stakeholders, taking into consideration limitations such as working hours and holiday periods.

³⁶ Community Engagement Policy, 12-3.

What constitutes enough time will depend on the complexity and scale of the engagement initiative.

59 The policy also identifies some occasions where it is not appropriate to engage with the community.³⁷

60 In relation to 'How we engage?', the Community Engagement Policy identifies three stages of community engagement: design and plan; action and deliver; and review and respond.³⁸

61 The design and plan stage involves establishing the purpose of the engagement, designing its scope, identifying stakeholders who are impacted by, interested in, or who can help inform the decision.³⁹ It also involves determining the expected level of participation, designing an appropriate community engagement process, and identifying the preferred methods for most effective engagement.

62 The action and deliver stage involves developing a communications plan to support the engagement process, and launching and implementing the engagement, delivering genuine and respectful engagement. It also requires collating and reviewing the data from each engagement activity, and identifying any limitations to the appropriate balance of information.

63 The review and respond stage is when the data collected during the engagement is analysed to identify themes, priorities and preferences, and the outcomes are shared with the community. This stage involves 'closing the loop' with participants, reporting back to them how their input contributed to the decision and communicating the next steps of the project.

Planning Act

64 As mentioned, the Council anticipates that the UDF in its final form will be the subject of an amendment to the Yarra Ranges Planning Scheme. The process by which a

³⁷ Community Engagement Policy, 13.

³⁸ Community Engagement Policy, 14-5.

³⁹ 'Stakeholders' is defined in the policy to mean 'individuals or organisations that would be affected by, or highly interested in, a decision made by Council': Community Engagement Plan, 17.

planning scheme may be amended is prescribed in Pt 3 of the Planning Act. The planning authority – in this case, the Council – must first prepare the amendment, having regard to the matters set out in s 12(2) of the Planning Act. It must then exhibit and give notice of the amendment in accordance with ss 17, 18 and 19 of the Planning Act, and reg 7 of the *Planning and Environment Regulations 2015* (Vic).⁴⁰ The notice of the amendment given under s 19 must set a date for submissions to the planning authority, which must generally be at least one month after the notice is given.⁴¹

65 Any person may make a submission to the planning authority about the amendment.⁴² The planning authority must consider all submissions made on or before the date for submissions set in the notice, and may consider any late submission.⁴³ The planning authority may refer the submissions to a panel appointed under Pt 8 for consideration, hearing, and report.⁴⁴ In that event, the planning authority must consider the panel’s report before deciding whether or not to adopt the amendment, with or without changes.⁴⁵ The planning authority must then submit the amendment to the Minister, who may approve the amendment with or without changes, or may refuse to approve the amendment.⁴⁶ It is only after the Minister has published notice of approval in the Government Gazette that the amendment takes effect as part of the planning scheme.⁴⁷

Charter

66 The Council is also a ‘public authority’ for the purposes of the Charter,⁴⁸ which means that the Charter applies to it in the exercise of its powers and the performance of its functions under the Local Government Act and the Planning Act. Section 38(1) of the Charter provides that it is unlawful for a public authority to act in a way that is

⁴⁰ The Minister for Planning may exempt a planning authority from any of the notice requirements of s 19 and the regulations if the Minister considers that compliance with those requirements is not warranted, or that the interests of Victoria make such an exemption appropriate: Planning Act, s 20.

⁴¹ Planning Act, s 19(4)(b).

⁴² Planning Act, s 21(1).

⁴³ Planning Act, ss 22(1), (2).

⁴⁴ Planning Act, ss 23, 24, 25.

⁴⁵ Planning Act, ss 27, 29.

⁴⁶ Planning Act, ss 31, 35.

⁴⁷ Planning Act, ss 36, 37.

⁴⁸ Charter, s 4(1)(e).

incompatible with a human right.

67 The human rights protected by the Charter are derived primarily from the United Nations *International Covenant on Civil and Political Rights 1966 (ICCPR)*.⁴⁹ They include, relevantly, a right to take part in public life. Section 18(1) of the Charter provides:

Every person in Victoria has the right, and is to have the opportunity, without discrimination, to participate in the conduct of public affairs, directly or through freely chosen representatives.

Section 18 is modelled on art 25(a) of the ICCPR. Article 21(a) of the Universal Declaration of Human Rights also recognises a right to participate in the conduct of public affairs.

68 The scope of this right is yet to be fully explored in Victoria. It has been found to be engaged by a ban on participating in public question time at a council meeting.⁵⁰ Article 25(a) of the ICCPR has been held not to mean that ‘any directly affected group, large or small, has the unconditional right to choose the modalities of participation in the conduct of public affairs’.⁵¹

69 Like all of the human rights protected by the Charter, the right to participate in public affairs in s 18(1) is not absolute. It may be subjected to reasonable limits, in accordance with s 7(2) of the Charter. Section 7(2) provides:

A human right may be subject under law only to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account all relevant factors including –

- (a) the nature of the right; and
- (b) the importance of the purpose of the limitation; and
- (c) the nature and extent of the limitation; and

⁴⁹ *International Covenant on Civil and Political Rights 1966*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

⁵⁰ *Richardson v City of Casey Council (Human Rights)* [2014] VCAT 1294, [223].

⁵¹ Human Rights Committee, *Decision: Communication No 205/1986 (Marshall v Canada)*, 43rd sess, UN Doc CCPR/C/43/D/205/1986 (30 January 1986) [5.5].

- (d) the relationship between the limitation and its purpose; and
- (e) any less restrictive means reasonably available to achieve the purpose that the limitation seeks to achieve.

70 The onus of establishing that a public authority has limited a human right rests on the person alleging the limitation. Once it is established that a human right has been limited, the onus shifts to the public authority to establish that the limitation is justified under s 7(2) of the Charter. If the limitation is justified, the public authority will have acted compatibly with human rights.⁵² To put it another way, a public authority breaches s 38(1) of the Charter by acting in a way that limits a human right, where that limit is not reasonable and justified under s 7(2).

71 In developing and considering the UDF, the Council is required by s 38 of the Charter to act in a way that is compatible with the right to participate in public affairs in s 18(1) of the Charter. This does not give any person who wishes to say something about the UDF the right to dictate the terms of their participation. A community engagement plan designed and delivered in accordance with the Council's Community Engagement Policy is unlikely to limit the right to participate in public affairs simply by specifying the ways in which members of the public can engage with the Council about the UDF.

Common law

72 Finally, the Council submitted that it has no common law duty to consult in relation to the development of a policy such as the UDF, either generally or in accordance with the principles of procedural fairness.⁵³ I accept that submission, which was not contested by Mr Dickson.

73 The development and consideration of the UDF by the Council is a policy exercise that involves broad questions of public interest associated with good urban design. If adopted by the Council, the UDF will become a planning policy that will influence the

⁵² *Thompson v Minogue* (2021) 67 VR 301, [47]–[48].

⁵³ Referring to *Geelong Community for Good Life Inc v Environment Protection Authority* (2008) 20 VR 338, [66]; *Botany Bay City Council v Minister of State for Transport & Regional Development* (1996) 66 FCR 537, 552–5; *Castle v Director General State Emergency Service* [2008] NSWCA 231, [6] (*Castle*).

future development of the Monbulk town centre, indirectly affecting the interests of the Monbulk community. However, it will not have any direct legal consequences, and will not affect the interests of any particular individuals. It is not the kind of decision that attracts the rules of procedural fairness.⁵⁴

What community engagement has the Council undertaken in relation to the UDF?

74 The UDF was drafted during 2022 by the Council's Design and Place **Department**, under the management of Mr Islip. It was drafted by Council's in-house qualified urban designers, with input from other subject-matter experts within the Council.

75 The drafting process included consultation with several community groups, most notably the Monbulk and District Community Working Group (**MADCOW**). MADCOW is a not-for-profit organisation focused on community development in the Monbulk area, with members drawn from a range of local organisations and businesses. Council officers met with MADCOW to discuss the development of the draft UDF on six occasions between August 2021 and October 2022. For example, on 15 August 2022, Council officers participated in a community preview briefing that was convened and promoted by MADCOW, which was attended by about 100 people. Members of the Department also met with:

- (a) the Positive Ageing Reference Group in September and November 2022, having conducted a Monbulk town centre walk-through on 6 May 2022;
- (b) the Monbulk Bowling Club in July 2022; and
- (c) the Council's Disability Advisory Committee on five occasions between March and October 2022.

76 The feedback from these consultations was considered by Department officers in drafting the UDF, and some of it was incorporated into the draft document.

77 On 13 December 2022, when the Council resolved to place the UDF on public exhibition, it also had before it a Communications and **Engagement Plan** prepared by

⁵⁴ *Castle*, [6]–[7].

the Department. The Engagement Plan was published on the Council's website in advance of the meeting, along with the UDF and a business paper outlining key features of the UDF.

