

COURT: SUPREME COURT OF TASMANIA

CITATION: *Lenna Motor-Inn Pty Ltd v Hobart City Council* [2025] TASSC 56

PARTIES: LENNA MOTOR-INN PTY LTD
v
HOBART CITY COUNCIL
SUPER WOOLSTORE PTY LTD

FILE NO: 1813/2021

JUDGMENT

APPEALED FROM: *Lenna Motor-Inn Pty Ltd v Hobart City Council and Ors*
[2021] TASRMPAT 26

DELIVERED ON: 29 October 2025

DELIVERED AT: Hobart

HEARING DATE: 8 December 2022

JUDGMENT OF: Wood J

CATCHWORDS:

Environment and Planning – Planning – Development, assessment and control – Assessment and control of particular matters – Principles governing consent or approval – Consideration of planning scheme – Sullivans Cove Planning Scheme 1997 – Discretionary development – Whether Tribunal misapplied Scheme in refusing permit – Error not made in application of clauses 23.2 and 23.6.2 – Tribunal did not treat objectives as stand-alone requirements to be met – Tribunal did consider whether proposal was "individually prominent" in contrast with neighbouring buildings – Adequacy of reasons – Reasoning in relation to objectives and exercise of discretion sufficient – Decision not unreasonable – Findings on separate clauses not inconsistent.

Aust Dig Environment and Planning [1329]

Legislation:

Resource Management and Planning Appeal Tribunal Act 1993 (Tas) ss 24, 25

Tasmanian Civil and Administrative Tribunal Act 2020 (Tas)

Tasmanian Civil and Administrative Tribunal Amendment Act 2021(Tas)

Cases cited:

Boland v Clarence City Council [2021] TASFC 5

Director of Housing v Lefevre [2021] TASSC 33

Raff Angus Pty Ltd v Resource Management and Planning Appeal Tribunal [2018] TASSC 60, 28 Tas R 224

Saltwater Lagoon Pty Ltd v Glamorgan Spring Bay Council [2022] TASSC 5

Saunders & Ward Pty Ltd v Resource Management and Planning Appeal Tribunal [2016] TASFC 3, 28 Tas R 120

Singh v Minister for Immigration and Multicultural Affairs (2001) 109 FCR 152

Sultan Holdings Pty Ltd v Fuglsang Developments Pty Ltd [2017] TASFC 14, 27 Tas R 405

Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd [2021] TASFC 12

REPRESENTATION:

Counsel:

Appellant: A Spence SC

First Respondent: N Billett

Second Respondent:

Solicitors:

Appellant: Page Seager

First Respondent: Billett Legal

Second Respondent: Murdoch Clarke

Judgment Number: [2025] TASSC 56

Number of paragraphs: 143

**LENNA MOTOR-INN PTY LTD v HOBART CITY COUNCIL
and SUPER WOOLSTORE PTY LTD**

REASONS FOR JUDGMENT

**WOOD J
29 October 2025**

- 1 This is an appeal from a decision of the Resource Management and Planning Appeal Tribunal concerning a proposal by Lenna Motor-Inn Pty Ltd for a development in Battery Point in Tasmania.
- 2 The site of the proposed development has a total area of 3918m² and is located at the junction of Runnymede Street and Salamanca Place, adjoining Princes Park to the east. The site consists of two existing buildings, being the historic Lenna dwelling at the southern end of the site and the 1973 hotel building in the centre. The development would occupy the northern corner of the site closest to the junction of Runnymede Street and Salamanca Place.
- 3 The proposal is "for partial demolition, new building for residential hotel, restaurant/café, unlisted use (bar) and shops, subdivision (one additional road lot), alterations to carparking and associated works in the Road Reserve at 20 Runnymede Street." Mr Lovell, a heritage expert, described the development proposal in his evidence at the Tribunal hearing as a "6 level hotel extension comprising two levels of basement car parking and four levels of guest facilities and accommodation.... The frontage width to Runnymede Street is in the order of 34 metres wide and on Salamanca Place, 36.5 metres."
- 4 The site is located in the Sullivans Cove area and the Sullivans Cove Planning Scheme 1997 has application. The relevant planning authority is the Hobart City Council. The area surrounding the site is characterised by a mix of uses, including recreation, visitor accommodation, hospitality, offices, childcare, and residential.
- 5 On 17 December 2018 the Council refused to grant a planning permit. Lenna Motor-Inn then appealed that decision to the Tribunal. The Tribunal affirmed the Council's decision on 2 July 2021 and Lenna Motor-Inn lodged an appeal to this Court with respect to the Tribunal's decision.
- 6 This appeal concerns the proper construction of the Scheme and, in essence, the appellant asserts that the Tribunal misapplied the Scheme.

Background

- 7 After the Council's decision refusing to grant a permit, the appellant applied to the Tribunal to amend the development application. In doing so, the appellant sought to address the concerns of the Council by reducing the scale, height, and setback of the proposal. On 4 February 2021 the Tribunal made orders amending the development application by substituting amended plans for those originally submitted.
- 8 Following amendment of the development application, the Council revised its grounds for refusal on 26 March 2021. The single reason for refusal was that the proposal failed to meet the objectives of cl 23.2 of the Scheme.
- 9 The Council concluded that the proposal failed to meet the objectives of cl 23.2, stating, in particular, that "it fails to conserve the traditional urban pattern of Sullivans Cove, it fails to reflect the natural topography of the planning area, and it will be individually prominent in terms of contrast with

neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation."

10 These are three of the 10 objectives set out at cl 23.2, and in these reasons are referred to as objectives 1, 5, and 7.

11 The appellant appealed the Council's decision to the Tribunal. At the hearing before the Tribunal, the second respondent, Super Woolstore Pty Ltd, opposed the proposal on grounds which were originally relied on by the Council in its refusal of the permit, notwithstanding the amendment to the proposal. The grounds advanced by the Council and the second respondent required the Tribunal to consider compliance with three particular clauses of the Scheme: cl 16.2, Part D - Activity Area Controls (Use); cl 22.4.5, Part E, Schedule 1 – Conservation of Cultural Heritage Values; and cl 23.2, Part E, Schedule 2 – Urban Form.

12 The Tribunal was required to consider several questions, summarised as follows:

First, in relation to cl 16.2:

- Does the proposal contribute to and enhance the cultural heritage, built form (bulk, height, volume, urban detail) and spatial characteristics of Activity Area 2.0?

Second, as to whether the proposal met cl 22.4.5:

- Does the proposal complement and contribute to the cultural significance, character, and appearance of 20 Runnymede Street and its setting?
- Does the location, bulk, and appearance of the proposal adversely affect the heritage values of the places of cultural significance (Salamanca Place and warehouses at 121-89 Salamanca Place and Princes Park)? and,
- Will the proposal be individually prominent?

Third, as to whether the proposal met cl 23.2, the questions which arose were:

- In relation to objective 1, whether the proposal conserves the traditional urban pattern of Sullivans Cove?
- Having regard to objective 5, whether the bulk and height of the proposal reflects the natural topography of the planning area?
- Would the proposal have a respectful relationship to buildings of identified cultural significance with Runnymede Street and Salamanca Place, having regard to objective 6? and,
- In relation to objective 7, whether the proposal would be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation?

13 The Tribunal found that the proposal complied with the aspects of the Scheme in contention except for objective 7 in cl 23.2.

