VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P510/2020  Permit Application no. TPA/45451 |
| CATCHWORDS | |
| Section 81 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Whether time for commencing and completing development should be extended. | |

|  |  |
| --- | --- |
| APPLICANT | Hansworth Land Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 149 Hansworth Street  MULGRAVE VIC 3170 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 10 November 2020 |
| DATE OF ORDER | 16 November 2020 |
| CITATION | Hansworth Land Pty Ltd v Monash CC [2020] VCAT 1282 |

# Order

### Amend name

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act* *1998* the application is amended by changing the name of the applicant to:

Hansworth Land Pty Ltd

### Extension of time granted

1. In application P510/2020 the decision of the responsible authority is set aside.
2. Pursuant to s 85(1)(f) of the *Planning and Environment Act 1987*, the time within which the development described in Permit No. TPA/45451 is to be started is extended to 8 November 2021 and the time within which the development is to be completed is extended to 8 November 2024.

|  |  |  |
| --- | --- | --- |
| **Juliette Halliday**  **Member** |  |  |

# Information

|  |  |
| --- | --- |
| Description of proposal | Request to extend time for commencement (and completion) of the development under planning permit TPA/45451 (which allows the development of two residential apartment towers (including podium) of 9 and 10 storeys in height and 30, two or three-storey townhouses and associated landscaping and works. |
| Nature of proceeding | Application under section 81(1)(a) of the *Planning and Environment Act 1987* – to review the refusal to extend the time within which any development or use is to be started or any development completed. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone - Schedule 2 (**GRZ2**) |
| Permit requirements | Clause 32.08-4 - Construction of two or more dwellings on a lot |
| Land description | The subject land is a vacant site accessed from Hansworth Street, Mulgrave. It is irregular in shape, with an overall area of 1.67 hectares. The land slopes approximately 8.2 metres from the south-east to the north-east.  To the north of the land is the Monash Freeway. Land to the south and west is residential in nature, typically developed with one and two-storey detached dwellings. To the east (located between the subject land and the Monash Freeway) is a two-storey aged care facility. To the south east is the Waverly Gardens Shopping Centre and associated car parking. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. Hansworth Land Pty Ltd is the applicant in this matter. Under s 69 of the *Planning and Environment Act 1987* (**Act**), the owner of the land asked the Monash City Council (**Council**) to extend Planning Permit TPA/45451 (**Permit**) which allows the development of two residential apartment towers and thirty townhouses at No. 149 Hansworth Street, Mulgrave (**land**).
2. Council refused to grant the request to extend the Permit. The applicant has applied to the Tribunal under s 81(1)(a) of the Act to review the Council’s decision.
3. The issue for determination in this matter is whether the time for carrying out and completing the development under the Permit should be extended.
4. Having regard to the relevant provisions of the Act, the Monash Planning Scheme (**Scheme**), the submissions of the parties and the documents filed with the Tribunal I have determined that the time to commence and complete the development allowed under the Permit should be extended. My reasons for reaching this conclusion follow.

## Procedural issues & rulings

1. The application was dealt with ‘on the papers’ with written submissions, documents and submissions in reply filed by the parties to the proceeding.[[2]](#footnote-2)
2. The applicant sought to amend the name of the entity that made the extension of time request to ‘2 Ramleh Pty Ltd’, and to amend name of the applicant in this proceeding to ‘Hansworth Land Pty Ltd’ (being the registered proprietor of the land). The Council consents to these requests. I have made the orders to change the name of the applicant in this proceeding, as requested. Given that ‘any person affected’ can apply under s 81(1)(a) of the Act to review a decision of the responsible authority to refuse to extend the time to start development, I can’t see the need to change the name of the entity that made the extension of time request and so I have declined to make an order doing so.
3. The applicant’s submission was supported by a planning assessment report prepared by Stuart McGurn of Urbis. I have taken the applicant’s submissions, and Mr McGurn’s report into consideration in reaching my conclusions in this matter. I have not treated Mr McGurn’s report as expert witness evidence (noting that there was no dispute between the parties regarding the status of Mr McGurn’s report).

