

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1227/2015
PERMIT APPLICATION NO. WH/2014/881

CATCHWORDS

Section 77 Planning and Environment Act 1987 – three double storey dwellings – Neighbourhood Residential Zone – Transitional provisions – Significant Landscape Overlay – landscape integration with abutting park

APPLICANT	Chan Chee Leong
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENTS	Alison Kirk, John Joseph McMahon, Blackburn & District Tree Preservation Society Inc, Mr J F lambert, Megan & Peter Short, Blackburn Village Residents Group Inc, Pennie Kendall
SUBJECT LAND	60 Main Street BLACKBURN VIC 3130
WHERE HELD	Melbourne
BEFORE	Jeanette G Rickards, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	14 December 2015
DATE OF ORDER	4 February 2016
CITATION	

ORDER

- 1 The decision of the responsible authority in relation to permit application no. WH/2014/881 is set aside.
- 2 A permit is granted in relation to land at 60 Main Street, Blackburn. The permit will allow
 - Construction of three double storey dwellings, and
 - Removal of trees

3 The permit is subject to the conditions contained in Appendix A to these reasons.

**Jeanette G Rickards,
Senior Member**

APPEARANCES

For Applicant	Mr R Easton, Town Planner, Easton Consulting
	He called as a witness :
	Mr J Hutchison, Horticulturalist/Landscape Designer
For Responsible Authority	Mr G Simkus, Town Planner, Direct Planning
For Respondents	Ms M Crouch for Blackburn & District Tree Preservation Society Inc
	Mr M Taafe for Blackburn Village Residents Group Inc
	Ms M Short in person and on behalf of Mr P Short
	Ms P Kendall, Mr J F Lambert, Mr J J McMahon, Ms A Kirk in person

INFORMATION

Description of Proposal

Construction of three double story dwellings generally with a north- south orientation. Dwelling one has a front door to Main Road, whilst dwellings two and three, have a front door adjacent to the common access way along the northern boundary. All three dwellings include a double car garage accessed from the common access way; master bedroom with walk-in robe, ensuite; open plan living area consisting of a kitchen, dining and lounge; laundry and powder room. Open space is provided in the form of decks at ground level, dwelling one – 130 m², dwelling two – 142 m² and dwelling three – 238 m². At first floor, dwelling one provides a secondary living area and two additional bedrooms. A bathroom and powder room is also provided. Dwellings two and three also provide a secondary living area albeit south facing, two additional bedrooms with bathroom and separate powder room. The buildings are split level and utilise a more domestic architectural style combining mostly hip roof forms with some gable ends. Face brickwork is proposed at ground level with a mix of render and some timber cladding at first floor.

It is proposed to remove the following trees numbered 1, 7, 8, 10, 11, 14, 15, 16, 18, 19, 20, 21, 24, 25, 26, 27, 35, 37, 38 and 39.

The overall building height is a maximum of 8.2 m above ground level, the maximum wall heights are 7.3 m. The building site coverage is approximately 506 m² or approximately 29.7%. The total permeable area is approximately 61%. No front fence is proposed to the Main Street frontage, but a fence along the creek's southern boundary is to comply with Melbourne Water requirements.

Nature of Proceeding

Application under Section 77 of the *Planning and Environment Act 1987*.

Zone and Overlays	Neighbourhood Residential Zone Schedule 1 (Bush Environment Areas) (clause 32.09) Significant Landscape Overlay Schedule 2 (Blackburn Area 2) (clause 42.03) Special Building Overlay (clause 44.05)
Permit Requirements	Clause 32.09-5 – to construct more than one dwelling on a lot Clause 42.03 – to construct a building or to construct or carry out works within 4m of 8 trees and a building that exceeds 9m in height; to remove, destroy or lop 4 trees Clause 44.05-1 – to construct a building or to construct or carry out works
Relevant Scheme policies and provisions.	Clauses 11, 12, 15, 16, 21.05, 21.06, 22.03, 22.04 and 65.
Land Description	<p>The site is located on the west side of Main Street, Blackburn, approximately midway between Blackburn Railway Station and Canterbury Road. The site is well located in regard to community facilities and services. There are 2 bus routes along Main Street, connecting to Blackburn Station. Furness Park is directly opposite the subject land, while the property is also within walking distance of a group of shops in Canterbury Road, further to the south and Blackburn shopping centre to the north.</p> <p>The site has an irregular shape. It includes a frontage of 21m to Main Street, a depth of 53.3m and an irregular frontage totalling 58.2m to the reserve along its southern boundary.</p> <p>The site has a total area of 1707m². The site is relatively flat near its frontage, but then rises steeply to its north-west corner by approximately 6.5 m. This site is presently developed with a single story brick dwelling which is now unoccupied and derelict. The rear yard is substantially overgrown and there is a scattering of other vegetation on site, all of which has been subject to a separate arborist's report. The front and southern boundaries are not fenced.</p> <p>No 58 Main Street is located directly to the north of</p>