14 Having made this determination, the Tribunal was not satisfied that it should exercise its discretion under cl 23.6.2 to approve the proposal and upheld the Council's decision to refuse to grant a permit with respect to the amended proposal.

The Supreme Court appeal

15 The appellant appealed the Tribunal's decision to this Court pursuant to s 25 of the *Resource Management and Planning Appeal Tribunal Act 1993* (RMPAT Act). That provision governs this

appeal noting the effect of the transitional provisions in the *Tasmanian Civil and Administrative Tribunal Act 2020* and, in particular, that the commencement date of the *Tasmanian Civil and Administrative Tribunal Amendment Act 2021* was after the date the appeal was lodged on 27 July 2021.

16 There are five grounds of appeal that assert an error of law for the purpose of s 25 of the RMPAT Act. Grounds 1, 2 and 3 assert the Tribunal erred in failing to properly construe the objectives in cl 23.2. A fourth ground asserts the Tribunal failed to give adequate reasons for its findings and a fifth ground asserts that the Tribunal's decision was unreasonable in that it reached inconsistent findings with respect to a key consideration.

17 The first respondent, the Council, was represented at the hearing of the appeal and argued that the Tribunal did not fall into error. The second respondent submitted to any order the Court may make on the determination of the appeal and did not wish to be heard.

The Planning Scheme

18 The Scheme is a performance-based scheme as described within cl 3.3:

"This Scheme is based in part on a 'performance' approach to development control. This approach recognises that there are in many cases a number of ways in which land use and development can satisfy desired environmental, social and economic standards. In this approach, presenting *what* desired standards need to be met is considered as important as prescribing *how* such standards must be met."

19 The Scheme divides the planning area into Activity Areas: cl 1.2 and Figure 4 of Part D of the Scheme. Applicants for proposed use or development in an Activity Area must demonstrate that the use is one which is allowed to take place in that Activity Area and is able to be performed in accordance with the standards applicable in that Activity Area. Particular 'use classes', listed in cl 14.3, are either exempt, permitted, discretionary, or prohibited within each Activity Area.

20 Separate controls are provided for development of land as opposed to use of land. Generally, provisions relating to the development of land are contained within the Schedules to the Scheme: cl 13.2. Any development of land that is not "exempt" under cl 8.4 or the Schedules to the Scheme requires a permit to undertake the development: cl 16.4.

21 The proposal is located within "Activity Area 2.0 Sullivans Cove Mixed Use". The general characteristics of this Activity Area are set out in cl 16.1. Clause 16.2 provides the objectives and performance criteria for all use and development in this Activity Area.

22 The Schedules regulating development are to be found in Part E of the Scheme. These Schedules govern the assessment of proposed developments under the Scheme and all development must satisfy the relevant provisions contained within the Schedules: cl 16.4.2.

23 In this appeal the relevant schedule is "Schedule 2 - Urban Form". In this Schedule there are 'deemed to comply' provisions for permitted development: cl 23.6.1. It is common ground that the development proposal, the subject of this appeal, does not meet the 'deemed to comply' provisions.

24 In the event the 'deemed to comply' provisions do not apply to a development it may be approved as a discretionary development. Clause 23.6.2 relates to "discretionary buildings" and is in the following terms:

"23.6.2 'Discretionary' Buildings

Development which cannot satisfy the 'deemed to comply provisions' of Clause 23.6.1 may be approved at the discretion of the Planning Authority taking into consideration the Objectives in Clause 23.2. ..."

25 The proposal under appeal falls into this category of discretionary developments and by virtue of cl 23.6.2 may be approved at the discretion of the planning authority, taking into consideration the relevant objectives in cl 23.2.

26 The term "Objectives" is defined in Part G of the Scheme:

"Objectives: General statements of intention for use or development to attain as a means of satisfying the 'Principles' of the Scheme."

27 Clause 23, Schedule 2 sets out the objectives as follows:

"23.2 Objectives

The following objectives apply to the application of this Schedule:

- The traditional urban pattern of Sullivans Cove is to be conserved. A contemporary adaptation is to be created in development/redevelopment areas.
- Views to Sullivans Cove along primary spaces are to be retained, especially to the River Derwent.
- Views over the land bounded by Tasman Highway, Brooker Avenue and Liverpool Street from the City and Wapping to the Domain and from the Domain and Tasman Highway to the City are to be retained.
- Expression of the Wall of the Cove is to be encouraged where possible.
- The bulk and height of buildings must reflect the natural topography of the Sullivans Cove Planning Area, the amphitheatre sloping down to the Cove and the Macquarie Street and Regatta Point Ridges.
- A diversity of building heights and volumes will be encouraged within this over-riding pattern, but buildings must have a respectful relationship to each other and to buildings of identified cultural significance within a street.
- **New buildings must not be individually prominent in terms of contrast with neighbouring buildings by being significantly higher or having a larger apparent size when viewed in street elevation.** (Emphasis added.)
- New buildings should facilitate the creation of 'secondary spaces' on lots in the Cove. Such spaces should be encouraged where they demonstrably create useable pedestrian environments and facilitate pedestrian movement and views.
- New urban gardens are to be encouraged in secondary spaces only.
- On the land bounded by the Tasman Highway, Brooker Avenue and Liverpool Street the landscaping should reflect the variety of garden areas and parkland styles that exist in the immediate surrounding area and that mark the transition to the Domain."

28 As noted, the Tribunal found that the proposal did not comply with one of the objectives, objective 7, as highlighted.

29 This objective is central to the grounds of appeal, as are the terms of cl 23.6.2, which provide for the exercise of discretion by the planning authority, "taking into consideration the objectives in Clause 23.2".

30 It should be noted the terms "Apparent Size" and "Height" expressly mentioned in or relevant to the construction of the seventh objective, are defined in cl 23.5 of Schedule 2:

"Apparent Size

'Size' of development when viewed in elevation. It is the length of wall and the area of a wall of a building relative to the width of any abutting street or public space.

...

Height

In respect of buildings (other than structures), that maximum vertical distance **measured** between the natural surface level and the eaves or parapet at any point of any part of a building. ..."

General principles governing construction of Planning Schemes

31 Planning Schemes should be interpreted according to the same principles as apply to the interpretation of legislation: *Raff Angus Pty Ltd v Resource Management and Planning Appeal Tribunal* [2018] TASSC 60, 28 Tas R 224 at [20]; *Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd* [2021] TASFC 12 at [112]–[114]; *Saltwater Lagoon Pty Ltd v Glamorgan Spring Bay Council* [2022] TASFC 5 at [19]–[22].

32 Principles of statutory construction which apply to the interpretation of the Scheme include: when construing legislation, the words should be given their plain and ordinary meaning, and should be read in the context of the surrounding provisions and the instrument as a whole.

33 Another principle invoked on behalf of the appellant is that it is assumed that the same words appearing in various provisions are used consistently and should be given the same meaning; *Director of Housing v Lefevre* [2021] TASSC 33 at [49]; *Statutory Interpretation in Australia*, D C Pearce, 10th edition: [4.7]–[4.8].

