

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P68/2022
PERMIT APPLICATION NO.52310

CATCHWORDS

Two double storey dwellings on a lot; Neighbourhood character; Amenity impacts including overlooking, visual bulk and noise; Tree removal and new landscaping.

APPLICANT	Donald Caratti
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Siew Ling Lee
SUBJECT LAND	5 Charlton Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	5 October 2022
DATE OF ORDER	1 December 2022
CITATION	Caratti v Monash CC [2022] VCAT 1374

ORDER

Permit granted

- 1 In application P68/2022 the decision of the responsible authority is varied.
- 2 In planning permit application 52310 a permit is granted and directed to be issued for the land at 5 Charlton Street Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows the construction of two dwellings on a lot in the General Residential Zone Schedule 3.

Rachel Naylor
Senior Member

APPEARANCES

For applicant	Mr D Caratti
For responsible authority	Mr D De Giovanni, town planning consultant
For respondent	Mr T Berger, town planning consultant of Hatch Planning Pty Ltd



INFORMATION

Land description

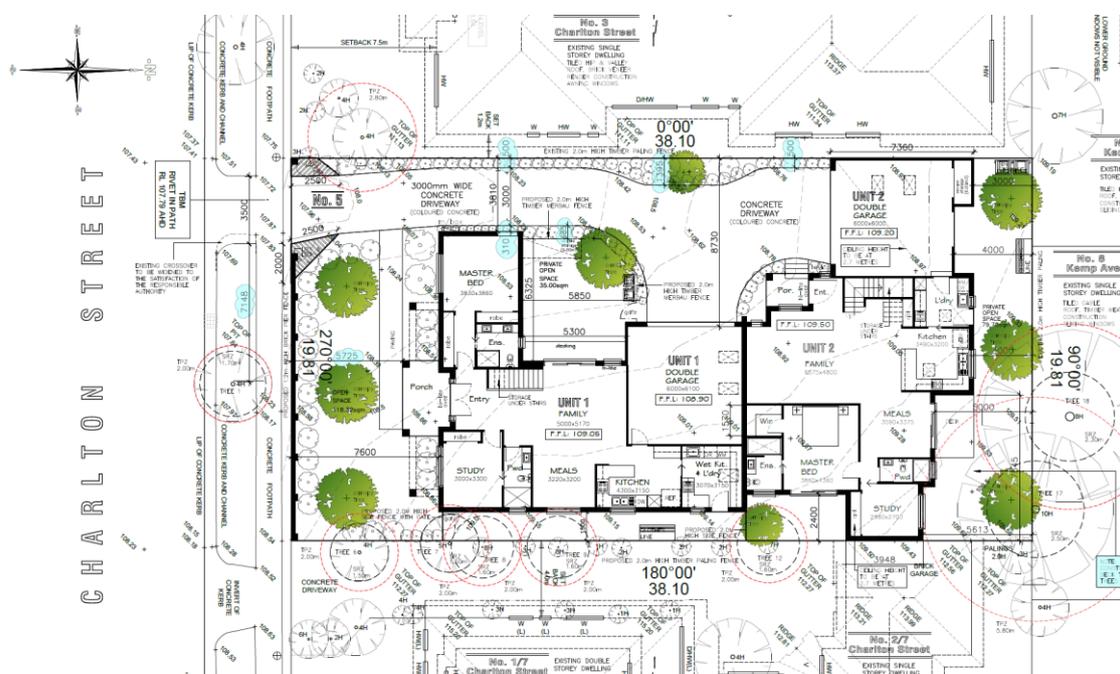
The site is on the north side of Charlton Street in Mount Waverley. It has a 19.81m frontage, a 38.1m depth and a total area of 754sqm.

The land slopes from the northeast to the southwest corners by around 1.59m. The land currently contains a detached single storey house with scattered shrubs and trees.

Description of proposal

Construction of two double storey dwellings, one behind the other, with a shared communal driveway along the west side of the site.

Below is extract of s57A ground floor plan considered by Council



Nature of proceeding

Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit.

Planning scheme

Monash Planning Scheme

Zone and overlays

General Residential Zone Schedule 3 (**GRZ3**)

No overlay controls apply

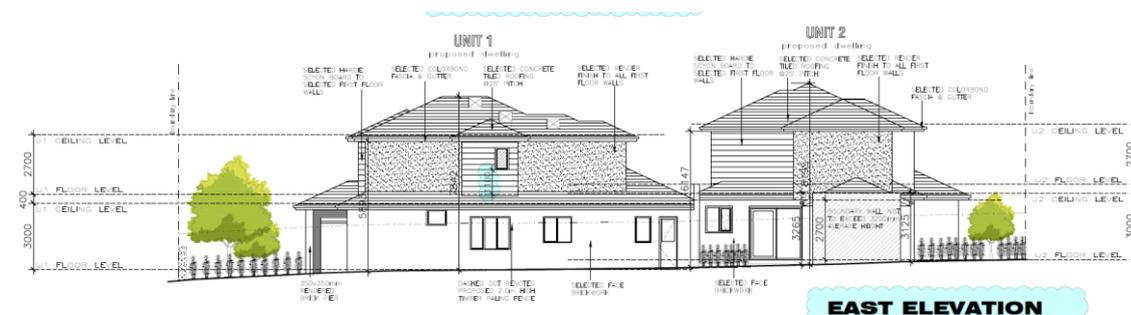
Permit requirements

Clause 32.08-6 Construction of two dwellings on a lot in GRZ3

REASONS¹

What is this proceeding about?

- 1 The applicant seeks a review of the Council's decision to grant a planning permit for the development of two double storey dwellings, one behind the other, on the land at 5 Charlton Street, Mount Waverley (**the site**).
- 2 Each dwelling contains four bedrooms and two car spaces in a double garage. The dwellings share a common driveway on the west side of the site. The dwellings will have face brickwork at ground level, vertical cladding and render at the first floor level and concrete tiled pitched roofs. The maximum overall height is 8.4 metres (dwelling 1's west elevation). The proposed plans calculate the site coverage at 45.41% and permeability at 39.14%.