the subject land. It comprises a single story brick dwelling, with a pitched tile roof. The garage to that dwelling is located on the common boundary with the subject land and is setback approximately 6 m from the frontage. The main dwelling is setback 1.7 m from the subject land and substantially overlooks it.

No 2 Hill Street, abuts the western boundary of the subject land. The dwelling on that site is a multi-level dwelling, located near the north-west corner of the subject land and substantially overlooks the subject land. The rear of that property, extends along the bulk of the western boundary of the subject land to the reserve at the south.

The land abutting the southern boundary of the subject land is located in a Public Use Zone 1 (Service and Utility) and is associated with the Gardiners Creek Trail and other public open space reservations in close proximity¹.

Tribunal Inspection

2 February 2016

Cases Referred To

Chan v Whitehorse CC [2014] VCAT 1504 (4 December 2014)

¹ Extract from Delegate's Report

REASONS²

What is this proceeding about?

- 1 Whitehorse City Council (the Council) refused an application by Chee Leong Chan (the applicant) to construct three double storey dwellings on land at 60 Main Street, Blackburn. The applicant seeks review of the decision.
- 2 The Council's grounds of refusal include the failure of the proposal to integrate through landscaping with the park to the south; the visual impact of buildings on the park; the space in and around the buildings, their height and form.
- 3 Several residents and two resident groups lodged objections to the proposal with the Tribunal. In their grounds of objection they also raise issues of landscaping and visual impact of the proposal to the park.
- 4 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, statements of grounds lodged with the Tribunal and evidence presented with regard to the applicable policies and provisions of the Whitehorse Planning Scheme, I have decided to set aside the decision of the Council and direct a permit issue. My reasons follow.

Planning Provisions

- 5 The subject land is located within Neighbourhood Residential Zone Schedule 1 (Bush Environment). This zone was introduced into the Whitehorse Planning Scheme on 16 October 2014 via Amendment C160.
- 6 The application was lodged with the Council on 27 August 2014. The land at the time of lodging the application was located in the General Residential Zone Schedule 1.
- 7 Pursuant to clause 32.09-3 only two dwellings are permitted on a lot. However as the application was lodged prior to the amendment to the zone provisions, transitional provisions apply which provide that '*clause 32.09-3 does not apply to an application to construct two or more dwellings on a lot made before the approval date of the planning scheme amendment that introduced this clause 32.09 into the planning scheme*'.
- 8 In considering an application under the transitional provisions, a balance is required in relation to what is expected into the future under the new zone provisions and what would have previously been permitted under the former zone provisions. Under the new zone provisions there is now more emphasis on neighbourhood character.

² I have considered all submissions and Statements of Grounds lodged with the Tribunal although I do not recite all of the contents in these reasons.

- 9 The Council indicated the subject land, at 1707m², is large enough for three dwellings, although under the new zone provisions only two dwellings would be permitted and the subject land is located within a 'limited change area' under clause 21.06-1.
- 10 The determining factor in relation to the application is, in my view, centred on landscaping and the potential for landscaping on the subject land to be integrated with the abutting park to the south. A number of trees are proposed to be removed and as the land is subject to the Significant Landscape Overlay Schedule 2, Blackburn Area 2, a permit is required to remove, destroy or lop a tree.
- 11 The key elements of significance of the Blackburn Area 2 are:

... attributed to the quality of the environment, which includes vegetation notable for its height, density, maturity and high proportion of Australian native trees.

This in turn contributes to the significance of the area as a valuable bird and wildlife habitat.