Ground 1 – the approach taken by the Tribunal

34 The first ground of appeal asserts that the Tribunal made an error of law in its approach to objective 7 of cl 23.2.

35 Ground one asserts:

"1 **Objective 7** - The Tribunal erred in determining that Objective 7 of cl.23.2 of the *Sullivans Cove Planning Scheme 1997 (Planning Scheme)* afforded a basis to refuse the Proposal:

Particulars

Pursuant to cl.23.6.2 the objectives in cl.23.2 are only required to be taken into consideration. The objectives do not constitute a standard on which the Proposal can be refused. The Tribunal in its determination at [168] held that Objective 7 can form a basis for refusal."

36 The appellant's submissions expand on the nature of the error attributed to the Tribunal. Having noted that the proposal was found to be compliant with all applicable provisions of the

Scheme apart from objective 7, the appellant contends that the Tribunal erred in regarding objective 7 as a stand-alone basis to refuse the proposal.

37 It is submitted that upon a proper construction of the Scheme, the objectives in cl 23.2 are merely general statements of intent and purpose that must be considered by the planning authority in exercising its discretion to approve or refuse the application. The objectives do not provide specific controls or standards to be met as stand-alone bases for refusing the proposal.

38 It is contended for the appellant that the objectives are intended to be assessed and weighed against one another in a wholistic way, rather than each providing a separate basis for refusal. It does not automatically follow from a finding that one objective was not met that the proposal should be rejected. Put another way, it is argued that on a plain reading of the Scheme, the objectives are not to be "elevated to mandatory standards required to be met." The appellant relies on a comparison of other Schedules in the Planning Scheme which employ mandatory language.

39 It is contended that the proper approach for the Tribunal to take, having found that the proposal did not meet objective 7, was to weigh that finding (as just one relevant consideration) against its findings that the proposal did not offend the other provisions of the Scheme, and use that assessment to inform the exercise of its discretion. It is contended that was not the approach taken by the Tribunal and that a weighing up exercise is not evident. Rather, the Tribunal proceeded to reject the proposal solely on the basis of its finding that objective 7 was not met.

40 The Council contends that the Tribunal did not fall into error as contended in ground 1. The Tribunal did not elevate any of the objectives under cl 23.2 to the level of a mandatory test and the Tribunal did not refuse the proposal on the basis of non-compliance with objective 7. Rather, it is submitted that the Tribunal undertook a discretionary exercise guided by the objectives.

41 It is argued on behalf of the Council that the correct approach to the operation of the discretion in cl 23.6.2 involves a requirement to take the objectives in cl 23.2 into consideration as the determining factors. That is, they are the fundamental elements to the exercise of the discretion and it is open to the Tribunal to determine what weight it gives to each of those objectives. It is not the case that a failure to satisfy one objective is necessarily determinative or is automatically to be equated to a finding that the discretion could not be exercised to approve a proposal.

42 The Council argued that the Tribunal approached its task correctly. In exercising its discretion under cl 23.6.2, the Tribunal considered each of the objectives in issue in the appeal, including objective 7, and considered that non-compliance with objective 7 warranted a determination that a permit should be declined.

The Tribunal's approach

43 The Tribunal's consideration of objective 7 was part of a broader consideration of whether the proposal met those objectives of cl 23.2 that were in issue on the appeal.

44 The Tribunal considered the appellant's argument that the objectives in cl 23.2 are not mandatory requirements that the proposal must satisfy but, rather, that the Tribunal need only consider the objectives in ascertaining the appropriateness of the proposal. After observing that objectives are general statements of intention for use and development to attain as a means of satisfying the principles of the Scheme (see definition of "objectives" in the Scheme), the Tribunal went on to state:

"111 However, the Tribunal notes a number of the Objectives in Clause 23.2 are mandatory in their terms. For example, Objectives 5 and 7, called up by Ground 3 of the appeal, require that '*buildings must reflect the natural topography*' and that the '*new buildings must not be individually prominent*'. In the Tribunal's view, Clause 23.6.2 by its language does not convert the

Objectives to something more than general statements of intent. However, the mandatory language used in some of those Objectives, but not others, must be given some meaning. In the Tribunal's view, those Objectives should be afforded greater weight in the Tribunal's consideration of whether to exercise its discretion under Clause 23.6.1 to approve the Proposal."

45 The Tribunal went on to consider the first objective and had regard to cl 23.1 which provides a definition of "urban form" and identifies the distinctive urban form of Sullivans Cove. In this context the Tribunal referred to relevant evidence regarding the proposal. At paragraph 124, the Tribunal held that the proposal did not fail the first objective.

46 Consideration was then given to evidence relevant to the fifth objective of cl 23.2. At paragraph 137, the Tribunal concluded that the proposal did not offend this objective.

47 After considering the evidence bearing on the sixth objective, the Tribunal concluded at paragraph 140 that this objective was met by the proposal.

48 The Tribunal then considered objective 7. After considering the evidence, the Tribunal concluded at paragraph 167 that in certain contexts, where the site is seen from points where the Silos or 1973 Lenna are not part of the direct view field, the proposal "could be construed as being individually prominent." This is the case where the proposed street elevations are viewed from two particular locations, being directly fronting the site in Salamanca Place, and at the junction of Runnymede Street and Salamanca Place. The Tribunal reproduced photomontages illustrating the prominence, described as Viewpoint 11.

49 The Tribunal proceeded to express its conclusion regarding the objectives in cl 23.2 and the exercise of its discretion as follows:

"168 The Tribunal is therefore not satisfied, taking into consideration the Objectives at Clause 23.2 that it should exercise its discretion under Clause 23.6.2 to approve the Proposal. Even if the Tribunal is wrong and Objective 7 should be given no greater weight than the other Objectives which do not incorporate mandatory language, the Tribunal is still satisfied that it should refuse to exercise its discretion on the basis of the individual prominence of the Proposal."

Consideration of ground 1

50 This ground of appeal raises a question of the proper construction of cll 23.6.2 and 23.2, particularly, objective 7, in the context of the discretion to be exercised pursuant to cl 23.6.2.

51 Clause 23.6.2 provides that development "may" be approved at the discretion of the planning authority "taking into consideration the objectives in Clause 23.2". It is plain from the words of cl 23.6.2 that the exercise of discretion is not at large, but rather, it is to be exercised with reference to a consideration of the objectives.

52 A question arises as to the meaning of the phrase "taking into consideration". It is argued for the appellant that its meaning is analogous to a direction to "have regard to" particular matters. Counsel for the appellant and the respondent relied on *Singh v Minister for Immigration and Multicultural Affairs* (2001) 109 FCR 152 and, in particular, a passage at [54]:

"This expression is capable of different meanings, depending on its context. As Mr Williams pointed out, a statutory obligation to have regard to specified matters when making an administrative decision may require the decision-maker to take the matters into account and 'give weight to them as a fundamental element in making his [or her] determination': *R v Hunt*; *Ex parte Sean Investments Pty Ltd* (1979) 180 CLR 322

at 329 per Mason J. Indeed, this is the meaning that was given to the predecessor of s 501(6)(c) of the *Migration Act* (relating to the character test): *Minister for Immigration and Ethnic Affairs v Baker* (1997) 73 FCR 187, at 194. But the phrase 'have regard to' can simply mean to give consideration to something (*Shorter Oxford English Dictionary*). In this sense a direction to a decision-maker to have regard to certain factors may require him or her merely to consider them, rather than treat them as fundamental elements in the decision-making process."