East elevation of s57A plans considered by Council. This elevation faces the applicant's side of the site.

- 3 The applicant advises he does not oppose the granting of a permit. Rather, he seeks a 'full and proper consideration of the relevant planning scheme' in regard to 'the protection of amenity for all adjoining properties'.

This is a repeat application for review

- 4 The applicant submits 'no reference shall be made to former case determinations'. However, the other parties both submit that the previous Tribunal decisions with their findings are a relevant consideration, much of which are supportive of a proposal to develop this site with two dwellings.

¹ The submissions of the parties and the supporting exhibits given at the hearing 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.

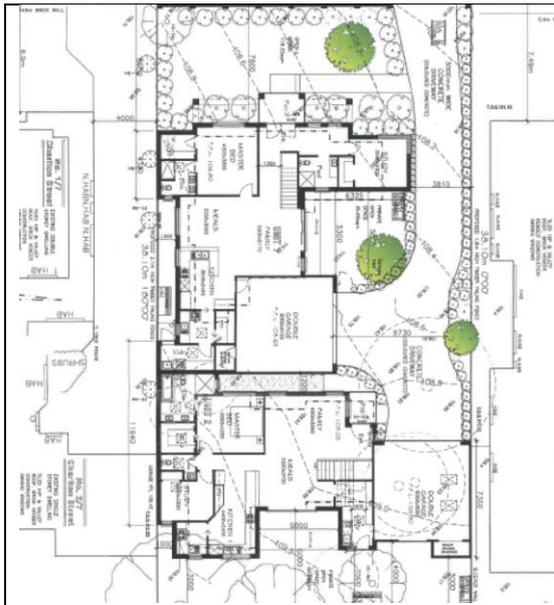
- 5 As is the circumstance in any review application, I must consider the proposal on its own merits and reach a decision as to whether it is acceptable. A previous decision is a relevant consideration. The relevance and weight that I place upon it or parts of it will depend on a range of factors, including changed circumstances.²
- 6 In March 2020, the Tribunal determined that there is no issue in principle with the site being developed with two dwellings. The impact of the proposed development on trees located along the eastern interface was of concern, particularly when the proposed impact on one tree was in the range of 48% of the tree protection zone. So, the Tribunal issued an interim decision allowing the permit applicant and then the other parties the opportunity to address this matter.³
- 7 In August 2020, the Tribunal determined that no permit should issue. Having considered the material submitted about the impact on the trees, the Tribunal was not satisfied that the information adequately responded to the concerns about the boundary trees. The Tribunal found the protection of tree 16 was still outstanding. The proposal involved a 37% incursion into the structural root zone, and it was unclear what excavation may be proposed in proximity to the tree.⁴
- 8 Mr Berger for the respondent permit applicant submits there are no significant changed circumstances since those decisions were issued. The site remains in the General Residential Zone Schedule 3 and there have been no changes to the planning policies in the planning scheme or in regard to the interpretation of facts or law relevant to this proceeding. The existing neighbourhood is very similar, except for construction having commenced at 6 Charlton Street for a two dwelling development. I agree with this summary.
- 9 Mr Berger submits this new proposal has addressed the impact on the trees, which was the shortcoming identified in the previous decisions. This has meant that the layout of the development has changed on the site, including greater setbacks from the eastern side boundary.

² Potential factors that may change are explained further in *Reichert v Banyule City Council* [1996] VCCAT 44. *Zumpano v Banyule City Council* [2016] VSC 420 at [29] states –
... Planning decisions in earlier applications affecting the subject or surrounding land are often relevant considerations in the assessment of a later application. They will almost certainly be relevant when the same use and development of the same land is sought in both the earlier and later applications. It is for the later decision-maker to determine what weight should be given to the earlier decision. Assessment of the significance of correcting features in the context of a proposed use and development is pre-eminently a planning and not a legal matter.

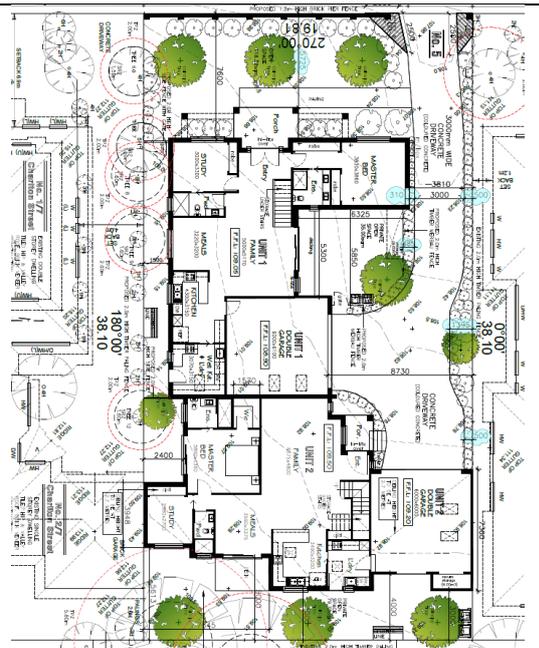
³ *Caratti v Monash CC* [2020] VCAT 371

⁴ *Caratti v Monash CC* [2020] VCAT 910





Extract from March 2020 Tribunal decision of layout of development, including boundary construction on the east side (left hand side of image).



Current proposal with most of development set back from east side (left hand side of image).