Previous decision

- 12 A previous application for three, double storey dwellings on the subject land was refused by the Council in 2013. That decision was affirmed by the Tribunal in *Chan v Whitehorse CC*³. The transitional provisions came into effect during the Tribunal's consideration of this previous application.
- 13 The Council submits, the current application is similar to the previous application and on that basis should be refused.
- 14 The Tribunal previously stated:

*The effect of the proposed development on the reserve, would be quite pronounced. The existing interface between the reserve and the review site would be changed from one which is characterised by vegetation and in which buildings assume a recessive and subordinate role to that vegetation. The interface to the reserve proposed in this application would be strongly influenced by the presence of two prominent, double storey dwellings directly abutting the reserve, with little opportunity to provide effective filtering views of the building through provision of landscaping.*⁴
- 15 Whilst the Council submits the changes for the current application are not significant they include;
 - The setback of the upper floor to the southern boundary is increased: Dwelling 1 – 10.3m (previously 7.75m); Dwelling 2 – 13m (previously 0.210 – 1.35m) and Dwelling 3 - 13.8m (previously 0.230m – 4m);

³ [2014] VCAT 1504 (4 December 2014)

⁴ Ibid at [13]

- Dwelling 1 at ground floor is setback 4.25- 4.99m from the southern boundary, previously it was 7.7m;
- Reduced deck areas and relocation resulting in the area between the dwellings and the southern boundary of 5m for dwellings 1 and 2 and 5.5m to 8m for dwelling 3 allows for in ground planting along the southern boundary.

16 The Tribunal in its previous determination considered that the siting of dwellings 2 and 3 and their proximity to the southern boundary and the interface with the park left no opportunity for effective landscaping.

17 In relation to the proposal before me, I consider the increased setback at ground level to the southern boundary for dwellings 2 and 3 now incorporated into the proposal, as well as the increased setback from the southern boundary of the upper levels ensures that this proposal is significantly different from the previous proposal and will allow for landscaping to be incorporated between the dwellings and the southern boundary, whether this landscaping results in an acceptable outcome in terms of the provisions of the planning scheme is further considered.

Neighbourhood character

18 The subject site is located within the Bush Environment. The preferred character for the Bush Environment is stated at clause 22.03-5 of the planning scheme:

The streetscape will be dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees. The buildings will nestle into the topography of the landscape and be surrounded by bush-like native and indigenous gardens, including large indigenous trees in the private and public domains.

Buildings and hard surfaces will occupy a very low proportion of the site. They will be sited to reflect the prevailing front, rear and side setbacks. The larger rear setbacks will accommodate substantial vegetation including large canopy trees. The bushy environs are complemented by street trees and a lack of front fencing. Properties abutting and close to creeks and lake environs.

19 The attributes of the subject land nominated by the applicant in the previous application still generally apply.

- a The site is located on Main Street, a road that performs a collector function linking two commercial centres to the north and south and connects directly with a railway station.
- b The proposal incorporates architecturally designed dwellings that are both innovative and contextual in their design. Each of the dwellings is detached from each other, and adopt an inconspicuous profile in

their presentation to both the street and the abutting reserve to the south.

- c The proposal does not contribute to unacceptable overlooking, overshadowing, daylight impacts, and visual bulk.
- d The proposal meets the objectives of Clause 55 and where standards of Clause 55 are not met, the non-compliances are inconsequential and the associated objective is met.
- e The removal of vegetation from the site has been done in accordance with an arboricultural assessment of the vegetation. No significant vegetation is proposed to be removed and significant vegetation is to be retained.
- f The proposal makes adequate provision for additional landscaping to be introduced onto the site.
- g The buildings are to be constructed above the nominated flood level and will have no adverse impact on the abutting creek's floodway function.⁵

20 The subject land as it presents to Main Street will be of a single dwelling setback 10m viewed through existing canopy trees. Access to the proposed development is maintained via the existing driveway to the north. 12 existing trees at the front of the subject land are to be retained ensuring that the presentation of the development to Main Street continues to respond to the existing neighbourhood character.

