

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P673/2024  
PERMIT APPLICATION NO.TPA/55514

### CATCHWORDS

Section 82 *Planning and Environment Act* 1987, Monash Planning Scheme, General Residential Zone – Schedule 2, accessible area, neighbourhood character, rear setback, overshadowing, visual bulk, landscaping.

<b>APPLICANT</b>	Tania Naomi Wisel
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council Paul Economedes
<b>SUBJECT LAND</b>	16 Clapham Road HUGHESDALE VIC 3166
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	20 February 2025
<b>DATE OF ORDER</b>	24 February 2025
<b>CITATION</b>	Wisel v Monash CC [2025] VCAT 168

### ORDER

#### Amend name

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by changing the name of the permit applicant to:

Paul Economedes

#### Permit granted

- 2 In application P673/2024 the decision of the responsible authority is varied.
- 3 In planning permit application TPA/55514 a permit is granted and directed to be issued for the land at 16 Clapham Road Hughesdale VIC 3166 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

<b>Planning scheme clause</b>	<b>Matter for which the permit has been granted</b>
Clause 32.08-7	Construct two or more dwellings on a lot.

Alison Glynn  
Senior Member



## APPEARANCES

For applicant	Tania Wisel, in person with Arthur Thornton.
For responsible authority	Roseanna Oppedisano and Sally Moster, town planners.
For respondent	Paul Economedes, in person.

## INFORMATION

Description of proposal	Construction of three, double storey dwellings.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the decision to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone – Schedule 2 ('GRZ2')
Permit requirements	Clause 32.08-7 construct two or more dwellings on a lot in GRZ2.
Key relevant scheme policies and provisions	Clauses 11, 15.01, 32.08, 55, 65 and 71.02-3.
Land description	The site has a 20.12 metre frontage to the east side of Clapham Road and a depth of 45.7 metres to create an area of 919.8 square metres. The land is vacant. To the north are three, single storey dwellings on a similar sized lot. To the south is a single storey dwelling. To the rear is a modern single storey dwelling.
Tribunal inspection	I inspected the site and surrounds, unaccompanied, prior to the start of the hearing on 20 February 2025.



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

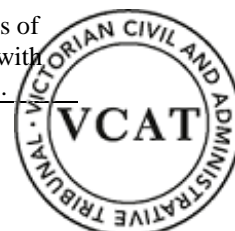
- 1 Miss Wisel ('applicant') has a property to the rear of 16 Clapham Road, Hughesdale, ('review site') where Monash City Council ('council') has issued a notice of decision to grant a planning permit ('NOD') for three, double storey dwellings. The applicant submits she is not opposed to a permit being granted for the proposal but submits that the proposed rear dwelling should be modified to increase its setback to her property to create additional room for landscaping, sunlight and reduced visual bulk to her adjoining property. With this she opposes the proposed double garage wall of the rear dwelling that abuts the boundary of her property and the extent of upper storey building of this rear dwelling, that will interface to her property.
- 2 Mr Economedes ('respondent') is the project architect for the proposal and submits the proposal, with the conditions imposed by the council in the NOD, has sufficiently addressed the provisions of the Monash Planning Scheme ('scheme'). He acknowledges in submissions made at the hearing that some further, minor, modification to conditions in the NOD could occur. I address these below.
- 3 The Tribunal must determine if a planning permit should be granted having regard to submissions made in context of the decision making framework of the scheme and the *Planning and Environment Act 1987* (Vic). In this context I find the proposal is acceptable, generally as set out in the NOD as issued by the council. I will vary the decision of the council to make some minor changes to conditions for reasons I set out below.

