

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P185/2021
PERMIT APPLICATION NO. WH/2020/201

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit

APPLICANT	Gaurav Bhutani
RESPONSIBLE AUTHORITY	Whitehorse City Council
RESPONDENTS	Ann Quinn & Robin Barrett and Others
REFERRAL AUTHORITY	Transport for Victoria
SUBJECT LAND	139 Canterbury Road BLACKBURN VIC 3130
HEARING TYPE	Hearing
DATE OF HEARING	1 November and 25 November 2021
DATE OF ORDER	13 January 2022
CITATION	Bhutani v Whitehorse CC [2022] VCAT 11

ORDER

Amend permit application

- 1 Pursuant to 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:	Tarawill Building Design
Drawing numbers:	TP-01 to TP-12 inclusive
Dated:	All dated 12/07/2021

- 2 In application P186/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application WH/2021/201 a permit is granted and directed to be issued for the land at 139 Canterbury Road, Blackburn in accordance with the endorsed plans and the conditions set out in Appendix A.

The permit allows:

Construction of a second dwelling, addition and alterations to the existing dwelling and reduction in the provision of car parking

Laurie Hewet
Senior Member

APPEARANCES

For applicant	Mr M Waldon, town planner
For responsible authority	Mr G Simkus, town planner
For referral authority	No appearance
For respondents	Ms R Barret, Dr A Quinn and Ms D Tribe. Mr M Taafe, appeared on behalf of the Blackburn Village Residents Association Inc.

INFORMATION

Description of proposal	Construction of a second dwelling, additions and alterations to the existing dwelling.
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	Whitehorse Planning Scheme
Zone and overlays	Clause 32.09: Neighbourhood Residential Zone (NRZ1) Clause 42.03: Significant Landscape Overlay (SLO2) The review site abuts a road in a Road Zone Category 1.
Permit requirements	Clause 32.09-6: A permit is required to construct a dwelling if there is at least one dwelling existing on the lot. A development must meet the requirements of Clause 55. Clause 3 of schedule 2 to Clause 42.03: A permit is required to: <ul style="list-style-type: none">• Vary the setback of the upper floor of the proposed dwelling as measured from Lalwa Street• Vary the setback of the upper floor from the eastern boundary.• Construct or carry out works within 4m of a tree that requires a permit for its removal. Clause 52.06: A permit is required to reduce the number of car parking spaces required under Clause 52.06-5.

Land description

The review site is located on the north-east corner of Canterbury Road and Lalwa Street. The site has a frontage of 10.6 metres towards Canterbury Road, a splayed corner measuring 6.48 metres and a side boundary dimension of 38.56 metres to Lalwa Street. The site has an area of 647.14sqm

A single storey brick dwelling having a frontage to Canterbury Road occupies the site.

Abutting the site to the east is a dwelling also fronting Canterbury Road. The dwelling is currently being used as a dental surgery. A paved car park is located to the rear of the surgery and abuts the review site's eastern side boundary.

On the south side of Canterbury Road, directly opposite the review site is another medical centre. Diagonally opposite the review site is the eastern edge of an activity centre which runs along the south side of Canterbury Road, and to the west of Main Street, it straddles the north side of Canterbury Road.

Opposite the review site on the north western corner of Canterbury Road and Lalwa Street is a dual occupancy development.

Abutting the review site to the north is a single storey dwelling.

The review site enjoys excellent access to a wide range of services and facilities. Canterbury Road is a divided main road (zoned RDZ1). Public Transport is widely available. Passive and active public open space is distributed throughout the area. The Blackburn Lake Sanctuary is about 1 kilometre to the north east, the Blackburn Creeklands Reserve is about 500 m to the north. The Wandiligong Sanctuary is located on Canterbury Road, about 150 m to the east of the review site and extends north into the residential hinterland.

Tribunal inspection

I inspected the site and the surrounding neighbourhood after the hearing.