53 It is argued for the appellant that the terms of cl 23.6.2, in stating that the discretion be exercised "taking into consideration" the objectives, is a direction to "merely consider them" rather than to treat them as "fundamental elements in the decision-making process".

54 The Council argues, by contrast, that the clause required the planning authority to take the objectives into account and give weight to them as fundamental elements in making its decision.

55 The context of the Planning Scheme suggests that the objectives are more than matters that must be referred to. The objectives, as statements of intent and purpose, are informative and are placed front and centre in the decision-making process. Clause 23.6.2 does not refer to any other provisions in the Scheme.

56 Under the Scheme, the objectives are the stipulated matters that need to be considered in making the determination and they are clearly intended to guide the exercise of discretion. Any other characterisation of the objectives, whether it be as fundamental elements or some other characterisation, is a gloss on the language of the clause and the task involved. It is not necessary for me to decide on this appeal whether the objectives qualify as "fundamental elements in the decision-making process".

57 It is worth noting that the wording of cl 23.6.2 does not dictate the weight to be given to each of the objectives. Clause 23.6.2 simply requires that the objectives in cl 23.2 are to be taken into consideration. Beyond that, the language of cl 23.6.2 is not prescriptive.

58 In considering the nature of the task of taking into consideration the objectives in cl 23.2, the terms of the clause are of assistance. The opening words provide that, "The following objectives apply to the application of this Schedule", being Schedule 2 – Urban Form. Again, these opening words are not prescriptive.

59 It can be seen from the objectives themselves, set out above at [27], that not all of them will be engaged by a particular development proposal. In some instances, particular objectives will not have relevance or application to the proposal. For example, objective 9 provides, "New urban gardens are to be encouraged in secondary spaces only", and objective 4 provides, "Expression of the Wall of the Cove is to be encouraged where possible". In the case of inapplicable or irrelevant objectives, the issue of compliance or non-compliance does not arise. They are simply not relevant. The task of "taking into consideration the Objectives" as required by cl 23.6.2 would not involve anything more than an assessment that any inapplicable objectives are not relevant and do not call for further consideration.

60 The appellant argues that the language of cl 23.6.2, and of cl 23.2 in its opening words that "The following objectives *apply* to the application of this Schedule", is to be contrasted with other clauses setting out objectives which are couched in more obligatory language. It is argued that this elevates these other objectives to stand-alone bases for refusal. For example, cl 23.7.2 provides "The objectives of this Schedule must be taken into consideration in the assessment of all 'discretionary' development." Schedule 8, cl 29.5 requires that the objectives "must be satisfied" in determining an application and Schedule 6, cl 27.4 requires that the subdivision "must satisfy the following requirements". It is accepted this contrast is significant and a difference in meaning is demonstrated.

61 In *Sultan Holdings Pty Ltd v Fuglsang Developments Pty Ltd* [2017] TASFC 14, 27 Tas R 405, the Full Court considered the distinction between the mandatory language of cl 16.4.2 and 29.5 of the Scheme, and a requirement to take particular matters "into account". At [62] the Full Court stated:

"Cl 16.4.2 and 29.5; respectively 'must satisfy' and 'must be satisfied'. Achieving a state of satisfaction about a particular state of affairs is a vastly different thing from taking into account the issue generally."

62 The appellant's contention flowing from this comparison is that the objectives in cl 23.2 are not prescriptive conditions that must each be satisfied. The contention met with no resistance on this appeal or the appeal before the Tribunal.

63 It is uncontentioned that when construing cl 23.2, the weight to be given to each of the objectives is a matter for the planning authority, or the Tribunal on appeal, to be determined in the context of the case under consideration. There can be no question that the significance of a proposal failing to satisfy one of the objectives is a matter of discretionary judgement. Thus, the planning authority, having taken into consideration the objectives, might regard non-compliance of the development proposal with one of the objectives as fatal or, conversely, treat non-compliance with a number of the objectives as not requiring refusal. Necessarily, the exercise involved is a case-by-case assessment.

64 In considering a particular development proposal, the planning authority will also need to consider questions of degree, such as the extent to which the proposal falls short of any of the objectives. There is a "fair degree of evaluation" involved in determining whether a discretionary development proposal should be approved. It is recognised that this is not an uncommon feature of planning schemes in the case of discretionary developments: *Wilderness Society (Tasmania) Inc v Wild Drake Pty Ltd* (above) at [137] and [141]; *Boland v Clarence City Council* [2021] TASFC 5 at [20] per Brett J (Wood and Pearce JJ agreeing).

65 In addition to the distinction between cl 23.2 and the opening words of other clauses concerned with objectives elsewhere in the Scheme, a distinction can be seen within cl 23.2 and the objectives in that clause. They are couched in terms that range from a recommendation or mere encouragement through to language which is more insistent. Objectives 5 and 7 employ the word "must". These objectives may be contrasted with objective 4 which is in terms that, "Expression of the Wall of the Cove is to be 'encouraged' where possible". Objective 8 provides another contrasting example. Objective 2 provides a difference of insistence within its terms, with views to the River Derwent having particular significance.

66 The objectives also range in terms of their specificity. Objective 7 is specific and provides clarity in terms of what is required, others are couched in general terms and a clear line of expectation is not drawn, such as objective 6. Some of them involve concepts or descriptors that inherently involve an exercise of judgment and are matters on which minds may differ, for example, "respectful relationship", and, "significantly" higher.

67 The Tribunal noted what it regarded as the mandatory terms of some of the objectives, such as objectives 5 and 7, and referred to the terms of objective 7 with emphasis: "new buildings **must** not be individually prominent". The Tribunal reasoned that the mandatory terms must be given some meaning and expressed the view that these objectives should be afforded greater weight in the Tribunal's consideration of whether to exercise its discretion to approve the proposal under cl 23.6.1.

68 In my view, the Tribunal's reasoning is sound. The ordinary and natural meaning of the words in objective 7 viewed in their context, including a comparison with other objectives within the clause, compel this interpretation. The mandatory terminology provides guidance about the

significance or importance to be given to this objective in the decision-making process compared with other objectives which do not employ the same mandatory language. As I understand the appellant's argument, that approach is not in question.

69 It is submitted by the appellant that the Tribunal went further and fell into error by treating objective 7 as an obligatory requirement which had to be satisfied or else a proposal must fail. It is plain, however, from the Tribunal's reasons that this was not how the Tribunal reasoned and in fact, the Tribunal expressly eschewed that approach. Indeed, the Tribunal expressly stated that it did not elevate the objectives to something more than general statements of intent, as stated at paragraph 111 of the Tribunal's decision, set out above at [44].

70 As can be seen from that passage, the Tribunal's view was that "those Objectives (expressed in mandatory terms) should be afforded greater weight in the Tribunal's consideration of whether to exercise its discretion...". It is plain that the Tribunal regarded this objective as more weighty than others but the Tribunal did not suggest that non-compliance with this objective had to be determinative.

71 At paragraph 168 the Tribunal made it clear that even if objective 7 was not given any greater weight than others because of its mandatory language, "the Tribunal is still satisfied that it should refuse to exercise its discretion on the basis of the individual prominence of the Proposal." This speaks of a discretion not compulsion.