Landscaping

- 21 The subject site is located within the Significant Landscape Overlay Schedule 2 Blackburn Area 2. Consideration under the overlay provisions relate to the ability to provide landscaping within the setback distance from property boundaries. Whether the proposed buildings retain an inconspicuous profile and do not dominate the landscape and whether a reasonable portion of the lot is available for tree planting, landscaping and open space use.
- 22 The southern boundary of the subject land abuts the linear Gardiners Creek Reserve/Kalang Park. A mix of native and indigenous species of plants and trees are located immediately adjacent to the boundary.
- 23 The only significant trees on the subject land are located within the eastern front of the site and as stated above these trees are proposed to be retained.
- 24 An arborist report by Galbraith & Associates was submitted with the application. The report describes the site as having '*a small amount of native indigenous vegetation and several large native Victorian trees but is dominated largely in numbers and canopy by exotic weeds*'. The report indicated '*there are up to ten trees of any worth to retain on the basis of their potential to positively contribute to this site. These are trees 2, 3, 12,*

⁵ Ibid [7]

13, 16, 17, 22, 23, 28 and 29. Of these only five are of high worth for retention in my opinion, namely numbers 2, 3, 13, 28 and 29.' These include Southern Mahogany Gum, Southern Blue Gum, Swamp Gum, Blackwood and Photinia.

- 25 Mr Hutchison provided a landscape plan which shows the retention of the significant trees referred to in the Arborist report. In the landscape plan Mr Hutchison proposes to add a total of sixteen indigenous canopy trees throughout the site with mature heights ranging from between 4-6m to 12m.
- 26 The residents and resident groups who attended the hearing submitted the proposed development did not appropriately respond to the context of the site particularly as it abuts the park. They submitted the proposed built form of the three dwellings will not maintain an inconspicuous profile, but will rather dominate the landscape, due to the height of the buildings in some places over 9m, the reduced separation between the built form and the overall visual bulk of the dwellings.
- 27 In terms of the landscaping proposed for the subject site the residents and resident groups submitted, three dwellings on the subject site results in a 'cramming' of trees onto the land, with no even spread, the dwellings will not nestle among the trees and there is an inability to screen along the western boundary with canopy trees due to the small setbacks. Any proposed development should be avoided in the north eastern section of the subject site due to its steepness and a number of the species proposed in the landscape plan are considered inadequate for effective screening or a more suitable species would be appropriate, particularly the preferable use of Yellow Box compared to the proposed Red Box.
- 28 Whilst the proposed dwellings will sit forward of the current location of the existing dwelling in relation to the park the proposed set back to each dwelling from the southern boundary with the park of between 4.99m and 5.86m is considered reasonable and will provide for landscaping to be incorporated along this southern boundary adjacent to the park.
- 29 It is noted the path within the park has recently been relocated and sits slightly closer to the southern boundary of the subject land than it previously did. Whilst the Council may require a 3m firebreak from a boundary with residential properties, existing planting along the northern edges of the path, as well as the proposed planting along the southern boundary within the subject land, will ensure there is an adequate mix of tall to medium sized trees and shrubs.
- 30 Screening does not mean that built form will not be seen, as such the proposed vegetation along the western boundary is considered to be adequate for the screening of dwelling 3 when viewed from the abutting property to the west. This also applies to the proposed planting along the southern boundary which will assist in screening the ground floor levels of

the three dwellings. It is noted the upper levels of each of the dwellings are well setback from this boundary between 10 – 13m.

- 31 Whilst there was some criticism of the species proposed with suggestions that insufficient plant numbers were also proposed I am satisfied that the landscape plan prepared by Mr Hutchison provides for a variety of indigenous vegetation that will make a significant contribution to the revegetation of the subject land, which is, but for a few significant trees in the frontage, currently heavily infested with weed species. Mr Hutchison considered that either the Red Box or the as suggested Yellow Box could be incorporated along the southern boundary. This could be a matter for a condition.
- 32 Mr Hutchison also acknowledged that tree 16 could be retained although it could be compromised at the time of the removal of the existing dwelling. I consider this tree should be removed as proposed to allow for replanting in this location.
- 33 I am unable to conclude that the removal of the weed species and the proposed planting of a variety of indigenous vegetation will have an impact on the park, rather I consider the removal of the weed species in close proximity to the park will only benefit the park and the introduction of more indigenous vegetation on the subject land will make a contribution to the existing planting within the park. I agree with Mr Hutchison that '*the proposed replacement of the existing vegetation with sixteen new high value trees offers an investment into the site's future in terms of rejuvenation and re-generation of the canopy cover with quality, long lived indigenous canopy trees*'.
- 34 The noted rich bird life within the park will not be impacted by the proposal but it is expected will also be greatly assisted by the proposed planting of native vegetation and the removal of the weed species on the subject site.
- 35 Even if there was no development proposal on the subject land but the weed species was cleared this would result in the existing dwelling being clearly visible to persons within the park. It was also suggested that two dwellings, now supported in the new zone provisions, would be preferable. The development on the subject land of two dwellings does not necessarily result in a reduction of built form and even if two dwellings were located on the subject site the need for the removal of a significant amount of vegetation in the form of weed species would result in initially any buildings being more dominant within the landscape and visible from the park until such time as replacement vegetation matures.