78 The Engagement Plan identified a number of key external stakeholders: MADCOW, property developers and designers, key community and business groups of Monbulk, and residents living within the UDF area. The key dates for engagement in accordance with the plan were:

- Friday 16 December 2022 – Website launch
- Week beginning 23 January 2023 – Stakeholder Meeting (1)
- Week beginning 30 January 2023 – Drop-In Session (1) & Stakeholder Meeting (2)
- Week beginning 6 February 2023 – Drop-In Session (2) & Stall at Monbulk Produce Market
- Week beginning 13 February 2023 – Drop-In Session (3) & Webinar
- Week beginning 20 February 2023 – Drop-In Session (4)

79 The Engagement Plan initially proposed a consultation period of about two and a half months, between 16 December 2022 and 24 February 2023. Mr Islip considered that at least one month's notice was required, consistent with the minimum notice period for planning amendments under s 19 of the Planning Act. In view of the approaching holiday period, he recommended an extended two and a half month consultation period.

80 At the Council meeting on 13 December 2022, David Ricciuti, a member of the public who lives in Silvan, spoke against the motion to approve public exhibition of the UDF. He read out a submission which posed a number of questions about the UDF, and suggested extending the public exhibition period by at least four weeks. The submission concluded with a request for 'clarity on all aspects of this ambiguous draft Monbulk urban design framework word salad to allow full public transparency and a full and clear comprehension of what is being proposed for our community'.

81 After hearing Mr Ricciuti's submission, Councillor McAllister proposed an alternate motion, extending the consultation period by two weeks to 12 March 2023. The alternate motion was carried unanimously.

82 On 14 December 2022, Mr Islip telephoned Mr Ricciuti and his wife Kathy Ricciuti and explained the next steps in providing a detailed response to his submission. Mr Islip explained that the Council intended to conduct the primary consultation about the UDF in February 2023, when families were back from school holidays. The period in December and January was included so that anyone with time over the holidays could familiarise themselves with the content before the active consultation period in February.

83 Mr Islip had a further telephone conversation with Mr Ricciuti on 20 January 2023, which lasted for nearly an hour. Mr Islip explained how to navigate the Council's website and where the submission options were displayed. He outlined some preliminary responses to the questions and comments in Mr Ricciuti's submission, and said that his team was developing a written response. Mr Islip also advised that a comprehensive glossary had been added as Part 7 of the UDF, and that he had made changes to the project website to explain the community consultation process more clearly.

84 The Council next met on 31 January 2023. That meeting was adjourned for a while, in circumstances that are discussed below.⁵⁵ During the adjournment, Mr Islip met with Mr and Mrs Ricciuti in the staff kitchen hub and listened to their concerns about the UDF. Mr Islip's evidence was that these concerns were similar to those raised in their earlier conversations, despite his previous explanations and assurances. When the meeting reconvened online later that evening, Mr Ricciuti asked the following question:⁵⁶

Answers to questions posed re Monbulk UDF have still not been completed and the public exhibition started in Dec. We all agreed that the info needed to

⁵⁵ See [158]–[166] below.

⁵⁶ The following questions and Mr Islip's answers were recorded in the minutes of the Council meeting on 31 January 2023.

be clear & questions answered for clear public info of what is proposed. When will the information be available & because it isn't, shouldn't the exhibition be extended to allow for the delay? UDF stated there would be a community meeting with a presentation/Q&A session. There's no mention of it on the website.

When will this & pop-up stall at a market be held?

85 Mr Islip responded:

Thank you for your question, David.

As advised in our recent phone conversations, we have followed up on your questions and have updated the project website with a new Glossary that explains many of the items you raised.

All consultation sessions are detailed on the Council Shaping Yarra Ranges website. This includes several drop-in sessions in the Monbulk Living and Learning Hub throughout February, and an online webinar including Q&A options which will be recorded and uploaded to the project webpage for viewing at any time. We have also recorded an introductory video to assist with understanding the scope and intent for the Urban Design Framework which is in the final stages of editing in preparation for uploading to the project webpage.

Much of this information has now been publicly available for a couple of weeks, in addition to the comprehensive information and explanations within the Draft Monbulk Urban Design Framework document, and the project has been well promoted in Council's communications channels and the local newspapers. Given the already lengthy period of community engagement, no further extensions to the consultation period are being considered.

86 A further question about the UDF was asked by an anonymous resident:

The Draft Monbulk Urban Design Framework seeks funding through the Victorian Government-led 20-Minute Neighbourhood Initiative (20MN).

Is YR Council willing to only accept funding of projects through the 20MN initiative if they have a guarantee that association with the 20MN initiative will not lead to people of the YR Shire losing any essential freedoms including freedom of movement within and across the Shire of YR borders? This includes freedom of privacy including zero tracking of movements.

87 Mr Islip gave the following response to that question:

Thank you for your question,

Council would seek a range of funding sources to support the actions in the Draft Monbulk Urban Design Framework (UDF) in order to reduce the dependence on ratepayer funding. Many of these actions support the convenience and liveability benefits of the 20-minute city principles.

The Victorian Charter of Human Rights sets out the basic rights, freedoms and responsibilities of all people in Victoria, and all local governments must act consistently with the human rights in the Charter.

The Draft UDF seeks to improve movement and access for the community within the Monbulk area, but also advocates to improve public transport and cycling networks that extend well beyond Monbulk.

The Council boundary is an abstract line on mapping systems for defining where a Council's responsibilities start and stop, but has no physical presence apart from welcome signage and hence does not limit movement.

Sometimes technology can be used to understand where there is congestion on a path or road network or an intersection. They can also help Council improve our services for community by using sensors to notify a Council when a bin is full or when a drain is blocked, helping to stop litter entering waterways and flooding. There is no personal information or identifying information in these 'smart cities' solutions, so it would not be possible to track a particular person.

88 On 3 February 2022, Mr Islip sent an email to Mr and Mrs Ricciuti, providing a detailed response to the questions that Mr Ricciuti had asked at the Council meeting on 13 December 2022. The response explained the consultation period determined by the Council, the ways in which community engagement was being promoted, and identified the key internal and external stakeholders who had been consulted. It clarified that no rezoning was proposed as part of the UDF, and that any future rezoning required for the Village Green project would have to be the subject of a planning scheme amendment.

89 The response also answered several questions Mr Ricciuti had asked in relation to 20-minute neighbourhoods, as follows:

29. Could the public draft please explain in detail what the 20 minute neighborhood looks like in operation and will the principles of the 20 minute neighborhood limit or restrict movements outside of the Monbulk neighborhood?

The concept behind 20 minute neighbourhoods is simple – communities are designed to make sure everything you need day-to-day is close to home and a walkable distance away. The intent is for people to be able to move about easily and freely without being burdened by excessive travel or costly transport options. It aims to improve movement and access, rather than preventing it.

Previously, towns had been designed over time to be very car-focused and forgot about people, which often resulted in sprawling urban areas. In an ideal community, all of your services – supermarkets, stores, doctors, community hubs – should be accessible within 20 minutes, however you get around.

Having walkable towns means that people who drive can still get around easily, but so can younger people or those who choose or need to walk, ride or use a mobility device. It has a positive flow-on for physical health and making people feel connected with their communities.

Of course you can choose to go to other centres for these activities, however having options close by improves people's quality of life.

Further information on the State Government's 20 minute neighbourhood policy can be found at <https://www.planning.vic.gov.au/policy-and-strategy/planning-for-melbourne/plan-melbourne/20-minute-neighbourhood>

30. Would there be consequences for travelling outside of our 20 minute neighbourhood? Will living in a 20-minute neighbourhood be required?

The 20-minute neighbourhood is a principle to improve people's choices. If people decide to travel further for these activities, then they can go to other centres unencumbered.

Travelling outside of the 20 minute distance only impacts on the quality of life, time and travel cost for the person deciding to travel further for these basic needs, however there is nothing to prevent a person choosing to do this.

31. What will the projected population be of the Monbulk 20 minute neighborhood and how will employment be achieved for that population within 20 minutes seeing as 55% (or 58387) of Monbulk residents currently work outside the area?

The population of Monbulk-Silvan in 2023 is 5,077, by the year 2041 it is expected that the population will have grown by 152 people to 5,229.

Jobs within Monbulk township are likely to be retail and local community services, or home based businesses. Nearby, outside the Monbulk township, are a large range of agricultural activities which often employ locals. The recent increase in popularity of working from home has meant more people can work locally in Monbulk, especially those with office-based roles.

There are, however, a large range of industries sectors that are not offered in Monbulk and hence people employed in these professions would need to travel outside of Monbulk for their work life.

90 In his covering email, Mr Islip encouraged Mr and Mrs Ricciuti to review the UDF and make a submission with any further suggestions to improve it. In February and March 2023 they sent emails to the Mayor and other Councillors on a range of other subjects, including querying the Council's response to events at its meeting on 31 January 2023 and the quality of the Council's community engagement about the UDF. Mrs Ricciuti also asked a question at the Council's meeting on 14 March 2023, which was answered by the Council's Director Planning & Sustainable Futures, Kath McClusky. It is not

clear from their evidence whether Mr and Mrs Ricciuti ever made a submission to the Council about the substance of the UDF.