72 The Tribunal's reasons at paragraph 168 reveal that the Tribunal exercised its discretion in reaching its conclusion and its conclusion was not the result of construing cl 23.2 as inevitably requiring refusal in the event of non-compliance with objective 7. Further, in stating its determination in this paragraph the Tribunal expressly refers to having taken into consideration the "Objectives at Clause 23.2". I emphasise here the reference by the Tribunal to objectives plural, as opposed to the failure to comply with a single objective.

73 One aspect of the Tribunal's reasoning at paragraph 168 requires further consideration. Having concluded that objective 7 had not been complied with, the Tribunal concluded that it was "therefore not satisfied, taking into consideration the objectives at Clause 23.2 that it should exercise its discretion under Clause 23.6.2 to approve the proposal." The use of the word "therefore" and the apparent inevitability of the conclusion may suggest that the non-compliance with objective 7 was regarded as determinative. However, that conclusion was tied to the particular proposal under consideration. It is not apparent that the Tribunal regarded that result as an inevitable consequence of the construction of the Scheme and the effect of cll 23.6.2 and 23.2.

74 In considering the appellant's contention, it is useful to have regard to the Tribunal's decision in its entirety. By the time the Tribunal reached a consideration of objective 7, it had already carefully considered the other objectives in issue - 1, 5, and 6 - and concluded that they were not offended by the proposal. This is essential context for the conclusion reached. The contention that the Tribunal failed to take into consideration its own conclusions with respect to these other objectives is not tenable.

75 In conclusion, the reasoning of the Tribunal demonstrates that it did not make the legal error asserted and treat objective 7 as a requirement under the Scheme that was essential to the grant of a permit such that a failure to comply with it necessarily had to result in refusal. Rather, the Tribunal's determination that it should not approve the proposal resulted from its discretion to regard non-compliance as determinative in the context of the particular proposal under consideration.

76 I only add that it was entirely open to the Tribunal to do what it did and treat the failure to comply with objective 7 as warranting the exercise of its discretion to refuse the proposal, notwithstanding the proposal did not offend the other objectives in issue.

Ground 2 – failure to properly construe objective 7: "individually prominent"

77 Ground 2 asserts another error of law as follows:

"2 **Failure to properly construe Planning Scheme** - Further, or in the alternative, the Tribunal erred by misapplying and / or failing to properly construe cl 23.2 of the Planning Scheme, with respect to the application of Objective 7 as set out below:

...

The Tribunal held at [166] and [167]:

...

Particulars

- (i) **Neighbouring buildings** - the Tribunal erred at [167] of its determination in finding that, where the building was not seen in the context of either the Silos or 1973 Lenna, it was individually prominent (as illustrated by reliance of View Point 11 at [167]). This is the reverse of what the Planning Scheme requires.
- (ii) **Significantly higher or would have larger apparent size** – the Tribunal failed to determine whether the proposal would be significantly higher and/or have a larger apparent size when contrasted to neighbouring buildings."

(Quotes not included.)

The appellant contends that the errors were made by the Tribunal in reaching its conclusion that the proposal would be "individually prominent".

78 It is accepted by the appellant that the Tribunal correctly interpreted the meaning of the phrase "individually prominent" as meaning "singly or separately protuberant, projecting or important". Further, the Tribunal correctly interpreted the meaning of "neighbouring" as meaning "to be situated next to or very near".

79 In the Tribunal's reasons it expressly acknowledged that the issue of whether the proposal was "individually prominent" required a comparison of the height and apparent size of the proposal to neighbouring buildings.

80 It is submitted for the appellant that while the Tribunal correctly identified the test and the comparison required, the Tribunal did not in fact apply this test. Instead, it determined whether the proposal was individually prominent without regard to its neighbouring buildings.

81 It is pointed out by the appellant that the Tribunal considered the proposed development from specific street elevations where the development's neighbouring buildings, 1973 Lenna and the Silos, would not be visible. It is submitted that the approach of the Tribunal was incorrect in that objective 7 does not impose an absolute requirement that a building not be "individually prominent". Rather, the requirement is qualified, "in terms of contrast with neighbouring buildings by being significantly higher or having larger apparent size when viewed in street elevation."

82 It is contended that the Tribunal failed to determine whether the proposal would be individually prominent when contrasted with neighbouring buildings. It is argued that this error is evident from paragraphs 166 and 167, set out below.

83 The Council's argument relied on the entirety of the Tribunal's reasoning with respect to objective 7. It was argued that the Tribunal's decision does not disclose the error contended and that the comparison required was undertaken.

Consideration of ground 2

84 The appellant contends that the Tribunal's reasoning discloses an error because the Tribunal found that the proposal was individually prominent when not seen in the context of its neighbouring buildings, being the 1973 Lenna and the Silos buildings. This error is said to be revealed in paragraphs 166 and 167 of the Tribunal's decision:

"166 It is apparent from the comments above that when the site is seen from points where the Silos and/or 1973 Lenna are part of the direct view field, the proposed street elevations may not be individually prominent within the meaning of the Scheme. This is the case in the majority of locations where the street elevations of the Proposal are visible.

167 Conversely, where the proposal is not seen in the context of either the Silos or 1973 Lenna, the Proposal could be construed as being individually prominent. This latter position is the case when the proposed street elevations are viewed from two particular locations. These are the locations directly fronting the site in Salamanca Place, and at the junction of Runnymede Street and Salamanca Place. From these locations, as illustrated in Mr Strugnell's photomontages at View Point 11 - Salamanca Place (near the intersection with Runnymede Street), reproduced below."

85 The contention presupposes that the Tribunal found that the only neighbouring buildings are the Silos and 1973 Lenna. It is argued that because those buildings were not visible from the locations where it was determined the development was individually prominent, the Tribunal did not undertake the comparison required by the terms of objective 7.

86 It is apparent, however, from aspects of the Tribunal's reasoning beyond paragraphs 166 and 167 that the Tribunal found that there were neighbouring buildings other than the Silos and 1973 Lenna. The Tribunal's decision referred to the evidence of Ms Ayers that the neighbouring buildings included: 1973 Lenna and the Silos buildings, the serviced apartments at 1 Castray Esplanade and 13-17 Castray Esplanade, and also buildings in Runnymede Street running up from the junction with Salamanca Place, and 93 Salamanca Place: paragraphs 157 and 164.

87 The Tribunal noted that the objective requires an assessment of the proposal's height and apparent size "when viewed in street elevation". The Tribunal stated that the phrase suggests that only the elevations of a building visible from the street are relevant. At paragraph 160 the Tribunal elaborated:

"160 The Tribunal takes this to mean what is visible and apparent when looking at those elevations from the street frontages. That is, what is directly apparent in the view field of the viewer – rather than what is visible when turning the head to see a wider view field from various viewpoints along these frontages."

88 The Tribunal considered the viewpoint looking towards the Salamanca Place elevation of the proposal in front of the site at paragraphs 162-163. The Tribunal later referred to this as the "Salamanca view". The Tribunal stated that neither the Silos nor 1973 Lenna would be obvious in this viewpoint. The Tribunal noted that 1973 Lenna would be blocked by the proposal and that the Silos building is not part of this direct view field. Similarly, the low-scale rear parts of the Castray Esplanade buildings to the north of the site are behind the viewer and not a part of this view field.