The site is suitable for development with two dwellings

- 10 Developing this site with two dwellings is in keeping with the planning policies and relevant zoning in the planning scheme.
- 11 The purpose of the General Residential Zone includes to encourage a diversity of housing types and housing growth, particularly in locations offering good access to services and transport. The Council highlights that this site has good access as it is approximately:
 - 920m from the Mt Waverley train station;
 - 800m from the Mt Waverley Activity Centre;
 - 165m from the Mt Waverley Primary School;
 - 240m from bus routes 623 and 733 along Stephenson's Road;
 - and
 - 230m from a park at the eastern end of Charlton Street.
- 12 The planning policies nominate the site as being in a 'Garden City Suburbs' area, which is considered suitable for incremental change. Clause 21.04-3 explains that different zones and schedules will be applied 'to achieve a preferred development outcome'.
- 13 The purpose of the General Residential Zone also encourages development that respects the neighbourhood character of the area. This consideration together with potential amenity impacts are the key planning considerations

in this case having regard to the relevant planning policies and zoning, and the issues raised in this application for review.

Neighbourhood character

- 14 The General Residential Zone purpose does not expect the character or amenity of these residential areas to be maintained as they presently are. The purpose of the zone encourages a diversity of housing types and housing growth, and respecting the neighbourhood character.
- 15 The Understanding Neighbourhood Character Planning Practice Note 43 (January 2018) (**PPN43**) explains ‘respecting character does not mean preventing change’⁵ and, in simple terms, it means that a development should try to ‘fit in’.⁶ The relevant character can be both the existing character and a preferred future character. In this case, both are relevant. The neighbourhood character objectives at clause 55.02-1 are:
 - To ensure that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character.
 - To ensure that development responds to the features of the site and the surrounding area.
- 16 PPN43 states understanding character means, in most cases, that ‘about five sites or buildings up and down the street, across the street and behind the site in question should be sufficient to identify the features of the neighbourhood that should influence the design’.
- 17 GRZ3 applies to ‘Garden City Suburbs’ and contains neighbourhood character objectives about contributing to the character with well landscaped and spacious gardens, limiting driveway lengths and widths, limiting paving in open space areas and minimising building mass and visual bulk in the streetscape with garages and carports located behind the front walls of buildings.
- 18 GRZ3 contains variations to some of the clause 55 standards, including:
 - A front setback of at least 7.6 metres;
 - A 50% site coverage;
 - At least 30% permeable surfaces;
 - A 5 metre rear setback;
 - 75 square metres of open space including one part that is secluded private open space with a minimum area of 35 square metres, a 5 metre minimum dimension and convenient access to a living room; and

⁵ Page 5 of PPN43.

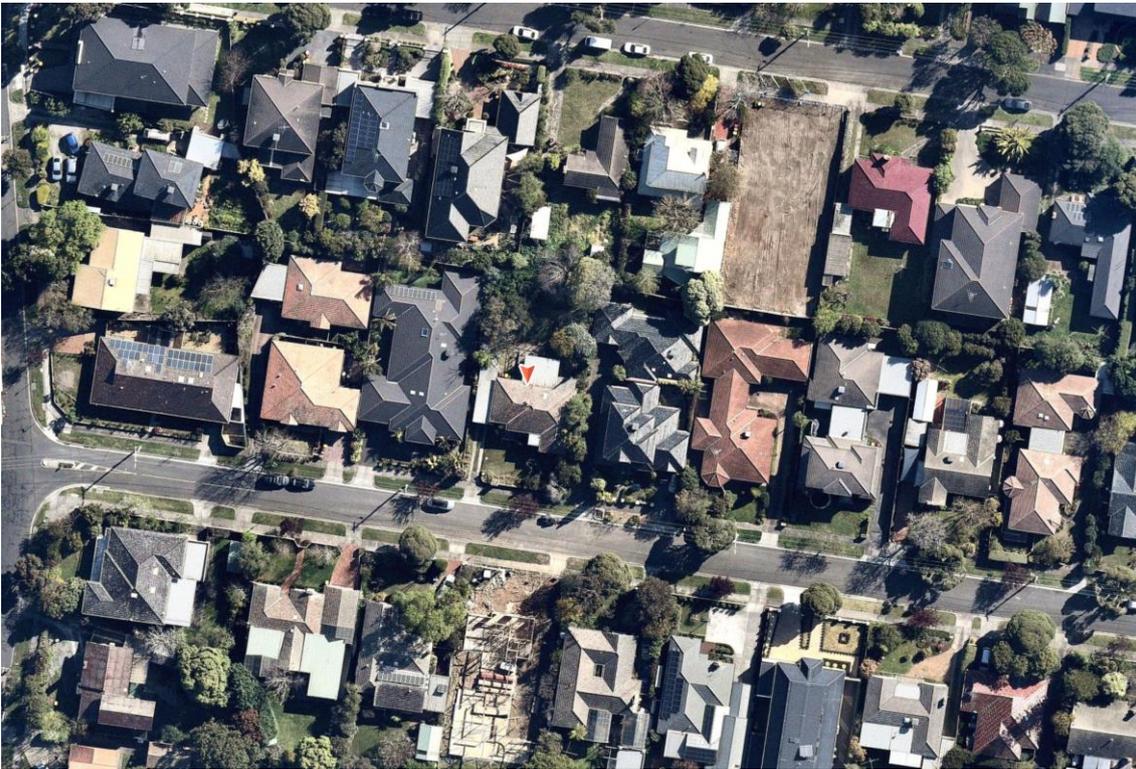
⁶ Page 6 of PPN43.



- Landscaping that includes at least one canopy tree, plus at least one canopy tree per 5 metres of site width.
- 19 The variations to the clause 55 standards and the additional decision guidelines relevant to this site place added emphasis on a design contributing to a sense of spaciousness within the development and landscaping that will contribute to the garden character.
- 20 It must be remembered that the clause 55 standards are not mandatory. There is a discretion to grant permission for development that contains different responses to those sought by the standards. The key consideration is whether the clause 55 objectives are met. The neighbourhood character objectives relevant in this case require this development to contribute to the preferred character and to respond to the features of the site and the surrounding area. In other words, the preferred character and the features of the site and surrounds may not be the same; and the clause 55 objectives require both to be considered.

