

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P76/2018
PERMIT APPLICATION NO. PP17/00638

CATCHWORDS

Section 77 *Planning and Environment Act 1987* – General Residential Zone Schedule 1, Design and Development Overlay Schedule 31, Significant Landscape Overlay Schedule 1 – Neighbourhood and Landscape Character – Built Form – Internal and External Amenity Impacts – Traffic and Car Parking

APPLICANT

Kinsale Group Pty Ltd

RESPONSIBLE AUTHORITY

Boroondara City Council

REFERRAL AUTHORITY

Department of Environment, Land, Water and Planning

RESPONDENTS

Nicholas Luke, Malcolm Clark, Dr Julien Freitag, Professor Kevin Hindle, Deborah Goode & Peter Roff Smith, Joan Ryan, Ronald Weibrecht, Mr & Mrs S Tattos, Carmel Westmore, Robert Lewis

SUBJECT LAND

61 Molesworth Street
KEW VIC 3101

WHERE HELD

Melbourne

BEFORE

Jeanette G Rickards, Senior Member
Peter Gaschk, Member

HEARING TYPE

Hearing

DATE OF HEARING

12 & 13 June 2018

DATE OF ORDER

7 September 2018

CITATION

Kinsale Group Pty Ltd v Boroondara CC
[2018] VCAT 1368

ORDER

Amend permit application

- 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:

- Prepared by: Chandler Architecture & Interior Design
- Drawing numbers: TP05 - TP10 inclusive and TP14 All Revision D
- Dated: 3 May 2018

Permit granted

- 1 In application P76/2018 the decision of the responsible authority is set aside.
- 2 In planning permit application PP17/00638 a permit is granted and directed to be issued for the land at No. 61 Molesworth Street, Kew in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of multi-dwellings on a lot, construction of a front fence greater than 1.5 metres in height, buildings and works, and construction of a swimming pool within the Design and Development Overlay (DDO31) and the Significant Landscape Overlay (SLO1), vegetation removal, and buildings and works within the Public Park and Recreation Zone (PPRZ); reduction of the number of car spaces (two visitor spaces) pursuant to clause 56.02 in accordance with the endorsed plans.

**Jeanette G Rickards,
Senior Member**

**Peter Gaschk,
Member**

APPEARANCES

For applicant

Mr N Tweedie SC & Mr R Forrester, Barristers
instructed by Ward Lawyers

They called as witnesses:

- Mr W Bromhead, Town Planner
- Mr B Blades, Urban Design
- Ms C Dunstan, Traffic Engineer
- Mr J Patrick, Landscape Architect
- Mr B Raworth, Architectural Historian
- Mr C Goss, Architect provided Visual Montages but was not called to give evidence.

For responsible authority

Mr D Song, Town Planner, Song Bowden Pty Ltd

For referral authority

Mr E Kyriacou

For respondents

Mr N Luke, Mr S Tattos, Professor K Hindle,
Mr R Lewis and Ms C Westmore in person

INFORMATION

Description of proposal	Construction of 10 dwellings, a front fence greater than 1.5m, a swimming pool, and removal of vegetation
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Boroondara
Zone and overlays	General Residential Zone Schedule 1 (clause 32.08) Design & Development Overlay Schedule 31 (clause 43.02) Significant Landscape Overlay Schedule 1 (clause 42.03)
Permit requirements	Clause 32.08-6 – construction of two or more dwellings on a lot Clause 43.02 – construct a building construct or carry out works; to construct a swimming pool Clause 42.03 – construct a building construct or carry out works; remove destroy or lop vegetation
Relevant scheme policies and provisions	Clauses 11.01-1, 12.05-2, 12.03-1, 15, 16, 16.01, 18, 18.02-4, 21.03, 21.04, 21.05, 22.05, 55, 65 and 71.02-3
Land description	The subject site is located on the southern side of Molesworth Street approximately 110m east of Yarra Boulevard, in Kew. The site is irregular in shape and has a frontage of 32.25m, a maximum depth of 54.86m and a total site area of 1,355m ² . Topographically, the land falls steeply from the north (front) to south (rear) by approximately 11m. A 1.67m wide easement is located adjacent to the eastern boundary of the site. The site is currently developed with a single storey dwelling with a sub-floor at the rear of the building with a hipped tiled roof. The existing dwelling is setback a minimum of 6.6m from Molesworth Street. The subject site has two vehicle access

points. One crossover is from Molesworth Street and is via a crossover and driveway adjacent to the western boundary, and the other is from Yarravale Road and is via a shared crossover with No. 40 Yarravale Road and a driveway adjacent to the eastern boundary of the site. A 1.8m high rendered brick fence is constructed across the site's frontage.

West: Land to the west is occupied by a three storey modern dwelling at No. 63 Molesworth Street, the dwelling is setback approximately 6.9m from the street. Secluded Private Open Space (SPOS) is located at the rear of the site at ground level and within first and second floor balconies.

East: The subject site adjoins two properties to the east, No. 59 Molesworth Street and No. 40 Yarravale Road. Land at No. 59 Molesworth Street is occupied by a two storey dwelling. SPOS is located at the rear of the site.

South: Land to the south is within the Public Park and Recreation Zone (PPRZ). It is Crown land and contains vegetation, an outbuilding and vehicle access which connects to the subject site¹.

Tribunal inspection

14 June 2018

¹ Extract from submission by Responsible Authority

REASONS²

WHAT IS THIS PROCEEDING ABOUT?

- 1 The applicant seeks review of the decision of Boroondara City Council (the council) to refuse to grant a permit. Following the substitution of amended plans the council informed the Tribunal it no longer opposed the application:

Having had an opportunity to review the amended plans, Council wishes to advise that it no longer opposes the proposed development subject to the conditions included within Appendix A. Council is of the view that subject to the proposed conditions, each of Council's grounds of refusal have been appropriately addressed.
- 2 A number of statements of grounds were lodged with the Tribunal at the time of the application for review. Six respondents who had lodged a statement of grounds continue to oppose the proposed development despite the amended plans. It is these grounds of objection that the Tribunal will focus on in this determination.
- 3 The objections relate to the size and impact of the proposal on the neighbourhood and amenity of adjoining properties; the impact of increased vehicles generated by the development; the impact of vehicle access from Yarravale Road, including construction vehicles; and the extent of landscaping treatment.
- 4 Following the hearing Amendment VC148 was introduced on 31 July 2018 to all Victorian Planning Schemes. Parties were provided with an opportunity to make submissions regarding the changes to the Boroondara Planning Scheme.
- 5 The council submitted:

...the strength of the submissions it made at the hearing have not changed as a result of the amendment. This is because:

 - The planning controls applicable to the proposal have not changed.
 - The zone and Planning Permit 'triggers' remain unchanged.
 - The Design and Development Overlay (Schedule 31) and Significant Landscape Overlay (Schedule 1) continue to apply. The ordinance in each schedule to these two overlays remain unchanged.
 - Council's LPPF, including the applicable local policy, reference document and relevant parts of the municipal strategic statement remain unchanged.

