VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1651/2018  Permit Application no. TPA48143 |
| CATCHWORDS | |
| Monash Planning Scheme; General Residential Zone; three-storey apartment building; main road location; preferred neighbourhood character; amenity; car parking. | |

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| APPLICANTs | Vasiliki & Daniel Lombardi |
| responsible authority | Monash City Council |
| Referral Authority | VicRoads – Metropolitan South East Region |
| SUBJECT LAND | 430 Springvale Road, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Michael Nelthorpe, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 27 February 2019 |
| DATE OF ORDER | 1 April 2019 |
| CITATION | Lombardi v Monash CC [2019] VCAT 456 |

# Order

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by: | Ausdraft |
| * Drawing numbers: | TP1-TP11 (inclusive) |
| * Dated: | 19 December 2018 |

### Permit granted

1. In application P1651/2018 the decision of the responsible authority is set aside.
2. In planning permit application TPA48143 a permit is granted and directed to be issued for the land at 430 Springvale Road, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of eight dwellings;
* Alteration of access to a road in a Road Zone Category 1.

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| Michael Nelthorpe **Member** |  |  |

# Appearances

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| For applicant | Mr Glen Watt, of Design & Project Planning Pty Ltd |
| For responsible authority | Mr Gerard Gilfedder, town planner of Currie & Brown |

# Information

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| Description of proposal | Eight dwellings in a three-storey apartment building with basement car parking. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 2 |
| Permit requirements | Clause 32.08-4: to construct two or more dwellings on a lot. |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.04, 21.13, 22.01, 22.04, 22.05, 32.08, 52.06, 52.29, 55, 65 & 71.02. |
| Land description | This rectangular lot is located on the east side of Springvale Road, four lots to the south of Harris Crescent. It has an 18.63 metre frontage, a 37.8 metre depth and an area of 705 square metres. A single-storey dwelling occupies the site. |
| Tribunal inspection | 26 February 2019 |

# Reasons[[1]](#footnote-1)

1. Vasiliki & Daniel Lombardi (‘the applicants) applied to the Monash City Council (‘the council’) for a planning permit to construct a three-storey apartment building over basement car parking at 430 Springvale Road, Glen Waverley.
2. The council refused to grant a permit, saying that the proposal does not contribute to the preferred neighbourhood character and does not provide enough space for landscaping. It also says that it does not satisfy a series of clause 55’s objectives and clause 52.06’s design standards. It says that it will adversely affect the amenity of adjoining residential properties and is an overdevelopment. It also says that the internal amenity of the apartments is not good.
3. The application was referred to VicRoads because it is proposed to alter the vehicle access to Springvale Road. It does not object to the grant of a permit subject to a modification to the driveway and the imposition of conditions.
4. Based on this summary, I consider that the issues I must address are:

* Is the proposal an appropriate response to the surrounding neighbourhood character?
* Is an appropriate level of internal and external amenity achieved?
* Does the proposal appropriately provide for car parking and traffic movements?

1. Having heard and considered the submissions and having inspected the site, I find that the proposal is an acceptable planning response and that a permit will issue. I find that the only substantive issue is the proposed extent of landscaping. Otherwise, I consider that the building is an acceptable response to its context.
2. A site’s context is the greatest variable in the statutory planning framework. Policies for residential development and neighbourhood character must be applied with regard for a site’s physical context. The council has not properly accounted for it here.
3. This is a site on a wide, busy road and amongst several non-residential uses. The buildings containing these uses are two-storey in height and commercial in appearance. Their setting is at grade car parking with limited space for planting. The remaining residential dwellings are candidates for redevelopment and appear as such. Like many properties on Springvale Road, their front gardens are relatively neglected and are often used for car parking or reversing areas. This is understandable because front garden amenity is very poor due to the road’s traffic volumes.
4. The proposed apartment building will be a comfortable fit in this context. Its scale is comparable to its neighbours and it retains some space for landscaping in the frontage. It does not accord with most of the neighbourhood character objectives yet neither do its recent neighbours. Consequently, I have exercised my discretion to vary from character policy due to the site’s physical context.
5. I elaborate on these findings below.