91 On 7 February 2023, the Council's chief executive officer, Tammi Rose, Ms McClusky, and Chandler Ward⁵⁷ Councillor David Eastham met with representatives of MADCOW. As a result of that meeting, the Council made further adjustments to the consultation process. Under Mr Islip's management, the project website was changed to make an interactive plan more prominent on the website, the profile of all four options of the Village Green area in the consultation survey were increased, and an after-hours drop-in session was added. In addition, on 9 February 2023 Ms McClusky decided to extend the consultation period by a further two weeks, with a new end date of 26 March 2023.

92 The Council had planned to have a pop-up stall at the Monbulk Produce Market on 11 February 2023, to promote submissions about the UDF and to discuss its content. However, after the Council meeting on 31 January 2023, the Council decided to cancel this event, due to concerns that suitable risk mitigation measures could not be put in place. It reached this decision in consultation with MADCOW and the market organisers.

93 On 21 February 2023, the Council placed an advertisement in the local newspaper, the *Star Mail*, inviting feedback on the UDF. The newspaper had already reported on the UDF, publishing articles about it on 16 December 2022 and 22 January 2023. The UDF was also promoted through the Hills Community Development eNewsletter, which reaches about 400 service providers and volunteer groups in the Dandenong Ranges.

94 During the consultation period, about a dozen businesses along Main Road in Monbulk put up a poster in their front windows. These businesses included a community bank, a newsagent, a medical clinic, a drycleaner, the post office, a butcher, a fish and chip shop, a bakery, and a large supermarket. The poster was headed 'HAVE YOUR SAY – MONBULK TOWNSHIP URBAN DESIGN

⁵⁷ The Monbulk locality falls entirely within the Chandler Ward.

FRAMEWORK'. It advertised the drop-in sessions and provided the website address for online feedback.

- 95 The Council had a display set up at the Monbulk Living & Learning Centre for the duration of the consultation period. The display comprised eight display panels, copies of the printed booklet, hard copy surveys for collection, and a comments board.
- 96 The Council held five drop-in sessions at the Monbulk Living & Learning Centre, on 9, 15 and 20 February 2023, and 2 and 15 March 2023. About 300 people in total attended these sessions. The attendees included Stan Giles and Evelyn Giles, both of whom made affidavits that were relied on by Mr Dickson. Mr and Mrs Giles appear to have pressed Mr Islip and other Council planners present at the drop-in sessions to mail written notice of the UDF to all Yarra Ranges ratepayers. They claim that Mr Islip said that the Council did not have the funds to do that. Mr Islip's recollection was that he said that a mailout to all ratepayers would be costly and would not be a responsible use of Council funds.
- 97 On 27 February 2023, Council officers attended an evening information session organised by MADCOW. The session was attended by about 50 people. There was a table for each precinct, each with a large printout of the plan for that precinct. Council staff hosted a round-robin style discussion at each table.
- 98 On 2 March 2023, Council officers met with the Monbulk Business Traders Association, which represents business property owners and tenants based in the Monbulk township. About 30 people attended that meeting, at which the Council officers provided information and collected feedback.
- 99 Council officers held a number of other targeted meetings with organisations or bodies with some interest in the UDF. These included meetings:
- (a) on 8 December 2022 and on 1 February 2022, with St George's Anglican Church;
 - (b) on 15 February 2023, with the Rotary Club of Monbulk and District;

- (c) on 1 March 2023, with the Council’s Youth Advisory Committee;
- (d) on 2 March 2023, with the Positive Ageing Reference Group;
- (e) on 7 March 2023, with TRIBE Youth Group (Monbulk); and
- (f) on 27 April 2023, a follow-up meeting with Monbulk Primary School to clarify comments made during the consultation about bus parking.

100 On 8 March 2023, the Council mailed a letter about the UDF consultation to 1,942 property owners in Monbulk. The letter was from Mr Islip, and read:

After several highly popular drop-in sessions and focused community group meetings, Council is encouraging all community members to review and make a submission for the draft Monbulk Township Urban Design Framework (UDF) which has been on public consultation since 16 December 2022.

Submissions will be closing on the 26 March 2023 so there is still time to have your voice heard. Tell us what you support and what you think needs improvement.

To find out more about the draft Monbulk Township UDF and provide your feedback, you can:

- **Visit the webpage:**

<https://shaping.yarraranges.vic.gov.au/monbulk-urban-design-framework>

- Review the documents
- Complete the survey

- **Drop in**

Monbulk Living & Learning Centre, 21 Main Road Monbulk

- view the UDF display panels during business hours
- pick up a hard copy survey, or drop off your completed survey
- attend the final Drop In Session, Wednesday 15 March 2023 4pm-8pm.

- **Email**

- designandplace@yarraranges.vic.gov.au

- **Mail in your feedback**

- Attention: UDLA team
Re: Monbulk UDF
PO Box 105, Lilydale Vic 3140

Scan the QR code at the bottom of this letter for the full details.

The draft UDF is a plan to shape the future of Monbulk Township that builds on the adopted Monbulk Structure Plan 2017. It provides guidelines and project proposals around themes of open space, transport, walkability, parking, housing, and recreational facilities.

- 101 Mr and Mrs Giles were among the property owners in Monbulk who received this letter.
- 102 On the evening of 8 March 2023, the Council conducted an online webinar about the UDF, which was both livestreamed and recorded for later viewing on the Council website. A number of questions were taken from online attendees during the webinar. A document setting out the Council's answers to those questions was subsequently uploaded to the project webpage.
- 103 Throughout the consultation period, the Council maintained a dedicated project webpage for the UDF on the 'Shaping Yarra Ranges' section of its website. The project webpage included relevant documents and explanatory material. On 22 February 2023, an introductory video was added to the content on the webpage. There were 7,846 unique visitors to this webpage, with a total of 15,355 page views. There were 610 reads of the full UDF, and 3,517 reads of a shorter summary document on the webpage.⁵⁸
- 104 The project webpage hosted an online survey seeking feedback on the UDF overall, in relation to each of the three precincts, and separately in relation to the options for the proposed Village Green development. Hard copies of this survey were also available at the Monbulk Living & Learning Centre and at each drop-in session.
- 105 The Council also printed copies of the summary UDF document and distributed them for viewing or collection at the drop-in sessions at Monbulk Living & Learning Centre, as well as Monbulk Bendigo Bank, Yarra Junction Community Link, Upwey Community Link, and Healesville Community Link. An initial 100 copies were

⁵⁸ A 'read' was recorded when a person opened the document and performed some action (flipping a page, zooming, etc) or stayed for more than two seconds.

printed on 23 January 2023, and a further 100 on 23 February 2023.

106 In the course of the consultation, the Council received 448 submissions, in the form of emails, letters, survey responses (both online and hard copy), and post-it notes. It also received feedback from 380 unique contributors at the range of workshops held during the consultation period.

107 One of the submissions received by the Council was an email dated 28 March 2023 from Ms Bernardini, attaching the results of her online survey, expressing her concerns about limitations on movement and increased surveillance such as CCTV, and asserting that the UDF would implement a United Nations agenda. The Council accepted this submission, although it was sent after the end of the consultation period.

108 Mr Islip's evidence was that the community feedback received is being considered by an internal working group including senior Council officers, to ascertain what changes are required or desirable in light of the feedback. The feedback findings will be the subject of a report to the Council when the UDF is considered at a future Council meeting. Mr Islip explained that, due to the significant volume, complexity, and size of some of the submissions, it has taken a lot longer to analyse the feedback than initially planned. Analysis of the feedback and submissions has informed some changes to the proposed UDF, which was still a work in progress when Mr Islip made his affidavit on 21 July 2023. He anticipated that a revised UDF would be presented to the Council for consideration no earlier than September 2023.

Has the Council met its community engagement obligations in relation to the UDF?

109 The Council has adopted a Community Engagement Policy, as required by s 55 of the Local Government Act.

110 The Local Government Act imposes no other obligation on the Council to engage with the community in relation to the development of a planning policy. The UDF is not one of the documents or plans that the Council must develop using the deliberative engagement practices set out in its community engagement policy.⁵⁹ Nor is it an

⁵⁹ See [53] above.

amendment to the Yarra Ranges Planning Scheme, in relation to which the Council must follow the process prescribed in Pt 3 of the Planning Act.⁶⁰ In relation to a planning policy such as the UDF, it is a matter for the Council to determine how, when and with whom it should engage in the application of its community engagement policy.

111 In accordance with its community engagement policy, the Council adopted the Engagement Plan in relation to the UDF, in the form recommended by Council officers. The Council decided that the consultation period should be two weeks longer than initially recommended, and the period was later extended by a further two weeks in response to community feedback.