² 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.

- The changes to Clause 52.06 (Car Parking) do not change the car parking assessment as relevant to Council's position.
 - The most relevant parts of the PPF, being Clauses 11 (Settlement), 12 (Environmental and Landscape Values), 15 (Built environment and Heritage) and 16 (Housing), continue to articulate similar themes with respect to applications for medium-density on land within the General Residential Zone in established suburbs of Melbourne.
- 6 The applicant for review adopted the submission of the council. No other comments were received by the Tribunal.

PROPOSAL

- 7 The proposal consisted of the construction of eleven (11) dwellings contained in one building constructed over no more than three storeys or 10m in height above NGL. Twenty-five (25) car spaces to be located within a basement with vehicular access from the existing crossover in Yarravale Road through the Public Park and Recreation Zone (PPRZ). The removal of vegetation within the PPRZ to widen the access. Pedestrian access to be from Yarravale Road and Molesworth Street. A swimming pool is also proposed within the terrace areas of two dwellings on the third floor.
- 8 Amended plans were substituted at the commencement of the hearing. The significant changes in the amended plans include the removal of vehicle access from Yarravale Road and the relocation of vehicle access from the existing crossover in Molesworth Street; removal of one dwelling (10); retention of two trees (25 & 38); a 4m wide centralised break in the southern elevation for the first and second floors, increased on the third floor to 6m and a 3.5m central break to the front and south elevations on the fourth floor; an increased setback to Molesworth Street of 7.4m; and increased setbacks over the levels to the south and east.

WHAT ARE THE KEY ISSUES?

- 9 The issues raised within the context of this review primarily relate to preferred neighbourhood and landscape character. In addition, issues have also been raised by respondents around adverse amenity impacts on adjoining properties arising from the scale and visual bulk of the built form, construction of buildings and works, traffic management and safety, as well as internal amenity for future occupants of the new development.
- 10 We must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the Planning Scheme. Net community benefit is central in reaching a conclusion on this matter. Importantly clause 71.02-3 requires the decision maker to integrate the range of policies relevant to the issues to

be determined and balance conflicting objectives in favour of net community benefit and sustainable development.

- 11 Based on the submissions, evidence and material presented by the parties the key considerations in this proceeding may be expressed as follows:
 - Is the development respectful of neighbourhood and landscape character?
 - Will the development have any unacceptable impacts on the amenity of the area and future occupants of the proposal?
 - Are there any unreasonable impacts associated with proposed parking and traffic safety?
- 12 Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the Boroondara Planning Scheme, assisted by our inspection of the subject site and adjoining properties, we consider the amended proposal provides an acceptable built form outcome that respects the neighbourhood and landscape character of the area. We also find the proposal represents an acceptable form of development in terms of amenity, traffic and parking.

STRATEGIC CONTEXT

- 13 The subject land is zoned General Residential Schedule 1 – ‘Suburban Precincts without a Consistent Open Backyard Character’ (GRZ1) and is affected by the Design and Development Overlay Schedule 31 which relates to the Yarra (Birrarung) River Corridor Protection (DDO31) and Significant Landscape Overlay Schedule 1 (SLO1) also relating to the Yarra (Birrarung) River Corridor Environs.
- 14 Under the Planning Policy Framework new housing is encouraged within established urban areas. Clause 16 (Housing) provides:

Planning should provide for housing diversity and ensure the efficient provision of supporting infrastructure.

Planning should ensure the long term sustainability of new housing, including access to services, walkability to activity centres, public transport, schools and open space.

Planning for housing should include the provision of land for affordable housing.
- 15 Clause 16.01-2S seeks to locate new housing in designated locations that offer good access to jobs, services and transport by increasing the proportion of new housing in designated locations within established urban areas.
- 16 Clause 16.01-2R seeks to identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne. Manage the supply of new housing to meet population growth and create a sustainable city by developing housing

and mixed use development opportunities in locations that are in particular:

- In and around the Central City.
- Areas for residential growth.
- Metropolitan activity centres and major activity centres.
- Neighbourhood activity centres - especially those with good public transport connections.

17 Clause 16.01-2R also seeks to facilitate increased housing in established areas to create a city of 20-minute neighbourhoods close to existing services, jobs and public transport and to direct new housing to areas with appropriate infrastructure.

18 Clause 16.01-3S seeks to provide for a range of housing types to meet diverse needs. Strategies for achieving this are:

Ensure housing stock matches changing demand by widening housing choice.

Facilitate diverse housing that offers choice and meets changing household needs through:

- A mix of housing types.
- Adaptable internal dwelling design.
- Universal design.

Encourage the development of well-designed medium-density housing that:

- Respects the neighbourhood character.
- Improves housing choice.
- Makes better use of existing infrastructure.
- Improves energy efficiency of housing.

Support opportunities for a range of income groups to choose housing in well-serviced locations.

19 Clause 16.01- 3S seeks the delivery of more housing closer to jobs and public transport and to facilitate diverse housing that offers choice and meets changing household needs through:

- Provision of a greater mix of housing types.
- Adaptable internal dwelling design.
- Universal design.

20 In the Local Planning Policy Framework (LPPF) Clause 21.05 seeks to facilitate residential development in accordance with Boroondara's Housing Framework. The housing policy indicates that within GRZ1 there is an expectation that moderate change will occur. One of the purposes of GRZ1 is 'to encourage diversity of housing styles and

housing growth particularly in locations offering good access to services and transport’.

- 21 The subject site comprises a total area of 1.355m² with a wide 32.25m frontage to Molesworth Street. The site is located within an established residential area which has good access to public parkland (30m from River Retreat Reserve to the south-west), existing services and infrastructure (810m from Kew Junction Major Activity Centre to the south east; 620m to bus routes along Studley Park Road).
- 22 At Clause 21.05 ‘a diverse range of housing types while protecting the preferred neighbourhood character and adjoining residential amenity’ is also encouraged.
- 23 Despite some reservations expressed by respondents in respect to steep streets found in the area, we consider the site is within comfortable walking distance to key infrastructure, services and facilities that make the site suitable for some form of medium density housing in an established area as proposed. We acknowledge however that any such proposal must be respectful of the neighbourhood character and ‘minimises detrimental impact on neighbouring properties’.