Do any other matters warrant rejection of the proposal?

- 36 Several other matters were raised in submissions and the objections originally lodged with the Council. None provide the basis for rejecting the permit application.

37 It was submitted '*the proposed design squanders the opportunity for northern aspects and passive solar heating*' with garages facing north. In the context of this site I consider the design to be appropriate. It has utilised the existing crossover to the north for access to the dwellings hence the northern aspect of the garages, as a result, the presentation of only one dwelling to the street is maintained along with the retention of significant vegetation within the site frontage. It has also drawn upon the outlook to the park to the south, hence incorporating the private open space of dwellings towards this location, allowing for setbacks for landscape planting along the southern boundary with the park.

38 The separation between the dwellings of at least 3m at ground level does not in my view result in a perception of built form extending across the site when viewed from the park. Planting is proposed within the separated areas and will contribute to the landscape surrounding the dwellings.

39 Clothes lines within the side setback of the dwellings can be readily moved to accommodate proposed vegetation.

40 Mr Hutchison acknowledged there will be some shadowing of plants to the south and west. He indicated the species proposed tolerated some shade and whilst this may result in the plants taking longer to reach maturity, I do not consider it will be significant.

41 The planning scheme provisions seeks to '*ensure that buildings and extensions do not dominate the streetscape*'. In this instance there was no suggestion that the height of dwelling 1 would dominate Main Street, but rather the height of the dwellings when viewed from the park. The gabled roof form of the existing dwelling is 7.5m and is clearly visible when standing in the park. The design of the proposed dwellings has maintained the gable roof form of the existing dwelling, as a result the height of dwelling 3 to the top of the gable when viewed from the park is approximately 9.8m, dwelling 2 is approximately 8.8m and dwelling 1 is approximately 7.5m. It was submitted that relative to the park would result in built form of 10 and 12m. I disagree, with a maximum height of a little over 9m for one dwelling with an average overall height of 8.2m the height of the proposed dwellings is not out of keeping with expectations within a residential area and is considered reasonable.

42 The incorporation of the gabled roof form the use of face brick work, render and hard plank boards incorporates materials and features found within the neighbourhood. Whilst views from the park are relevant, the park is not the streetscape. Dwellings are already visible when walking in the park. The park abuts residential areas where development is encouraged. Over time the landscaping proposed around the dwellings will ensure that the dwellings will sit comfortably within this landscaped setting and be less visible in form to users of the park.

43 Some were critical of the potential for views into and from the park to the deck areas of the dwellings. It is considered that the proposal provides a positive interface with the park with potential surveillance of public areas being a positive outcome.

What conditions are appropriate?

44 A fence is proposed along the southern boundary. Condition 7 identifies the type of fence proposed as consisting of 1m high closed wooden palings with a 0.8m high wood lattice fence above with a cap. As part of the fence is within the Special Building Overlay it is not clear as to whether this would meet the approval of Melbourne Water, as such a more general condition is considered appropriate that would require the fence to be at least 1.9m high to the satisfaction of the Council and Melbourne Water.

45 Tree 12 is described in the arborists' report as the '*significant cultural stump*'. This tree is located on the southern boundary. The residents seek an additional condition to protect the tree, namely:

Tree 12 on the property boundary with the Blackburn Creeklands (Kalang Park) known as the "Significant Cultural Stump" should be protected. Specifically tree 12 should not be removed or otherwise damaged during the construction of fencing.