## Background

1. The Permit was issued on 8 November 2017, at the direction of the Tribunal in *Pong Property Development Pty Ltd v Monash CC* (***Pong***).[[3]](#footnote-3) It allows the following:

The development of two residential apartment towers (including podium) of 9 and 10 storeys in total height and associated landscaping and works and of 30, two or three storey townhouses and associated landscaping works.

1. The Permit contains a condition which states that it will expire if the development is not started before 2 years from the date of issue and the development is not completed before 6 years from the date of issue. The Council’s understanding is that the applicant concedes that the development did not start before the expiry of the Permit and this is not contested by the applicant.[[4]](#footnote-4) This means that the permit expired on 8 November 2019.
2. On 6 February 2020, the applicants applied to the Council for an extension of time of two additional years to commence the development and three years to complete the development, with the time commencing from the date of approval of the request.
3. The Council refused to grant the extension based on what it says were substantial alterations to the Planning Policy Framework since the issue of the Permit, and the inconsistency of the development with policies, requirements and objectives in the Scheme relating to neighbourhood character and internal amenity. The grounds of refusal also state that if the application were lodged today it would be prohibited given the zoning of the land.
4. Relevantly, the following amendments to the Monash Planning Scheme (**Scheme**) were gazetted after the permit application was lodged with the Council, and before the application for review was determined by the Tribunal in *Pong*:
   1. Amendment VC110 was gazetted on 27 March 2017. Amongst other things, this Amendment introduced the minimum garden area requirements (**MGAR**) at clause 32.08-4 of the GRZ2 and the maximum building height and number of storeys requirements at clause 32.08-10 (11 metres, 3 storeys). The transitional provisions in the GRZ2 applied to the permit application to exempt it from the requirement to comply with the minimum garden area requirements and the height limit introduced by Amendment VC110;[[5]](#footnote-5)
   2. Amendment VC136 was gazetted on 13 April 2017. It inserted a requirement at clause 32.08-6 of the GRZ2 for apartment developments of five or more storeys to meet the requirements of clause 58 (Apartment Developments) and amended clause 55 (Two or more dwellings on a lot and residential buildings) to introduce new standards for apartments (clause 55.07 – Apartment developments). The transitional provisions at clause 32.08-6 applied to the permit application to exempt it from the from the requirements of the relevant amendments to clause 55, and clause 58; and
   3. Amendment VC139 was gazetted on 29 August 2017. Amongst other things, it introduced the references to the *Apartment Design Guidelines for Victoria* to various provisions of the Scheme (including clause 15.01-2S Building design).
5. In reaching its decision to grant the Permit in *Pong,* the Tribunal took into account these amendments to the extent that they were relevant to the exercise of its discretion, noting that when the Tribunal made its decision, the maximum building height and number of storey requirements and relevant requirements at clauses 55 and 58 did not apply to the permit application due to the transitional provisions (as already discussed).

