

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P996/2023
PERMIT APPLICATION NO.TPA/54537

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic), Monash planning scheme, Side by side development, Neighbourhood character, Landscaping.

APPLICANTS	Shuk Yee Chan & Chi Keung Chan
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	16 Glendowan Road MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	16 November 2023
DATE OF ORDER	4 December 2023
CITATION	Chan v Monash CC [2023] VCAT 1294

ORDER

1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: Metro Building Designers
- Drawing numbers: Rev B, VCAT Plans
TP01 – TP08
- Dated: 26th Sept 2023

Permit granted

- 2 In application P996/2023 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/54537 a permit is granted and directed to be issued for the land at 16 Glendowan Road Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two dwellings on a lot.

Tracey Bilston-McGillen
Member



APPEARANCES

For applicants	Daniel Bowden, town planning consultant, SongBowden Planning Pty Ltd. He called Rob Thompson, Landscape Architect, Habitat to give landscaping evidence.
For responsible authority	Adrienne Kellock, town planning consultant, Kellock Town Planning Pty Ltd.

INFORMATION

Description of proposal	<p>Construction of two (2) double storey dwellings on a lot on the site. Dwelling 1 is located in the northern half of the site with Dwelling 2 in the southern half. The dwellings are attached at the ground and first floor for the first two rooms and then a 2 metre separation is provided.</p> <p>Each dwelling is provided with a basement accommodating two car spaces. Each dwelling has its own access from the street.</p> <p>The ground floor of each dwelling contains an open plan kitchen/dining/family room, a separate living room, a bedroom with ensuite and walk in robe, a laundry and powder room.</p> <p>The first floor of each dwelling accommodates three bedrooms with ensuites, a shared bathroom and an open plan retreat.</p> <p>Each dwelling has a front balcony facing the street.</p> <p>Proposed landscaping includes retaining the existing vegetation in the rear of the site, canopy trees in the front setback and rear with smaller creepers and planting on the side boundaries.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme.
Zone and overlays	Neighbourhood Residential Zone Schedule 3 ‘Creek Environs Area’.



Permit requirements	Clause 32.09-6, a permit is required to construct two or more dwellings on a lot.
Key scheme policies and provisions	Clauses 11, 15, 16, 21.01, 21.04, 21.08, 22.01, 22.04, 22.05, 32.09, 55, 65 and 71.02.
Land description	<p>The land is rectangular in shape with a frontage of 16.76 metres, a depth of 45.72 metres and a site area of 719 square metres.</p> <p>The land has a fall of approximately 3.25 metres from the north-west corner to the south-east corner of the site.</p> <p>The site is currently occupied by a detached double storey dwelling. There is an existing crossover located on the north side of the frontage.</p> <p>Trees are located along the rear boundary and smaller trees scattered through the site. There is street tree located in the centre of the naturestrip.</p> <p>The surrounding properties are residential of varying style and design.</p>
Tribunal inspection	I inspected the site and surrounds.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Shuk Yee Chan & Chi Keung Chan ('applicant') have proposed to develop the site at 16 Glendowan Road, Mount Waverley ('review site') for two dwellings.