## Is the proposal an appropriate response to the surrounding neighbourhood character?

1. The council submits that the proposed building’s three-storey height with limited separation from boundaries and extensive hard paving is inconsistent with the scale of the area and the openness of sites. It says that it is inconsistent with the desired future character of the area.
2. It says that the building cannot provide landscaping consistent with the Garden Suburban character. It says that there is no space for landscaping on the side and rear boundaries and that semi-mature canopy trees with spreading crowns cannot be planted in the proposed ground level open space areas as these spaces are above the basement.
3. It relies on the statement of preferred character in the Planning Scheme, which is that:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees.

Architecture, including new buildings and extensions will, in the majority of cases be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two-storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated.

Setbacks will be generous and consistent within individual streets.

Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrasts between buildings.

The built form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Neighbourhoods that are influenced by the naturalistic landscape of the creek valleys or on highpoints and ridges will have a predominance of native trees in both the public and private realm. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Streets which have a majority of gardens currently lacking fences will continue to do so. Walls and fences in other streets will be low to allow plants in the front gardens to be visible from the street. Colours and materials will be sympathetic to the architecture of the house.

The soft quality of streets derived from the nature strips will be protected by ensuring that each lot frontage has only one single crossover. Landscape elements such as remnant indigenous vegetation and the large old coniferous windrows will be retained until horticulturally unstable. The character of existing public open spaces within the Character Type, particularly those naturalistic corridors such as Damper Creek and Valley Reserve, will be protected by ensuring that buildings directly adjacent to such areas are setback and buffered with planting that complements that within the public open space.

1. What is apparent is that the review site and its immediate neighbours display few, if any, of these characteristics. This section of Springvale Road does not have ‘a pleasant leafy framework of well-planted front gardens and large canopy trees’ nor has it a ‘soft quality’. Rather, it has a hard quality due to its domination by six lanes of traffic, and nearby front gardens are neither pleasant or well-planted.
2. The architecture of new buildings in the immediate surrounds is not ‘secondary in visual significance to the landscape of the Character Type’. Rather, the new buildings are commercial in appearance and dominate their sites. Landscaping is not of the Character Type, rather it is occasional canopy tree planting in the frontage and hedges at times around the site’s perimeters.
3. In all, the built form is not ‘visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting’. As such, it is reasonable to discount much of this character statement. Its emphasis appears to be on the local streets of this Character Type rather than the main arterial roads that serve these local streets.
4. Consequently, I have no issue with the building or its scale. It is a contemporary apartment building predominantly of two-storeys and with a recessive third level. It presents well to the street as it is articulated by the vertical element of the staircase and the cascading elements of the two-storey entry foyer and single-storey porch. Its west facing balconies and terraces add articulation and interest while its low-pitched roof acknowledges the roof forms of most original and contemporary dwellings in the broader neighbourhood.
5. I find that its scale is suitable amongst its neighbours. It is comparable to that of its recent neighbours and will appear as an acceptable alternate to these non-residential uses. I do not place much weight on the single-storey form of the original dwellings between Harris Crescent and Ranfurlie Drive, as some have been converted to non-residential uses and others seem ripe for redevelopment.
6. I am not persuaded that it should fail because it lacks the ‘openness’ sought by the character statement. There is a lot of open land on nearby lots along Springvale Road, yet most of this is occupied by at grade car parking spaces or is neglected. I consider that it is unnecessary to require a high degree of openness to achieve a comfortable fit in this location.
7. In my opening statements, I said that the extent of landscaping was the one substantive issue in this review. The proposal provides approximately 80 square metres of space for landscaping in the frontage and retains space on the rear easement. It provides a one metre wide strip of deep soil along the southern boundary and no meaningful space along its north boundary. There is no opportunity for in-ground planting in the rear open space courtyards as these are above the basement.
8. The question is whether this landscaping response is acceptable. I find that the extent of open space in the frontage is acceptable because it allows for the planting of between two and four canopy trees that can contribute to the Garden City character. I find that it is acceptable because it is comparable to one of its recent neighbours to the south and is greater than most original properties along this section of Springvale Road.
9. I consider that the one metre strip along the south boundary can accommodate a hedge of vegetation that will improve the outlook of those apartments with a southern aspect and will soften the appearance of the building’s lower levels. I find that this is acceptable.
10. I will require a similar treatment along the northern boundary. This is possible because the basement’s width can be reduced by 400mm with this space provided on the northern boundary. This reduction in width is available because the basement’s access aisle is 6.8 metres wide whereas 6.4 metres is all that is required.
11. I am satisfied that screen planting can occur on the easement to soften the building’s appearance from the properties to the rear.
12. On a specific issue raised by the council, I am not persuaded that the rear of the landscaping strips on the side boundaries suffer by being below natural ground level. The bedding of the ground floor level on this marginally sloping site results in a maximum cut of one metre at the south-east corner. It can be addressed by providing a suitable growing medium in the areas of cut. This can be addressed by a permit condition.
13. In all, I consider that this is an appropriate landscape response in this setting. I am not persuaded that greater areas of landscaping would significantly affect the neighbourhood’s preferred character. As I said earlier, this character seems to relate to the neighbourhood’s local streets which have a different amenity, streetscape character and dominant built form. In the Springvale Road context, I find that it is acceptable to mimic the best of its recent neighbours by ensuring that front garden planting contributes to character while side and rear planting contributes to internal and external amenity.