### WHAT ARE THE KEY ISSUES?

- 4 The applicant submits the proposal fails to address three key elements impacting her property. These are:
  - The loss of amenity and impact on backyard character due to the height, bulk and setback of the rear, third dwelling of the proposal that sits close to her rear yard.
  - The lack of space for landscaping to soften this dwelling at the rear of the review site, and
  - The impact of shadow on her adjoining rear yard from the rear dwelling of the proposal.
- 5 These three issues relate to character and amenity provisions and must be tested against provisions of the planning scheme in accordance with the site's zoning in General Residential Zone– Schedule 2 ('GRZ2') that in turn

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<sup>1</sup> The submissions 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.



requires consideration to the provisions of clause 55 of the scheme, as varied by GRZ2.

- 6 I address these issues below. In doing so I note that the applicant does not take issue with the presentation of the development as it faces Clapham Road or the general layout of the proposal. It is the backyard character and impact on amenity to the adjoining rear yard that is of specific concern.
- 7 My review of the application plans and the relevant provisions of the scheme is that the presentation of the proposal to the street is acceptable and that the general layout of the proposal is also acceptable. My assessment below therefore focuses on the issues raised by the applicant about the rear interface of the proposal.

## **PROCEDURAL ISSUES AND RULINGS**

- 8 At the start of the hearing I directed that I would change the name of the planning permit applicant from Paul Economedes Architects to Paul Economedes so that the planning application is made by a legal entity. No objection was made by any party to this ruling and the orders reflect the name change made.

### **Previous tribunal decision**

- 9 A different proposal for the review site was the subject of a Tribunal decision, *Pedagandham v Monash CC*<sup>2</sup> (*'Pedagandham'*) in 2023. As the council commented, this previous proposal and the reasons for its refusal related to a quite different design and different issues, notably how that proposal presented to Clapham Road. No party indicated that the principles of a repeat review were relevant to the proceeding before me given the difference in the 2023 proposal and that now before me. I agree. It is, however, useful to record that the site's physical context remains the same and that the planning scheme provisions remain generally the same. This includes that:

- The surrounding area comprises brick and weatherboard housing stock from the interwar period as well from the 1950s and 1960s with some newer infill development. Residential development predominantly comprises single storey detached dwellings with some single storey tandem villa units and double storey walk up flats.
- The GRZ2 seeks to encourage a diversity of housing types and growth particularly in locations offering good access to services and transport while respecting the neighbourhood character of the area. Clause 55 provisions are required to be considered. The site is located approximately 750 metres from the Oakleigh Activity Centre, 570 metres to the Hughesdale Neighbourhood Activity Centre, 700 metres

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<sup>2</sup> [2023] VCAT 996.



to the Hughesdale Train Station and one kilometre to the Oakleigh Train Station.<sup>3</sup>

- The GRZ2 does not contain specific neighbourhood character objectives but does vary relevant Rescode standards relating to Standard B6 with a front setback of 7.6 metres, Standard B28 with private open space consisting of an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling, a minimum width of 5 metres and convenient access from a living room and Standard B32 with a front fence within 3 metres of a street not exceeding 1.2 metres. The proposal before me satisfies these variations.
- The current proposal meets the site coverage, site permeability and garden area requirements of the scheme.

10 Since the *Pedagandham* decision the policy framework of the scheme has been updated, although much of the policy intent has not changed. It has simply moved location in the scheme, although with some updated wording. My assessment of the new proposal is based on the current policy context of the scheme as I address below.

### IS THE REAR BUILDING PRESENTATION, POSITION AND SETBACK ACCEPTABLE?

11 The applicant submits that the rear building interface with a two metre wide setback and garage to rear boundary is too close and imposing on their property, having regard to the character sought for the GRZ2 area. This is noting that while the review site is 20 metres wide, the building extends across all of the interface to the applicant's property, that is only 15 metres wide. As depicted in figure 1 below, the northern five metres, that remains open does not directly interface review applicant's property.