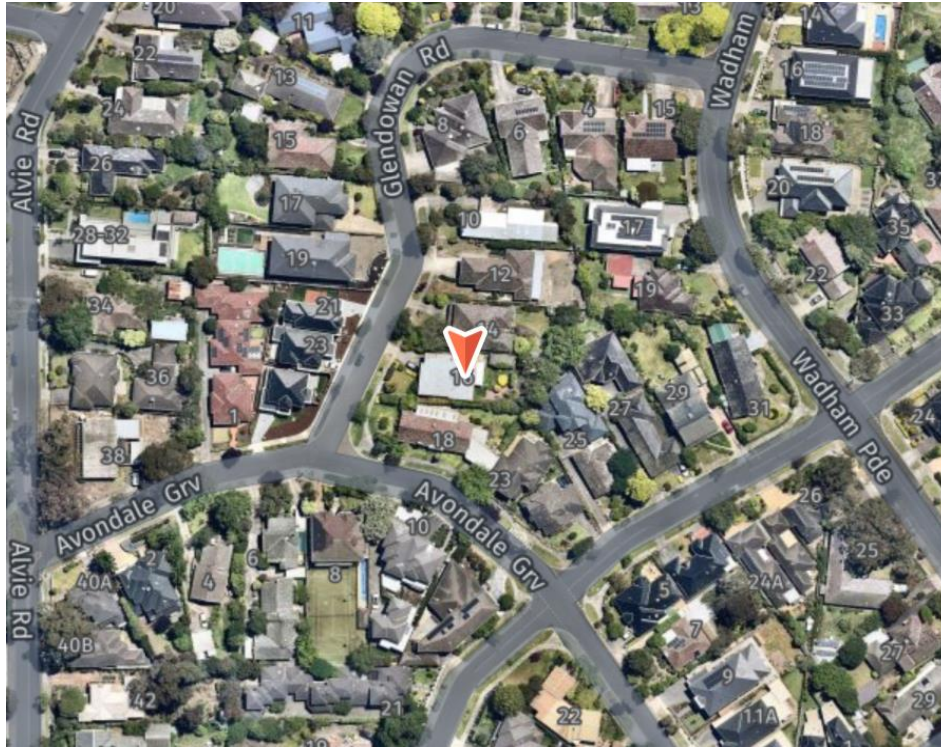


Figure 1: Review site and surrounding properties. Source nearmap.

- 2 Monash City Council ('council') refused to grant a planning permit on the grounds that the proposed development is inconsistent with policies at clauses 21.01, 22.01, inconsistent with the zone provisions and fails to comply with clause 55 ResCode objectives and design standards relating to neighbourhood character and landscaping.² In summary, council submitted that whilst the proposal would contribute to the supply and diversity of housing within the municipality, it fails to provide a suitable response to the context and preferred character of the neighbourhood. The key issues included; the side-by-side layout and bulk of the dwellings resulting in excessive bulk and the level of landscaping proposed fails to provide a suitable response to the valued landscape character of the neighbourhood.

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² Following the amended plans, Council amended their grounds of refusal to delete reference to non-compliance with clause 55 issues of access and side and rear setbacks.

- 3 The applicant amended the plans with the changes including, in summary, the replacement of a central driveway with two separate crossovers, changes to setbacks including an increase in the rear boundary setbacks and subsequent increase in the private open space areas, at the first floor a reduction in the northern boundary setback to 1.8 metres, a maximum wall height slight decrease and minor changes to the garden area, site coverage and permeability calculations.
- 4 This decision focusses on the key issues of concern to council including neighbourhood character, bulk and landscaping. I do not go to matters that are considered to be acceptable by the council for example internal amenity or matters of overshadowing. Having regard to the submissions, my site inspection, the landscaping evidence and the planning scheme provisions, I have decided to set aside the decision of the council and issue a permit subject to conditions. My reasons follow.