## Is an appropriate level of internal and external amenity achieved?

### Internal amenity

1. The council contends that the proposed internal amenity is inadequate because:

* Apartment 1’s private open space is not 75 square metres in area and is in the frontage;
* Three of the apartments are oriented to the south or east;
* The balcony of the south-facing apartment does not meet Standard B29 of ResCode;
* The arrangement for people with limited mobility is poor; and
* The overhanging first floor form means that the north and east facing windows of the living areas of Apartments 2 and 3 are not clear to the sky.

1. I find that these shortcomings are not fatal to the proposal. Apartment 1 has 50 square metres of private open space behind a 2.4 metre high wall. This will provide a viable level of amenity for this apartment as the wall will reduce vehicle noise from the road. I find that a 32 square metre courtyard and additional space along the northern boundary is sufficient for this two-bedroom apartment. It allows adequate space for recreation and enough space from the northern boundary for daylight and amenity. I note that the courtyard could be enlarged by shifting the 2.4 metre wall closer to the frontage yet this would be detrimental to the streetscape without adding a great deal to the courtyard.
2. I take no issue with the east facing apartments as an eastern orientation has the amenity of capturing the morning sun. These apartments also benefit from their distance from Springvale Road. This is a reasonable balance and is one that is necessary in an apartment building where outlooks from all elevations are expected. Along these lines, it is acceptable to have a south-facing apartment and I find that Standard B29 can be varied to accommodate this. That only one of eight apartments has this orientation is a good design outcome overall.
3. I find that the access to people with limited mobility is acceptable. The standard sets a relatively low bar in that only the access to a dwelling’s ground floor entry must be accessible. The standard does not require access to the upper floor of a dwelling or to other ground floor rooms. Consequently, it is more likely that a person with limited mobility would visit this building rather than live in it. This varies from clause 58 of the Planning Scheme which has standards for ‘accessible apartments’ that provide accommodation for people with limited mobility.
4. In this proposal, independent access to the building is difficult or impossible for people with limited mobility because the slight slope of the site results in a set of four steps at the frontage. The alternative is to access the garage by vehicle and to use the lift to access apartments. I find that this is an acceptable arrangement for visitors with limited mobility.
5. Regarding the overhang of north and east facing windows, I find that these windows will receive adequate daylight given their orientation.

### External amenity

1. The council contends that the development generally complies with the overlooking standard of ResCode but that the east-facing Bedroom 4 window of Apartment 8 must be screened to avoid unreasonable overlooking.[[2]](#footnote-2) I agree and will require it by a condition on the permit.