Existing character

- 21 I agree with the submissions of the Council and the permit applicant that Charlton Street and the immediately surrounding streets are in a state of transition. Many of the original dwellings are being replaced with medium density housing and larger single dwellings. As the Council highlights, half of Charlton Street contains either large single dwellings or two dwellings. There are multiple examples of buildings close to the rear boundary. I note the properties at the rear of this site also contain some large single dwellings and examples of buildings that are close to the rear boundary.



- 22 As part of the newer developments, vegetation is primarily located at the front and rear of lots, including canopy trees.

Two storey rear dwelling

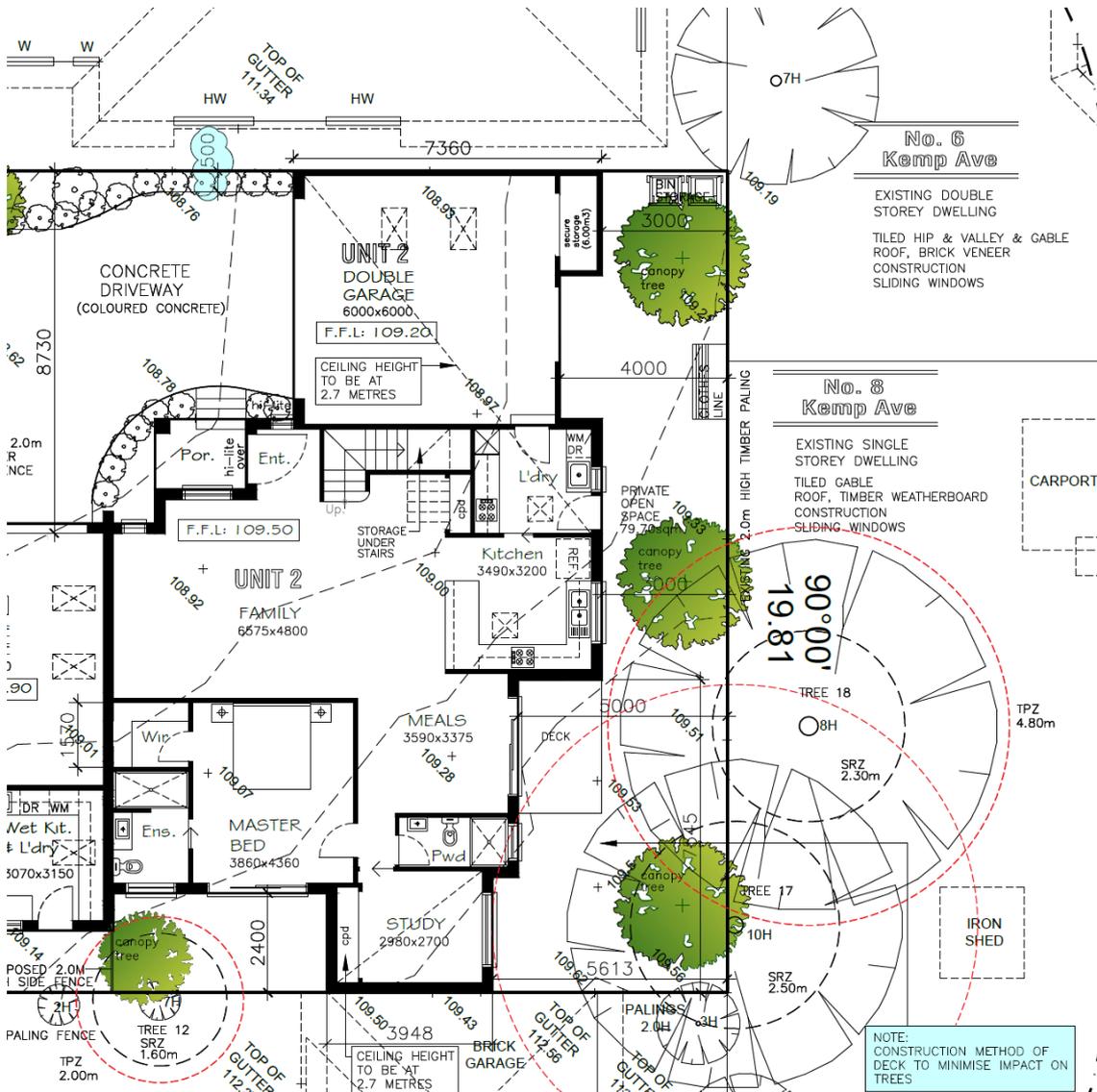
- 23 The applicant is concerned that two storey rear dwelling does not respect the existing character, which predominantly contains single storey built form. The applicant says the only example of two storey built form at the rear is at 6 Charlton Street, and that the two storey element is recessed approximately 8 to 9 metres from its rear boundary. The applicant points out the dominance of single storey built forms in Charlton Street and near the rear of this site in Kemp Avenue. As such, the applicant says the proposal is not an appropriate transition and is contrary to the decision guidelines in GRZ3, impacting on adjoining properties.
- 24 There is nothing in GRZ3 or the planning policies that discourage two storey development at the rear of sites. GRZ3 suggests considering whether the development provides an appropriate transition to built form on adjoining sites. The units to the east at 7 Charlton Street include a double storey house at the front and a single storey house at the rear. The single house at 3 Charlton Street is single storey. Both of these properties contain single storey development in the rear half of their respective lots. An acceptable or appropriate transition is often a difference of one storey. In other words, stepping up from one to two storeys. This proposal provides this transition. Furthermore, there is already an example of a two storey form with sheer walls located at the rear at 6 Kemp Avenue. Within this context, a two storey rear building is acceptable.
- 25 The GRZ3 neighbourhood character objectives support new development that has breaks and recesses in the built form. The proposed rear dwelling contains three bedrooms with associated bathroom facilities, all of which have varying setbacks from the east, west and rear boundaries. When combined with the varying ground floor setbacks, the acknowledgement of the tree protection zones of surrounding trees and the opportunity for new vegetation on the site itself, the proposal is respectful of both the existing and preferred future neighbourhood character.