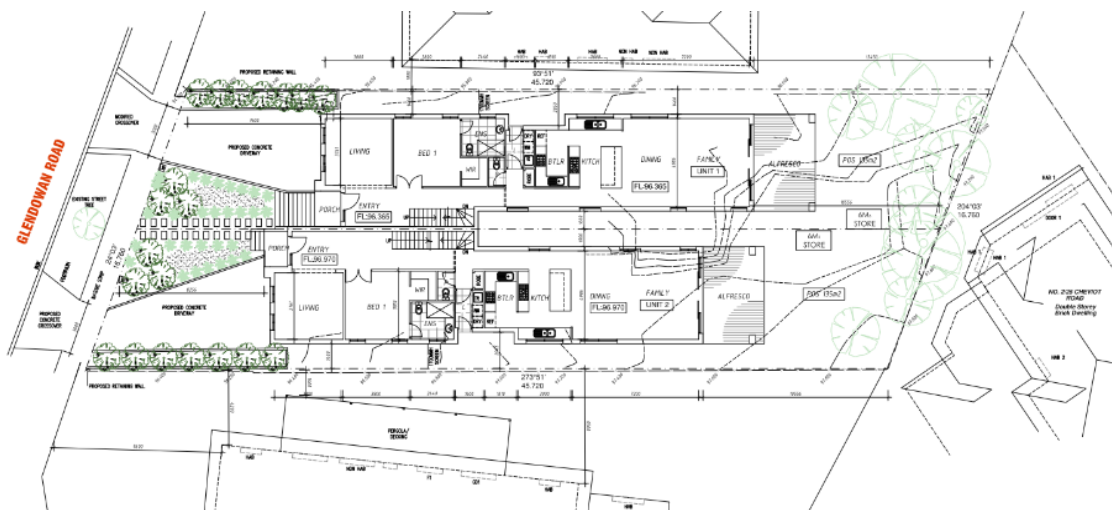


Figure 2: Amended ground floor plan. Metro Building Designers.

Neighbourhood character

- 5 Council submitted that the Residential development framework map³ identifies the review site within three categories including; Category 2 – Accessible area, Category 7 – Creek Environs area and Category 8 – Garden City area. The applicant submitted that the site is located in Category 2 – Accessible area. Clause 22.01 identifies the site within a Creek Environs Area.

³ Clause 21.04.



Figure 3: Map 3 – Residential development framework map. Monash planning scheme, clause 21.04.

- 6 The future character statement at clause 22.01 for Creek Environs Areas states that development should respond to the preferred future character statement for the area, which, in this case, includes the following (but not limited to):

New development will be designed to complement the established planting patterns and topography.

Design emphasis should be placed on promoting the preferred neighbourhood character by responding to the landscape setting.

This area will continue to provide lower scale residential development. Modest dwellings, with simple pitched rooflines and articulated facades, will continue to be the prevailing character.

New development will be well landscaped retaining the ‘open landscape character’ of the nearby creek environment and will taper down in scale closer to the creek. Development will visually connect to the creek environment through the use of colours and materials for buildings and fencing that blend with, rather than contrast with it.

- 7 Council directed me to clause 22.01 Residential Development and Character Policy with objectives seeking ‘To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area’ and to the preferred character statement discussed above.

- 8 Council raised concerns that the proposed development is ‘squeezed’ on to a ‘too narrow’ site where the development appears bulky and the side-by-side layout fails to complement the established and preferred character of the neighbourhood.



WEST ELEVATION

Figure 4: Proposed front/west elevation. Metro Building Designers.

- 9 The applicant submitted that in balancing the tension between policies that encourage more housing, more diverse housing and neighbourhood character policies, a first principles assessment is considered appropriate. It was put that this is an area where infill development has long been a ‘definable feature’ and the trend is continuing. More recently development has been in the form of multi-unit developments with double garage, additional driveways, large two storey forms and a range of architectural forms. Refer Figure 5 below detailing examples of development within the surrounding area.



Figure 5: Streetscape photographs of development within the street.

- 10 From my inspection of the site and surrounds and the submissions, I am persuaded by the applicant that the proposed development addresses the preferred character statement for the area and is consistent with the emerging character of the area. There is no question that the proposed built form is evident to the street, but this is not out of character with development in the street and surrounding area. I find the proposed built form acceptable for the following reasons.
- 11 The proposed building is articulated through the varied setback to the street and the inclusion of a balcony at the first floor. Council sought through draft conditions to delete this balcony but I do not agree with this suggestion. Balconies can provide articulation and a visual connection to the street. The varied setback also provides a sense of visual relief of the two dwellings when viewed from the street.
- 12 The proposed two dwellings as detailed in Figures 2 and 4 are orientated to the street with a basement partially visible. Having garages and built form

visible to the street is a characteristic of the street and surrounding area. I also make the observation that the separate basement garages results in the proposal reading as two dwellings, not 'one large single dwelling'.