## Does the proposal appropriately provide for car parking and traffic movements?

1. The council contends that vehicles cannot enter car space No. 7 in a forward direction and that this is contrary to VicRoads conditions. I disagree. VicRoads requires that ‘vehiclesmust enter and exit the land in a forward direction’ and I find that this condition is met. I agree with the council that it is unlikely that vehicles will enter car space No. 7 in a forward direction given its proximity to the basement ramp. However, a vehicle can comfortably reverse into or out of this space. This allows it to exit in a forward direction.
2. At the hearing, I expressed concern that the gradient of the basement ramp may not meet the relevant standard of clause 52.06.[[3]](#footnote-3) This standard is that:

Where the difference in grade between two sections of ramp or floor is greater that 1:8 (12.5 per cent) for a summit grade change, or greater than 1:6.7 (15 per cent) for a sag grade change, the ramp must include a transition section of at least 2 metres to prevent vehicles scraping or bottoming.

1. I am not persuaded that the summit grade change is met given that the ramp changes from a grade of 1:10 to 1:44 without a transition section. I will require this to be addressed via a condition on the permit. Consequential changes may be required to the building, yet I consider that these will not alter my findings.

## what conditions are appropriate?

1. The draft conditions circulated by the council were discussed at the hearing. It contests most Conditions between 1m) and 1r). These all relate to overland flows determined in a study undertaken by the council. I will accept Condition 1m) regarding the finished ground floor level being set at 179.656 Australian Height Datum as I find that this approach has merit. I recognise that the retention of Condition 1m) will increase the building’s height by 0.506 metres and will alter the arrangement of the building, areas of natural ground and fencing however, I consider that this can be satisfactorily resolved. I will also accept Condition 1p) as this can be incorporated in the changes required by Condition 1m).
2. I will vary Conditions 1n) and 1o) to allow solid fencing above the anticipated height of the overland flow. I will delete Condition 1q) requiring larger setbacks on either side of the building as I consider that the approved setbacks strike a fair balance between the council’s ultimate outcome and a reasonable development outcome on this site. I will take the same approach for Condition 1r) that would require a 1.3 metre high apex at the mouth of the basement. This is not feasible given the ramp’s primary purpose is to provide safe vehicle access to the site.
3. I have also deleted Draft Condition 16 that refers to walls on boundaries because the proposed development is setback from all boundaries.

## Conclusion

1. For the reasons outlined above, the council’s decision is set aside and a permit will issue. I consider that the site’s existing conditions provide an opportunity to meet planning policy objectives regarding urban consolidation without significant impact on the achievement of the neighbourhood’s preferred character.

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| **Michael Nelthorpe Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA48143 |
| Land: | 430 Springvale Road, Glen Waverley |

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| What the permit allows |
| In accordance with the endorsed plans:   * Construction of eight dwellings; * Alteration of access to a road in a Road Zone Category 1. |

## Conditions:

1. Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans dated 19 December 2018 but modified to show:
   * + - 1. A Garden Area Plan (using shaded areas and minimum dimensions), demonstrating the subject site has provided 35% (or a minimum of 246.75 square metres) garden area;
         2. The eastern window of Bedroom 4 of Dwelling 8 screened to comply with Standard B22;
         3. The basement’s northern setback increased to 900mm by reducing the width of its access aisle to 6.4 metres;
         4. Notation that each store in the basement has a capacity of 6 cubic metres;
         5. 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) on **both sides** of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road;
         6. The provision of a passing area of least 6.1 metres wide at the property boundary which tapers back to a minimum 5.5 metres wide over a distance of at least 7m; (VicRoads)
         7. Appropriate linemarking that sufficiently guides exiting vehicles to the left-hand side of the passing area; (VicRoads)
         8. The driveway constructed to satisfy the Design Standards of Clause 52.06-9 including provision of at least 2.1 metre headroom beneath overhead obstructions in the driveway and ramp gradients that include transition sections of at least 2 metres to prevent vehicles scraping or bottoming;
         9. Any changes required by the Sustainable Design Assessment approved under Condition 3;
         10. Bicycle parking facilities to be designed and with signage as set out in Clause 52.34 of the Monash Planning Scheme;
         11. The minimum Finished Floor Level at least 179.656 metres Australian Height Datum;
         12. The fence along the east boundary being designed to allow for the anticipated overland flow;
         13. The Proposed 1800 mm Timber Paling partitioning fence between Dwellings 2 and 3 being designed to allow for the anticipated overland flow;
         14. The top level of the retaining wall on the east side of the property at finished ground level and
         15. The site shaped away from the ramp to reduce the potential for overland flows to enter the basement.
2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
3. Before the development starts a Sustainable Design Assessment, that responds to the Environmentally Sustainable Development Policy in Clause 22.13 must be submitted to and approved by the Responsible Authority.
4. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.
5. Before the commencement of buildings and works, 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 prior to the commencement of any works. The plan must be generally in accordance the plan dated 19 December 2018 11 of 11 and modified to show the proposed landscape treatment of the site including:
6. the location of all existing trees and other vegetation to be retained on site;
   * + - 1. provision of canopy trees with spreading crowns located in the front setback of the development and hedging plants along the side boundaries;
         2. planting to soften the appearance of hard surface areas such as driveways and other paved areas;
         3. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material;
         4. the location and details of all fencing;
         5. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site and detail of all growing medium to be provided in areas of cut; and
         6. details of all proposed hard surface materials including pathways, patio or decked areas.

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

1. Before the development starts, a construction management plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
2. measures to control noise, dust and water runoff;
   * + - 1. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
         2. the location of where building materials are to be kept during construction;
         3. site security;
         4. maintenance of safe movements of vehicles to and from the site during the construction phase;
         5. on-site parking of vehicles associated with construction of the development;
         6. wash down areas for trucks and vehicles associated with construction activities;
         7. cleaning and maintaining surrounding road surfaces; and
         8. a requirement that construction works must only be carried out during the following hours:

i) Monday to Friday (inclusive) – 7.00am to 6.00pm;

ii) Saturday – 9.00am to 5.00pm;

1. Prior to the commencement of works on the site, the owner shall prepare a Waste Management Plan for the collection and disposal of waste to the satisfaction of the Responsible Authority. The following measures are required for the internal bin storage area:
2. Appropriate ventilation;
   * + - 1. Bin washing facility; and
         2. Suitable capacity to store all of the bins.
3. Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
4. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted.
5. Before the occupation 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 then maintained to the satisfaction of the Responsible Authority.
6. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
7. The private on-site drainage system must prevent stormwater discharge from the driveway over the footpath and into the road reserve.
8. The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip of No 426, Springvale Road via a 225 mm pipe and a 900 mm x 600 mm junction pit to be constructed to Council Standards. *(A new pit is to be constructed to Council Standards if a pit does not exist, is in poor condition or is not a Council standard pit). (The bus company are to be notified and approval of this is required, and VicRoads approved traffic management plan is required).*
9. Engineering permits must be obtained for new or altered vehicle crossings and connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.
10. All stormwater collected on the site 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 drainage works commencing.
11. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department and VicRoads.
12. The footpath and nature strip are to be reinstated to the satisfaction of Council.
13. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### VicRoads Conditions

1. Prior to the commencement of use or occupation of the development, a sealed access crossover as at least 6 metres wide at the property boundary with the edges of the crossover angled at 60 degrees to the road reserve boundary, at least for the first 3 metres from the edge of the road must be constructed to the satisfaction the Responsible Authority and at no cost to VicRoads or the Responsible Authority.
2. Prior to the commencement of the use or the occupation of the buildings or works hereby approved, the access crossover and associated works must be provided and available for use.
3. Vehicles must enter and exit the land in a forward direction at all times to the satisfaction the Responsible Authority.
4. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
5. The development is not started within two (2) years of the issue date of this permit.
   * + - 1. The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the Planning and Environment Act 1987, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**- End of conditions -**

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. [↑](#footnote-ref-1)
2. Standard B22 of clause 55.04-6. [↑](#footnote-ref-2)
3. Design standard 3 of clause 25.06-9. [↑](#footnote-ref-3)