REASONS¹

- 1 This is an application to review the decision of the Responsible Authority to refuse permission for the construction of a second dwelling at 139 Canterbury Road, Blackburn. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:
 1. The proposal is contrary to the Local Planning Policy Framework contained in the Whitehorse Planning Scheme, particularly in relation to the following Clauses:
 - a) Clause 21.05 (Environment);
 - b) Clause 21.06 (Housing);
 - d) Clause 22.03 (Residential Development);
 - e) Clause 22.04 (Tree Conservation);
 2. The built form, bulk and scale of the development is excessive with limited landscaping opportunity and is an over development of the site.
 3. The proposal fails to meet the landscape character objective and the decision guidelines of the Significant Landscape Overlay, Schedule 2.
 4. The development fails to meet the following standards of Clause 55
 - B1 (Neighbourhood Character)
 - B7 (Building Height)
 - B17 (Side and Rear Setbacks)
 - B22 (Overlooking)
 - B28 (private Open Space_
 - B31 (Detailed Design)
 5. The proposal does not provide appropriate vehicle access failing to meet Design Standards of Clause 52.06-9
- 2 After the Council's refusal of the application amended plans were prepared and circulated in accordance with the Tribunal's practice note (PNPE9). The Council maintains its opposition to the proposal on the grounds of refusal stated above.
- 3 There are objectors to the application. The objectors broadly support the Council's grounds of refusal. The objectors also raise concerns that the proposal will set an undesirable precedent for the Bush Environment Precinct and in addition, its approval will erode the boundary of the Bush

¹ The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

Environment Precinct where it abuts the residential area to the west which is affected by a different Significant Landscape Overlay (SLO9). Concerns are also expressed about the proposal's impacts on car parking and traffic safety. The objectors also share the Council's concerns about aspects of the proposal's design, setbacks, landscaping and visual impacts.

- 4 The application is a repeat appeal. An earlier application (the *Peluso* case) for a similar proposal (construction of a second dwelling) was refused by the Council. On review, the Council's refusal was affirmed by a decision of the Tribunal.²
- 5 The Council and the objectors submit that the Tribunal's earlier decision should be accorded significant weight because there has been no significant change in the application, the site's context, the relevant planning policy or in the interpretation of the facts or the law relevant to the Tribunal's consideration.
- 6 Subject to the adoption of some changes to the design, the proposal is acceptable.
- 7 The review site is located on a corner and has a main road frontage. It is located proximate to an activity centre and enjoys access to a wide range of services and facilities including public transport. The site is well located in a strategic sense. Consequently, the site is suitable for some form of modest redevelopment. The construction of a second dwelling is consistent with that outcome.
- 8 The concerns expressed by the Council and the objectors about the proposal's response to the Bush Environment character precinct and the provisions of SLO2, are largely unfounded. The proposal does not set a precedent for future development within the precinct because the site's physical context, which is strongly influenced by its main road frontage, corner location and proximity to the activity centre, is relatively unusual. The proposal does not involve the removal of any significant vegetation. The proposal provides for landscaping over and above that already on the site, in line with Council policies.
- 9 My reasons for granting a permit are set out below.

REPEAT APPEALS

- 10 This application is a repeat appeal. An earlier application (the *Peluso* case) for a similar proposal (construction of a second dwelling) was refused by the Council. On review, the Council's refusal was affirmed by the Tribunal
- 11 The principles for dealing with repeat appeals have been established and accepted over a long period.
- 12 Broadly, the principles establish that while the Tribunal is not bound by the first decision of the Tribunal, weight ought to be accorded to that decision.

² *Peluso v Whitehorse CC 2016 VCAT 991 (27 June 2016)*

In the absence of any material change of circumstances of the land, and its surrounds, changes in planning policy and/or changes in the interpretation of the facts or law relevant to the Tribunal's consideration, or changes in the proposal itself, the first decision of the Tribunal should be followed.

- 13 Importantly however, I am not bound by the previous Tribunal decision in respect to any or all its findings. It is necessary for me to consider the new application on its merits. It is a matter for me to decide what weight is appropriately accorded the Tribunal's previous decision.
- 14 This approach to the consideration of repeat appeal is discussed in some detail in the decision of His Honour Garde J in *Zumpano v Banyule*³ in which His Honour made the following pertinent observations:

Repeat applications can come in many forms. Approval may be sought of the same use and development as was sought in a previous application. They may contain one or more correcting features, or seek approval for a development entirely different from that for which approval was sought in an earlier application.