89 At paragraph 164 the Tribunal made findings about the "neighbouring buildings" in the Salamanca view:

"164 The 'neighbouring buildings' in this Salamanca Place view include those in Runnymede Street running up from its junction with Salamanca Place. These buildings include 93 Salamanca Place (four storeys high) and some of the lower scale buildings to the south - depending on the precise location of the viewer."

The Tribunal stated at paragraph 165 that it preferred the evidence of Ms Ayers in this regard.

90 The Tribunal concluded in paragraph 167, set out above, that the proposal was individually prominent from two locations: directly fronting the site in Salamanca Place and at the junction of Runnymede Street and Salamanca Place. Further, the direct view field at those locations did not include 1973 Lenna and the Silos. Significantly, in relation to the location directly fronting the site in Salamanca Place, the Tribunal had expressly found that the direct view field included other lower scale neighbouring buildings.

91 It can be seen that the appellant's contentions fall away once the Tribunal's reasons are closely considered. This is particularly so with respect to the appellant's contention that the Tribunal did not make the necessary finding that the proposed development was individually prominent in the context of its neighbouring buildings. This aspect of ground 2 proceeded on the basis of a misapprehension of the Tribunal's reasoning and the false premise that the Tribunal found that the only neighbouring buildings were the Silos and 1973 Lenna.

92 Contrary to the appellant's argument, the Tribunal identified particular neighbouring buildings for the purpose of its conclusion that the proposal was individually prominent. This can be seen from the Tribunal's reasons set above at [89] as well as the Tribunal's acceptance of Ms Ayers' evidence.

93 Another contention is that the Tribunal determined whether the proposal was individually prominent in isolation and failed to determine whether the proposal would be "significantly higher and/or have a larger apparent size" when contrasted with neighbouring buildings. The appellant's submissions acknowledged that the Tribunal correctly identified that the test in objective 7 "requires a comparison of the height and apparent size of the proposal to neighbouring buildings in order to determine whether the proposal is individually prominent": paragraph 141 of the Tribunal's decision.

94 Indeed, it can be seen that the Tribunal was plainly aware of the comparative task involved and the importance of identifying the neighbouring buildings for the purpose of that task. The Tribunal stated at paragraph 147:

"The determination of what is to be included as neighbouring buildings is of critical importance because the scale of the buildings in the vicinity of the site range from the Silos and the 1973 Lenna (both tall bulky buildings) to one storey elevations of the gallery buildings opposite the site in Runnymede Street and other buildings of generally low scale in Salamanca Place".

As I understand the contention, the error is that in applying objective 7, the Tribunal in paragraphs 166–167 overlooked the comparative task and the need to compare the height and apparent size of neighbouring buildings.

95 When viewed in isolation, the Tribunal's reasoning at paragraphs 166 and 167 does not engage in a comparison of the proposed development with neighbouring buildings. The Tribunal described the development proposal as "individually prominent" simpliciter. The Tribunal referred to the proposed street elevations when viewed from two particular locations: fronting the site in Salamanca Place and at the junction of Runnymede Street and Salamanca Place.

- 96 However, the Tribunal had expressly made findings about lower scale neighbouring buildings in previous passages before reaching the conclusions in paragraphs at 166–167. The Tribunal clearly found that these buildings would be visible in the viewpoint looking towards the Salamanca Place elevation of the proposal in front of the site. The findings identified that the Silos and 1973 Lenna were not in view, while buildings of a lower height on Salamanca Place and running up Runnymede Street were within this view.
- 97 A valid observation is that the Tribunal's reasons regarding these lower scale buildings within this view focussed on comparative height rather than "apparent size". However, it is sufficient for the purposes of objective 7 to make a finding about the contrast with neighbouring buildings in terms either of height or apparent size and a finding about both is not required.
- 98 It would also be valid to observe that the Tribunal did not explicitly refer to the neighbouring buildings that would be within view from the location at the junction of Runnymede Street and Salamanca Place. As mentioned, the Tribunal's reasons at paragraph 167 reveal that the proposal was "individually prominent" when the proposed street elevations are viewed from two particular locations: directly fronting the site in Salamanca Place, and at the junction of Runnymede Street and Salamanca Place. It is entirely clear from the reasons that a finding was made that there were smaller scale neighbouring buildings in Runnymede Street that would be seen from the location directly in front of the site in Salamanca Place. Whether or not a finding was made that the smaller scale buildings would be visible in the view field from the junction is less clear. The Tribunal illustrated the new building's individual prominence with reference to Mr Strugnell's images, Viewpoint 11. However, these images do not show the smaller scale neighbouring buildings on the other side of Runnymede Street. It is also noted that the Tribunal adopted a restricted view field for the purpose of the comparison as can be seen above at par [87]. It may be, however, that the Tribunal's finding about the view from the junction was encapsulated in other findings. It may be that the view from the junction was regarded by the Tribunal as just another location of the Salamanca view directly fronting the site, which was described at paragraph 162 as the "viewpoint looking towards the Salamanca Place elevation of the Proposal in front of the site".
- 99 Ultimately, this point regarding the Tribunal's findings in relation to one of the particular locations does not advance the appellant's case on this appeal. A discrete finding of the neighbouring buildings within view at the location of the junction was unnecessary. The clear finding that was made about the smaller scale buildings within the view from the location at the front of the building on Salamanca Place was sufficient for the purpose of a finding of individual prominence.
- 100 Contrary to the appellant's argument, a comparison with neighbouring buildings was undertaken by the Tribunal and involved the identification of smaller scale buildings. It is apparent from the Tribunal's reasons that the conclusion of individual prominence was made with reference to these buildings. This conclusion deals entirely with the argument that the Tribunal failed to undertake the comparison required by objective 7.
- 101 Returning to this ground of appeal more generally, I can detect no error in the Tribunal's reasoning. As noted, the Tribunal commenced its consideration by identifying the correct question of individual prominence with reference to the height and apparent size of neighbouring buildings, and then recounted evidence on this question and made findings relating to that question. The reference to "individual prominence" of the proposed development at paragraphs 166-167 is plainly a reference to the question that was correctly defined and properly considered as a comparative exercise.
- 102 When the Tribunal's reasons with respect to objective 7 are read in their entirety rather than in a piecemeal fashion, there was no error of law in the application of this objective and the approach taken by the Tribunal. This ground of appeal fails.

Ground 3 – constructive failure to exercise jurisdiction

103 Ground 3 asserts a constructive failure to exercise jurisdiction:

"3 **Constructive failure to exercise jurisdiction** - Further, or in the alternative, the Tribunal constructively failed to exercise its jurisdiction by failing to determine whether, in finding the Proposal would be individually prominent, it would be significantly higher and / or would have larger apparent size when contrasted to neighbouring buildings."

This ground stands or falls with ground 2.

104 As can be seen, the above conclusion relating to ground 2 is that the Tribunal adopted a correct approach with respect to "individual prominence" and was concerned with "individual prominence" vis-à-vis the height and apparent size of neighbouring buildings, as required by the terms of objective 7. The Tribunal expressly made a finding that the proposal would be individually prominent, when viewed from two particular locations. The Tribunal's determination of individual prominence involved a contrast with neighbouring buildings. The neighbouring buildings and their heights were identified by the Tribunal. They were the buildings identified by Ms Ayers in her evidence as recounted at paragraph 164 and noted as accepted by the Tribunal at paragraph 165. This conclusion was reached in the context of reasons which set out the correct approach to the comparative task required by objective 7.