The rear setback

- 26 The applicant submits the rear setback is contrary to clause 21.01-3 and GRZ3 that seek a minimum 5 metre rear setback as about two thirds of the rear setback is not 5 metres. The applicant considers this indicative of the proposal being an overdevelopment and does not compare with the setbacks of surrounding properties. The applicant submits the properties to the rear at 6, 8 & 10 Kemp Avenue have rear setbacks in excess of GRZ3 but acknowledges the properties at 3 and 7 Charlton Street have rear setbacks less than 5 metres. The Council also highlighted these same existing features of the surrounding properties.



27 As illustrated in the extract of the ground floor plan below, the rear dwelling is designed with a staggered rear setback that varies between 3.0 and 5.6 metres. The proposal's rear setback aligns with that of the rear dwelling at 7 Charlton Street at the eastern end (bottom of extract) and it has a greater rear setback than the house at 3 Charlton Street at the western end (top of extract).



28 Clause 21.01-3 has a general policy of respecting character of surrounding development including maintenance of consistent setbacks and minimising impact of the scale and mass of development. The Council points out the proposed rear dwelling has a courtyard of 79.7 square metres in total, of which at least 35 square metres has a width of 5 metres or more. This larger section is also located opposite part of an open plan living area of the ground floor of this dwelling.

- 29 The Council considers greater weight should be given to existing features of the site and surrounding area as opposed to the preferred future character and the varied standard in GRZ3. I am persuaded by the Council's submission that the proposed rear setback is consistent with the current and emerging pattern of rear setbacks to properties on the north side of Charlton Street and the south side of Kemp Avenue. The proposed staggered rear setback enables the planting of new vegetation as well as recognising the tree protection zones of canopy vegetation on surrounding properties. New tree planting is proposed at the front and rear of the site as well as in specific locations in the middle of the site based on the landscape concept plan. This proposed layout acceptably responds to the GRZ3 neighbourhood character objectives.

Response to neighbouring trees

- 30 As explained earlier in regard to this proposal being a repeat application for review, the layout of the proposed development has changed to respond to the potential impacts upon the structural root zones and tree protection zones of the trees on the neighbouring properties. The Council highlights that the arborist report provided with the permit application has considered these trees and shrubs.⁷ The applicant submits the changes to the proposed layout have removed all incursions into structural root zones and any incursions into the tree protection zone are not greater than that envisaged by AS4970-2009.⁸ In general terms, the layout has improved as it now has regard to the neighbouring trees. Matters of detail about this arose during the hearing, and this is considered further later in these reasons.

Amenity impacts

- 31 PPN43 explains on page 2 that neighbourhood character and amenity have differences:

Amenity is about the pleasantness and good functioning of an area. Neighbourhood character is about its sense of place and community meaning. Regardless of the character of an area there are standards of residential amenity that apply to all residential development. These basic amenity standards include overlooking, overshadowing and solar access. Sometimes, these amenity standards can have an effect on neighbourhood character, but as a general principle, neighbourhood character and amenity should be treated separately.

Overlooking

- 32 The applicant is concerned about overlooking to the west as 3 Charlton Street has several habitable room windows and a private open space area, submitting that limiting views has not been met by this proposal in accordance with the clause 55 overlooking objective. The Council submits

⁷ Arboricultural Impact Assessment by TMC Reports Version 3 dated 16 December 2021.

⁸ AS4970-2009 Protection of trees on development sites.



this concern is without merit. Prior to this hearing, the respondent permit applicant advised on 19 August 2022 that all windows will be clear glass unless notated otherwise. The Council points out two of the first floor west facing windows of unit 1 at the front are setback about 10.7 metres, so they do not require screening pursuant to clause 55. The last first floor west facing window is in unit 2 at the rear. It services the stairwell connecting the ground and first floor levels. The planning scheme does not define this as a habitable room window, so no screening to limit views is required. I agree with the Council's analysis and find there are no first floor habitable room windows that require screening to limit overlooking.

- 33 The applicant is also concerned about unit 2's ground floor west facing windows around the porch entry being able to overlook the boundary fence. Standard B22 states in part:

This standard does not apply to a new habitable room window, balcony, terrace, deck or patio which faces a property boundary where there is a visual barrier at least 1.8 metres high and the floor level of the habitable room, balcony, terrace, deck or patio is less than 0.8 metres above ground level at the boundary.

- 34 Unit 2's floor level appears to be proposed to be slightly less than 0.8 metres above ground level.⁹ The ground floor plan notes the existing 2.0m high timber paling boundary fence, hence the fence height is greater than 1.8 metres. For these reasons, no screening is required to limit any overlooking that may occur.

Visual bulk of rear two storey dwelling

- 35 The applicant submits a two storey building at the rear of the site will create an inappropriate visual massing/bulk that impacts the amenity of the adjoining secluded private open spaces, including 2/7 Charlton Street, 6, 8 & 10 Kemp Avenue and 3 Charlton Street.
- 36 The Council points out there is no planning policy discouragement of double storey built form at the rear of properties. The Council also points out the previous Tribunal found:

There is no longer a defined backyard scape character as new development extends well into rear yards. The proposed two storey second dwelling in the rear of the review site is a comfortable fit having regard to the emerging character of the neighbourhood.¹⁰

- 37 The existing neighbourhood contains both single and double storey dwellings. The applicant points out many of the surrounding two dwelling developments have single storey buildings at the rear. That is correct immediately surrounding this site other than for the two dwellings under

⁹ There is a spot level on the ground floor plan close to the boundary of 108.76 and the proposed floor level is 109.5, which is 0.74 above ground level.