In *Rozen v Macedon Ranges Shire Council*,⁴ the Court concluded:

The weight to be given to the various considerations which may be relevant on the one hand, and to particular facts bearing on those considerations on the other hand, is not fixed by the planning scheme but is essentially a matter for the decision maker.⁵

This passage confirms that the weight to be given to the relevant considerations, and to the particular facts bearing on those considerations, is essentially a matter for the Council and the Tribunal.

This applies equally in the case of repeat applications. Planning decisions in earlier applications affecting the subject or surrounding land are often relevant considerations in the assessment of a later application. They will almost certainly be relevant when the same use and development of the same land is sought in both the earlier and later applications. It is for the later decision-maker to determine what weight should be given to the earlier decision. Assessment of the significance of correcting features in the context of a proposed use and development is pre-eminently a planning and not a legal matter.

- 15 In the current case, the proposal adopts a similar but not identical form and typology to that previously considered by the Tribunal. It is proposed to retain the existing dwelling on the site and to construct a double storey dwelling to the rear of the retained dwelling facing the side street. This was the approach adopted by the applicant in *Peluso*.

³ *Zumpano v Banyule City Council* [2016] VSC 420

⁴ [2010] VSC 583.

⁵ *Ibid* [172] (citations omitted); approved in *1045 Burke Road* [2015] VSCA 27 [32], [102].

- 16 In *Peluso* the Tribunal found the proposal was unacceptable primarily on neighbourhood character grounds. There were specific aspects of the proposal about which the Tribunal was critical. The Tribunal said:

My concern relates to the presentation and siting of proposed Dwelling 2 and the proposed garage door to the Dwelling 1 car space within the Lalwa Street streetscape. The proposed Dwelling 2 garage is setback 3 metres from the street, with the porch sitting forward of the garage (with a 2.4 metres setback), and the proposed living room front wall is setback 5 metres with the attached garage door of Dwelling 1 setback 5.5 metres. The siting of Dwelling 2 and the attached garage door of Dwelling 1 (accessing a carport structure) with the associated driveways is uncharacteristic of the Bush Environment Precinct. The visual impact of proposed Dwelling 2 (combined with the garage door of Dwelling 1) will not be mitigated by the landscape response. I consider that the positioning of the new built form relatively close to the Lalwa Street frontage will result in a built form presentation that will not retain an ‘inconspicuous profile’ or a ‘tree dominated landscape’ as required by the SLO2 objectives. I therefore do not think that the proposed site coverage of 38.4% (compared to the as-of-right site coverage of 33% under the SLO2 permit triggers) is justified.

The presentation of Dwelling 2 in the Lalwa Street streetscape also does not contribute to the preferred Bush Environment character where buildings ‘nestle’ into the landscape and are ‘subservient’ to vegetation. Proposed Dwelling 2 is also not sited “to reflect the prevailing front, rear and side setbacks” of the area. I do not consider that the proposed site coverage of 38.4% meets the preferred character statement that, “Buildings and hard surfaces will occupy a very low proportion of the site.”⁶

- 17 Since the Tribunal’s decision in *Peluso* there has been no significant change to the relevant planning scheme provisions and/or changes in the interpretation of the facts or law relevant to the Tribunal’s consideration.
- 18 The site’s physical context is also largely unchanged except that the property abutting the review site to the east, which was previously a dwelling, has been converted to a medical centre (dental clinic). A paved car park is located to the rear of the clinic and abuts the review site’s eastern side boundary.
- 19 The conversion of the abutting dwelling to the east is relevant because it introduces a non-sensitive interface to the review site’s long side boundary.
- 20 My assessment of the proposal in its current form is set out below. An assessment of the proposal’s response to the previous Tribunal’s criticisms, to the extent they are relevant are incorporated in my findings.

⁶ *Peluso* op.cit paragraphs 23 and 24.

BASIS OF DECISION

21 The parties in this case provided me with detailed descriptions of the review site and the surrounding area, the proposal, the relevant planning scheme provisions and policies.