105 While the Tribunal did not expressly state that the proposed development was "significantly" higher than those neighbouring buildings, the heights of the buildings were specified by the Tribunal and were not in issue. Ms Ayers' evidence was that the development on the opposite (south western) corner of the junction of Runnymede Street and Salamanca Place has a maximum height of four storeys, with development up Runnymede Street toward Arthur Circus having heights between one and three storeys. The Tribunal referred to her evidence that the height of the four-storey building at 93 Salamanca Place was RL20.7m and "the height of the Proposal [was] approximately RL19.8m at the Salamanca Place street frontage and a height of RL30.6m, setback by approximately 6m from the Salamanca Place frontage and approximately 4.2m from the Runnymede Street frontage."

106 Moreover, there is no argument before this Court that given the heights of the neighbouring buildings specified by the Tribunal as the low-scale buildings, the proposed development was not "significantly higher". The appellant's argument before the Tribunal was rather that the proposal would not be individually prominent when contrasted with 1973 Lenna and the Silo apartments.

107 Contrary to the assertion in ground 3, when the Tribunal's findings are read in context, the Tribunal clearly found that the proposed development was individually prominent when contrasted to neighbouring buildings. The Tribunal did not ask itself the wrong question or fail to apply itself to the real question to be decided.

Ground 4 – inadequate reasons

108 Ground 4 alleges that the Tribunal provided inadequate reasons for its decision:

"4 **Inadequate reasons** - Further, or in the alternative, the Tribunal erred in failing to give adequate written reasons as required by s 24 of the *Resource Management and Planning Appeal Tribunal Act 1993*, including its findings on material questions of fact and reference to the evidence or other material in which those findings were based.

The Tribunal failed to determine whether, in finding the Proposal would be individually prominent, it would be significantly higher and/or would have larger apparent size when contrasted to neighbouring buildings."

- 109 The Tribunal has a statutory obligation to provide written reasons set out in s 24 of the RMPAT Act:
- "24 Reasons to be given by Appeal Tribunal**
- (1) Subject to this section and to section 23, the Appeal Tribunal must give written reasons for its determination of an appeal.
 - (2) The reasons must include its findings on material questions of fact and a reference to the evidence or other material on which those findings were based.
 - (3) The Appeal Tribunal must cause a written copy of its reasons to be given to each party to the appeal."
- 110 The appellant asserts that the Tribunal has failed to comply with its obligation to provide reasons which extend to its findings on material questions of fact.
- 111 This statutory obligation and the standard required has been considered in a number of cases. In *Sultan Holdings Pty Ltd v John Fuglsang Developments Pty Ltd* (above) Porter AJ at [118] provided general guidance as to minimum standards of adequacy:
- "Reasons given must have explanatory value so as to enable an understanding of why the case was decided in the way it was. The path of reasoning needs to be explained in an intelligible way. This is also to enable an appellate court to properly carry out its functions. Reasons have to be adequate for the purpose, not optimal or persuasive. In an appropriate case contested issues have to be resolved; for instance, favouring one body of expert evidence over another needs to be explained. Some of the authorities from which these propositions are drawn deal with courts as distinct from statutory tribunals, but see *Wingfoot* (above) at [55]; *Pollard v RRR Corporation Pty Ltd* [2009] NSWCA 110 at [56]-[66]; *Robinson v Chatters* [2010] TASSC 66 at [73]-[78]; *Caruso v Kite* [2008] VSC 207 at [32]; *ACN 087 528 774 Pty Ltd v Chetcuti* [2008] VSCA 274, 21 VR 559 at [20]."
- 112 The first assertion of inadequacy is the Tribunal does not state whether it made a finding that the proposal was individually prominent by reason of:
- (i) being significantly higher than the neighbouring buildings when viewed in street elevation; or
 - (ii) having a larger apparent size than the neighbouring buildings when viewed in street elevation; or
 - (iii) a combination of both.
- 113 The appellant argues that "it is impossible to determine the basis upon which the Tribunal determined that the proposal was individually prominent by comparison to 1973 Lenna and the Silos (being the neighbouring buildings for the purpose of objective 7) to an extent that justified refusal of the proposal, or at all."
- 114 As explained above, the two buildings referred to by the appellant, 1973 Lenna and the Silos, are not the only neighbouring buildings. Significantly, for the purpose of the Tribunal's conclusion of individual prominence, they are not the relevant neighbouring buildings.
- 115 It is clear from the Tribunal's reasons at paragraphs 164 and 167 that the proposed new development is individually prominent when viewed from two locations: fronting the site in Salamanca Place, and at the junction of Runnymede Street and Salamanca Place. The neighbouring buildings in the Salamanca Place view include 93 Salamanca Place, and lower scale buildings in Runnymede Street running up from its junction with Salamanca Place.

- 116 The finding of individual prominence was based on those two views of the development and the neighbouring buildings as identified by the Tribunal. It is evident from the reasons that the height of these buildings was the basis for the comparison.
- 117 The position of the appellant before the Tribunal was that the proposal would not be individually prominent when contrasted with 1973 Lenna and the Silo Apartments at 1 Castray Esplanade. The Tribunal's reasons were, however, that the view from two particular locations did not include these buildings.
- 118 It is abundantly clear from the Tribunal's reasons that it concluded that the proposed development failed objective 7 and was individually prominent. The Tribunal's reasons referred to the neighbouring buildings which included 93 Salamanca Place (four storeys) and lower scale buildings to the south in Runnymede Street. The Tribunal expressly stated that it preferred the evidence of Ms Ayers in this regard. She had contrasted the development with these buildings noting the heights of lower scale buildings to the south on Runnymede Street were between one and three storeys.
- 119 As previously observed, the Tribunal did not focus on apparent size in contrast with neighbouring buildings, in dealing with individual prominence. However, as already observed, a finding on this point was not essential to a finding that the proposed building was "individually prominent". The Tribunal's reasoning was both legitimate and exposed.
- 120 The Tribunal's reasoning is sufficiently clear from all that was said. It is apparent how the Tribunal reached its conclusion that the new building would be individually prominent and the comparative exercise undertaken by the Tribunal is also revealed.
- 121 Another criticism in terms of reasons is that the Tribunal does not provide any explanation as to how it arrived at the conclusion that the proposal would not be "individually prominent" for the purpose of cl 22.4.5, but would be "individually prominent" for the purpose of objective 7 in circumstances where, absent good reasons for concluding otherwise, those words must be taken to have a consistent meaning throughout the Scheme.
- 122 In my view the Tribunal was not obliged to provide reasons on this point. This is evident from the below discussion with respect to ground 5.
- 123 The final criticism in terms of inadequacy of reasons is that "having identified that the Tribunal did not consider compliance with objective 7 to be a mandatory requirement and that it was one of several relevant factors for consideration in the exercise of its discretion, the Tribunal did not provide any explanation as to how it arrived at its decision to reject the proposal on the basis of that objective alone". The criticism is that "there is nothing in the reasons to suggest that the Tribunal undertook a process of weighing up the various considerations relevant to the discretion". I have determined the Tribunal did not fall into error in these respects. This ground raises a question about whether the reasons adequately reveal the Tribunal's reasoning path.
- 124 The Tribunal's reasons identify that it was not satisfied that it should exercise its discretion to approve the proposal "taking into consideration the objectives at Clause 23.2". It is revealed that the Tribunal took into account the objectives raised by the appeal – 1, 5, 6 and 7. Indeed, these objectives had been considered by the Tribunal in its reasons leading to that conclusion.
- 125 A weighing process is evident from the Tribunal's reasons. The Tribunal reasoned that objective 7, in its mandatory terms, should be given more weight than non-mandatory objectives, but also that, even if objective 7 should be given no greater weight than other objectives which do not incorporate mandatory language, the Tribunal was still satisfied that it should refuse to exercise its discretion on the basis of objective 7.