46 I agree, but suggest that in the vicinity of tree 12 the fence be open wire. There is already a proposed condition relating to tree protection zones being required during construction and I consider it would be appropriate to include tree 12 in this list. An additional condition could be imposed that would read:

Any fencing proposed around or within 0.5m of Tree 12 identified in the arborist report as the "Significant Cultural Stump" must be post and wire.

47 As commented on earlier, Mr Hutchison had no issue with either the Red Box or Yellow Box species being used along the southern boundary. This can be resolved with the Council.

Conclusion

48 For the above reasons the decision of the responsible authority will be set aside and a permit subject to conditions be directed to be issued.

**Jeanette G Rickards,
Senior Member**

APPENDIX A

PERMIT APPLICATION NO:	WH/2014/881
LAND:	60 Main Street BLACKBURN
WHAT THE PERMIT ALLOWS:	<p>The permit allows:</p> <ul style="list-style-type: none">• Construction of three double storey dwellings; and• Removal of trees <p>in accordance with the endorsed plans.</p>

CONDITIONS

- 1 Before the development starts, or any trees or vegetation removed, amended plans (three copies in A1 size and one copy reduced to A3 size) shall be submitted to and approved by the Responsible Authority. The plans must be drawn to 1:100 scale, with dimensions, and be generally in accordance with the plans submitted with the application but modified to show:
 - a. The locations of Tree Protection Zones described in condition 5, and a summary of the requirements of conditions 5 & 6 to be annotated on the development and landscape plans.
 - b. A boundary fence along the southern boundary in accordance with Condition 7.
 - c. Provision of swept path diagrams using an industry standard program demonstrating efficient ingress and egress of a B85 design vehicle for each garage and any necessary changes ensuring retention of minimum 1m deep garden beds to the north boundary.
 - d. Modifications to hard surface areas at the north-west corner to provide only the minimum necessary for efficient vehicle turning.
 - e. Landscape Plan in accordance with Condition 3.
 - f. Relocation of the clothes lines to avoid the proposed landscaping.All of the above must be to the satisfaction of the Responsible Authority. Once approved these plans become the endorsed plans of this permit.
- 2 The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and

must not be altered or modified without the further written consent of the Responsible Authority.

- 3 No building or works must be commenced (and no trees or vegetation shall be removed) until a landscape plan generally in accordance with the landscape plan prepared by Justin Hutchison Pty Ltd dated 23.07.14 Revision VCAT_A has been submitted to and endorsed by the Responsible Authority. This plan when endorsed shall form part of this permit. This plan shall show:
 - a. A survey of all existing vegetation, abutting street trees, natural features and vegetation.
 - b. Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.
 - c. Planting within and around the perimeter of the site comprising trees and shrubs capable of:
 - i providing a complete garden scheme,
 - ii softening the building bulk,
 - iii providing some upper canopy for landscape perspective,
 - d. A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed incorporating any relevant requirements of condition No. 1.
 - e. The proposed design features such as paths, paving, lawn and mulch.
 - f. A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant.
 - g. All new trees must be locally indigenous and planted at a minimum height of 1.5 metres

Landscaping in accordance with this approved plan and schedule shall be completed before the addition to the building is occupied.

4. The garden areas shown on the endorsed plan must only be used as gardens and must be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it may be required to be replaced by a tree or shrub of similar size and variety.
5. Prior to commencement of any building or demolition works on the land, a Tree Protection Zones (TPZs) must be established on the subject site (and nature strip if required) and maintained during, and until completion of, all buildings and works including landscaping, around the following trees in accordance with the distances and

measures specified below, to the satisfaction of the Responsible Authority:

a. Tree Protection Zone distances:

Tree 2 (Southern Mahogany Gum) – 9.1 metres radius.

Tree 3 (Southern Blue Gum) – 8.9 metres radius.

Tree 28 (Blackwood) – 2.4 metres radius.

Tree 29 (Blackwood) – 3.2 metres radius.

Tree 31 (Photinia) – 2.4 metres radius.

Tree 32 (Photinia) – 2.4 metres radius.

Tree 34 (Lily Pilly) – 2.5 metres radius.