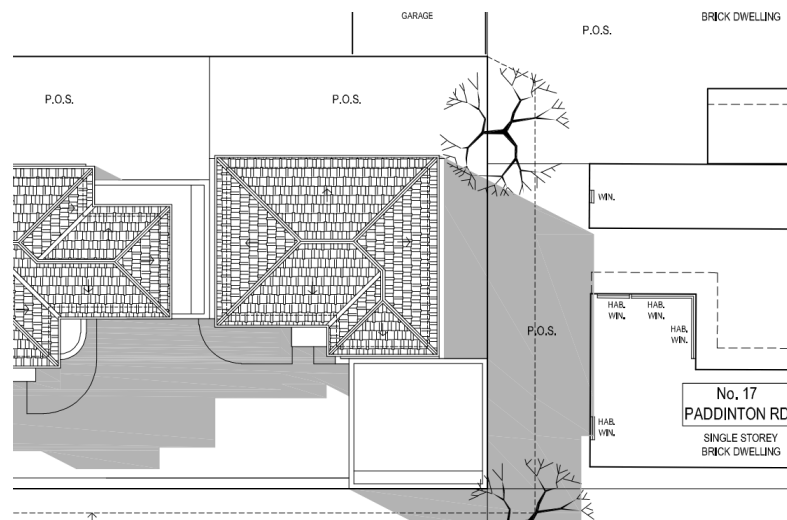


Figure 1 - section of 3pm shadow diagram in application plans showing alignment of the proposed rear dwelling to the rear of 17 Paddington Road.

<sup>3</sup> As set out in paragraph 5 of *Pedagandham*.

- 12 The applicant submits that the extent of two storey form and building close, or at the rear boundary, is not consistent with the character guidelines set out in policy of the scheme. The applicant refers to character policy at clause 22.01. As explained at the hearing this character policy has now been relocated to clause 15.01-5L through Amendment C166mon in 2024. This has resulted in some minor change to the policy wording. The policy intent remains and includes character policy for residential areas across the municipality, that relevantly includes direction to:

Minimise visual bulk to neighbouring properties, by setting back buildings from adjacent secluded private open space.

...

Provide rear setbacks that support a green corridor of open space along adjoining backyards.

...

Minimise walls on boundaries and provide spacing between dwellings to maintain the character of open vegetated backyards

- 13 These preferred character objectives are broad and need to be balanced against both existing site conditions and housing policy that seeks to direct greater housing choice and diversity in areas close to activity centres. As a site of over 900 square metres, in walking distance to both the Hughesdale and Oakleigh Activity Centres it is important a balance is struck between potentially conflicting policy to address preferred character policy, to also consider existing character, and policy to increase housing supply in well located areas.
- 14 The applicant submits the rear setback and double storey form is not consistent with the existing character of the area. However, I concur with the council's observation that there are several double storey dwellings in the nearby area and that as a GRZ2 area, it is reasonable to expect double storey dwellings. The overall building height is less than eight metres.
- 15 Many of the adjoining sites, including those to the direct north of the review site include dwellings set close to their rear boundary. There is not an area that has open 'green spine' as found in other parts of the municipality.
- 16 The proposal orientates its main secluded private open space ('SPOS') areas to its side, northern boundary, the same way other multi dwelling developments have to the north of the review site. This is a logical design response to the sustainable design policy directions of the scheme.
- 17 The proposal meets standard B17 for side and rear setbacks as set out in clause 55.04-1. Given the standard is met, clause 55 deems that its objective to ensure the height and setback of a building from a boundary respects the existing or preferred character, and to limit impact on the amenity of existing dwellings, is also met.