112 During this consultation period, the Council's officers implemented the Engagement Plan, with some variations. The pop-up stall at the Monbulk Produce Market did not go ahead on 11 February 2023, due to security concerns. However, on 8 March 2023, letters were mailed out to 1,942 property owners in Monbulk, and an additional evening drop-in session was held at the Monbulk Living & Learning Centre on 15 March 2023. The level of community interest and engagement over the UDF was high, and Mr Islip expressed satisfaction at the number of submissions received by the Council. The Council is still considering those submissions and other feedback, which are likely to result in revisions to the UDF. The community engagement delivered by the Council, described at [74] to [109] above, strikes me as wide-ranging, genuine and respectful, and of the quality contemplated by the Local Government Act and the Council's Community Engagement Policy.

113 Mr Dickson's submissions raised a number of specific complaints about the Council's community engagement over the UDF, which I consider in the following paragraphs.

114 First, he was critical that the consultation period began shortly before the Christmas holiday period, describing it as poor timing on Council's part. This would have been a valid criticism if the consultation had been limited to the one month minimum

⁶⁰ See [64]–[65] above.

prescribed by the Planning Act for a planning scheme amendment. However, the consultation period ran for more than three months, almost until the Easter holiday period. The Engagement Plan adopted by the Council was to engage actively with the community during February 2023, having provided time over the summer holidays to read and consider the UDF and explanatory material that was available on the Council's website. The Council responded to concerns about the timing and duration of the consultation period, extending it by a total of four weeks to 26 March 2023. It continued to engage actively with the community during those additional four weeks. In my view, the Council provided ample time for community engagement about the UDF.

115 Second, Mr Dickson complained that the informative video about the UDF was not released until 22 February 2023, two months into the consultation period. I agree that the video would have been of more benefit if it had been made available at an earlier time. Even so, it was available for more than a month, during the active phase of the consultation, and was apparently viewed more than 400 times.

116 In addition, the video was only one of the numerous means by which the Council brought the UDF to the attention of the community. Before the video was uploaded to the Council's website, anyone who visited the project webpage could have read the entire UDF, the summary document, and the explanatory material prepared by Council officers, and could have completed the online survey. In addition, the Council promoted the opportunity to have a say about the UDF by its display at the Monbulk Living & Learning Centre, in the front windows of local businesses, in the local newspaper, by meeting with MADCOW and a number of other local organisations, and by the drop-in sessions held on 9, 15 and 20 February 2023.

117 I do not consider that the delayed release of the video had the effect that the Council failed to meet its community engagement obligations.

118 Third, Mr Dickson described the community engagement process as 'a poorly planned exercise with token efforts made along the way', during which the Council failed to

improve the way it engaged with the community. I do not accept that description, which does not match the findings I have made at [74] to [109] above. The Council approved a well thought out Engagement Plan that was designed to elicit the views of the Monbulk community in a range of different ways. It extended the consultation period by four weeks, and added new engagement mechanisms in response to feedback received and an unexpectedly high level of interest in the UDF.

119 Fourth, Mr Dickson was critical that the Council did not mail out notice of the UDF and the consultation period to every person, or household, in the Yarra Ranges municipal area. He said that there were more than 156,000 people living in the Yarra Ranges, and that the Council had not brought awareness of the UDF to the community at large. I do not accept that effective community engagement about a planning policy for the Monbulk town centre required Council to give notice in writing to all ratepayers (or residents, or households) across the municipality. Mr Dickson did not explain what interest a person living in Lilydale or Yarra Glen might have in an urban design policy for the township of Monbulk. It was open to the Council to adopt a community engagement plan that specifically targeted the Monbulk community, while also providing opportunities for people outside that community to have a say. I accept Mr Islip's evidence that a municipality-wide mailout would not have been a responsible use of ratepayer money, and that there were more cost-effective ways to bring the UDF to the attention of the affected community.

120 Fifth, Mr Dickson complained that those wishing to participate had been left unfulfilled while attempting to engage with Council and exercise their rights to participate in public affairs. The evidence does not support that complaint.

121 Mr Dickson relied on affidavit evidence from 18 other members of the Yarra Ranges community. Only five of those witnesses expressed concern about the community engagement undertaken by the Council:

- (a) Mr and Mrs Giles, who live in Monbulk, attended at least one of the drop-in sessions and received the letter from the Council sent on 8 March 2023. They

clearly had access to information about the UDF and how to have a say about it. Their affidavits did not say whether they in fact made a submission.

- (b) Mr and Mrs Ricciuti, of Silvan, had significant input during the early stages of the engagement process. Mr Ricciuti persuaded the Council to extend the consultation period by two weeks, and they were able to speak with Mr Islip at length on several occasions. In addition, they received careful and respectful responses to their numerous questions, including many that were not strictly relevant to the UDF.
- (c) The Council accepted Ms Bernardini's late submission providing the results of her online survey. It is still being considered, along with the hundreds of other submissions received by the Council, as contemplated by the Engagement Plan. It is not clear why Ms Bernardini expected to be personally contacted by a Councillor about her submission.

122 Sixth, Mr Dickson submitted that when people were trying to engage with the Council at Council meetings, the Councillors did not want to engage with them. I consider below the events at the Council meeting on 31 January 2023, the Council's decision to hold meetings online between 26 April and 27 June 2023, and the requirements imposed by the Council for in-person attendance by members of the public at meetings conducted since 11 July 2023. At this point, it is sufficient to note that the Council is obliged to conduct its meetings in accordance with its Governance Rules, which make specific provision for public participation in Council meetings, and require the Chair to ensure that meetings are orderly.⁶¹

123 In relation to community engagement over the UDF, I observe that the Engagement Plan adopted by the Council did not rely on Council meetings to inform, consult, and involve the community. A range of other engagement activities were chosen by the Council for this purpose, including maintaining the project webpage, the drop-in sessions at Monbulk Living & Learning Centre, the webinar, and regular meetings

⁶¹ These are discussed at [131], [134]–[150], and [177] below.

with MADCOW. However, in addition to delivering the engagement activities contemplated by the plan, the Council received and responded to questions related to the UDF from Mr and Mrs Ricciuti at Council meetings, including on 13 December 2022 and 31 January 2023.

124 Mr Dickson has not established that the Engagement Plan adopted by the Council for the UDF limited his or anyone else's Charter right to participate in public affairs. The right does not enable any member of the public, regardless of their interest in the UDF, to dictate the terms of the Council's engagement with the community about the UDF, or to demand immediate answers to questions about matters not contained in the UDF. It does not guarantee those who participate in community engagement the individual attention of Councillors or Council officers, or a right to participate in Council meetings in a manner inconsistent with its Governance Rules. In my view, the Engagement Plan adopted by the Council for the UDF was compatible with the s 18(1) right to participate in public affairs. It was focused on the issues raised by the UDF, appropriately targeted to the community most affected by it, and provided a range of ways in which members of the community could have their say.

125 I find that the Council's engagement with the community about the UDF met its community engagement obligations under the Local Government Act, and its own community engagement policy, in a way that was compatible with the human right to participate in the conduct of public affairs.

What are the Council's obligations to open its meetings to the public?

126 Every decision by a council to do any act, matter or thing that it is empowered to do is to be made by resolution.⁶² A resolution of a council may be made at a council meeting.⁶³

127 In its decision making, a council must take into account the community engagement principles and the public transparency principles set out in Pt 3, Div 1 of the Local

⁶² Local Government Act, s 59(1).

⁶³ Local Government Act, s 59(2)(a). A resolution of a council may also be made at a meeting of a delegated committee, or by a council officer or a community asset committee under delegation: s 59(2)(b)-(c).

Government Act. The community engagement principles are discussed earlier in this judgment.⁶⁴ The public transparency principles are set out in s 58:

The following are the public transparency principles –

- (a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;
- (b) Council information must be publicly available unless –
 - (i) the information is confidential by virtue of this Act or any other Act; or
 - (ii) public availability of the information would be contrary to the public interest;
- (c) Council information must be understandable and accessible to members of the municipal community;
- (d) public awareness of the availability of Council information must be facilitated

128 A council must adopt and maintain a public transparency policy to give effect to these principles.⁶⁵

129 The procedure for Council meetings is the subject of Pt 3, Div 2 of the Local Government Act.

130 Section 60(1) of the Local Government Act provides that a council must develop, adopt, and keep in force governance rules for the conduct of council meetings, including holding meetings by electronic means of communication. A council must comply with its governance rules.⁶⁶

131 Section 61 of the Local Government Act provides for council meetings, relevantly:

- (1) A Council meeting is a meeting of the Council at which –
 - (a) all the Councillors are, subject to this Act, entitled to attend and vote; and
 - (b) no other person is entitled to vote; and

⁶⁴ See [53]–[54] above.

⁶⁵ Local Government Act, s 57.

⁶⁶ Local Government Act, s 60(6).