- 13 The preferred character statement calls for articulated built form in a landscaped setting. The building is articulated along the north and south (side) boundaries at both the ground and first floor levels. The setback recesses provide visual relief to the length of the walls. As to the landscaped setting, the proposed dwelling provides meaningful landscaping at the front of the site including a key canopy tree. The proposal also retains the backyard space which retains a sense of garden space and provides space for further planting. It is my observation that the proposed level of landscaping within the front setback, side and rear yard is generous. The issue of landscaping is discussed in greater detail below.

Landscaping

- 14 Council refused the application on the grounds that the proposal is inconsistent with decision guidelines of schedule 3 of the Neighbourhood Residential Zone ('NRZ3') in regard to preferred character and fails to satisfactorily meet the objectives and standards of clause 55 Landscaping ('B13').

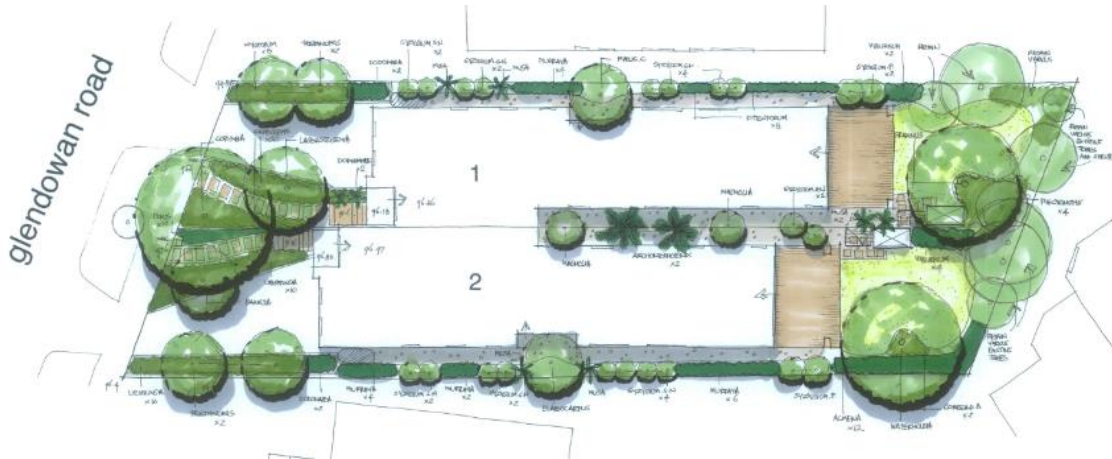


Figure 6: Extract of Habitat Landscape Plan.

- 15 NRZ3 varies the clause 55 B13 Landscaping provision, requiring the retention or provision of at least one canopy tree plus one canopy tree per 5 metres of site width with a minimum mature height equal to the height of the roof and the species should be native, preferably indigenous.
- 16 Council directed me to the NRZ3 objective that reads:
To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.
- 17 A number of decision guidelines also seek consideration of landscaping matters including maximising planting opportunities adjacent to the street, whether the built form complements the landscape setting including:

- Whether the built form complements the landscape setting by including the following features:
 - A built form that is sufficiently recessed and articulated, as viewed from the creek reservation and neighbouring properties, to reduce visual bulk and ensure the vegetation provides the more dominant element as viewed from the creekland reserve, the street and adjoining properties.
 - Housing that visually recedes into a continuous backdrop of canopy trees, avoiding dominant upper storeys and tall roof forms, resulting in visually intrusive built form and large, blank walls.