¹⁰ *Caratti v Monash CC* [2020] VCAT 910 at [1] on page 3 at bullet point 3.



construction at 6 Charlton Street. However, more broadly in the neighbourhood, including in Alfred Street and Kemp Avenue, there are examples of two storey townhouses built to the rear of the properties. I have already found, from a neighbourhood character perspective, that the layout of the development and the transition in height from one to two storeys at the rear of the site is an acceptable design response.

- 38 There is no requirement or policy guidance in the planning scheme that suggests being able to see a two storey building is unacceptable. Mere visibility of a building is not sufficient reason to form a view that it creates an unacceptable visual bulk.
- 39 The Council submits there have been some changes made to the first floor layout with the closest setback from the rear boundary now increased from 3.6 to 5.0 metres. Furthermore, I note the east side elevation has changed with greater setback and therefore greater articulation on the east side of the first floor of unit 2. The Council’s submission contains the following illustration comparing the first floor layout considered previously by the Tribunal in 2020 with this proposed first floor layout:

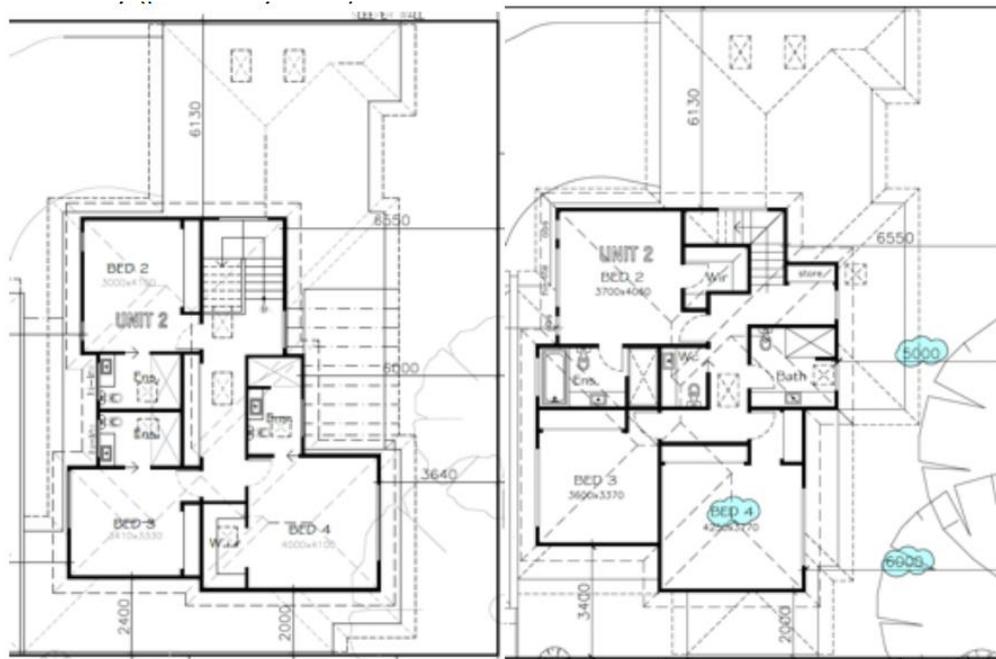


Figure 8 – Previous First Floor Plan Dwelling 2 Figure 9 – Current First Floor Plan Dwelling 2

- 40 The Council submits the proposed first floor is recessed from the ground level, and is well articulated with differing setbacks. In regard to the immediately surrounding properties the Council submits:
- The proposed rear dwelling is on the ‘blind-side’ of the house at 3 Charlton Street and is well removed from the courtyards of this house.

- The proposed dwelling abuts a driveway and garage of 2/7 Charlton Street and this house's main courtyard is located beyond its double garage.
- 41 Clause 22.01-3 policy includes preserving backyard character by ensuring rear development incorporates articulation and setbacks including ground floor setbacks sufficient in width to support screening trees. The Council considers the proposed rear setbacks are sufficient in width to support the retention and planting of screening trees.
- 42 For all of these reasons, I am persuaded that this proposal does not create an unacceptable visual bulk.

Noise of services and service areas

- 43 The applicant submits the noise impacts of services and service areas has not be considered as the services and service areas are not nominated on the plans. The Council points out the clotheslines, bin storage, external storage sheds and meter box locations are all shown. Air conditioning condensers are not shown, but the Council submits noise from these are controlled via other legislation. This is correct. Also, standard B24 suggests noise sources such as mechanical plant (which perhaps could include a condenser) should not be located near bedrooms of immediately adjacent existing dwellings. In this case, any condensers installed on the east side of units 1 and 2 will be immediately adjacent to the driveway of 2/7 Charlton Street, and will still need to control their noise via other legislation. This is not a reason why this proposal should be refused, nor a matter that needs to be controlled via permit conditions.

Permeability

- 44 The applicant refers to the permeability 'requirement' in standard B9 of GRZ3 that the site area have at least 30% pervious surfaces and submits the proposal does not consider this. The Council and the respondent permit applicant disagree as the proposal provides a permeability of 39.14%.
- 45 The applicant also refers to clause 22.01 that states hard paving should be excluded in the street setback and the applicant desires this outcome, so the development achieves an enhanced outcome to the garden city character. The only hard paving in the front setback is the shared driveway for both dwellings and the walkway to the front porch of unit 1. I am not persuaded this extent of hard paving is at odds with the policy aspirations. The design has minimised the number of crossovers and driveways to one and creates a front garden across the majority of the street frontage.