- (c) a decision to do an act, matter or thing is made by a resolution of the Council.
- (2) Except as provided in this Act and subject to the Governance Rules, the conduct of Council meetings is at the Council's discretion.
- (3) A Council meeting must be chaired by –
 - (a) the Mayor; or
 - (b) if the Mayor is not present at the Council meeting, the Deputy Mayor; or
 - (c) if the Mayor and the Deputy Mayor are not present at the meeting, a Councillor who is present at the Council meeting and is appointed by a resolution of the Council to chair the meeting.
- ...
- (6A) For the purposes of this section, a Councillor may attend and be present at a Council meeting by electronic means of communication.

132 Section 66 provides that council meetings must be open to the public except in specified circumstances:

- (1) A Council or delegated committee must keep a meeting open to the public unless the Council or delegated committee considers it necessary to close the meeting to the public because a circumstance specified in subsection (2) applies.
- (2) The circumstances are –
 - (a) the meeting is to consider confidential information; or
 - (b) security reasons; or
 - (c) it is necessary to do so to enable the meeting to proceed in an orderly manner.
- (3) If the circumstance specified in subsection (2)(b) or (2)(c) applies, the meeting can only be closed to the public if the Council or delegated committee has made arrangements to enable the proceedings of the meeting to be viewed by members of the public as the meeting is being held.
- (4) For the purposes of subsection (3), the arrangements may include provision to view the proceedings on the Internet site of the Council or on closed circuit television.
- ...
- (6) In this section –

open to the public means –

- (a) in the case of a Council meeting or a joint meeting of Councils –
 - (i) attendance in person by members of the public; or
 - (ii) a meeting that is broadcasted live on the Internet site of the Council; or
 - (iii) any other prescribed means of meeting; or

...

133 As required by s 60, the Council adopted its Governance Rules, which commenced on 2 September 2022.⁶⁷ Chapter 3 of the Governance Rules deals with meeting procedure for Council meetings. Rule 3 outlines the purpose of Council meetings, as follows:

- 3.1 Council holds meetings to conduct the business of Council. Council is committed to transparency in decision making and, in accordance with the Act, Council and Delegated Committee meetings are open to the public and the community are able to attend.
- 3.2 Meetings will only be closed to members of the public if:
 - (a) there are clear reasons for particular matters to remain confidential;
 - (b) a meeting is required to be closed for security reasons; or
 - (c) it is necessary to enable the meeting to proceed in an ordinary manner.
- 3.3 If a meeting is closed to the public for the reasons outlined in sub-Rules 3.2(b) or 3.2(c), the meeting will continue to be livestreamed. In the event a livestream is not available the meeting may be adjourned, or a recording of the proceedings may be available on Council’s website following the conclusion of the meeting.

134 Rule 4 provides for meeting roles. Relevantly:

- (a) the Mayor is required to take the Chair at all Council meetings at which the Mayor is in attendance.⁶⁸
- (b) Community members may only participate in Council meetings in accordance with rr 57, 58, 59, and 60.⁶⁹

⁶⁷ *Yarra Ranges Council Governance Rules* (at 2 September 2022).

⁶⁸ Governance Rules, Ch 3, Pt A, r 4.3.

⁶⁹ Governance Rules, Ch 3, Pt A, r 4.8.

135 Part C of Chapter 3 contains meeting procedure rules for the Council. Part C starts with r 12, which provides for the Council to fix the dates and times of meetings, as well as the mode of meeting:

- 12.1 Subject to Rules 13, 15 and 16, Council must from time to time fix the date, time and place (in-person, electronic- including hybrid or parallel) of all Council meetings.
- 12.2 Council must specify any arrangements for hybrid meetings inclusive of a physical and virtual meeting location or a fully virtual meeting where circumstances may require this.
- 12.3 A Council may determine certain meetings that must be held solely as face-to-face (in-person) meetings.

136 Division 8 of Part C is headed 'Public participation', and contains rr 57, 58, 59, and 60.

137 Rule 57 deals with submissions. A person may make a submission to the Council on matters not listed on the agenda. A submission may be on any matter, with some specified exceptions. One of those exceptions is where the submission is substantially the same as a submission made to a Council meeting in the preceding 12 months.⁷⁰

138 Rule 57.2 outlines the procedure for a member of the community who wishes to make a submission to give notice that they wish to attend a Council meeting.⁷¹ At the Council meeting scheduled to hear the submission, the Chair will allocate a maximum of five minutes to each person who wishes to address the Council.

57.5 The person addressing the Council meeting:

- (a) must confine their address to the 5 minute allocation of time;
- (b) shall extend due courtesy and respect to the Council and the processes under which it operates; and
- (c) shall take direction from the Chair whenever called upon to do.

57.6 There will be no discussion or debate with a person making a submission, however Councillors may ask questions of clarification.

57.7 The Mayor reserves the right to cease a submission if they deem the submission inappropriate.

⁷⁰ Governance Rules, Ch 3, Div 8, r 57.1(b).

⁷¹ The notice must be given in writing to the Council at least 11 days before the meeting the person wishes to attend.

139 Rule 58 provides for a person to speak to an item of business listed on the agenda. It provides:

- 58.1 A person may speak to an item of business listed on the Agenda. Any group or association that wishes to be heard should nominate a spokesperson to speak on their behalf.
- 58.2 Sub-Rule 58.1 does not apply during any period when a meeting is closed to members of the public in accordance with section 66(2) of the Act.
- 58.3 Members of the gallery, in attendance, who indicate that they would like to speak to an item listed on the Agenda will be invited to come forward by the Chair in the order items are listed on the Agenda.
- 58.4 For planning applications and planning policy matters, the Chair will invite one person to speak on behalf of any objectors and one person to speak on behalf of the applicant.
- 58.5 For all other matters listed on the Agenda, only one person will be invited to address Council, unless there are opposing views.
- 58.6 At the discretion of the Chair, additional speakers may be invited for items of large interest.
- 58.7 The Chair will allocate a maximum of 5 minutes to each person called to speak to an item listed on the Agenda.
- 58.8 The person called to speak:
 - (a) must confine their address to the 5 minute allocation of time;
 - (b) shall extend due courtesy and respect to the Council and the processes under which it operates; and
 - (c) shall take direction from the Chair whenever called upon to do.
- 58.9 The person called to speak must not raise any matter that;
 - (a) is considered malicious, defamatory, indecent, abusive, offensive, irrelevant, trivial, or objectionable in language or substance;
 - (b) relates to confidential information as defined under the Act;
 - (c) relates to the personal hardship of any resident or ratepayer; or
 - (d) relates to any other matter which the Council considers would prejudice the Council or any person.
- 58.10 The Mayor reserves the right to cease a submission if they deem the submission inappropriate.

58.11 There will be no discussion or debate with a person speaking, however Councillors may ask questions for clarification.

- 140 Rule 59 provides for members of the community to have the opportunity at every Council meeting fixed under r 12 to submit questions to the Council, unless the meeting is closed to the public in accordance with s 66(2) of the Local Government Act. No more than 15 minutes may be allocated to question time at a Council meeting, and there is a limit of two questions per person per meeting.⁷²
- 141 The Council must receive prior notice of questions to be asked at each meeting. Rule 59.5 outlines the requirements for questions submitted to the Council, which include that the question must be in written form and must contain the name, address, and email or telephone contact number of the person submitting the question. A question may be disallowed for specified reasons, including if it deals with a subject matter already answered.⁷³ Questions and answers are to be as brief as possible, and no discussion is allowed other than by Councillors for the purposes of clarification.⁷⁴ Like questions may be grouped together and a single answer provided.⁷⁵ The Chair may nominate a Council officer to respond to a question.⁷⁶ Both the question and the response are included in the minutes of the Council meeting, and a written copy of the answer is sent to the person who asked the question.⁷⁷
- 142 Rule 60 provides for the submission of petitions and joint letters to the Council.
- 143 Division 11 to Part C makes detailed provision for the minutes of Council meetings, which must generally be published on the Council's website and be available for inspection at the Council's offices during business hours.⁷⁸
- 144 Division 12 deals with behaviour at Council meetings. Rule 73 provides:

⁷² Governance Rules, Ch 3, Pt C, Div 8, rr 59.2, 59.8.

⁷³ Governance Rules, Ch 3, Pt C, Div 8, r 59.6(c).

⁷⁴ Governance Rules, Ch 3, Pt C, Div 8, r 59.12.

⁷⁵ Governance Rules, Ch 3, Pt C, Div 8, r 59.13.

⁷⁶ Governance Rules, Ch 3, Pt C, Div 8, r 59.14.

⁷⁷ Governance Rules, Ch 3, Pt C, Div 8, r 59.16.

⁷⁸ Governance Rules, Ch 3, Pt C, Div 11, r 71.2. This rule does not apply to the minutes of any part of a Council meeting that was closed to the public in accordance with s 66 of the Local Government Act: Ch 3, Div 11, r 71.3.