126 The Tribunal's reasons reveal that, taking into account the objectives in issue, in this particular case the Tribunal considered that non-compliance with objective 7 overwhelmed the other objectives to the extent that the Tribunal was satisfied that it should refuse to exercise its discretion. In other words, it is plain that in this particular case, non-compliance with objective 7, as the only objective which had not been complied with, warranted the refusal of the proposal.

127 Contrary to the submissions of the appellant, the Tribunal's reasons demonstrate how it arrived at its decision to reject the proposal. The reasons are brief but sufficient and inform the parties that it was non-compliance with objective 7 in the circumstances of this case which led to the Tribunal's conclusion. The Tribunal exposed its reasoning to an adequate degree.

Ground 5 – unreasonableness

128 The fifth ground of appeal asserts that the Tribunal's decision was so unreasonable that no reasonable decision maker could have made it. The Tribunal's reasons are said to contain inconsistent findings as to individual prominence in criterion 5 of cl 22.4.5 at paragraph 106 of its reasons compared with the findings made with respect to objective 7 at paragraph 168.

129 In considering this ground of appeal, it is accepted that an unreasonable decision gives rise to an error of law: *Saunders & Ward Pty Ltd v Resource Management and Planning Appeal Tribunal* [2016] TASFC 3, 28 Tas R 120. It is also accepted that in construing the Scheme it should be presumed that the phrase "individually prominent" has the same meaning wherever it appears.

130 Clause 22.4.5 is in Schedule 1 of the Scheme that is concerned with the Conservation of Cultural Heritage Values. The objectives of this Schedule are set out in cl 22.2, one of which is in the following terms:

"To encourage new development to be recognisable as new, but not individually prominent. Such development must reflect a 'good neighbour' relationship to places of identified cultural value."

131 The fifth criterion in 22.4.5 is in terms that, "'Building or works' may be recognisable as new but must not be individually prominent". The Tribunal's finding and conclusion concerning this criterion is relied on for the purpose of this ground of appeal:

"106 While the Proposal will, from some views, appear prominent, the Tribunal accepts the Proposal will appear as a new insertion in an area and site already incorporating modern elements. It will not detract from the cultural significance of the place (20 Runnymede Street) and will not be individually prominent in that respect."

132 It can be seen that criterion 5 is concerned with individual prominence in a certain respect as a new building. The Tribunal's consideration of "individual prominence" of the new building related to a place or places of "cultural significance". This brought in factors such as scale, the contemporary form of the proposed building and its architectural features, and whether it is to be amongst heritage buildings or an area of "mixed architecture and built form" as described by Mr Lovell.

133 Some of the evidence focussed on whether the proposed development would detract from historic Lenna at 20 Runnymede Street and an issue was whether the proposed development would detract from the cultural significance of that place. The Tribunal was concerned with the prominence of the proposed development with respect to historic Lenna and the cultural heritage values of that building. The conclusion at paragraph 106 reflects that concern.

134 The Tribunal at paragraph 168, in its consideration of objective 7 of cl 23.2, was concerned with individual prominence of the new building in terms of contrast with neighbouring buildings and,

specifically, whether it would be significantly higher or have a larger apparent size. This objective is confined to a comparison with neighbouring buildings.

135 A building can be individually prominent in one respect but not in another. It was open to the Tribunal to find that the new proposed building was not individually prominent as a contemporary building in terms of how it would relate to historic Lenna, a place of cultural significance, but was individually prominent in its height and apparent size with reference to other neighbouring buildings. The findings are not inconsistent because they are concerned with individual prominence in different respects.

136 It is worth noting that when the Tribunal considered historic Lenna in the context of objective 7, the Tribunal did not find the proposed development was individually prominent in terms of height and size compared with historic Lenna. Once again, this illustrates that a different focus and a different task may result in a different outcome but does not demonstrate an inconsistency in approach.

137 In the context of this ground about unreasonableness, the appellant presented some arguments that strayed beyond the particulars of this ground and overlapped with other grounds. It was asserted the Tribunal's decision was unreasonable because the Tribunal took into account an irrelevant consideration and gave undue weight to a relevant matter. I will consider these arguments noting that to a large extent they raise matters which have already been addressed.

138 In terms of the argument that the Tribunal gave consideration to an irrelevant matter, the matter said to be irrelevant was whether the proposal was individually prominent "when not seen in the context of either the Silos or 1973 Lenna." This argument assumes that these buildings are the only neighbouring buildings and ignores the other neighbouring buildings which were relevant to the Tribunal's consideration of individual prominence. The above reasons in relation to ground 2 dispose of this assertion of unreasonableness.

139 There was an additional argument that the Tribunal's decision was unreasonable because it gave excessive weight to a relevant matter. It was argued that the Tribunal appears to have given excessive weight to non-compliance with objective 7 and failed to weigh this finding against the finding that the proposal was otherwise compliant with all other provisions of the Scheme. I have dealt with the assertion of a failure to weigh compliance with other objectives in the context of ground 1 and concluded that the Tribunal did take into account compliance with other objectives.

140 The argument about excessive weight relied on the Tribunal's reasons in expressly stating that even if objective 7 was to be given no greater weight than the other objectives, it would still refuse to exercise its discretion on the basis of the individual prominence of the proposal: see paragraph 168 of the Tribunal's decision. Superficially, this reasoning about the result if no greater weight is to be given to objective 7, may seem inconsistent with a result that non-compliance with this single objective would still result in a refusal to grant the permit. The Tribunal's focus on mandatory language, however, and the weight to be given to the objective was concerned with the weight assigned to this objective by the authors of the Scheme. In other words, the focus was on whether it could be discerned from the text of the Scheme that the objective was to be treated as more significant in all cases.

141 The Tribunal's reasoning was that the mandatory language in objective 7 meant that it should be assigned more weight than objectives in the same clause which did not use that language. Regardless, though, the Tribunal's reasoning was that, in this case, the proposal's individual prominence resulted in the refusal of the proposal. It was open to the Tribunal to so conclude. Even if the authors of the Scheme and the text employed did not attribute more weight to objective 7, the Tribunal, in the exercise of its discretion in the particular case, could give non-compliance with that

objective such weight that it would result in an outcome that was fatal to the proposal. There is nothing unreasonable about this approach. The weight to be given to non-compliance with objective 7 in the context of a particular proposal was ultimately a matter for the Tribunal. It has not been shown that in the exercise of its discretion it was not open to the Tribunal to have given the weight it gave to non-compliance with objective 7, in the particular circumstances of this case.

142 There is no error of law as asserted and this ground of appeal fails.

Conclusion

143 The asserted errors are unsubstantiated and the grounds of appeal are not made out. The appeal is dismissed and I will hear from the parties in relation to any consequential orders.