22 It is not necessary for me to repeat that information other than to record that:

- The review site is zoned NRZ1(Bush Environment Areas). There is no maximum building height specified in the schedule. The maximum building height in the zone is 9.0m and two storeys. A permit is required to construct a dwelling if there is at least one dwelling existing on the lot. A development must meet the requirements of Clause 55. The schedule to the zone contains varied Clause 55 standards for B8, B9, B13, B17, B18, B28 and B32.
- The review site is affected by the SLO2 (Blackburn Area 2). A permit is required to remove, destroy or lop vegetation and for buildings and works where nominated requirements are not met. A permit is required under SLO2 for buildings and works varying the setback of the upper floor of the proposed dwelling from the side street and the eastern boundary, and for works within 4m of a tree that requires a permit for its removal. No vegetation that requires a permit for its removal is proposed to be removed.
- The site is in a limited change area under Clause 21.05. Strategies for these areas are at Clause 22.03-4.
- The site is in a Bush Environment precinct under Clause 22.03-5. The preferred character statement is:

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

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

This precinct is identified for the lowest scale of intended residential growth in Whitehorse (Limited Change area) and the preservation of its significant landscape character and environmental integrity is the highest priority.

- Relevant policies include those at Clauses 15, 16, 21.05, 21.06, 22.03 and 22.04.
- 23 The Council and the objectors submit that the proposal is not acceptable primarily because it is not respectful of the preferred character for the Bush Environment Precinct. They also submit that the landscape character objectives of SLO2 which applies to and reinforces the preferred character of the Bush Environment Precinct, are not met.
- 24 The Council has undertaken a comparative analysis of the current proposal against the proposal previously considered in *Peluso*. As a result of that analysis, it submits that the current proposal seeks four (4) bedrooms (2 previously proposed), it provides two garaged spaces not one, it is positioned closer to all side boundaries and a landscape plan has not been submitted. The Council further submits that the current proposal provides less opportunities for landscaping.
- 25 Consequently, the Council submits that the proposal's presentation to the side street (Lalwa Street) is more prominent than that previously found to be unacceptable. In the Council's submission the proposal will:
- Not result in the dominance of vegetation cover in keeping with the bush character environment.
 - Not incorporate a reasonable proportion of the lot free of buildings.
 - Not result in a tree dominated landscape.
 - Not result in an inconspicuous profile nor will it result in a tree dominated landscape.
 - Is too aggressive in terms of the extent of hard surfaces associated with accessways to Lalwa Street, and exhibits a prominent second floor element, and has virtually no separation between the existing dwelling.
- 26 The Council further submits that the proposal does not provide an acceptable internal layout. The Council identifies poor connection between the living area of the existing dwelling and the proposed secluded open space. The loss of northern sunlight to the retained dwelling is also identified as a poor outcome.
- 27 The objectors broadly support the Council's criticisms of the proposal but further submit that the grant of a permit will set an undesirable precedent for development within the Bush Environment Precinct and the area affected by SLO2. They submit it is imperative that the integrity of the precinct not be compromised by unsympathetic developments eroding its edges.
- 28 The objectors also submit that insufficient space is made available on site for effective landscaping. Criticism is also levelled at the proposed planting schedule. Concerns are expressed about the loss of wildlife habitat.

Findings

29 For the reasons I have outlined previously, it is not my role in this matter to carry out a comparative analysis of the proposal considered by the Tribunal in *Peluso* against the proposal that is now before me.

30 While the Tribunal's decision in *Peluso* is relevant to my consideration of the current proposal, I am required to assess the proposal on its own merits. I am not required to form a view about whether this proposal is more or less acceptable than the previous proposal. I am required to decide whether this proposal is acceptable.

31 This proposal is acceptable for the following reasons.

- The combination of the zoning of the land, the application of the SLO2 and the site's inclusion in the Bush Environment Precinct and limited change area, does not amount to a prohibition on development in this locality.
- The review site exhibits several locational attributes which make it well located in policy terms and renders it suitable for some form of development. The site is located on a corner and has a main road frontage. It is located proximate to an activity centre and enjoys access to a wide range of services and facilities including public transport.
- The construction of a second dwelling on the site is consistent with the objectives for minimal change areas.
- There is a pronounced difference between the character of Lalwa Street and other streets within the Bush Environment Precinct. Lalwa Street does not exhibit those features of the Bush Environment Precinct to the same extent as in other parts of the Precinct. A consideration of the proposal's contribution to the preferred character of the precinct will appropriately have regard to the review site's immediate context.
- The review site currently makes little contribution to the preferred character of the Precinct. The presentation to Lalwa Street is primarily a high, solid, side boundary fence. There is therefore an opportunity to achieve a superior contribution to the preferred character of the neighbourhood.
- The proposal presents as a conventional, double storey dwelling in the Lalwa Street streetscape. The retention of the existing dwelling retains the site's existing contribution to the streetscape character of Canterbury Road. Its maximum overall height of 7.7m is well below the 9.0m maximum height in the NRZ1.
- The proposal demonstrates substantial compliance with the standards and all the objectives of Clause 55, including the varied standards in the schedule to the NRZ1. The minor variation from the varied site