Tree 12 (Significant cultural Stump) – 1 metre radius

b. Tree Protection Zone measures are to be established in accordance with Australian Standard 4970-2009 and are to include the following:

- i Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres in height held in place with concrete feet.
- ii Signage placed around the outer edge of perimeter the fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.
- iii Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary provide watering/irrigation within the TPZ, prior and during any works performed.
- iv No excavation, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the TPZ unless otherwise approved within this permit or further approved in writing by the Responsible Authority.
- v All supports and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
- vi No trenching is allowed within the TPZ for the installation of utility services unless tree sensitive installation methods such as boring have been approved by the Responsible Authority.
- vii Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.

viii Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorized person only during approved construction within the TPZ, and must be restored in accordance with the above requirements at all other times.

6 During construction of any buildings, or during other works, the following tree protection requirements are to be adhered to, to the satisfaction of the Responsible Authority:

- a. An Air-Spade® or Ground Penetrating Radar (GPR) investigation is to be undertaken prior to commencement of construction works to identify the size and number of roots in the location of, and to the depth of, the planned works where within the TPZs of Trees 28 and 29. When site works are completed an arboricultural report detailing the results of the investigation, is to be submitted to council. The report is to include advice and recommendations explaining how the tree will remain viable if works proceed under the current plans, to the satisfaction of the Responsible Authority.

7 Prior to any buildings and works occurring on the site a boundary fence at least 1.9m high must be constructed along the southern boundary of the site with no gates to the park to the satisfaction of the Responsible Authority and Melbourne Water. Any fencing proposed around or within 0.5m of Tree 12 identified in the arborist report as the “Significant Cultural Stump” must be post and wire.

8 The development must be provided with external lighting capable of illuminating access to each garage and car parking space. Lighting must be located, directed and shielded and of limited intensity that no nuisance or loss of amenity is caused to any person within and beyond the site.

9 All stormwater drains must be connected to a point of discharge to the satisfaction of the Responsible Authority.

10 Detailed civil plans and computations for connection to the point of discharge and a stormwater outfall drain, to be located in the rear easement, that conveys stormwater from the site to Gardiners Creek must be prepared by a suitably experienced and qualified professional, and submitted for approval by the Responsible Authority prior to the commencement of any works.

11 Stormwater connection to the nominated point of discharge and construction of a stormwater outfall drain must be completed and approved to the satisfaction of the Responsible Authority prior to the occupation of any of the buildings.

- 12 As-constructed drawings prepared by a Licensed Land Surveyor are to be provided to Council after the completion of the drainage outfall works prior to the occupation of any of the buildings.
- 13 Prior to the occupation of any of the buildings, the Applicant/Owner shall give to the Council an amount equal to 5% of the actual cost of the drainage outfall works as cash security or as a bank guarantee in lieu of cash, to cover a three-month maintenance period. The Applicant/Owner shall enter into a maintenance agreement so that in the event of any maintenance works not being completed by a due date, the Council may proceed with the maintenance works and deduct the cost from the security lodged.
- 14 Stormwater that could adversely affect any adjacent land shall not be discharged from the subject site onto the surface of the adjacent land.
- 15 The Applicant/Owner shall be responsible to meet all costs associated with reinstatement and/or alterations to Council or other Public Authority assets deemed necessary by such Authorities as a result of the development. The Applicant/Owner shall be responsible to obtain an "Asset Protection Permit" from Council at least 7 days prior to the commencement of any works on the land and obtain prior specific written approval for any works involving the alteration of Council or other Public Authority assets.
- 16 The existing street trees shall not be removed or damaged except with the written consent of the Responsible Authority.

Melbourne Water Conditions

- 17 No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
- 18 Prior to the commencement of works, a Site Management Plan detailing pollution and sediment control measures must be submitted to Melbourne Water for approval.
- 19 Prior to the commencement of works, a separate application direct to Melbourne Water must be made for approval of any new or modified storm water connection to Melbourne Water's drains or watercourses.

Expiry

- 20 This permit will expire if one of the following circumstances applies:
 - a. the development is not commenced within two (2) years from the date of issue of this permit;
 - b. the development is not completed within four (4) years from the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing pursuant to the provisions of Section 69 of the Planning and Environment Act 1987.

--- End of Conditions ---