18 Council considers the proposed development fails to achieve the above objective and guidelines as the proposed development:

- has limited articulation and limited variation in setbacks along the length of the dwellings resulting in excessive visual bulk to the street and neighbouring properties;
- the landscaping and canopy planting space within the front setback remains constrained due to the extent of paving required to serve the two double garages; and
- the need for retaining walls and separate path and the side setback being only 1.4 metres is inadequate to provide for screen planting to filter views of the built form from the adjoining properties.

19 I do not share council's concerns regarding the proposed landscaping of the site. Mr Thomson submitted that the proposed landscaping scheme overcomes the potential loss of tree cover and vegetation generally. He further submitted that the proposed development includes sufficient space for tree retention and for landscape areas suitable for the growth of further canopy and other species.

20 It is well established that the City of Monash values its landscaped character. Clause 22.02 highlights that the City of Monash's residential areas have a garden city character that is highly valued by the community. An objective reads 'To build upon the important contribution that landscaping makes to the garden city character of Monash'. A number of landscaping policies seek to ensure that trees are retained or planted to contribute to the garden character.

21 I find the proposed landscaping achieves the objectives and preferred character statement. The preferred character statement reads the 'buildings will be recessive and normally hidden from view behind vegetation and tall trees'. I make the observation that the proposed dwellings will not be 'hidden from view'. As discussed above, the character of the area is one of built form to the street, some form may be hidden from the street but more often than not, in my view, built form is visible to the street. This is evident

in the streetscape photographs at Figure 5. The degree of landscaping varies within the street from dwellings being partially hidden behind trees and front gardens to driveways creating large openings with a view to garage doors and elevated houses.

22 Having regard to the preferred character statement and in particular landscaping, I find the proposed landscaping plan successfully satisfies the relevant objectives for the following reasons:

- The proposed scheme includes a key canopy tree, a Lemon Scented Gum in the front setback as well as six other trees and shrubs ranging from a Kanooka that grows to a height of 7 metres, a Crepe Myrtle that grows to 6 metres and smaller planting. The number of trees and lower vegetation will present as a landscaped garden and will soften the view of the development. Mr Thomson also suggested a minor realignment of the front paths to provide a softer entrance and I support this change.
- The north and south side boundary planting is proposed to be planted with narrow, upright habit (fastigiata) native trees (Syzygium) hedged shrubs (Dodonaea, Murraya, Pittosporum) as well as feature foliage. It is proposed to provide a continuous landscape buffer to screen or filter views of the proposed built form and provide varied greenery along the edge of the site. Council was concerned that the species selected would not grow to a sufficient height to screen the side walls of the dwellings. Mr Thomson advised that a taller, narrower species could be selected if required. He further submitted that a 1.4 metre setback is sufficient for planting and for the setback to be a walkway. I agree with this suggestion that a taller narrower tree could be planted. I also support the statement that a 1.4 metre setback is sufficient to provide a path and landscaping along the boundary. This setback is a 'working space' that is to provide access, it is not open space. Planting along the boundaries will soften the view of each dwelling.
- To the rear, it is proposed to provide for a Waterhousia and Fraxinus, both capable of growing to 8 metres. Mr Thomson submitted that it is preferable to retain much of the existing vegetation as it currently contributes to the landscaped environment as there is no reason to remove it. He further suggested that a condition of permit be included to ensure that the rear vegetation is retained. The type of vegetation present would not require a permit for its removal but it was his opinion that it contributes to the landscaped character of the area and is well established. I am persuaded by this evidence and will require a condition on permit to ensure its protection.