coverage standard (40%) is acceptable in the context that the proposal generously exceeds the modified permeability standard and a Garden Area of 50% is proposed. A site coverage of about 44% (which will be reduced following the removal of the garage for dwelling 1 which I discuss below) is very low in this suburban context.

- Importantly the need for a permit to construct a building under the SLO2 where nominated setbacks and other built form features are not met, does not amount to a requirement for those setbacks to be achieved. The need for a permit generates a consideration of the acceptability of the setbacks that are proposed. Having regard to the proposal's generous compliance with Clause 55 standards (including the varied standards in the schedule to the zone) the proposal is acceptable with respect to these matters. I reiterate my findings about the acceptability of the site coverage.
- The proposal provides for landscaping opportunities to complement retained vegetation and to assist with the integration of the proposal into the streetscape. Landscaping areas are available throughout the site including in the side street setback and in the areas of secluded private open space. An appropriate selection of species can be achieved through the preparation and approval of a landscaping plan.
- The proposal does not involve the removal of vegetation that requires a permit for its removal under the SLO2. The retention of the existing vegetation on the site is consistent with the objectives of that overlay.
- The applicant's arborist report assessed the impact of the proposal on the retained vegetation including vegetation on neighbouring sites. The Council's arborist assessed that report and does not oppose the grant of a permit.

32 During the hearing the applicant advised me that it is now proposed to remove the garage for the retained dwelling and to convert that space into an open car space. I consider that to be an appropriate outcome because it addresses in part some of the concerns about the visual prominence of the proposal in the streetscape and also the loss of sunlight to a north facing window.

33 I have imposed a condition requiring that change to be made.

34 I have also considered whether changes are required to the internal layout of the existing, retained dwelling to improve connection between the internal living spaces and the rear secluded private open space.

35 On balance I have decided that the proposal is acceptable without requiring that change primarily because the dwelling enjoys access to open space in the front setback from internal living areas. That feature of the proposal

combined with the removal of the garage and its conversion to an open car space, ensures that the relevant objective of Clause 55.05-4 is met.⁷

- 36 Concerns about the granting of a permit establishing an undesirable precedent and eroding the edges of the SLO2 and Bush Environment Precinct are unfounded. For the reasons I have outlined above the proposal will introduce a conventional style dwelling into a residential street and will do so in a manner that achieves an acceptable fit into the preferred character of this neighbourhood.
- 37 Additionally, the review site's physical context and locational attributes (main road frontage, corner site, immediate proximity to an activity centre) which have informed my conclusion about the acceptability of this proposal are not elsewhere repeated in the precinct. Any future application for development in the precinct will need to be assessed having regard to the context of that site and will not be able to gain any significant benefit from the granting of this permit.
- 38 The provision of vehicle access to the site via the side street is appropriate. Any increase in vehicle movement volumes associated with one additional dwelling on the site will be imperceptible. The provision of one car parking space for the retained three bedroom dwelling is acceptable in a locality where ample, unrestricted on street car parking is available.

CONCLUSION

- 39 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be aside and a permit issued.
- 40 In deciding the conditions to be included on the permit I have had regard to the "without prejudice" conditions provided to the Tribunal by the responsible authority and the submissions and evidence of the parties in addition to the matters which arise from my reasons.

Laurie Hewet
Senior Member

⁷ The objective is: To provide adequate private open space for the reasonable recreation and service needs of residents

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	WH/2020/201
LAND:	139 Canterbury Road BLACKBURN VIC 3130

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of a second dwelling, addition and alterations to the existing dwelling and reduction in the provision of car parking.