Public addressing the meeting

- 73.1 Members of the public do not have a right to address Council and may only do so with the consent of the Chair or by prior arrangement.
- 73.2 Provision is made in Rules 57, 58, 59 and 60 for members of the community to:
- (a) ask questions at a Council meeting;
 - (b) make submissions to a Council meeting;
 - (c) speak to items of business included on the Agenda for a Council meeting; and
 - (d) present petitions to Council.
- 73.3 Any member of the public addressing Council must extend due courtesy and respect to Council and the processes under which it operates, and must take direction from the Chair whenever called on to do so.
- 73.4 A member of the public in attendance at a Council meeting must not disrupt the meeting.

145 Rule 75 governs the recording of proceedings, in the following terms:

- 75.1 A person in the gallery must not operate film, photographic, tape-recording or other equipment to reproduce sound and/or images at any meeting without first obtaining the consent of the Chair.
- 75.2 The consent of the Chair may be revoked at any time during the course of a meeting by the Chair stating that consent has been revoked and ordering that the recording cease.

146 Rules 76, 77 and 78 enable the Chair to remove a disruptive person, to adjourn a disorderly meeting, and to have disruptive or disorderly persons removed from the chamber. They provide:

76. Chair may remove

- 76.1 The Chair may order and cause the removal of any person, other than a Councillor, who disrupts any meeting or fails to comply with a direction given under sub-Rule 73.3.

It is intended that this power be exercisable by the Chair, without the need for any Council resolution. The Chair may choose to order the removal of a person whose actions immediately threaten the stability of the meeting or wrongly threatens their authority in chairing the meeting.

77. Chair may adjourn disorderly meeting

77.1 If the Chair is of the opinion that disorder at the Council table or in the gallery makes it desirable to adjourn the Council meeting, they may adjourn the meeting to a later time on the same day or to some later day as they think proper. In that event, the provisions of sub-Rules 20.2 and 20.3 apply.

78. Removal from Chamber

78.1 The Chair, or Council in the case of a suspension, may ask the Chief Executive Officer or a member of the Victoria Police to remove from the Chamber any person who acts in breach of this Chapter and whom the Chair has ordered to be removed from the Chamber under Rule 80.

147 Rule 80 provides additional duties and discretions to the Chair of a Council meeting. Relevantly, the Chair ‘must call to order any person who is disruptive or unruly during any meeting and interferes with the conduct of the business of Council’.⁷⁹

148 ‘Disorder’ is defined in r 2.1 to mean:

... any disorderly conduct of a member of the gallery, or a Councillor or anyone else in attendance and includes:

- (a) interjecting when another person is speaking, except, in the case of where a Councillor is raising a Point of Order;
- (b) making comments that are defamatory, malicious, abusive or offensive;
- (c) refusing to leave the meeting when requested, ordered or directed to do so by the Chair in accordance with the Act and these Rules; and
- (d) engaging in any other conduct which prevents the orderly conduct of the meeting

149 In summary, Pt 3, Div 2 of the Local Government Act and the Governance Rules provide the procedural rules for the Council to make decisions by resolution at Council meetings. While those meetings are first and foremost meetings of the elected Councillors, they must generally be open to the public and there are several ways in which members of the community may participate in a Council meeting. The Chair – usually the Mayor – is responsible for ensuring that a Council meeting is conducted in an efficient and orderly way, and has powers to deal with anyone in attendance who is disorderly or disruptive.

⁷⁹ Governance Rules, Ch 3, Div 13, r 80.1(b).

150 The provision for members of the community to attend and participate in meetings of the Council is generally consistent with the right to participate in public affairs in s 18(1) of the Charter. The Governance Rules place some limits on public participation, including the Chair's powers to order the removal of a disruptive person or adjourn a meeting in the event of disorder. Those limits are compatible with the right to participate in public affairs so long as they are reasonable and justifiable, in accordance with s 7(2) of the Charter.

Is the Council meeting its obligation to open its meetings to the public?

151 As mentioned, between 26 April and 27 June 2023, the Council held its meetings online. It resumed holding in-person meetings from 11 July 2023, but has imposed some new requirements for those members of the community who wish to attend a Council meeting in person.

152 Mr Dickson submitted that, between 26 April and 27 June 2023, the Council did not keep its meetings open to the public, as required by s 66 of the Local Government Act. He disputed that the circumstances in s 66(2)(b) or (c) applied to the meetings that were held online, for two reasons. First, he said that the people in the public gallery at the meetings held between 31 January and 11 April 2023 were not dangerous or threatening; they were merely frustrated at the Council's response to their attempts to engage with the Council. Second, he argued that s 66(1) did not permit the Council to close a meeting in advance, and that a meeting could only be closed once one of the circumstances in s 66(2) had arisen.

153 An additional issue raised by Mr Dickson was whether members of the public were entitled to make video recordings of Council meetings. He relied on the decision of *Kyriazis v County Court of Victoria (No 1)*,⁸⁰ in which Bell J permitted the self-represented plaintiff to make an audio recording of a Supreme Court hearing, for the purposes of s 4A(4)(a) of the *Court Security Act 1980* (Vic). Mr Dickson argued that the principles of open justice and free communication that were emphasised in *Kyriazis* applied equally to Council meetings. He argued that the Council had a policy

⁸⁰ [2017] VSC 636.

of banning filming in the public gallery, which was inconsistent with the outcome in *Kyriazis*.

154 When the Council resumed holding in-person meetings in July 2023, it introduced a new requirement for persons wanting to attend a Council meeting to register their attendance by 5:00pm the day before the meeting. In order to register, a person must provide their name and street address, and may optionally provide their contact telephone number and email address. They must also tick a box acknowledging that they have read and will comply with the Council's Governance Rules, specifically r 73.3.⁸¹ Registration takes place online, with assistance available by telephoning or attending the Council offices. Before entering the public gallery to observe the meeting, the person is required to present photo identification which is checked against their registration details. The Council also decided that no more than 70 people would be allowed entry to the public gallery, that being the maximum number of people who could comfortably and safely fit into the public gallery space in the meeting room.

155 Mr Dickson filed affidavits from the following people who were dissatisfied with these registration requirements for in-person attendance:

- (a) Michelle Parker of Mount Evelyn;
- (b) Nicolette Hildegard O'Sullivan of Healesville;
- (c) Sherilyn Maree Brown of Warburton East;
- (d) Ursula Carey of Lilydale;
- (e) Karin Wilk of Warburton;
- (f) Darren Favaloro of Lilydale;
- (g) Kenneth Eric Hardwick of Chirnside Park;

⁸¹ See [145] above.

- (h) Mary May Frances Lee of Mount Evelyn;
- (i) Annette Louise McCrae Bird of Mount Evelyn;
- (j) Maria Rosa Italiano of Lilydale; and
- (k) Pamela Margaret Oakley of Chirnside Park.

156 Ahead of the Council meeting on 11 July 2023, each of these people emailed one or more of the Councillors, expressing their disappointment about the decision to require residents to pre-register for Council meetings and to provide photo identification. They each said that there was no statutory provision compelling them to register, and that the requirement was incompatible with their human rights – specifically, the right in s 13 of the Charter not to have their privacy unlawfully interfered with.

Meetings between 31 January and 11 April 2023

157 Until 11 April 2023, the Council was conducting its meetings in a hybrid fashion that maximised opportunities for public participation and the transparency of its decision-making. Councillors and Council officers could attend the meetings in person in the Council chamber at the Civic Centre in Lilydale. The chamber has a public gallery that comfortably accommodates about 70 people, and this gallery was open for members of the public who wished to attend Council meetings in person. Before 2023, it was usual for five to ten people to sit in the public gallery at a Council meeting. Councillors, Council officers, and members of the public were also able to attend virtually and participate in the meeting online. The meetings were livestreamed on the Council’s website, so that members of the public could observe the meetings as they were occurring. In addition, video recordings of Council meetings were placed on the Council’s website for later viewing at any time.

158 Between 31 January and 11 April 2023, larger than usual numbers of people attended the public gallery for meetings of the Council. There are different accounts in the evidence of what occurred.

159 According to Mr Hilson, approximately 120 people attended the public gallery for the Council meeting on 31 January 2023. Mr Hilson said that there were numerous and regular outbursts from members of the public gallery that did not subside. Some people in the gallery were shouting in an aggressive and threatening manner, pointing their fingers at Councillors, and walking towards where the Councillors and Council officers were sitting at the front of the Council chamber in an intimidating way. Some members of the group sought to dictate to the Mayor what topics were to be debated during the meeting. When the Mayor issued warnings about this behaviour, it escalated.

160 Mr Hilson said that at this point the Mayor adjourned the meeting and asked for the chamber to be cleared. Many people refused to leave the public gallery, and the police were called. While the Councillors had left the chamber, Council staff remained to manage the public gallery. A large number of people in the gallery then stood and advanced toward the front of the chamber, surrounding individual staff members, aggressively arguing on a range of issues, and personally attacking the integrity of staff. The police arrived and the chamber was eventually cleared, about 45 minutes after the meeting was adjourned.