NEIGHBOURHOOD AND LANDSCAPE CHARACTER

Neighbourhood Character

- 24 The subject site is located within an established suburban area comprising detached dwellings within landscaped gardens, described within GRZ1 as the ‘Suburban Precincts without a Consistent Open Backyard Character’. Architectural styles are described by Mr Blades as eclectic and diverse.
- 25 Clause 22.05 in the LPPF seeks ‘to ensure new development retains and enhances the key character attributes that contribute to a precinct’s preferred character’ and it is policy that development makes a positive contribution to realising a precinct’s preferred character.
- 26 The subject site is located within Neighbourhood Character Precinct 13. The preferred character for this area is:

To facilitate contemporary design that respects the detached older houses in the precinct, including post war Modernist dwellings, and which builds on the precinct’s history of fostering innovative design. To maintain the precinct’s densely vegetated feel and ensure development integrates with the surrounding natural bushland setting. This will be achieved by:

 - Encouraging the retention of large trees and landscaped gardens;
 - Ensuring the scale and siting of dwellings integrates with the streetscape and surrounding vegetation;
 - Ensuring colours and materials blend in with the surrounding trees and landscaping;

- Ensuring garages and carports do not dominate the streetscape;
- Maximising soft landscaping and minimising areas of hard surfaces;
- Encouraging no or low front fences; and
- Encourage design that integrates with the heritage styles of the precinct.

- 27 It was put to us that there is no other apartment style building within this area and that therefore the form of the building is unsuitable. We note in this respect that there is nothing within the planning scheme that indicates an apartment style building is prohibited in this physical and planning policy setting. This is a medium density proposal consisting of ten dwellings. We consider the physical features of this site, namely its size at 1355m², and its topography with a fall of 11m, allow for a built form that responds appropriately to the setting and context of the site.
- 28 Within the GRZ1 development of up to two storeys that respects the suburban, detached character is sought. Under the schedule there is a mandatory maximum height of 9m, or 10m for sloping sites, such as the subject site. We also noted during our inspection of the area that several nearby buildings are of a contemporary style in three storey form. We consider that provided the mandatory height under the zone and overlay controls is not exceeded, and considering the slope of the land, three levels of built form integrated into the site slope can be achieved on the subject site.
- 29 Under DDO31 the subject site is located within Area J (River Retreat). This area has a mandatory 30m minimum setback line from the Yarra River and a maximum height of 10m for sloping sites. We find that the proposed development accords with DDO31.

Built Form

- 30 The site has a cross-fall of 1.49m from its front north east corner to its north west corner and an 11.09m fall to the south east corner. Due to the topography the proposed building is to extend over five levels presenting largely as a two storey building to Molesworth Street with a recessed second storey.
- 31 As measured from Natural Ground Level (NGL) the building presents overall as no higher than 10m. Given the significant slope of the subject site the proposed height accords with the requirements of both the GRZ1 and DDO31 objectives and controls. Further, we note that discretionary requirements outlined in clause 2 DDO31, that 'buildings should not cast any additional shadow across any public open space between 11:00am and 2:00pm at the equinox', is also met by the proposed development.
- 32 Viewed from Molesworth Street the proposed development will present as two storeys with a central break. The building is to be setback 7.2m

and 8.2m from the frontage and will maintain the general setback of dwellings in the street of 6.9m to 63 Molesworth Street, 6.2m to 65 Molesworth Street, 7.04m to 59 Molesworth Street and 7.7m to 57 Molesworth Street. We consider these setbacks are generally consistent with the zone and overlay built form objectives.

- 33 The front fence is to consist of a 1.3m high masonry wall setback 1.14m from the front of the subject land. This fence is to be located approximately 4m from the eastern boundary and extend for a length of 7.6m. Located in front of this fence at its eastern end is a 2.9m long services box at a height of 1.6m. A 1.6m high metal picket fence is to extend from the end of the masonry wall approximately 2.5m to the building and setback approximately 4m. Landscaping is proposed forward of the fence to the east, as well as to either side of the central pedestrian entry. Two street trees, a Prickly-leaved paperbark and a Queensland Brush Box are to remain at the front of the proposed development. This will allow for the proposed new building to be viewed through their foliage. The transparency of the fence, as well as the proposed landscaping treatment particularly forward of the more solid front fence, will in our view sit comfortably within the existing mixed street presentation which includes the existing high concrete fence at No. 63 Molesworth Street.
- 34 Molesworth Street rises from Yarra Boulevard. The two storey dwelling at No. 65 Molesworth Street has an overall height of RL43.41 rising approximately 7.19m above NGL. The dwelling at No. 63 Molesworth Street has an overall height of RL 44.45 rising approximately 6.5m above NGL. The proposed development is to have an overall height of RL47.00 and RL47.15 rising to approximately 9.7m. No. 59 Molesworth Street appears to be an anomaly within the street as it is set down the slope of the land behind a brick wall to the street and only its roof line is perceptible. This dwelling has an overall height of RL 42.92, whereas the dwelling at No. 57 Molesworth Street has an overall height of RL47.20. Largely due to the sloping topography of the area, we consider that the slight increase in height of the proposed development in comparison with the nearby neighbouring properties is reasonable.
- 35 We find the proposed built form height and accompanying building setbacks to the front of the site will be generally consistent with and compatible with the surrounding built form found in Molesworth Street. The two storey element addressing Molesworth Street provides a suitable transition to the neighbouring properties and the deep central recess in the front elevation will give the appearance of a division in the built form ensuring it is not a dominating element within the streetscape.
- 36 When viewed from the south (either in Yarradale Road or Yarra Boulevard) we consider the built form will be difficult to see given the heavy vegetation in the PPRZ and the proposed landscaping on the subject site that will contribute to additional screening and filtering of

direct views of the built form. We are also satisfied that the 'stepping down' of the built form, following the topography of the site, will not result in an overwhelming or dominant built form when viewed from the south.

- 37 We note that the proposed site coverage at 64.8% and permeability at 35.2% exceed the discretionary controls outlined in DDO31. However, we do not think these variations to the discretionary controls is fatal to the proposal. The Decision Guidelines at clause 5 of DDO31 require the following consideration:

- Whether sufficient space is provided between buildings to maintain views of the Yarra River and allow for the planting and growth of vegetation, including large canopy trees.
- The need to minimise impervious surfaces to allow for filtration of water and retention and establishment of indigenous vegetation and canopy trees.

- 38 Based on these matters we are satisfied that the amended design response will address these guidelines in the following manner:

- The site sits well away from the Yarra River Corridor.
- The required garden area is met.
- The basement is well setback from all boundaries and generous front and side setbacks are provided for planting.
- Meaningful landscaping is proposed, including a minimum of six large canopy trees with the area proposed for such plantings to be more than 102m². In our view this accords with the requirements of DDO31 as well as SLO1.

- 39 The council was generally satisfied with the materials and finishes proposed for the building but did consider, following recommendations of the council's urban designer, that some changes should occur to the treatment to the east and west elevations. The proposed materials for both elevations include precast concrete panelling in natural grey, precast feature concrete panelling in grey/charcoal, timber soffit and wall cladding.

- 40 The council's urban designer recommended that at least two treatments be used; a section to be metal or timber cladding (lightweight presentation) and a mixture of rendered/textured concrete/stone (heavy treatment but articulated through the fine grain detail of the material).

- 41 In this respect council has included Condition 1(r) which provides:

A materials board of proposed materials, external finishes and colours, with a coloured set of elevation plans reflecting proposed materials. This must include the use of varying high quality materials including lightweight wall treatments such as timber cladding and/or metal cladding for the second, third and fourth floor wall treatments where

these walls contribute to a three and four storey presentation, and the replacement of sections of the precast concrete on the ground and first floor walls with either stone, textured concrete or render.

- 42 Mr Blades considered the proposed materials for the east and west elevations were architecturally resolved allowing for a 'muted palette which does not seek to draw attention to the proposal but rather positions it as a muted backdrop to the extent of existing and proposed landscaping'.
- 43 We agree with Mr Blades that as these elevations are not perceived from the public realm the proposed changes are unnecessary. We will therefore delete condition 1(r) from the council's draft permit.

Landscape Character

- 44 The site is affected by Significant Landscape Overlay Schedule 1 – Yarra (Birrarung) River Corridor Environs (SLO1).
- 45 SLO1 provides a Statement of nature and key elements of landscape relating to the Yarra River corridor:

The Yarra River has metropolitan significance as an environmental, aesthetic, cultural, recreation and tourism asset. The river corridor links parklands and reserves into a near continuous vegetated landscape experience that provides a highly valued, secluded natural environment, enjoyed by local and metropolitan communities.

- 46 Siting and design objectives relating to built form under SLO1 are:
- To protect and enhance the natural landscape character of the Yarra River corridor where the river, its topography, adjacent public open space and a continuous corridor of vegetation and canopy trees are the dominant features.
 - To minimise the visual intrusion of buildings and works when viewed from the Yarra River and adjacent public open space, bicycle and shared paths and bridge crossings.
 - To ensure all buildings are subordinate to the existing vegetation with all views of buildings filtered through vegetation.
- 47 Several trees are proposed to be removed on the site. Under the SLO1 a permit is required for their removal as they all have trunk circumferences over the threshold specified in the planning scheme. No issue has been taken by the council regarding the removal, but for one tree identified as Tree 38.
- 48 Tree 38, a Sweet Gum is now to be retained within the site's southern setback within dwelling 2's private open space. Tree 25 which sits outside the subject site within the PPRZ and within the area that was to be widened for vehicle access is also to remain, as vehicle access is no longer proposed from Yarravale Road.

- 49 The rear of the site abuts the PPRZ located between the southern rear boundary and Yarra Boulevard. This area contains dense vegetation with a Monterey Pine and Monterey Cypress described by Mr Patrick as augmenting the weeds within this area. Mr Patrick also notes that these two trees are 'weeds'. He also refers to an Italian Poplar in the process of falling apart and a Southern Mahogany stump which is reshooting with poorly attached branches. Tree 25 sits within this setting.
- 50 As described by Mr Patrick this vegetation within the PPRZ provides a significant vegetated screen to the subject land when viewed from Yarra Boulevard and its intersection with Yarravale Road. We find this landscape setting to be important to the landscape character of the site and nearby Yarra River corridor. To this extent, along with the proposed landscaping on the subject site we find the objectives of the SLO1 'to minimise visual intrusion of buildings and works when viewed from the Yarra River and adjacent public open space', 'to reduce visual contrast with the natural landscaped character setting of the Yarra River corridor space, bicycle and shared paths and bridge crossings', and 'to ensure all buildings are subordinate to the existing vegetation with all views of buildings filtered through vegetation', achieves the continuation of this landscape character setting.
- 51 To the eastern boundary opposite the rear private open space of No. 40 Yarravale Road, it is proposed to plant five Blueberry Ash with a width of 4m and height of 10m at maturity. These plants are proposed to be located below natural ground level with a retaining wall to a portion of the boundary resulting in a potential height at maturity of 8m. Mr Patrick indicated that the slope of the land is such that natural ground level is soon attained and planting to the southern end of this boundary will be in natural soil.
- 52 Professor Hindle, the owner of No. 40 Yarravale Road whose rear private open space abuts this area, expressed concern that it would take a considerable number of years for the plants proposed by Mr Patrick to grow to the expected 8m in height and provide an effective screen. Mr Patrick indicated an alternative species such as a Weeping Lilly Pilly planted at 3m - 3.5m would likely reach a height of 8m within four to five years and could be incorporated along this section of the eastern boundary.
- 53 We consider Mr Patrick's recommendation of the Weeping Lilly Pilly would be a suitable alternative to the proposed Blueberry Ash. Having inspected Professor Hindle's rear private open space, we also believe a section of trellis above the fence in this location would assist providing additional screening, further protecting his area of private open space. We propose to address these changes through permit condition.
- 54 Mr Patrick also recommended three Blueberry Ash along the eastern boundary at natural ground level opposite 59 Molesworth Street. Several

Silver Birch are located along the common boundary within No. 59 Molesworth Street with a large habitable room window directly opposite.

- 55 At the interface with No. 63 Molesworth Street Mr Patrick proposes a hedge of Aussie Southern Lilly Pilly. The top of the retaining wall will ensure planting is at natural ground level. A Blackwood and Melbourne Yellow Gum are to be located in this south west section to dwelling 1.
- 56 Mr Lewis, whilst incorrectly referring to SLO2 which is not included within the Boroondara Planning Scheme, did express concerns regarding the potential earthworks that will be required to construct the basement, as well as the overall built form that will cover the subject site.
- 57 We find that the proposed development will not have an adverse impact on the area identified in SLO1 relating to the Yarra (Birrarung) River Corridor Environs as the proposed development will not be visible from the Yarra River. Nor will it be readily visible from Yarra Boulevard due to:
- The vegetation within the PPRZ;
 - The removal of vegetation on the subject site is reasonable with the retention of Tree 38 and the proposed landscaping adding to the landscaped character of the area;
 - The construction of a basement is considered appropriate and will have no impact on the river or its surrounds given the subject site is located a minimum of 145m from the banks of the Yarra River; and,
 - The built form 'steps' with the slope of the site meeting the relevant 10m maximum allowable height, ensuring no light spill or overshadowing to the Yarra River or to any public open spaces.

AMENITY IMPACTS

- 58 Overlooking issues were highlighted by both Mr Luke of No. 59 Molesworth Street and Mr Tattos of No. 63 Molesworth Street.
- 59 Mr Luke expressed concern regarding potential overlooking into the large habitable room window on the western elevation of his dwelling facing the subject site, as well as overlooking into his areas of private open space and the visual impact of the proposed development when viewed from these areas of his property. Whilst his rear private open space is relatively well vegetated he noted his intention to renew some of the vegetation which would potentially expose his rear private open space.
- 60 Sections of dwelling 3 and dwelling 5 above are to be located on the eastern boundary. A wall proposed on the boundary is to be in the same location as the existing garage wall. Dwelling 7 on the second floor is to

be setback 9m from the eastern boundary opposite the habitable room window in 59 Molesworth Street. A section of terrace accessed from bedroom 1 in dwelling 7 extends 3.7m towards the common boundary with 59 Molesworth Street. The terrace is to be screened with opaque glass to a height of 1.7m to prevent any direct overlooking into No. 59 Molesworth Street. We consider the screening along with the existing trees located on the boundary will prevent any direct overlooking into the habitable room window of No. 59 Molesworth Street.

- 61 Dwelling 10 on the third floor is to be setback 5.1m from the eastern boundary. The kitchen and study windows within the eastern elevation are to be screened. The terrace relating to dwelling 10 is setback 7.5m. The eastern side of the terrace is to contain a 600mm high planter box with a 1.2m high glass balustrade. A small section of this terrace sits approximately 5.8m from the boundary. This section is to have a 1.7m high privacy screen. Section B plans indicates that a person standing on the terrace will be required to look over the planter box to obtain downward views into the rear private open space of No. 59 Molesworth Street. The 9m radius referred to in clause 55.04-6 Standard B22 extends to just beyond the fence line. We consider that the incorporation of the planter box with an increased minimum width to 1.0m, as well as the 1.2m balustrade will prevent any unreasonable downward views into the area of private open space. We also note that close to the common boundary in No. 59 Molesworth Street are two rather tall trees which will also prevent direct downward views. We are not sure if these are to be removed as part of Mr Luke's renewal of his rear private open space. However, as they are rather large and well established we have not factored in their removal.
- 62 There is also a similar potential for views into the rear private open space of No. 40 Yarravale Road. However, the 9m radius similarly extends to just beyond the common boundary. Trees are also located in the private open space of No. 40 Yarravale Road and in such circumstances, we consider there will be no adverse impact from downward views into this area.
- 63 On the western side of the proposed development Mr Tattos expressed concern at the potential for downward views into his rear private open space from the terrace to dwelling 9. Whilst the BBQ is shown to sit along the western elevation of this terrace we agree with Mr Tattos that there is some potential for downward views into his rear private open space area and in this respect, we consider a 1.7m high opaque screen should be located along the western elevation of the terrace to dwelling 9. We acknowledge that the upper level of private open space to his dwelling already contains an opaque screen, preventing his overlooking into the terrace, as well as a person standing on the terrace being able to view this upper level area. We propose to address this additional screening through permit condition.

- 64 Both dwellings 9 and 10 have an upper level terrace at level 4. Both terraces are well setback from the eastern and western boundaries. Both terraces have 600mm wide planter boxes extending around the eastern, western and southern edges of the terraces. We propose to increase the width of these boxes to 1.0m by permit condition, ensuring there is no ability for direct downward views, either into neighbouring properties, or to lower level terraces within the proposed development.
- 65 We are satisfied that apart from the requirement for screening to the western elevation of the level 3 terrace to dwelling 9 there will be no unreasonable impact on the amenity of abutting dwellings from overlooking because of the proposed development.
- 66 We are also satisfied that the incorporation of conditions 1(w) and 1(x) relating to screening for the dwelling 10 terrace and pool to a height of 1.7m which will avoid any direct downward views into No. 40 Yarravale Road.
- 67 Having considered the shadow diagrams, we are satisfied there will be no unreasonable overshadowing to the private open space areas of adjoining properties. We consider No. 40 Yarravale Road, No. 59 Molesworth Street and No. 63 Molesworth Street will all receive the required minimum of five hours of sunlight between 9am and 3pm at the equinox.

TRAFFIC AND CAR PARKING

- 68 Clause 18.02-4S seeks 'to ensure an adequate supply of car parking that is appropriately designed and located'.
- 69 Twenty-two onsite parking spaces for residents are to be provided within the basement. This exceeds the required number under clause 52.06.
- 70 Vehicle access is from the existing crossover at the western boundary in Molesworth Street. A mechanical car lift is proposed at the entry to the car park to accommodate vehicles entering and leaving the basement. As part of her evidence Ms Dunstan indicated that use of a standard ramp for entry into the car park would not be practical, given the vertical distance from Molesworth Street to the basement is approximately 10m which would require a ramp in the order of 45m in length.
- 71 Whilst several of the residents indicated there was often several cars that parked in Molesworth Street making it difficult for the passage of two-way traffic, Ms Dunstan indicated Molesworth Street is classified as a 'Local Access Road'³ with a carriageway width of 9.3m. In her view this is sufficient for 'vehicles to park on both sides of the road with one through lane of traffic or alternatively, two through lanes of traffic and one lane of parking'.
- 72 The changes to Clause 52.06 (Car Parking) which relate to the provision of visitor car spaces if the site is located within the Principal Public

³ Boroondara City Council - Register of Public Roads (Version 4.1 dated June 2016)

Transport Network do not change the car parking assessment as relevant to Council's position. On the amended plans two visitor car spaces are shown within the basement. We consider these two allocated visitor car spaces shown in the basement should be reallocated to residents of the proposed dwellings. Under the provisions of clause 56.02 visitors are discouraged from using a mechanical lift unless a valet service is provided. We find, based on Ms Dunstan's evidence that visitor demand for car parking can be readily accommodated on the street.

- 73 We consider the provision of the mechanical car lift to be a very practical solution to providing access to the basement. We do not see any necessity in requiring some convoluted ramp system merely because the provision of a mechanical car lift is considered unusual. We are satisfied with the specifications of the car lift and will incorporate the specifications referred to by Ms Dunstan in a condition.
- 74 We accept Ms Dunstan's analysis that queueing is unlikely to occur in Molesworth Street. Sufficient area is provided between the front of the site and the entry to the car lift to allow for a vehicle to wait either on entry or exit, depending on the use of the car lift. If, however, on a rare occasion it did occur, we do not consider this will have any detrimental impact on the efficient use of Molesworth Street.
- 75 Immediately to the west of the crossover in Molesworth Street is the driveway entry to No. 63 Molesworth Street. We accept Ms Dunstan's recommendations regarding the installation of a pedestrian sight triangle on the east side, as well as a convex mirror also on the east side of the accessway, to facilitate sight lines to the west. This should ensure no conflict will occur with vehicles exiting at the same time from both driveways.
- 76 Several residents in Yarravale Road highlighted concerns that even if there was to be no vehicle access from Yarravale Road, it could be possible that construction vehicles may attempt to enter via the existing driveway from Yarravale Road.
- 77 A condition requiring a Construction Management Plan has been included in the draft conditions provided by the council. Whilst we acknowledge the residents concern over this particular matter, particularly due to the one-way nature of entry from the Boulevard into Yarravale Road and the one-way exit with vehicles wishing to exit from Yarravale Road having to turn into the one-way section in front of Nos. 28 and 30 Yarravale Road, we consider management of this situation should be included within the Construction Management Plan and determined if suitable by the council at the time of approval of the Construction Management Plan. Council is responsible for the management and suitability of Yarravale Road to be used by any construction vehicles. We think it appropriate that such a condition be

placed on the permit, allowing the council to monitor and manage any concerns that may arise relating to this specific matter.

ARE THERE ANY OTHER ISSUES?

- 78 Although not located within a Heritage Overlay, the subject site sits adjacent to Heritage Overlay (HO530 – Yarra Boulevard Precinct). This is a large precinct broadly bound by Molesworth Street to the north, Studley Avenue to the east, Stawell Street to the south and Yarra Boulevard to the west. The precinct is an area of cultural heritage significance recognised as being important for its:
- ... association with many prominent architects and architectural practices of the post war era; these include, but are not limited to, Theodore Berman, Chancellor and Patrick, Ernest Fooks, Anatol Kagan, McGlashan and Everist, Romberg and Boyd, and Bernard Slawik.
- Architecturally, the Yarra Boulevard precinct is significant for its high concentration, richness and diversity of Modernist residential dwellings, complemented by examples of interwar and late 1960s-1970s residential development, set within an irregular, median strip divided curvilinear street layout. The overall intactness of the more visible components of the dwellings is comparatively high, and alterations generally adopt a sympathetic approach. Many of the residences also display a high degree of sensitivity to site and topography, and ingenuity in their architectural approach, including to the design and orientation of buildings. This has created a distinctive aesthetic character for residential development within this area of the municipality. The concentration of well-preserved postwar Modernist houses is also arguably distinctive in the wider metropolitan context.
- 79 Mr Raworth referred to several dwellings near the subject site. To the east is No. 59 Molesworth Street, a split level postwar dwelling. Although suggested in the heritage precinct citation that this dwelling may have been designed by Robin Boyd, Mr Raworth indicated this had not been firmly established.
- 80 Mr Raworth expressed the view that Nos. 57, 63 and 65 Molesworth Street are of no heritage interest, but opposite the site at No. 66A Molesworth Street is a multi-level c.1970 dwelling designed by architect Charles Duncan.
- 81 Mr Raworth noted that ‘owing to the topography of the area, dwellings on the southern side of Molesworth Street are set lower than street level, giving a more modest impression of scale, while dwellings on the northern side are set above street level and even a modest single storey dwelling appears grander in scale’.
- 82 Referring specifically to No. 59 Molesworth Street, Mr Raworth noted it is setback approximately 10m and sits largely below street level, due to

the topography. As such any two storey building on the subject site would sit taller than No. 59 Molesworth Street. In his view, 'the setback, massing and low/key neutral finish of the proposed development will ensure that it establishes a respectful relationship and does not detract from or dominate the adjacent heritage place in a matter that is undue or inappropriate'.

- 83 We accept Mr Raworth's evidence and make no further findings on these matters.

WHAT CONDITIONS ARE APPROPRIATE?

- 84 The council provided a set of draft conditions. These were discussed with the parties at the hearing. We have considered the comments made by the parties in relation to conditions and where appropriate, have either added or deleted conditions.
- 85 As stated above a draft condition requires a Construction Management Plan. We consider this condition adequately allows for the various issues raised around vehicular and pedestrian traffic movements, particularly by the respondents, to be addressed at the time of approval.
- 86 The Department of Environment, Land Water and Planning (DELWP) raised no objections to the granting of a permit provided its proposed conditions were included in any permit to issue. These conditions relate to the Crown land that abuts the subject land to the south and includes no vehicles, storage removal of vegetation, buildings and works and stormwater discharge to occur on the Crown land; the Crown land to be appropriately fenced and the existing driveway, gates and cubbyhouse which are currently located on the Crown land to be removed. We support the inclusion of these conditions on any permit to issue.

CONCLUSION

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

Jeanette G Rickards,
Senior Member

Peter Gaschk,
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	PP17/00638
LAND:	No. 61 Molesworth Street, Kew

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of multi- dwellings on a lot, construction of a front fence greater than 1.5 metres in height, buildings and works, and construction of a swimming pool within the Design and Development Overlay (DDO31) and the Significant Landscape Overlay (SLO1), vegetation removal, and buildings and works within the Public Park and Recreation Zone (PPRZ); reduction of the number of car spaces (two visitor car spaces) pursuant to clause 52.06 in accordance with the endorsed plans.

Amended plans required

- 1 Before the development starts, amended plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and three (3) copies provided. When the plans are endorsed they will then form part of the permit. The plans must be substantially in accordance with the plans TP00, TP01, TP02, TP03, TP04, TP05, TP06, TP07, TP08, TP09, TP10, TP11, TP12, TP13, TP14, TP15, TP16 and TP17, Rev. D, Project No. 2016064, dated 3 May 2018, prepared by Chandler Architecture / Interior Design, but modified to show:
 - (a) All changes to balconies must comply with Clause 55 Standards B22 (Overlooking) and B23 (Internal Views);
 - (b) A plan notation indicating that suitable drainage and/or any other engineering outcomes are to be applied to the private open spaces within the front setback where located below footpath level to avoid overland flows into habitable rooms;
 - (c) Provision of an apex at the driveway entrance to a minimum height of 250mm above the footpath level or provision of an alternative engineering solution to avoid overland flows into the car lift;
 - (d) The paved area to the south of Dwelling 1 to be setback a minimum of 1.5 metres from the southern boundary with a retaining wall provided along the southern edge of the paving to maintain natural ground level for landscaping, including tree plantings. This must include maintaining natural ground level for the proposed Blueberry Ash;

- (e) The retaining wall to the west of the BBQ area of Dwelling 1 to be set back a maximum of 1.5 metres from the ground floor western wall with natural ground level maintained at the top of the retaining wall;
- (f) The extent of paving and landscaping space within the Dwelling 1 secluded private open space to be in accordance with the landscape plan prepared by John Patrick Pty Ltd, Job NO. 18-0255, Drawing NO. L-MED 01, dated May 2018 but modified in accordance with Conditions 1 (j) and (k) of this permit;
- (g) Dwelling 3 Bedroom 4 to be changed to a non-habitable room on the Storage Area Plan (TP19.03) in accordance with the Ground Floor Plan (TP06);
- (h) The basement columns to be located and dimensioned in accordance with the design standards of Clause 52.06 of the Boroondara Planning Scheme;
- (i) The driveway ramp to achieve a transition grade length of 2 metres in accordance with the Gradients design standard within clause 52.06 of the Boroondara Planning Scheme;
- (j) Any obstructions within the subject site located for 2 metres along the road frontage and 2.5 metres along the accessway to be 50% permeable to below 900mm in height to maintain visibility to pedestrians;
- (k) A convex mirror provided on the east side of the accessway to facilitate sight lines;
- (l) Technical specifications of the two Total Move car lifts supplied by Levanta Park (1 entry and 1 exit);
- (m) All garden beds at ground level above the basement to have a minimum soil depth between 500mm to 600mm;
- (n) The entire calculated Tree Protection Zones to be shown for all trees that are to be retained both on the subject site, and for any trees where any part of the Tree Protection Zone is located within the subject site;
- (o) Enlarged, annotated and dimensioned details, at a scale of 1:50, of a screen to enclose any rooftop plant or equipment. The selected materials must be of a high quality and integrated with the balance of the development;
- (p) A notation that air conditioning units will not be located on balconies or terraces, unless it can be demonstrated that they will not be visible from the adjacent public realm;
- (q) Each dwelling to have a minimum of 18 cubic metres of total storage, including a minimum of 12 cubic metres of storage space within each dwelling;

- (r) A plan notation that any excavation within the easement is to be subject to the satisfaction of Council's Drainage Department;
- (s) The colours and materials to be clearly noted on all elevations in accordance with the colours and materials schedule;
- (t) A materials board of proposed materials, external finishes and colours with a coloured set of elevation plans reflecting proposed materials;
- (u) All minimum and maximum wall heights to be dimensioned above natural ground level;
- (v) Section elevations to clearly dimension the maximum building height as no greater than 10 metres above existing natural ground level;
- (w) Deletion of the pedestrian gate, fence and cubbyhouse from the Public Park and Recreation Zoned land;
- (x) Provision of articulation through increased setbacks between the second and third floor levels on the eastern elevation proximate to No. 40 Yarravale Road;
- (y) Increase the width of the planter boxes to 1m on the upper terraces of dwellings 9 and 10;
- (z) Screening to a height of 1.7m along the western elevation behind the BBQ on the terrace of dwelling 9;
- (aa) An Environmentally Sustainable Design (ESD) Report in accordance with Condition 16 of this permit;
- (bb) A Tree Management Plan in accordance with condition 14 of this permit;
- (cc) A Waste Management Plan in accordance with Condition 26 of this permit;
- (dd) A Landscape Plan in accordance with Condition 3 of this permit;
- (ee) A Construction Management Plan in accordance with Condition 27 of this permit;
- (ff) Allocation of the two visitor car spaces within the basement to residents.

Layout not to be altered

- 2 The layout of the site and the size, levels, design and location of buildings and works shown on the endorsed plans must not be modified for any reason (unless the Boroondara Planning Scheme specifies that a permit is not required) without the prior written consent of the responsible authority.

Landscape plan

- 3 A landscape plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plan must be

drawn to scale with dimensions and three (3) copies provided. When endorsed, the plan will form part of the permit.

The landscape plan must be generally in accordance with Landscape Plans (Ground and Level 1, and Level 2-4) prepared by John Patrick Landscape Architects Pty Ltd, dated May 2018, Job No. 18-0255 but modified to show:

- (a) Changes in accordance with Condition 1 of this permit;
- (b) Details of planter boxes above the basement, including dimensions to be a minimum width of 1m, soil depth, materials, drainage, and ongoing maintenance;
- (c) Provision of native or indigenous trees in each of the following locations:
 - i The two Natchez Crepe Myrtle trees within the front setback each replaced with large canopy trees (mature height of 10+ metres);
 - ii One tree along the southern boundary to the south of Dwelling 1 between the proposed Melbourne Yellow Gum and Blueberry Ash;
 - iii One large canopy tree (mature height of 10+ metres) along the southern boundary away from the basement directly south of the centralised break in the building;
 - iv One large canopy tree within the western setback of Dwelling 1 to the north of the proposed Melbourne Yellow Gum;
 - v Weeping Lilly Pilly in place of the Blueberry ash along the eastern boundary abutting 40 Yarravale Road;
- (d) The entire calculated Tree Protection Zone of each retained tree to be shown;
- (e) Tree Protection Fencing in accordance with Condition of this permit;
- (f) Planting required by any other condition of this permit; and
- (g) Landscaping and planting within all open areas of the site.

Maintenance of buildings and works

- 4. All buildings and works must be maintained in good order and appearance to the satisfaction of the responsible authority.

Completion of landscaping works

- 5. Landscaping as shown on the endorsed landscape plan/s must be carried out and completed to the satisfaction of the responsible authority prior to the occupation of the development.

Landscaping maintenance

6. All landscaping works including landscaping within planter boxes and shown on the endorsed landscape plan/s must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the responsible authority.

Supervision of works by arborist

7. All buildings and works within the Tree Protection Zone and Structural Root Zone as specified in the endorsed Tree Management Plan must be supervised by a suitably qualified and experienced arborist, to the satisfaction of the responsible authority. Any person acting on the permit must advise Council's Arborist (Statutory Planning) in writing at least 48 hours prior to the commencement of the works to be supervised.
8. Arborist supervision to occur during demolition and excavation for trees that are to be retained to the extent of the calculated Tree Protection Zone.

Trees to be protected

- 9 All trees to be protected and maintained to the satisfaction of the responsible authority.

Tree protection during construction

- 10 Before any development (including demolition) starts on the land, tree protection fences must be erected around the street trees in front of the subject site along Molesworth Street, the Sweet Gum (Tree No. 38) to the extent of calculated Tree Protection Zone where located within the front setback, and the neighbouring trees to the extent of calculated Tree Protection Zone where located within the subject site to define a "Tree Protection Zone". The fence must be constructed to the satisfaction of the responsible authority. The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the responsible authority.

Contractors to be advised of trees to be retained

- 11 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed Tree Management Plan and are advised of any obligations in relation to the protection of those trees.

Regulation of activities in Tree Protection Zone

- 12 No vehicular or pedestrian access, trenching or soil excavation is to occur within the Tree Protection Zone without the prior written consent of the responsible authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.

- 13 Ground protection must be provided for any vehicle access during construction where located within the calculated Tree Protection Zone of street trees to the satisfaction of a suitably qualified arborist and to the satisfaction of the responsible authority.

Tree Management Plan

- 14 Prior to the endorsement of the plans referred to in Condition 1 of this permit or the commencement of any works including demolition or levelling of the site, a tree management plan prepared by a suitably qualified and experienced arborist to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. Three (3) copies of the tree management plan must be provided. When the tree management plan is endorsed it will then form part of the permit. The tree management plan must specify actions for the management and maintenance of the street trees in front of the subject site along Molesworth Street, the Sweet Gum (Tree No. 38) within the subject site, the neighbouring trees to the south and east of the subject site making specific comment on the following matters to the satisfaction of the responsible authority to ensure that the tree remains healthy and viable on site.
- (a) The establishment of appropriate foundations within the tree's TPZ. The foundation type and method will need to be specified by the arborist in conjunction with engineering specifications;
 - (b) The mapping of the foundation excavation points on a site plan;
 - (c) Reporting on the presence of any exposed roots over 50 mm diameter and management of these roots e.g. how they were pruned, fertilisation, watering regime etc;
 - (d) When supervision by an arborist will be required on-site and time frames specified for supervision;
 - (e) The establishment of a fixed Tree Protection Zone and where it will be located in relation to the tree and proposed building(s). This TPZ should be clearly identified on a site plan and have specific recommendations stipulated on these plans referenced from the Tree Management Plan;
 - (f) Any remedial pruning works that are required to be performed on the tree before, during and post development of the 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 Tree Management Plan must be implemented to the satisfaction of the responsible authority.

Contractors to be advised of trees to be retained

- 15 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of the street trees and Tree 38 (Liquidambar) on site that is to be retained and are advised of any obligations in relation to the protection of those trees.

Environmentally Sustainable Design (ESD) Report

- 16 Concurrent with the endorsement of plans referred to in Condition 1 of this permit, an Environmentally Sustainable Design (ESD) Report that is to the satisfaction of the responsible authority for approval. The report must address ESD principles proposed for the site including, but not limited to energy efficiency, storm water collection and re-use for garden irrigation and toilet flushing, and waste and building materials. Any recommended changes to the building must be incorporated into the plans required by Condition 1. Once approved, such a plan must be implemented prior to the occupation of the dwellings to the satisfaction of the responsible authority.

Drainage

- 17 The site must be drained to the satisfaction of the responsible authority.
- 18 The development must not commence until the easement along the southern boundary is modified in accordance with the proposed easement layout and registered on title.

Use of car parking spaces and driveways

- 19 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the responsible authority.

Carpark control equipment

- 20 Before the use starts or any building is occupied, details of any car park control equipment (controlling access to and egress from the internal/basement car park/s) must be submitted to and approved in writing by the responsible authority.

Lighting of carparks and accessways

- 21 Low intensity lighting must be provided to ensure that car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the responsible authority.

Concealment of pipes

- 22 All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view, to the satisfaction of the responsible authority.

Regular waste removal

- 23 All waste material not required for further on-site processing must be regularly removed from the site. All vehicles removing waste must have fully secured and contained loads so that no wastes are spilled, or dust or odour is created, to satisfaction of the responsible authority.

Maintenance of waste storage area

- 24 All bins and receptacles used for the collection and storage of solid waste, recyclables and other wastes must be kept in a designated area, to the satisfaction of the responsible authority. This storage area must be:
- (a) Properly paved and drained to a legal point of discharge;
 - (b) Screened from view with a suitably designed enclosure;
 - (c) Supplied with adequate water; and
 - (d) Maintained in a clean and tidy condition free from offensive odours
- All to the satisfaction of the responsible authority.

Hours for waste collection

- 25 Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:

Monday to Friday: 7:00am to 6:00pm

Saturday & Public Holidays: 9:00am to 6:00pm

Sunday: No collection allowed

All to the satisfaction of the responsible authority.

Waste management plan

- 26 A waste management plan to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. Once satisfactory, such plan will be endorsed and must be implemented to the satisfaction of the responsible authority. The plan must provide the following details of a regular private waste (including recyclables and hard waste) collection service for the subject land including:
- (a) The type/s and number of waste bins;
 - (b) Screening of bins;
 - (c) Type/size of trucks;

- (d) Swept paths demonstrating forward ingress and egress for the waste trucks;
- (e) Frequency of waste collection; and
- (f) Location of collection points within basement to the satisfaction of the responsible authority.

Construction management plan

27 Prior to the commencement of any site works, including demolition and excavation, a Construction Management Plan must be submitted to and endorsed by the responsible authority. No works are permitted to occur until the Plan has been endorsed by the responsible authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the responsible authority. The plan must be prepared in accordance with Council's Construction Management Plan Template and provide details of the following:

- (a) Hours for construction activity in accordance with any other condition of this permit;
- (b) Measures to control noise, dust, water and sediment laden runoff;
- (c) Measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (d) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- (e) A Traffic Management Plan showing truck routes to and from the site;
- (f) Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- (g) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
- (h) Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the construction management plan;
- (i) Contact details of key construction site staff;
- (j) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support site sheds on Council road reserves; and
- (k) Any plans to be consistent with any plans with the endorsed Tree Management Plan.

Hours for demolition and construction

- 28 All works including earthworks, demolition and construction activity associated with the approved development must take place only during the following hours, except with the prior written consent of the responsible authority:

Monday to Thursday: 7:00am to 6:30pm

Friday: 7:00am to 5:00pm

Saturday: 9:00am to 5:00pm

Sunday & Public Holidays: No construction

Provision of letter boxes

- 29 Provision must be made on the site for letter boxes and receptacles for papers to the satisfaction of the responsible authority.

DELWP Conditions

- 30 There must be no:
- (a) storage of materials (including temporary stack sites) or spoil;
 - (b) truck turning areas;
 - (c) new entry points;
 - (d) parking of vehicles;
 - (e) vegetation removal;
 - (f) buildings and works; and
 - (g) discharge of stormwater or other concentrated flow of water;
- on the adjacent Crown land as part of the development and its future use.
- 31 Prior to the works commencing, the shared boundary with Crown land must be suitable fenced (and erected on the correct boundaries of the land) to the satisfaction of the responsible authority and the department of Environment, Land, Water and Planning (DELWP), at the applicant's expense.
- 32 No works are to occur outside the property boundary and within Crown land without the further written consent of DELWP.
- 33 Following the removal of the fencing, gate and cubbyhouse from the occupied Crown land, this underlying land shall be rehabilitated so that the ground level beneath the removed structures is made consistent with the surface levels of the immediately adjacent Crown land.
- 34 Public access along/into the adjoining Crown land must not be restricted by the use or development at any time unless otherwise permitted in writing by the responsible authority.

Permit to expire:

35 This permit will expire if:

- (a) The development does not start within two (2) years of the issue date of this permit; or
- (b) The development is not completed within four (4) years of the issue date of this permit.

The responsible authority may extend the times referred to if a request is made in writing before the permit expires or:

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

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

- End of conditions -