CONDITIONS:

Amended Plans

- 1 Before the development starts, or any trees or vegetation are removed, amended plans in a digital format (*.PDF), 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 VCAT Amended Plans dated 12-07-2021 drawn by Tarawill Building Design, circulated on 16 September 2021, but modified to show:
 - (a) The garage for the retained dwelling 1 deleted and replaced with an open car parking space.
 - (b) The floor levels for garages amended to ensure that vehicle access is to conform to the Australian Standards for Off-Street Parking (AS/NZS 2890.1:2004) to the satisfaction of the Responsible Authority.
 - (c) Swept path diagrams using a B85 design vehicle template (AS 2890.1 2004) prepared by a suitably qualified traffic engineer using industry-recognised swept path software to be provided to demonstrate compliant vehicle turning movements to the satisfaction of the Responsible Authority.
 - (d) The locations of Tree Protection Zones described in Condition 5, with all nominated trees clearly identified and numbered on both site and landscape plans, and the requirements of Conditions 5 and 6 to be annotated on the development and landscape plans.
 - (e) A notation indicating that all obscured glazing be manufactured obscured glass. Obscure film being applied to clear glazing will not be accepted.
 - (f) A detailed schedule of all external cladding colours, textures, finishes, and materials.

All of the above must be to the satisfaction of the Responsible Authority.
Once approved these plans become the endorsed plans of this permit.

Layout must not be altered

- 2 The layout of the site and the size, design and location of the buildings and works permitted must always accord with the endorsed plan and must not be altered or modified without the further written consent of the Responsible Authority.

Landscaping

- 3 No building or works must be commenced (and no trees or vegetation shall be removed) until a landscape plan prepared by a suitably qualified and experienced person or firm has been submitted to and endorsed by the Responsible Authority. This plan when endorsed shall form part of this permit. This plan shall show:
 - (a) A survey of all existing vegetation, abutting street trees, natural features and vegetation.
 - (b) Buildings, outbuildings and trees in neighbouring lots that would affect the landscape design.
 - (c) Planting within and around the perimeter of the site comprising trees and shrubs capable of:
 - i providing a complete garden scheme,
 - ii softening the building bulk,
 - iii providing some upper canopy for landscape perspective,
 - iv minimising the potential of any overlooking between habitable rooms of adjacent dwellings.
 - (d) A schedule of the botanical name of all trees and shrubs proposed to be retained and those to be removed incorporating any relevant requirements of the Responsible Authority.
 - (e) The proposed design features such as paths, paving, lawn and mulch.
 - (f) A planting schedule of all proposed vegetation (trees, shrubs and ground covers) which includes, botanical names, common names, pot size, mature size and total quantities of each plant.

Landscaping in accordance with this approved plan and schedule shall be completed prior to the occupation of the development.

- 4 Landscaping in accordance with the approved Landscape Plan must be completed before the building is occupied. The garden areas shown on the endorsed plan and schedule shall only be used as gardens and shall be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any tree or shrub be removed or destroyed it must be replaced by a tree or shrub of similar size and variety to the satisfaction of the Responsible Authority.

Tree Protection

- 5 Prior to the commencement of any building and or demolition works on the land, a Tree Protection Zone (TPZ) must be established and maintained in accordance with a tree protection report approved by the responsible authority. The tree protection measures must remain in place during and until completion of all buildings and works including landscaping, to the satisfaction of the Responsible Authority.
- 6 Tree protection zone measures are to be established in accordance with Australian Standard 4970-2009 and including the following:
 - (a) Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres held in place with concrete feet.
 - (b) Signage placed around the outer edge of perimeter fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.
 - (c) Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary watering in summer months as required.
 - (d) No excavation, heavy machinery, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the TPZ unless otherwise approved within this permit or further approved in writing by the Responsible Authority.
 - (e) All supports, and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
 - (f) No trenching is allowed within the TPZ for the installation of utility services unless tree sensitive installation methods such as boring have been approved by the Responsible Authority.
 - (g) Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
 - (h) Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ and must be restored in accordance with the above requirements at all other times.

Permit Expiry

- 7 This permit will expire if one of the following circumstances applies:
 - (a) the development is not commenced within three (3) years from the date of issue of this permit;
 - (b) the development is not completed within five (5) years from the date of this permit.

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

- End of conditions -