161 Mr Islip was present at the meeting on 31 January 2023, and remained in the Council chamber after the Mayor had adjourned the meeting. In cross-examination at trial, Mr Dickson asked him about his evidence that ‘threatening comments’ were made at that meeting. Mr Islip said that he was one of the officers who approached the front of the chamber to try to engage with known representatives of the group. He said those people yelled insults about his professional credibility, called him names, and questioned his professional integrity and motivations. Mr Islip said that it was overwhelming, and he felt quite unsafe. He noticed that a female staff member had been separated and was surrounded, and he and another colleague moved to support her and try to avoid the situation escalating much further until the police could arrive and settle the scene. Among the different streams of dialogue that were going on were conspiracy theories about 20-minute neighbourhoods and accusations that he was

trying to lock people up. Mr Dickson put to Mr Islip that he had not been physically threatened. Mr Islip responded that he had experienced the aggression and escalated hostility as a threat.

162 As mentioned, Mr and Mrs Ricciuti were among those attending in the public gallery on 31 January 2023. Mr Islip spoke with them during the adjournment. He listened to their concerns about the UDF and, when the meeting was reconvened online, answered a question from Mr Ricciuti about the UDF.⁸²

163 Mr and Mrs Ricciuti's affidavit did not include an account of the meeting on 31 January 2023. However, the day after the meeting Mrs Ricciuti wrote an email to the Mayor, Councillor Jim Child, about 'the happenings at last night's council meeting'. She said that she understood that the Mayor wanted 'to have the public forum but don't want to have staff or Councillors subject to vitriol'. Mrs Ricciuti expressed her opinion that to shut down the gallery would only cause more division and explained that the people who attended were passionate in expressing their concerns about changes that were taking place without their consent. She wrote:

In my opinion there were several people there last night who were intent on creating a disturbance. The majority of people that I knew there and who we have been meeting with regularly are not violent or aggressive people, merely concerned for their way of life, and frustrated that there are no answers to their concerns.

164 Jennifer Matthews of Lilydale was also among the people present in the public gallery on 31 January 2023. She was there because she wished to speak on an agenda item about proposed terms of reference and appointments for the Health and Wellbeing Advisory Committee. She was not able to do so, because the public gallery was cleared, and she was not in attendance when the meeting resumed online more than 90 minutes later.

165 Based on the evidence about the Council meeting on 31 January 2023, I make the following findings:

⁸² See [84]-[85] above.

- (a) There was a group of people among the large public gallery who were intent on disrupting the meeting, and who did so. They interjected frequently and loudly and did not recognise the authority of the Mayor as Chair of the meeting. Their behaviour was contrary to r 73.3 of the Governance Rules, in that they did not extend due courtesy and respect to the Council and its processes, and they did not take direction from the Chair.
- (b) The public gallery also included people such as Mr and Mrs Ricciuti and Ms Matthews, who were attending to observe and participate in the meeting in an orderly way.
- (c) The Mayor called the meeting to order but was ignored by the disruptive group in the gallery. By that point there was disorder in the Council chamber and the Mayor was entitled under r 77 to adjourn the meeting, which he did at 7:18pm.
- (d) After the meeting had been adjourned, a loud and aggressive group of people surrounded Council staff who had remained in the chamber to manage the situation, including Mr Islip. The behaviour of this group was threatening and offensive. I accept that Mr Islip felt unsafe, and that he had good reason to do so.
- (e) The Council was able to resume the meeting online at 8:59pm and complete the business on the agenda. Mr Ricciuti's question was answered by Mr Islip. Unfortunately, the disruption of the meeting had the result that Ms Matthews was no longer in attendance when the Council discussed the terms of reference for the Health and Wellbeing Advisory Committee, and she was unable to speak about her concerns.

166 There is less evidence about what transpired at the Council meetings in February and March 2023. According to Mr Hilson:

- (a) The meeting on 28 February 2023 was attended by a group of approximately 50 people. Again, there were verbal remonstrations interrupting proceedings.

People in the gallery made verbal threats directed towards the Mayor and Councillors, such as 'You are on notice' and 'Your days are numbered'. The Mayor asked the members of the group disrupting the meeting to leave, which they eventually did, making further verbal threats to the Mayor and Councillors as they left the gallery.

- (b) A group of about 130 people attended the Council meeting on 14 March 2023. Several questions from members of the public had been submitted in advance of the meeting, including a question from Mrs Ricciuti which was answered by Ms McClusky. The Mayor had to give several warnings due to verbal remonstrations that interrupted proceedings. Following this meeting a physical barrier was placed between the gallery and the chamber.
- (c) The Council meeting on 28 March 2023 was attended by another large group. Again, verbal remonstrations interrupted proceedings during the meeting, and the Mayor issued warnings to members of the gallery.

167 Mr Hilson's evidence was that this pattern of behaviour escalated at the Council meeting on 11 April 2023. He said that some members of the public in the gallery were filming the meeting from the public gallery, with some of them using a flashlight to spotlight individual Councillors as they spoke. Mr Hilson described people standing up and pacing up and down the gallery space while filming, in an intimidatory way. The Mayor warned several people in the gallery not to film, in accordance with the Governance Rules. Some refused to stop filming, while others presented themselves to the governance team at the side of the chamber to protest the Mayor's request. When this group were advised that filming was not permitted, they disrupted the meeting from continuing. The Mayor adjourned the meeting, and the gallery was asked to leave. Once they had done so, the meeting continued online.

168 Mr Dickson was one of the people in the public gallery at the meeting on 11 April 2023. He said that he was unable to engage with anyone from the Council; they refused and were 'quite rude'. He and many concerned residents in the gallery were

ignored. According to Mr Dickson, the Mayor closed the meeting after people in the public gallery ‘attempted to register their right to not be filmed’. It does not appear that Mr Dickson attempted to engage with the Council in accordance with the Governance Rules. He did not say that he had made a submission, submitted a question, or that he wished to speak on a matter listed on the agenda for the meeting.

169 Following the meeting on 11 April 2023, the Council decided to temporarily stop conducting Council meetings with an in-person public gallery, and instead to conduct meetings virtually. This decision was taken in light of a risk assessment that concluded that the behaviour of some members of the public gallery presented an unacceptable risk to the health, safety and wellbeing of the Councillors, Council staff, and members of the public present at the meetings.

Were the meetings between 26 April and 27 June 2023 open to the public?

170 Mr Dickson’s complaint that the Council had closed its meetings to the public between 26 April and 27 June 2023 was misconceived. The Local Government Act allows council meetings to be held in person or online, or in a hybrid format as they had been held until this point. A council meeting is ‘open to the public’, as that term is defined in s 66(6) of the Local Government Act, if the meeting is broadcast live on the internet site of the council.⁸³ In other words, a meeting may be ‘open to the public’ even though members of the public are unable to attend in person.

171 All of the Council meetings between 26 April and 27 June 2023 were ‘open to the public’ in accordance with s 66 of the Local Government Act. They were held virtually, as permitted by s 61(6A) of the Local Government Act. Members of the public were able to participate in the meetings online via Zoom. All of the meetings were livestreamed on the Council’s website, so that members of the public could watch the meeting as it was occurring. In addition, recordings of the meetings were uploaded to the Council’s website where they could be watched at a later time.

⁸³ Section 66 is set out at [133] above.

172 As Mr Dickson pointed out, the definition of ‘open to the public’ was not in s 66 when the Local Government Act was first enacted. It was inserted by the *Regulatory Legislation Amendment (Reform) Act 2022 (Vic)*, with effect from 2 September 2022. I am not free to ignore the amendment on the basis that it is not within the spirit of the Local Government Act, as Mr Dickson suggested I should. I do not accept his submission that s 66 of the Local Government Act is there so that people can democratically participate face to face in a council meeting. In my view, council meetings are required to be open to the public in order to further the objective of the Local Government Act that councils are accountable, transparent and engaged with their communities, and to give effect to the public transparency principles and the community engagement principles.⁸⁴ This can be achieved by virtual attendance and participation as well as, or as an alternative to, being physically present at a council meeting.

173 Mr Dickson made the point that some members of the public might not be able to participate in a virtual meeting, due to financial constraints, unfamiliarity with computers, or a poor internet connection. While this point was well made, there was no evidence that he or his witnesses were affected by any of these circumstances. At the same time, there may also be members of the public who are not able to attend Council meetings in person, due to disability, lack of transport, work commitments, or caring responsibilities. Those people may find it easier to view and participate in Council meetings online. An additional consideration is that there is space in the public gallery for only a small fraction of the Yarra Ranges community.

174 As I have explained, the Council meetings from 26 April to 27 June 2023 were ‘open to the public’ despite the temporary closure of the public gallery. Members of the public were able to observe and participate in Council meetings online. There is no evidence that anyone was disadvantaged or prevented from participating because the meetings were conducted virtually rather than in person.