- 18 Despite the application plans meeting standard B17, the council imposed permit conditions to further recess the upper level of the rear of dwelling 3. These conditions are uncontested by the respondent and the council submits they were put in place to further ensure that broader character considerations of clause 55.06-1 for design detail and façade articulation, in context of the character policies, were met.
- 19 While the applicant would prefer further setback of dwelling 3 from the rear boundary, I find no reasonable basis to direct that this dwelling be further setback, based on the provisions of the scheme. The dwelling includes articulation that is further enhanced through the unopposed conditions imposed by the council and includes a setback that is consistent with the existing character of the area. In context of the site’s accessible location where policy also encourages increasing housing supply I find the design response of dwelling 3’s placement acceptable.
- 20 Dwelling 3 includes a garage that is set to the rear boundary and has a minimum, rather than an average height of 3.2 metres, as directed by standard B18 at clause 55.04-2. The respondent acknowledged that there is no specific need for the garage to exceed the standard height at the rear boundary and would accept a condition reduce its height by approximately 0.1 metres at the boundary.
- 21 I will direct that the garage wall to the boundary be reduced in height to no more than 3.2 metres from natural ground level at the rear, eastern boundary to avoid any further impost on adjoining properties from visual bulk and on backyard character.

**IS THERE SUFFICIENT ROOM FOR LANDSCAPING IN THE REAR OF THE REVIEW SITE?**

- 22 The applicant submits that the two metre wide space between the rear of dwelling 3 and the rear boundary is insufficient to provide canopy planting that can soften the building when viewed from the rear yard of 17 Paddington Road.
- 23 The proposal includes substantive areas for landscape space, although these are orientated mainly in the northern SPOS areas and to the front of the site. I am, however, satisfied that the two metre wide rear setback provides sufficient room for both a pathway from the garage to the rear yard, the slimline water tank for part of the setback and room for planting. This will be more hedge like planting. The applicant submits that this will further ‘hem in’ her rear yard but narrower planting space to the rear of the lot is consistent with other sites in the area and can ensure that there is a softening of the built form. There is no specific requirement in the GRZ2 area for rear canopy planting.

## **DOES THE PROPOSAL RESULT IN UNREASONABLE OVERSHADOWING TO THE PROPERTY TO ITS REAR?**

- 24 The applicant submits that height and form of dwelling 3 and its garage will unreasonably overshadow her SPOS located to the rear of 17 Paddington Road. This adjoining SPOS forms part of a larger SPOS that forms a mostly enclosed, internal courtyard of the dwelling at 17 Paddington Street. I am satisfied that when assessing the SPOS area of this adjoining site, as a whole, standard B21 at clause 55.04-5 is met. The scheme directs that if the standard is met then the objective is also met.
- 25 Even if my review of the plans is incorrect in determining that the standard is met, I remain satisfied that the objective is met. The dwelling at 17 Paddington Street includes a SPOS area that is linked but forms two spaces. The internal courtyard area is not impacted by the proposal by shadow during the relevant testing period of clause 55.04-5, being between 9:00am and 3:00pm at the equinox. The rear garden area is impacted by shadow from proposed dwelling 3 in the afternoon at the equinox. I accept this rear space, while not having any habitable windows facing onto it, provides ornamental garden and vegetable growing area. The impact, at the equinox is generally after 2:00pm. The objective of the clause is not to avoid any overshadowing but to ensure buildings do not 'significantly' overshadow existing SPOS areas. In context of the available SPOS areas of the adjoining site I am satisfied the objective of clause 55.04-5 is achieved.

## **CONCLUSION**

- 26 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions. In doing so I have varied conditions for reasons set out above. I have also included one additional condition and varied another condition.
- 27 Firstly, I have included a condition to identify natural ground level across the site, as it is not marked on the plans. As was discussed at the hearing, the land has a small fall of about 0.5 metres across the 45 metre length of the site. This is minor but should be identified to ensure the height of elements near the rear of the site are based on natural ground level.
- 28 I have also amended a condition of the NOD that required:
- A freestanding 'self-supporting' trellis along the eastern and southern title boundary with a minimum height of 1.7 metres above the proposed FFL of the Dwellings
- 29 The applicant opposes this condition on the basis that it may further impact on her amenity if it is significantly higher than 1.7 metres. I questioned at the hearing the purpose of the condition given the application plans show a 1.8 metre high fence to the rear boundary. I was advised that the existing fence is only 1.6 metres high and therefore the condition is to ensure that the overlooking objective and standard at clause 55.04-6 is met.





- 30 Discussion was held at the hearing that the condition could be amended to require either a 1.7 metre high screen, or a new fence to be constructed at no greater than 1.8 metres. I have amended to the condition to enable either a new fence to be constructed or a screen provided if a new fence is not constructed.

Alison Glynn  
**Senior Member**



## APPENDIX A – PERMIT DESCRIPTION AND CONDITIONS

<b>PERMIT NO</b>	TPA/55514
<b>PLANNING SCHEME</b>	Monash Planning Scheme
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>ADDRESS OF THE LAND</b>	16 Clapham Road HUGHESDALE VIC 3166

### THE PERMIT ALLOWS:

<b>Planning scheme clause</b>	<b>Matter for which the permit has been granted</b>
Clause 32.08-7	Construct two or more dwellings on a lot.

### CONDITIONS TO APPLY TO THE PERMIT:

#### Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council, but modified to show:
  - (a) Survey levels showing natural ground level (NGL) across the site.
  - (b) The walls on boundary to the garage to dwelling 3 reduced in height to be no greater than 3.2 metres high from natural ground level at the rear, eastern boundary.
  - (c) The northernmost bedroom 1 wall of Dwelling 3, to be recessed an additional 500mm without any consequential reduction to other setbacks or changes to the proposed windows.
  - (d) The easternmost wall of Dwelling 3 bathroom to be setback an additional 500 mm with no consequential reduction to other setbacks or changes to the proposed windows.
  - (e) Either:
    - i. a freestanding 'self-supporting' trellis along the eastern and southern title boundary with a minimum height of 1.7 metres and a maximum height of 1.8 metres above the proposed FFL of the Dwellings, or



- ii. the southern and eastern boundary fences reconstructed to be 1.8 metre high from natural ground level at the fence line.
- (f) All upper floor habitable room windows that are provided with obscure fixed glazing up to a minimum sill height of 1.7 metres above finish floor level to be labelled as ‘fixed’.
- (g) 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”.
- (h) Where practicable, 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 (where practicable). 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.
- (i) A Landscape Plan in accordance with condition of this Permit.  
all to the satisfaction of the Responsible Authority.

#### **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.

#### **Compliance with documents approved under this permit**

- 3 At all times what the permit allows must be carried out in accordance with the requirements of any document approved under this permit to the satisfaction of the responsible authority.

#### **Landscape Plan**

- 4 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 show the following:
  - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
  - (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;



- (c) A minimum of five canopy trees (minimum 1.5 metres tall when planted) throughout the site. The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
- (d) The location of any fencing internal to the site;
- (e) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (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 of any retaining walls associated with the landscape treatment of the site;
- (i) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (j) 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;
- (k) The location of external lighting (if any);
- (l) Planting required by any other condition of this permit; and
- (m) Landscaping and planting within all open areas of the site.

When approved the plan will be endorsed and will then form part of the permit.

- 5 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

### **Tree Protection**

- 6 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). 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.
- 7 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.



### **Landscaping Prior to Occupation**

- 8 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 & Stormwater**

- 9 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 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 Stormwater is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to any stormwater drainage works commencing.
- 12 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on [www.monash.vic.gov.au](http://www.monash.vic.gov.au).

### **Vehicle Crossovers**

- 13 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 14 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 15 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

### **Privacy Screens**

- 16 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to

transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

### **Boundary Walls**

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

### **Reticulated Gas Service Connection**

- 18 Any new dwelling allowed by this permit must not be connected to a reticulated gas service (within the meaning of clause 53.03 of the relevant planning scheme). This condition continues to have force and effect after the development authorised by this permit has been completed.

### **Satisfactory Continuation and Completion**

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

### **Time for Starting and Completion**

- 20 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
- (a) The development is not started before 2 years from the date of issue.
  - (b) 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 a request is made in writing before the permit expires, or

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

**– End of conditions –**