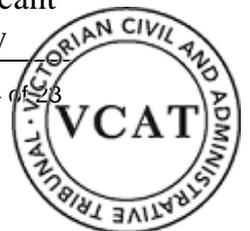
Tree protection and enforcement of conditions

- 46 The applicant submits the tree conservation policy at clause 22.05 promotes retention of mature trees and planting of canopy trees. The Council highlights that this policy seeks adequate space for the planting of canopy



trees, particularly within frontage setbacks. The applicant highlights that clause 22.01-4's preferred character statement for the Garden City Suburbs Northern area also seeks tree retention on lots to be redeveloped where possible to maintain the established leafy character. The applicant suggests trees 13, 19, 20 and 21 on the site should be kept as these trees on the site currently provide amenity to all adjoining properties and can provide a new development with 'immediate significant on site amenity'. Also, for a number of other trees, their removal should be controlled through permit conditions so as to protect SRZ of neighbouring trees, e.g. tree 13 removal impacting on tree 12's root system. As there are no vegetation related overlay controls that apply to this site, I am not persuaded tree retention is necessary as part of this proposal. Rather, the focus for any new development should be on implementing a landscape plan approved by the Council that can contribute to the enhancement of the garden city character that the planning policies aspire to create.

- 47 The applicant submits five canopy trees at a mature height of at least 8.6 metres are required by standard B13, but the landscape concept plan only proposed three that meet the minimum mature height requirement. The Council points out the varied standard B13 in GRZ3 requires a total of five trees that should reach a mature height of 8.4 metres, being the maximum building height of the proposal. The landscape concept plan includes eight trees being six dwarf flowering gums with a mature height of 6 metres and two ornamental pears with a mature height of 8 metres. The Council acknowledges these mature heights fall short of the proposed maximum building height. The mature height of trees on the site is a matter of detail that can be addressed through the Council's approval of a landscape plan as part of the permit conditions.
- 48 The applicant is concerned that the floor level for the proposed unit 1 is in the vicinity of the natural ground level within the tree protection zones. There may be a small section of excavation associated with unit 1 at the front of the site given the floor level is 109.05 and there are spot levels in proximity to trees 9 and 12 of 109.14 and 109.15. This is a matter of detail that should be reviewed through permit conditions to ensure that the extent of incursion in the tree protection zones has had appropriate regard to this potential impact.
- 49 The applicant considers further excavation will be required to connect into the sewer in the southeast corner of the site, which is within the SRZ of a significant tree on 8 Kemp Avenue. Again, this is a matter of detail that should be reviewed through permit conditions.
- 50 The applicant states he has 'little confidence' that permit conditions for tree protection will be enforced by the Council. In support of this concern, the applicant has made specific reference to the permit conditions for the two dwelling development at 6 Charlton Street, Mount Waverley. The applicant submits various conditions on that permit have not been implemented by

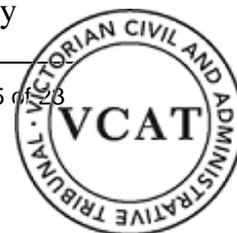


the permit holder and are not being enforced by the Council. The circumstances of that approval and its enforcement is a matter for the Council. The Tribunal, when making any decision, has confidence and faith in the town planning system as articulated in the Planning and Environment Act 1987 and all Victoria's planning schemes. This includes expecting that any conditions contained in a planning permit will be adhered to and, in the unfortunate circumstance where they are not, that they can be enforced. I adopt the statement of Senior Member Byard and Member Harty in *First Cashmore Pty Ltd v Macedon Ranges SC* [2005] VCAT 893 at 122 that:

... permits are granted on the basis that conditions will be observed or enforced. If that could not be relied on, virtually no planning permits could be issued.

What conditions are appropriate?

- 51 The Council's conditions contained in the Notice of Decision to grant a permit were discussed with the parties at the end of the hearing. Having regard to the issues in the proceeding and the comments made by the parties, where I consider it appropriate to do so I have varied the Council's conditions.
- 52 The applicant requests a condition be imposed to require 'the relevant current owner to receive a copy of the certified structural engineering plans and computations and/or a certified structural engineer's professional assessment of any requirement for the protection of their privately owned adjoining buildings within the vicinity of any common boundary'. This is not an acceptable planning permit condition. Planning permit conditions are matters to be executed between the permit holder and the Council in its role as the responsible authority. Compliance with permit conditions is a matter to be determined and managed by the Council in its role as the responsible authority. Furthermore, any detailed engineering plans are a matter that is dealt with at the building stage of a development. At the time of issue of a planning permit, it is sufficient for permit conditions to identify the need for the drainage to be to the satisfaction of the responsible authority.
- 53 The applicant requests a permit condition for a plan identifying any proposed external CCTV or that there be none installed on either dwelling because it is relevant to consider the amenity of protecting the privacy of adjoining properties. This is not an acceptable planning permit condition. Installation of security cameras is a personal choice and not a matter that needs to be controlled via a planning permit condition.
- 54 The garden area is calculated on the plans as 279.52sqm and 37.03%. The General Residential Zone requires a garden area of 35% for a lot of this size. The garden area plan (Sheet 4 Rev C) contains no dimensions, only



hatched areas. The Council estimates that some of the edges of hatched areas may have a width below one metre¹¹ in which case it should not be included in the garden area calculation. Council has imposed condition 1(g) to update this plan to ensure the one metre minimum is correctly shown whilst retaining compliance with the 35% minimum. Any correction is likely to be minor, and the Council and the respondent permit applicant are in agreement that the minimum requirement will continue to be met. Given this agreement and the fact that the requirement is exceeded in the proposal, the imposition of this requirement is a point of clarification rather than endeavouring to bring a non-compliant proposal into compliance (i.e. a development with less than 35% garden area).

55 The Council has imposed condition 1(b) requiring compliance with standard B19. During the hearing how this could be achieved was discussed with the two options being reducing the garage wall height and/or setting back the garage wall as it is wider than required by the planning scheme. So, the condition has been varied to refer to these possible options.