Bulk

- 23 Council is concerned that the development would present excessive visual bulk to neighbouring properties on either side of the site due to minimal setbacks and building articulation and inadequate space for meaningful planting. I do not share council's concern. The side elevations at both the ground and first floor levels are setback a minimum of 1.4 metres providing space for landscaping.
- 24 As discussed earlier, Mr Thomson in his evidence suggested that tall, narrow trees could be planted to reach the overall height of the dwelling. I consider this appropriate. Taller trees will soften the view and visual impact of the elevations. The elevations have also been recessed at the retreat and bathroom areas by 600mm. This is adequate to provide a visually varied elevation. It is further noted that dwelling 1, the northern dwelling does not extend beyond the existing house at 14 Glendowan Road. Due to the orientation of the adjoining house to the south at 18 Glendowan Road, the dwelling extends beyond this house. However, I do not consider this fatal to the proposal given the proposed level of landscaping and that the proposal largely complies with the clause 55 provisions such as setbacks, overshadowing and privacy.

CONCLUSION

- 25 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Tracey Bilston-McGillen
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54537
LAND	16 Glendowan Road MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two dwellings on a lot.

CONDITIONS

Amended Plans Required

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed, they will form part of the Permit. They must be generally in accordance with plans prepared by Metro Building Designers, dated 26 September 2023, but modified to show:
 - (a) Footpaths, reduction in the width of the entry stairs to dwelling 1 and any other changes to the front porch steps located in the front setback as shown on the Landscape Plan prepared by Habitat, dated October 2023.
 - (b) Show ramp grades on ground floor and elevation plans.
 - (c) Location and details of all retaining walls including any side balustrades including to the front entry stairs to dwelling 1.
 - (d) Driveway of Dwelling 2 at the front title boundary be extended in width to 3 metres.
 - (e) A corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
 - (f) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or



behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash".

- (g) Details of the provision of screening to windows and balconies to demonstrate accordance with Standard B22.
- (h) A materials schedule of proposed external finishes including colour swatches.
- (i) Ground floor walls to be constructed of different materials/finishes to first floor walls.
- (j) First floor side walls to be constructed of two different materials/finishes/colours to provide visual interest.
- (k) Retaining walls along the driveways to have a naturalistic material/finish.
- (l) Landscape Plan in accordance with Condition 3 of this Permit.

Layout not to be Altered

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Landscape

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Habitat , dated October 2023 except that the plan must be modified to show:
 - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. This includes the any vegetation located in the rear of the existing site to be retained;
 - (b) Species located along south boundary fence and in between the dwellings to be able to grow in heavily shaded areas;
 - (c) The location of all internal and boundary fences to the site;
 - (d) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development.
 - (e) Details of tree species to be planted within the north and south side setbacks in line with the building line. The species is to be tall and narrow and have the ability to grow to the wall height of the proposed dwellings.



- (f) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (g) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (h) The location and any retaining walls associated with the landscape treatment of the site;
- (i) Details of all proposed surfaces finishes including pathways, accessways, patio or decked areas;
- (j) Location of site services;
- (k) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (l) Landscaping and planting within all open areas of the site

Tree Protection

- 4 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). This includes any Street Tree and Vegetation/Trees located in the rear of the site noted as 'Retained' on the landscape plan prepared by Habitat. The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
- 5 No crossover should be within 2.5 metres of the street tree base. The tree must be protected by temporary rectangular wire fencing as per Australian Standards, erected prior to commencement of works until completion. Fence must extend out to at least distances given.

Landscaping Prior to Occupation

- 6 Before the occupation of any of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and thereafter maintained to the satisfaction of the Responsible Authority.

Drainage

- 7 The site must be drained to the satisfaction of the Responsible Authority.
- 8 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.



- 9 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 10 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 11 The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

Vehicle Crossover

- 12 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 13 All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 14 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 15 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 16 Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

Urban Design

- 17 17. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Satisfactory Continuation and Completion

- 18 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Permit Expiry

- 19 This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
 - The development has not started before 2 years from the date of issue.



- The development is not completed before 4 years from the date of issue.

In accordance with Section 69 of the Planning and Environment Act 1987, the responsible authority may extend the periods referred to if request is made in writing before the permit expires, or

- i within six (6) months afterwards if the development has not commenced; or
- ii within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –

