

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1653/2014
PERMIT APPLICATION NO. WH/2013/449

CATCHWORDS

Whitehorse Planning Scheme; Application pursuant to Section 79 of the *Planning and Environment Act* 1987; Amended plans in response to Tribunal order.

APPLICANT	Australasian Conference Association Ltd
RESPONSIBLE AUTHORITY	Whitehorse City Council
REFERRAL AUTHORITY	Melbourne Water Corporation
RESPONDENTS	The Blackburn & District Tree Preservation Society Inc, LCW & EM Boucher, Spiros & Kelly Papadopoulos, Hannah Wright, Gavin Mendis, Blackburn Village Residents' Group Inc (David Morrison), Stephen Bodin, Susan & Hugh Williams, Jennifer Robertson, R & A McLaren, Blackburn Lake Primary School, Bradley Hogan, Guy & Gertrud Ward, John & Mary Ainley, Mary Crouch, Trevor Hookey, Tim & Kylie McCorriston, Neil & Julie Finnegan, Darryl Shannon, Janet Danby, Hugh Marshall, Maimie Lim, Friends of Blackburn Lake Sanctuary Inc (Anne Payne).
SUBJECT LAND	131-173 Central Road, Nunawading
WHERE HELD	Melbourne
BEFORE	J A Bennett, Presiding Member Vicki Davies, Member
HEARING TYPE	Hearing
DATES OF HEARING	23, 24, 25, 26, 27, 30 and 31 March 2015
DATE OF ORIGINAL ORDER	21 May 2015
DATE OF ORDER	8 October 2015
CITATION	

ORDER

- 1 The decision of the Responsible Authority is set aside.
- 2 In permit application WH/2013/449 a permit is granted and directed to be issued for the land at 131-173 Central Road, Nunawading in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Use and development of the land for a retirement village with associated food and drink premises (café) and place of assembly, removal of vegetation, car parking reduction and waiver of loading bay requirements.

J A Bennett
Presiding Member

Vicki Davies
Member

REASONS

BACKGROUND

- 1 This matter was heard by us in March 2015 and we issued an interim order on 21 May 2015¹. That order should be read in conjunction with this order. It includes the list of appearances, standard information about the nature of the proposal, permit requirements, a description of the land and other matters. In our interim order we generally supported the concept of a retirement village but were not prepared to approve the proposal before us at that time. However, we concluded that a modified proposal may strike the right balance having regard to the test set out in Clause 10.04 which requires us to endeavour 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.
- 2 On the basis of that conclusion, we provided the Permit Applicant with an opportunity to prepare a modified proposal and in paragraph 106 of our reasons set out the following list of suggested modifications:
 - a *Buildings 1 and 2, including outdoor paved areas, terraces and decks, set back a minimum of 9 metres from the Central Road frontage. Except for narrow connecting pathways, the setback areas are to be landscaped with indigenous species.*
 - b *Building 1 is to be set back a minimum of 6 metres from the central driveway and its overall height reduced to not more than 11.5 metres.*
 - c *At ground level Building 2 is to be set back 5 metres from the western boundary. Upper level setbacks are to be increased to retain the relationship between the different levels.*
 - d *Building 3 to be divided into two, similar to the changes made to Building 4 (now 4 and 4A). Setbacks to the western boundary and Conservation Area 3 are not to be reduced.*
 - e *The shortfall in dwellings caused by the changes to Buildings 1, 2 and 3 may be made up by constructing a building with underground parking in the space currently occupied by the ground level car park for the multi-purpose facility.*
 - f *A revised landscape proposal which includes more indigenous species to complement the vegetation of Very High conservation significance and the bushland environment of this part of Nunawading opposite the Blackburn Lake Sanctuary.*
 - g *Fencing around the three conservation areas of a standard and style designed to limit all access except to and along defined gravel paths.*

¹ *Australasian Conference Association Ltd v Whitehorse CC* [2015] VCAT 712.

- h Where still relevant, any changes required by the circulated draft condition 1.*
- i Any consequential changes arising from the modifications listed above. An opportunity should also be taken to make corrections to plans (such as accurate levels and boundaries of conservation areas amended to not encroach on the oval or road).*

- 3 The Permit Applicant took the opportunity to respond to our order and has prepared further plans for consideration by the Tribunal, the Council and other parties to the hearing. We clearly stated that the opportunity to provide amended plans did not mean that they would necessarily gain approval.
- 4 The amended proposal was circulated to nominated parties and written submissions have been received from the City of Whitehorse, Friends of Blackburn Sanctuary Inc, Blackburn & District Tree Preservation Society Inc, Mr Bradley Hogan, Drs John and Mary Ainley and Mr Spiros and Ms Kelly Papadopoulos.

PERMIT APPLICANT'S RESPONSE TO THE ORDER

- 5 The Permit Applicant submitted a comprehensive set of plans, including a set of comparison drawings depicting the original proposal and the amended proposal incorporating changes required by the Tribunal.
- 6 In addition, statements explaining the changes were prepared by Mr Negri, Mr Murphy, Mr Organ and Ms Dunstan. We found these statements helpful in understanding why changes have been made and how they respond to the recommendations in our original order.

RESPONSES BY PARTIES TO THE AMENDED PLANS

- 7 Council's response noted that the amended plans appear to comply with the Tribunal's recommended modifications. Council also noted that there has been no objection to the new Building 7 located more centrally in the site and that it will be relatively inconspicuous and compliant with the objectives and decision guidelines of the SLO and ESO.
- 8 Submissions by other parties acknowledged that the amended plans appear to comply with the recommendations in our original order. There was consistent support for the new Building 7 located centrally on the site. To varying degrees submissions sought further changes, including reducing the heights of Buildings 2, 3 and 4 by a further storey and transferring the apartments to two additional levels on Building 7. Suggestions were also made to further angle Building 3 so that it is further away from Tree 708 at 15 Cromwell Court. The Friends of Blackburn Sanctuary Inc is concerned about the adverse impacts of construction works, including proposed works for the removal of the Blackburn Road level crossing, on the health of the Blackburn Lake Sanctuary and the areas of high conservation significance.

- 9 The Blackburn & District Tree Preservation Society Inc made a detailed submission identifying additional tree removal arising from the amended plans and also questioned some of the material in the reasons of the original order.

WHAT IS OUR RESPONSE TO THE AMENDED PLANS AND WRITTEN SUBMISSIONS?

- 10 We consider that the amended plans have successfully responded to the nine suggested modifications set out in paragraph 106 of our original order dated 21 May 2015. We consider that the additional setbacks from Central Road, the scaling back of Buildings 1 and 2, the division of Building 3 into two sections and the relocation of apartments into a new centrally located Building 7 represent major improvements over the layout we were considering in March 2015.
- 11 In particular we consider that the additional setbacks from Central Road and the western boundary have achieved a more acceptable built form transition. Although parties suggested a further reduction in the height and number of storeys of the western buildings, we are not persuaded that any further changes are required given the reasons we gave in our original order for supporting three storey buildings. We also note that the setbacks of Building 2 to the western boundary have been increased by 1.5 metres at each level and that the division of Building 3 into two sections has provided a view line from the west to the tree canopies within Tree Protection Zone 3.
- 12 The requirement for construction management and conservation management plans allows for control of construction works and the protection of the areas of high conservation significance. We agree with The Friends of Blackburn Sanctuary Inc that proposed works for the removal of the Blackburn Road level crossing should respond to the very high conservation values on the site and that the significant areas should be fenced off and protected. However, this permit cannot control the activities of the Level Crossing Removal Authority and we are concerned that all the research and effort to identify and protect the areas of very high conservation significance will be seriously undermined. In an effort to minimise adverse impacts, we have included a condition on this permit that the three conservation areas are to be fenced off within 3 months of the date of issue of this permit.
- 13 Many of the responding submissions made by the Blackburn & District Tree Preservation Society Inc relate to matters beyond the scope of what we allowed for in responding submissions and are not open for reconsideration. While we do not intend to comment on each of the detailed points raised by the Society, we do wish to reiterate the point made in our original reasons that while the Society and other parties would like to see many more trees being retained, we have to decide whether an appropriate balance has been struck between retaining vegetation and allowing development on a site

zoned for residential and institutional purposes. We also make the following comments on specific points raised by the Society.

- We agree that the greater setbacks that have been provided for Buildings 1 and 2 allow for the retention of Trees 3 and 4 (east of Building 1) and Tree 10 (in front of Building 2) which are in highly visible locations on the site. In our original order (paragraphs 55 and 56) we commented about the visual dominance of these buildings. The additional setbacks now provide an opportunity to retain three trees which would otherwise have been removed.
- On the other hand, we are not persuaded that trees such as 141, 142 and 143 between Buildings 4B and 5 should be retained given the landscaping/outdoor recreation area proposed in this location.
- We support the revised fencing for the conservation areas and consider it addresses our concerns about successfully limiting access to the conservation areas. The aim is to limit and control access to defined places rather than prohibit access.
- To the extent that we have been asked to consider different wording (e.g. use of the term ‘predominantly indigenous’ rather than ‘native and indigenous’), commentary on amended plans is not an opportunity to revisit those reasons. We also note that the landscape plan is required to be approved by Council and a final decision on plant species can be made at that time.
- We accept that there is some discrepancy about the number of trees on the site, including in the figures provided to us by expert witnesses and in submissions. We have rechecked the witness statement prepared by Galbraith & Associates (6 March 2015) and it includes a list of 726 trees. This numbering system was also used by Council’s Consulting Arborist in a report dated 18 March 2015. We accept that this figure includes trees described as ‘dead and gone’ and ‘gone’. Two of the trees (707 and 708) we have noted as being in the backyard of 15 Cromwell Court. We also acknowledge that Mr Murphy, in answer to a question from Ms Lane, stated that the site had 632 trees in 2005 but has only 540 trees now.
- We also accept that our references in paragraphs 78 and 81 to the protection of around 600 trees refers to the three conservation areas whereas the actual number within those areas is much less. But even if the three conservation areas are only protecting 299 indigenous trees, as suggested by Mr Berry, it does not fundamentally change our position that there is an urgent need to protect what remains – both in the conservation areas and elsewhere on the site. The number of trees is reducing year by year and this proposal provides an opportunity for that decline to be halted and for a very significant number of replacement indigenous trees to be planted. These new trees are not

just within the three conservation areas but according to Mr Tweedie include 106 trees outside of conservation areas.² We also note that setting aside the three conservation areas allows for the rehabilitation and planting of lower storey vegetation - a benefit sometimes forgotten when the focus is on tree numbers.

WHAT CONDITIONS SHOULD BE INCLUDED ON THE PERMIT?

- 14 On the last day of hearing in March 2015 we received a revised set of draft conditions prepared by the Permit Applicant. We gave Council and other parties an opportunity to respond to those draft conditions and comments were received from Council and Mr Morrison (The Friends of Blackburn Sanctuary Inc), together with further comments from the Permit Applicant.
- 15 Our decision to invite amended plans, the receipt of such plans and further comments from parties has meant that the conditions have needed to be further revised. The conditions contained in Appendix A therefore reflect our response to the draft conditions circulated on the last day of hearing, submissions and evidence at the hearing, together with subsequent comments and consequential changes arising from the amended plans. Formulating the conditions has not been an easy task. Whilst we do not itemise every condition that has been added or amended, we wish to highlight the following:
 - Condition 1 refers to the latest set of plans. We have retained a requirement for the plans to be further amended to include a notation of all tree protection zones, with all nominated trees clearly identified and numbered on both the site and landscape plan, as well as on the Tree Management Plan. Although we understand that the latest set of plans incorporate the further amendments to the plans, as set out in parts (b)-(i), we have retained those parts to allow the Council to assess whether the plans adequately show the required changes.
 - Condition 3, regarding landscaping and tree protection, is based on a modified version of the condition proposed by the Council and essentially agreed to by the Permit Applicant. We have further modified the condition, agreeing with the Permit Applicant that some of the wording was vague or unclear.
 - We have not adopted the Council's suggestion of an additional condition requiring the developer to enter into an early growing contract of stock of local provenance. We agree with the Permit Applicant that rather than mandate a method for obtaining stock, such matters are best left to a detailed landscaping plan.
 - The revised landscape plan shows an indicative means of fencing the conservation areas, with impermeable post and wire fencing to the

² Paragraph 115 of the Permit Applicant's outline of submissions dated 31 March 2015.

perimeter and timber post and cable ‘pedestrian guidance’ fencing internally. We support that approach.

- We have included a new condition requiring within three months of the permit being granted the temporary fencing off of the three conservation areas and the Tree Protection Zones of the trees specified in Condition 6(a). This is in response to concerns expressed by parties, which we share, that irreversible damage may be done to these areas if works commence on the removal of the Blackburn Road level crossing prior to the approval of plans required by this permit.
- We do not think there is a need to further modify Condition 5, regarding tree management and protection, in ways suggested by the Council, Mr Morrison or Mr Papadopoulos. The condition establishes a comprehensive regime to protect specified trees. We do not agree with Mr Papadopoulos that the distances specified in Condition 6J could not be reduced under any circumstances. The condition only allows for a decrease if investigations demonstrate that such a decrease will not adversely affect the tree. We consider this provides sufficient safeguard for these trees. Trees 3, 4 and 10 are included in the list of trees that will have protection measures.
- We do not agree with the Council that the ESD Sustainability Management Plan must incorporate the ‘further recommendations’ made by the Council’s sustainability advisor.³ Although Mr Talacko acknowledged that the further recommendations (including consideration of the use of light or reflective roofing material, insect screens and small skylights and the incorporation of ceiling) are sensible ideas, it was his evidence that they are not necessary to comply with the proposed clause 22.18 policy. While the further recommendations might be implemented, they should not be prescribed.
- The conditions regarding native vegetation are modified in the manner sought by the Council, to which the Permit Applicant is not opposed. We are satisfied that they address ongoing management of the required offsets.
- Condition 35, regarding a Conservation Management Plan (CMP), has additional wording suggested by the Council, to which the permit applicant is not opposed. On the basis of the arguments put on behalf of the Permit Applicant, we see no risk of the permit conditions becoming ineffective by, for instance, the buildings being converted (e.g. to dwellings). The condition requires the CMP to have effect as long as the permit operates. It is not limited to 10 years. Part (e) of the condition provides for ‘any other measures deemed appropriate’ to protect and enhance the ecological values. That could include succession planting, seed collection and a propagation and planting

³ As contained in the ESD Assessment of Mr Noy Hildebrand, dated 19 March 2015.

program, as suggested by Mr Morrison. It is not necessary for the CMP to spell out a requirement for an indigenous tree replacement planting program, as suggested by Mr Morrison. An appropriate replanting regime will be required by the approved landscaping plan and CMP.

- Condition 36 adequately covers the issue of amenity. For a proposal such as this, it is not necessary to include a condition requiring the site to be ‘ordered and maintained so it will not prejudicially affect the amenity of the locality by reason of appearance’, as suggested by the Council.
- We accept that the time limits for expiry of the permit should be extended to five years for the use commencement, three years for the development commencement and five years for the completion of development. As put on behalf of the Permit Applicant, this is a large and complex project and there is no benefit to anyone in setting unreasonable time limits. Furthermore, as explained by Mr Tweedie at the hearing, the ability to commence works would be compromised if the Level Crossing Removal Authority uses some of the subject land for the staging of its works.
- Mr Morrison suggested the need for conditions relating to such issues as disabled access, emergency management and access for emergency vehicles. Such matters will be addressed at the building permit stage.
- In our original order we discussed the place of assembly and food and drink premises (café). We are not persuaded that conditions are required to regulate these ancillary facilities, other than the general amenity condition (Conditions 36 and 37).
- Mr Morrison also suggested reinstating permit notes. Notes are not permit conditions but Council can include them as advisory information on the permit it issues.

16 It has taken a long time to achieve a development on the review site which strikes an acceptable balance between retaining areas of very high conservation significance whilst also allowing development on a site zoned for residential and institutional purposes.

17 However, we now consider that the revised proposal, responding to our recommended modifications, does achieve that balance in favour of a net community benefit and that it warrants our support.

DECISION

18 Having regard to the above, we will direct that a permit issue subject to the conditions set out in Appendix A.

J A Bennett
Presiding Member

Vicki Davies
Member

APPENDIX A

PERMIT APPLICATION NO	WH/2013/449
LAND	131-173 Central Road, Nunawading
WHAT THE PERMIT ALLOWS	Use and development of the land for a retirement village with associated food and drink premises (café) and place of assembly, removal of vegetation, car parking reduction and waiver of loading bay requirements in accordance with the endorsed plans.

CONDITIONS

Amended Plans

- 1 Before the use and development starts, or any trees or vegetation removed, amended plans (three copies) must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale, with dimensions, and be generally in accordance with the amended plans prepared by V-ARC (being TP-011 Rev K, TP-100 Rev K, TP-110 Rev K, TP-111 Rev K, TP-112 Rev K, TP-113 Rev K, TP-114 Rev J, TP-115 Rev I, TP-120 Rev I, TP-121 Rev L, TP-122 Rev L, TP-123 Rev L, TP-124 Rev K, TP-130 Rev A, TP-131 Rev A, TP 132 – Rev A, TP 133 Rev A, TP 134 Rev A, TP-200 Rev H, TP-210 Rev I, TP-215 Rev C, TP-220 Rev I, TP-230 Rev J, TP-231 Rev B, TP-400 Rev G, TP-600 Rev H, TP-601 Rev H, TP-602 Rev H, all dated 25/07/15) but modified to show, if still required:
 - (a) The location of all Tree Protection Zones (TPZs) specified in the Tree Management Plan required under Condition 6.
 - (b) A landscape plan in accordance with Condition 3.
 - (c) Development plans to reflect the requirements of the Parking Management Plan required under Condition 12 to be annotated on the plans.
 - (d) Ramp grades and widths in accordance with AS/NZS2890.1:2004.
 - (e) Column locations to be in accordance with AS/NZS2890.1:2004 and/or Clause 52.06 of the Whitehorse Planning Scheme.
 - (f) Development plans to reflect all sustainability features indicated in the approved ESD Sustainability Management Plan required under Condition 7. Where features cannot be visually shown, include a notes table providing details of the requirements (i.e. energy and water efficiency ratings for heating/cooling systems and plumbing fittings and fixtures, etc).

- (g) Development plans to reflect the requirements of the Waste Management Plan required under Condition 10 annotated on the plans.
- (h) Screening of the western terrace of Apt 3.04 (situated within the building terrace).
- (i) A notation in respect of Building 6 specifying built form measures necessary to ameliorate external noise sources associated with the abutting rail system to achieve an internal noise level of 55dB Lmax in bedrooms and 60dB Lmax in living rooms.

Once approved these plans become the endorsed plans of this permit.

No Alterations

- 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 prior written consent of the Responsible Authority.

Landscaping and Tree Protection

- 3 Prior to the commencement of any building or works on the land or the removal of any trees or vegetation authorised under this permit, a landscape plan prepared by a suitably qualified and experienced person or firm must be submitted to and endorsed by the Responsible Authority. This plan must be generally in accordance with the Landscape Concept Plan and Landscape Sections prepared by MDG Landscape Architects, Drawing Numbers LSK01(B) and LSK02(B), dated 28.07.2015, but modified to show, if still required:
 - (a) A survey of all existing vegetation, internal roadways, 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) softening the building bulk; and
 - (ii) providing some upper canopy for landscape perspective.
 - (d) The location of easements and consideration of assets within easements.
 - (e) A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed.
 - (f) The proposed design features such as paths, paving, lawn and mulch.
 - (g) The location of all Tree Protection Zones (TPZs) specified in the Tree Management Plan required under Condition 6.

- (h) Notations stating that the planting to be undertaken in the land conservation areas is indicative only and that all future planting in these areas is to be undertaken in accordance with the Conservation Management Plan required under Condition 35.
- (i) The realignment of the boundary of land conservation area 2 so that it does not encroach upon the oval situated to the immediate east of that land conservation area.
- (j) The realignment of the boundary of land conservation area 3 so that it does not encroach upon the roadway situated to the immediate east of that land conservation area.
- (k) Changes to the indicative planting palette to provide for indigenous species in all areas except gardens attached to particular units (where exotic plants with flowers and/or perfume may be selected) and to replace the following species with indigenous species of local provenance:
 - (i) *prunus cerasifera nigra* (Purple Leaf Plum);
 - (ii) *prunus lusitanica* (Portugal Laurel);
 - (iii) *erigeron kavinskianus* (Seaside Daisy).

Landscaping in accordance with this approved plan and schedule must be completed before any of the buildings are occupied.

- 4 The garden areas shown on the endorsed plan and schedule 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 the Responsible Authority may require it to be replaced by a tree or shrub of similar size and variety.

Temporary fencing required to protect conservation areas

- 5 Within 3 months of the issue date of this permit, temporary fencing is to be placed around the three conservation areas and around the Tree Protection Zones of the trees specified in Condition 6(a) until such time as the Tree Management Plan is approved and tree protection measures are implemented in accordance with that plan.

Tree Management and Protection

- 6 Prior to commencement of any building or works on the land, including the removal of any trees or vegetation authorised under this permit, a Tree Management Plan (**TMP**) prepared by a suitably qualified Arborist which is to the satisfaction of the Responsible Authority must be submitted to, and approved by, the Responsible Authority. When approved the TMP will be endorsed and it will then form part of the permit.

The TMP must identify the measures that are necessary to protect retained trees. Those measures are to be generally in accordance with Australian Standard 4970-2009, and must include the following:

- (a) The specification of appropriate Tree Protection Zones (**TPZs**) for any tree that may be adversely affected by buildings and works, and particularly for trees 2, 3, 4, 10, 106, 159, 160, 161, 162, 163, 205, 417, 418, 701, 702, 704, 706 to 716, and 720 to 726 (as shown on the Existing Tree Analysis Plan prepared by V-Arc).
- (b) TPZs must also be identified for any tree that is located within a conservation area that in the opinion of a qualified Arborist may be adversely impacted by the buildings and works approved under this permit.
- (c) The TPZs are to be established and maintained during, and until the completion of, all building and works allowed under this permit (including landscaping) unless they are altered or varied in accordance with the recommendation of a qualified Arborist.
- (d) The specified TPZs must be fenced with solid chain mesh fencing, or a similar type of fencing, at a minimum height of 1.8 metres, supported on, and held in place by, concrete pads. The fencing must be maintained at all times during, and until completion of, all building and works unless a qualified Arborist gives approval for it to be removed, or the area it protects to be altered.
- (e) Signs must be placed around the perimeter of the fencing, identifying the area as a TPZ. The signs are to be visible from within the development site, and the lettering and wording to comply with Australian Standard 1319.
- (f) Mulch is to be provided within the TPZs, to the extent identified in the TMP, to a depth of 100 mm, and supplementary watering is to be applied during dry weather, as specified in the TMP.
- (g) No excavations, construction works, activities, grade changes, surface treatments or storage of materials of any kind are permitted within a TPZ unless otherwise approved by this permit or further approved in writing by the Responsible Authority.
- (h) All supports and bracing are to be outside a TPZ and any excavation for supports or bracing is to avoid damaging tree roots.
- (i) No trenching is allowed within the TPZ for installation of utility services, unless the Responsible Authority has approved tree sensitive installation methods, such as horizontal soil boring.
- (j) There must be no alteration of the existing ground level of the land located within:
 - (i) 3.0 metres of the west boundary fence opposite trees 701 and 702;

- (ii) 4.0 metres of the west boundary fence opposite tree 704;
- (iii) 5.5 metres of the west boundary fence opposite trees 706 and 707;
- (iv) 7.5 metres of the west boundary fence opposite tree 708;
- (v) 6.0 metres from the trunk centre of trees 725 and 726;

unless non-root destructive exploratory investigations undertaken under the supervision of a suitably qualified Arborist demonstrates that alterations to the grounds levels can occur without adversely impacting upon the safe, useful life expectancy (SULE) of the tree.

- (k) Any paved area located within the TPZ of Tree 205 must be constructed at the existing soil grade using porous materials allowing water to penetrate through the surface and into the soil profile.
- (l) Any part of the car park that is to be located within the TPZ of Trees 417 and 418 is to be constructed at the existing soil grade using porous materials allowing water to penetrate through the surface and into the soil profile.
- (m) All tree pruning is to conform to AS4373-2007 *Pruning of Amenity Trees* and the work is to be performed by a suitably qualified Arborist.

Environmentally Sustainable Development

- 7 Prior to the commencement of any building or works on the land authorised under this permit, an amended ESD Sustainability Management Plan (**SMP**) detailing sustainable design initiatives to be incorporated into the development must be submitted to and approved by the Responsible Authority. The SMP must be generally in accordance with the SMP prepared by Ark Resources on 4 March 2015 and must outline and quantify the proposed sustainable design initiatives to be incorporated throughout the development including in respect of energy efficiency, water conservation, stormwater quality, waste management and material selection, to the satisfaction of the Responsible Authority.
- 8 The SMP must be implemented and adhered to during the construction of the development allowed by this permit, to the satisfaction of the Responsible Authority.
- 9 All works must be undertaken in accordance with the endorsed SMP to the satisfaction of the Responsible Authority. No alterations to the SMP may occur without the prior written consent of the Responsible Authority.

Waste Management Plan

- 10 Prior to the commencement of any building and works on the land authorised under this permit, a Waste Management Plan (**WMP**) generally in accordance with the WMP prepared by Wastetech Services Pty Ltd dated 2 March 2015 must be prepared to the satisfaction of the Responsible

Authority. When approved, the Waste Management Plan will be endorsed and then form part of this permit.

- 11 The approved Waste Management Plan must be implemented by the owners/occupiers of the site to the satisfaction of the Responsible Authority unless with the prior written consent of the Responsible Authority.

Car Park Management Plan

- 12 Prior to the commencement of any building and works on the land authorised under this permit a Car Park Management Plan must be submitted to and approved by the Responsible Authority detailing the allocation of spaces, line marking and signage.
- 13 The implementation of the Car Park Management Plan must be to the satisfaction of the Responsible Authority.
- 14 The car parking areas and accessways as shown on the endorsed plans must be formed to such levels that they may be used in accordance with the plan, and must be properly constructed, surfaced, drained and line-marked (where applicable). The car park and driveways must be maintained to the satisfaction of the Responsible Authority.
- 15 Parking areas and access lanes must be kept available for these purposes at all times.

Construction Management

- 16 Prior to the commencement of any building and works on the land under this permit a Construction Management Plan (**CMP**) must be prepared to the satisfaction and approval of the Responsible Authority, detailing how the owner will manage the construction issues associated with the development.
- 17 The CMP must address: any demolition, bulk excavation, management of the construction site, land disturbance, hours of construction, noise, control of dust, public safety, traffic management, construction vehicle road routes, soiling and cleaning of roadways, discharge of any polluted water, security fencing, disposal of site waste and any potentially contaminated materials, location of site offices, redirection of any above or underground services, and site security lighting.
- 18 The CMP must include a requirement that suitable washing facilities be provided and utilised on site for the cleaning of all construction vehicles prior to them exiting the designated property so as to prevent any grease, oil, mud, clay or other substance to fall or run off a vehicle onto a road, into any drain or under the road.
- 19 The CMP must be implemented to the satisfaction of the Responsible Authority and a contact name and phone numbers for the site manager must be provided to the Responsible Authority.

Engineering Assets

- 20 All stormwater drains must be connected to a point of discharge to the satisfaction of Responsible Authority.
- 21 Detailed plans and computations for stormwater on-site detention and connection to the legal point of discharge must be prepared by a registered consulting engineer (who is listed on the Engineers Australia National Professional Engineer Register) and submitted for approval by Responsible Authority prior to the commencement of any works.
- 22 Stormwater connection to the nominated point of discharge and stormwater on-site detention must be completed and approved to the satisfaction of the Responsible Authority prior to the occupation of the buildings.
- 23 Stormwater that could adversely affect any adjacent land must not be discharged from the subject site onto the surface of the adjacent land.
- 24 “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.”

Melbourne Water

- 25 No polluted and / or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water’s drains or watercourses.
- 26 The development must be constructed with finished floor levels a minimum of 300mm above the applicable flood level of 100.9 metres to Australian Height Datum.
- 27 The Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water’s requirements.
- 28 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 watercourse.

Native Vegetation

- 29 Prior to the commencement of any building and works on the land under this permit, the permit holder must advise all persons undertaking the vegetation removal or works on site of all relevant conditions of this permit.

Offsets required

- 30 In order to offset 0.591 hectares of native vegetation and 14 scattered trees with a strategic biodiversity score of 0.294 approved for removal as part of this permit, the Applicant must provide:
- (a) a general offset of 0.027 general biodiversity equivalence units within the three nominated land conservation areas, and to the extent that this cannot be achieved or that there is any remainder, within the Port Phillip and Westernport Catchment Management Authority area or the Whitehorse City Council municipal district with a minimum strategic biodiversity score of 0.290.
 - (b) a specific offset of 0.448 specific biodiversity equivalence units of habitat for Green Leek-Orchid within the three nominated land conservation areas, and to the extent that this cannot be achieved or that there is any remainder, within the Port Phillip and Westernport Catchment Management Authority area or the Whitehorse City Council municipal district.

Evidence of Offset

- 31 To provide the required offset, before the vegetation removal starts, the Applicant must either:
- (a) Provide to the Responsible Authority an allocated Credit Extract issued by the Department of Environment and Primary Industries Native Vegetation Credit Register that satisfies the required offset (Third Party Offset); and/or
 - (b) Commence management of the three nominated land conservation areas or another identified offset site in accordance with an Offset Plan endorsed by the Department of Environment, Land, Water and Planning (First Party Offset), to the satisfaction of the Responsible Authority. The Offset Plan must include:
 - (i) a description of the site, including a map of where the offset will be provided;
 - (ii) a schedule of the works required to achieve the offset over a 10-year period, detailing:
 - management actions to be performed (e.g. fencing, weed control, pest control, revegetation);
 - the person(s) responsible for implementing the specified management actions;
 - the timeline for the implementation of the management actions;
 - the method by which the management actions will be undertaken;

- the standard to which the management actions will be undertaken.
- 32 When approved, the Offset Plan will be endorsed and will then form part of the permit. All provisions, requirements and recommendations set out in the approved Offset Plan must be implemented and complied with at all times, within the timeframes and in the manner set out in the Offset Plan and to the satisfaction of the Responsible Authority.
- 33 If the Offset Plan does not specify a timeframe for carrying out any provision, requirement or recommendation, that provision, requirement or recommendation must be carried out without reasonable delay, having regard to any seasonal requirements or relevant climatic conditions and continue to be carried out to the satisfaction of the Responsible Authority.
- 34 Every year, for ten years after the Responsible Authority has approved the Offset Plan, the permit holder must provide notification to the Responsible Authority of the management actions undertaken towards the implementation of the Offset Plan. An offset site condition statement, including photographs, must be included in this notification.

Conservation Management Plan

- 35 Prior to the commencement of any works, a Conservation Management Plan must be prepared to the satisfaction of the Responsible Authority by a suitably qualified ecologist. The Conservation Management Plan must be consistent with any offset plan prepared pursuant to Condition 31 of this permit, and must specify measures to ensure the ongoing protection and enhancement of the ecological values of the three nominated land conservation areas, including the following:
- (a) The protection of the land conservation areas during construction works, including any necessary fencing to control access.
 - (b) Ongoing pest plant and animal control.
 - (c) A planting regime incorporating indigenous species of local provenance (which may be comprised wholly or partly by planting required to be provided by way of the native vegetation offset under condition 30).
 - (d) The location and design of pedestrian pathways and seating within the nominated land conservation areas.
 - (e) Any other measures deemed appropriate as a means of protecting and enhancing the ecological values of the nominated land conservation areas.

When approved, the Conservation Management Plan will be endorsed and will then form part of the permit. All provisions, requirements and recommendations set out in the approved Conservation Management Plan

must be implemented and complied with at all times, within the timeframes and in the manner set out in the Conservation Management Plan.

Amenity

- 36 The amenity of the area must not be unreasonably detrimentally affected by the use or development, through:
- (a) Transportation of materials, goods or commodities to or from the land.
 - (b) Appearance of any building, works or materials.
 - (c) Emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (d) Presence of vermin.
 - (e) In any other way.
- 37 All external lights must be of a limited intensity to ensure no nuisance is caused to adjoining or nearby residents and must be provided with approved baffles, so that no direct light or glare is emitted outside the site. External lighting must also be designed and located to minimise adverse impacts on nocturnal wildlife to the satisfaction of the Responsible Authority.

Time Limits

- 38 Except for the temporary fencing required by Condition 5, this permit will expire if one of the following circumstances applies:
- (a) The use is not commenced within five years from the date of issue of this permit;
 - (b) The development is not commenced within three years from the date of issue of this permit;
 - (c) The development is not completed within five years from the date of issue of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

---END OF CONDITIONS---