56 Since the Council issued the Notice of Decision to grant a permit and this review application was lodged, the respondent permit applicant has provided some further plans and elevations in correspondence to assist the other parties with matters of detail that have arisen. Where appropriate, the respondent permit applicant must submit a consolidated set of plans that are acceptable for endorsement by the Council.

CONCLUSION

57 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Rachel Naylor
Senior Member

¹¹ The Council's submission refers to the west side boundary and south of the porch of dwelling 2 not having a one metre width.



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	52310
LAND	5 Charlton Street MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

Construction of two double storey dwellings in a General Residential Zone Schedule 3 in accordance with the endorsed plans.

CONDITIONS

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 prepared by Blueprint Building Designers and Consultants, Reference No. 17-032, Sheets 1 – 4 of October 2020, Revision “C” S57A, but modified to show:
 - (a) The provision of north facing windows in Bedrooms 3 and 4 of Dwelling 1, which may be highlight windows or be windows treated to ensure compliance with Overlooking Standard B22 of Clause 55.04-6.
 - (b) Compliance of the Dwelling 2 garage with Standard B19 (Daylight to existing windows) Clause 55.04-3, which may include reducing the garage wall height and/or setting back the garage wall or other alternative acceptable design solutions.
 - (c) The number of fence columns to the front of Dwelling 1 reduced in number (comparable in spacing to those at No. 7 Charlton Street) including transparent infill panels.
 - (d) East and west elevation dimensions included on the plans as shown in the 10 August 2022 plan details.
 - (e) Additional details included on the plans as shown in the material provided on 26 August 2022 such as indicated in the blue and red clouds in that material.
 - (f) Details of any excavation required on the east side of Dwellings 1 and 2, including the buildings and any garden and retaining walls, particularly in relation to the Tree Protection Zones of the trees on the abutting land identified on the plans.



- (g) Paving on the east side of Dwellings 1 and 2 only outside the Tree Protection Zones of the trees on the abutting land identified on the plans.
- (h) Minimal paving as required for access from the deck into the private secluded open space of Dwelling 2, provided at grade on the north side of the Dwelling 2 deck, within the Tree Protection Zones of Trees 17 and 18, in accordance with requirements of Condition 6.
- (i) Obscure and highlight windows shown on both the elevations and layout plans.
- (j) The Garden Area Plan updated generally in accordance with the 10 August 2022 garden area plan to include the minimal dimensions noting a 1 metre minimum dimension is retaining compliance with the 35% minimum.
- (k) A notation confirming the location and design of any proposed 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".
- (l) 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.
- (m) Rainwater tank and irrigation pump location preferably along the common driveway.
- (n) Any changes in accordance with the Tree Management Plan (TMP) required by Condition 6 of this permit.
- (o) Tree Protection Measures (including tree protection fencing) in accordance with the TMP required under Condition 6.

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 Plan

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a suitably qualified landscape architect, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:



- (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 minimum of 5 canopy trees that will grow to at least the height of the buildings (being a maximum of 8.4 metres) with a minimum spread of 4 metres. Other canopy trees with spreading crowns in the major open space areas of the development and along the driveway. Tree planting should be outside of the tree protection zones of existing vegetation on abutting land.
- (c) A garden bed with landscaping on the east side of the driveway between the front façade of Dwelling 1 and the front fence.
- (d) 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;
- (e) Details of all internal fencing including materials;
- (f) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (g) The location of any retaining walls associated with the landscape treatment of the site, including any excavation required;
- (h) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (i) The location of Tree Protection Zones and tree protection fencing/measures.
- (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.

Landscaping Prior to Occupation

- 4 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 be maintained to the satisfaction of the Responsible Authority.



Tree Protection

- 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.
- 6 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 1, 6, 7, 8, 9, 12, 17, 18 and 29 (as identified in the Arborist Report, prepared by TMC Reports, 16 December 2021).
- 7 The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:
 - (a) A Tree Protection Plan drawn to scale that shows:
 - i Tree protection zones and structural root zones of all trees to be retained,
 - ii All tree protection fenced off areas and areas where ground protection systems will be used if any;
 - iii Any excavation required for the construction of any buildings or garden areas;
 - iv Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
 - v A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
 - (b) Details of how the root system of any tree to be retained will be managed during the course of the construction including construction of new boundary fencing. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
 - (c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and



- (d) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved TMP must be implemented to the satisfaction of the Responsible Authority.

- 8 Before any development (including demolition) starts on the land, a tree protection fence and ground protection systems as outlined in the TMP approved under condition 7 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 and ground protection systems must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
- 9 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.

Drainage

- 10 The site must be drained to the satisfaction of the Responsible Authority.
- 11 The private on-site drainage system must prevent stormwater discharge from the driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - (a) a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
 - (b) shaping the internal driveway so that stormwater is collected in grated pits within the property; and/or
 - (c) another Council approved equivalent.
- 12 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 or any alternative system is to be approved by Council's Engineering Department prior to drainage works commencing.
- 13 The nominated point of stormwater connection for the site is to the south 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 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).
Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.



- 14 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.
- 15 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.
- 16 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 Crossovers

- 17 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.
- 18 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.
- 19 Any new vehicle crossover or modification to an existing vehicle crossover must be a minimum of 3 metres in width, constructed to Council standards to the satisfaction of the Responsible Authority.
- 20 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit will apply and is to be paid prior to the drainage works commencing.

Urban Design

- 21 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
- 22 Any external lighting must be suitably baffled to prevent direct glare into any neighbouring properties to the satisfaction of the Responsible Authority.

Satisfactory Continuation and Completion

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

Expiry of permit

- 24 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:



- (a) The development is not started within two (2) years of the issue date of this permit.
- (b) 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 –