⁸⁴ Local Government Act, ss 4(b), 9, 56, 58.

175 It is regrettable that Council meetings between 31 January and 11 April 2023 were disrupted by a group of people whose behaviour was at times threatening and offensive to the Councillors, Council staff, and other members of the public who were present. Their behaviour caused the Council to hold its meetings from 26 April to 27 June 2023 in a way that did not maximise opportunities for public participation, even though those meetings were open to the public for the purposes of s 66 of the Local Government Act.

176 I do not accept the implicit premise of some of Mr Dickson's arguments on this issue, that the Council's Governance Rules are unreasonable constraints on the Charter right to participate in the conduct of public affairs. To the contrary, the Governance Rules facilitate the enjoyment of that right. They do so by providing procedural and behavioural rules for interactions at Council meetings between Councillors, and between members of the public and the Council. Observance of the Governance Rules at Council meetings enables a range of different voices to be heard – not only the loudest, most insistent voices. It is also more likely to inform and influence the Council's decision-making than shouting at Councillors and disrupting the business of the Council.

Filming Council meetings

177 Contrary to Mr Dickson's submission, the Council does not have a policy of banning filming in the public gallery. As noted, r 75 of the Governance Rules provides that a person must not film a Council meeting without obtaining the consent of the Chair.

178 It does not appear that the people who filmed the Council meeting on 11 April 2023 sought the consent of the Chair to do so. Mr Hilson's evidence was that they filmed the meeting without permission, in a disruptive and intimidatory way. In light of the behaviour he described, it is hardly surprising that the Mayor did not agree to them continuing to film the meeting.

179 Mr Dickson did not say that he tried to film the meeting he attended on 11 April 2023, or that he sought the consent of the Chair to do so. Indeed, his evidence was that some

people at the meeting protested about the Council filming them.

180 Justice Bell's decision in *Kyriazis* does not establish an entitlement for anyone to film a court hearing, or a public meeting, in any circumstances. It is an example of how human rights may be taken into account in exercising the discretion to permit the recording of a specific court hearing, under s 4A(4)(a)(i) of the Court Security Act. However, the way in which that discretion is exercised in other cases will depend on the facts of each individual case.

181 The Chair of a Council meeting has a different discretion under r 75 of the Governance Rules. Where consent is sought to film or otherwise record a Council meeting, the Chair will have to give proper consideration to relevant human rights, including the right to freedom of expression under s 15(2) and the right to participate in public affairs in s 18(1) of the Charter. However, those rights do not require consent to be given on every occasion; the Chair's decision will depend on the facts and circumstances surrounding the particular request.

Registration requirements at Council meetings

182 A number of Mr Dickson's witnesses considered the Council's recent registration requirements at Council meetings to interfere with their privacy. Section 13(a) of the Charter provides that a person has the right not to have their privacy unlawfully or arbitrarily interfered with. These internal limitations mean that the right will not be limited by a measure that is lawful and not arbitrary.⁸⁵ In addition, like all Charter rights, the right to privacy may be subjected to reasonable limits under s 7(2).

183 I accept that the requirement to provide one's name and street address, and to produce photo identification on arrival, engages the right to privacy in s 13(a) of the Charter. However, Mr Dickson has not shown that the requirement is either unlawful or arbitrary.

184 An 'unlawful' interference with a person's privacy for the purposes of s 13(a) is one

⁸⁵ *Thompson v Minogue*, [57].

that infringes an applicable law.⁸⁶ Mr Dickson did not identify any law that he said was infringed by the registration requirements. I understood his argument to be that there was no statutory provision that positively authorised the Council to require registration.

185 I accept the Council's submission that it is lawfully entitled to impose the registration requirements for Council meetings, having regard to its general powers under s 10(1) of the Local Government Act, its responsibilities under ss 21 and 23 of the *Occupational Health and Safety Act 2004* (Vic), and as the occupier of the premises where Council meetings are held. In addition, the unchallenged evidence of Mr Hilson was that the Council would treat any personal information collected during the registration process in accordance with the *Privacy and Data Protection Act 2014* (Vic) and the Council's Privacy and Health Information Policy.

186 An interference with a person's privacy may be arbitrary even if it is lawful.⁸⁷ An interference with privacy will be arbitrary if it is capricious, or has resulted from conduct which is unpredictable, unjust or unreasonable in the sense of not being proportionate to a legitimate aim.⁸⁸

187 The registration requirements are not capricious or unpredictable. They apply equally to all members of the public who wish to attend a Council meeting in person. People who wish to participate in a meeting in the ways permitted by rr 57, 58 and 59 of the Governance Rules have to identify themselves in any event. Those who only wish to observe a Council meeting can do so anonymously by watching the livestream on the Council's website.

188 Mr Hilson explained in some detail the reasons why the Council had adopted the registration requirements. It did so because its experience earlier in the year made the Council concerned that future meetings might not be a safe environment for Council staff or community members present. It wanted to ensure a safe environment while

⁸⁶ *Thompson v Minogue*, [49].

⁸⁷ *Thompson v Minogue*, [50].

⁸⁸ *Thompson v Minogue*, [55].

also achieving the best outcomes for the community. Mandatory pre-registration enables the Council to know in advance how many people will attend a meeting, to articulate clearly the behaviour that is expected of persons attending, and to identify anyone who engages in threatening behaviour during a meeting. Requiring people to show photo identification before entry ensures that those attending have not registered using false details.

189 Against the background of the disruption to Council meetings that occurred earlier this year, I consider that the registration requirements are proportionate to the legitimate aim of ensuring that Council meetings take place in a safe environment for all participants.

190 For those reasons, the registration requirements are not an unlawful or arbitrary interference with the right to privacy in s 13(a) of the Charter.

Should the Court answer the additional questions?

191 It will be recalled that Mr Dickson sought answers to two additional questions, namely:

- (a) whether the Council's role includes power to develop three-storey accommodation for local areas; and
- (b) whether the Council can engage with and adopt United Nations policies.

192 In theory, the Court can make a declaration that answers a legal question, in order to determine a legal controversy between the parties to the proceeding. However, the Court's power to grant declaratory relief is 'confined by the considerations which mark out the boundaries of judicial power'.⁸⁹ For that reason, a declaration 'must be directed to the determination of legal controversies and not to answering abstract or hypothetical questions'.⁹⁰ In other words, the Court may not give an advisory opinion in the form of a declaration.

⁸⁹ *Ainsworth v Criminal Justice Commission* (1992) 175 CLR 564, 582 (Mason CJ, Dawson, Toohey and Gaudron JJ).

⁹⁰ *Ainsworth*, 582 (Mason CJ, Dawson, Toohey and Gaudron JJ).

193 There are at least two reasons why the Court should not answer the additional questions.

194 First, Mr Dickson does not have standing to seek declaratory relief in relation to those questions. His interest in obtaining answers to the questions is no different from that of any other member of the public.

195 Second, the questions simply do not arise in this case. The evidence does not establish that the Council is contemplating developing three-storey accommodation for local areas, or that approving the UDF would amount to the adoption of United Nations policies. The UDF under consideration by the Council involves neither of these things. In particular:

- (a) The Yarra Ranges Planning Scheme already allows for three-storey developments in the Monbulk town centre. The UDF seeks to clarify when a permit should be granted for such a development, and to require the upper levels of any new three-storey buildings to be set back so that they are more in keeping with Monbulk's existing town character.⁹¹
- (b) The UDF does not refer to or apply the 20-minute neighbourhood principle. Even if it did, the principle is established Victorian Government policy that is already reflected in the Yarra Ranges Planning Scheme.⁹²

196 In short, the additional questions should not be answered because they do not relate to any legal controversy between the Council and Mr Dickson, or the Council and anyone else identified in the evidence.

Disposition

197 The proceeding must therefore be dismissed.

198 In relation to the costs of the proceeding, the usual rule is that costs follow the event. This means an unsuccessful party will be ordered to pay the costs of the successful

⁹¹ See [35]–[39] above.

⁹² See [32]–[33] above.

party, unless there are special circumstances that justify a different outcome.⁹³ My preliminary view is that I should order Mr Dickson to pay the Council's costs of the proceeding, including any reserved costs, on a standard basis.

199 If Mr Dickson seeks to persuade me to make a different order as to costs, he may do so by filing and serving a written submission, with any affidavit in support, by 1 September 2023. The submission should set out the costs order that he seeks, and the reasons why he says it should be made. The Council may file and serve any answering written submission and affidavit by 15 September 2023.

CERTIFICATE

I certify that this and the 62 preceding pages are a true copy of the reasons for judgment of Justice Richards of the Supreme Court of Victoria delivered on 18 August 2023.

DATED this eighteenth day of August 2023.



.....
Associate

⁹³ *Northern Territory v Sangare* (2019) 265 CLR 164, [24]-[25].