## should the timeframes to carry out the development under the permit be extended?

1. One of the purposes of including a time limit in a permit to commence and complete a development is so that it will not survive unacted upon until it is revived after having become inappropriate.[[6]](#footnote-6) The Tribunal has previously recognised that it can be problematic to extend the life of a permit that is no longer appropriate.[[7]](#footnote-7) What was a reasonable outcome when a permit was first issued can become a poor outcome with the passage of time.
2. In determining an application for review under s 81(1)(a) of the Act regarding a request for an extension of time, the principles derived from the decision in *Kantor v Murrindindi SC*[[8]](#footnote-8) are relevant. They can be summarised as follows:
   1. Firstly, the applicant should advance some reason or material in support of the grant of the extension.
   2. Secondly, the responsible authority (or the Tribunal in review proceedings) may consider:
      1. Whether there has been a change of planning policy;
      2. Whether the landowner is seeking to ‘warehouse’ the permit;
      3. Any intervening circumstances that bear upon a grant or refusal;
      4. The total elapse of time since the permit was originally granted;
      5. Whether the time limit originally imposed was adequate;
      6. The economic burden imposed on the landowner by the permit;
      7. The probability of a permit issuing should a fresh application be made.
3. These principles are not mandatory considerations, nor are they exhaustive.
4. In *Island Investment Group Pty Ltd v Bass Coast SC*[[9]](#footnote-9) the Tribunal said that it should perhaps be emphasised, as it was in *Kantor* itself, that these so-called ‘Kantor principles’ are a set of non-exhaustive guiding principles. They are not a substitute for the ultimate discretion that needs to be exercised under the Act having regard to the facts and circumstances of a particular case. Moreover, different weight may apply to different principles in different cases.
5. In addition, the fact that a development may now be prohibited does not mandate a decision to refuse to extend the time to commence a development.[[10]](#footnote-10)
6. As to why an extension should be granted, the Applicant says that there has been a change in ownership of the land, a contract of sale in respect of which was executed on 12 November 2019, with the purchase settling on 21 August 2020. It says that a two-year extension of time will provide reasonable time to review the permitted development in light of market conditions.

## Consideration of kantor pinciples

### Whether there has been a change in planning policy

1. The parties referred to several changes to the planning scheme have occurred since the issue of the Permit on 8 November 2017, including the following:
   1. Amendment C125 (Part 1) – introduced changes to the Local Planning Policy Framework (amongst other things). There were no changes to the zoning of the land introduced by this Amendment;
   2. Amendment VC148 – implemented the new Planning Policy Framework (amongst other changes);
   3. Amendment VC154 – changed the Victorian Planning Provisions and amended clause 55.07 Apartment Developments (amongst other things);
   4. Amendment C125 (Part 2) – changed parts of the Local Planning Policy Framework. There were no changes to the zoning of the land introduced by this Amendment;
   5. Amendment VC169 – amended clause 15.01-5S (Neighbourhood character) amongst other things.
2. More specifically, Amendment C125 (Part 2) updated clauses 21.04 (Residential development) and 22.01 (Residential development and character policy). Under cause 22.01-4, the land is now within the ‘Garden City Suburbs (Northern)’ character area, the preferred future character statement for which states:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings…

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street…

…

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

…

1. The Council submits that the form, scale and intensity of the development would not be supported if assessed against the current planning policy framework. It asserts that the changes that have been introduced mean that the development will be incongruous with the preferred future character of the area and will result in an undesirable planning outcome. The applicant submits that the site and policy context has not changed in any substantive way since the Permit was granted. It submits that to the extent that the policy has been modified with respect to character, it does not overcome the rights reasonably accrued in the original consideration which contemplated the nature of the surrounding character in light of Amendment C125.
2. The changes to the Scheme which have occurred since the grant of the Permit (including those introduced through Amendment C125 (Part 2)) have resulted in in a change in emphasis of the Scheme, particularly in terms of neighbourhood character policy. Whereas at the time the Permit was issued, the land fell outside any of the neighbourhood character areas at clause 21.04).[[11]](#footnote-11) It is now within the Garden City Suburbs Northern Areas under clause 21.04 of the Scheme. Relevantly, clauses 21.04 and 22.01 now call for intensive, higher scale development and residential development to be directed to activity centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princess Highway) to assist to preserve and enhance garden city character (amongst other things).[[12]](#footnote-12)
3. For these reasons, I consider that the changes to the Scheme which have occurred since the issue of the Permit are a factor that weighs against the request to extend time to commence the development.

### Whether the landowner is seeking to warehouse the permit

1. The Council did not seek to rely on the permit holder seeking to warehouse the Permit in support of its refusal to extend the Permit. The applicant pointed out that this is the first request to extend the time for development to commence under the Permit. It also submitted that it is relevant that the land-owner made active steps to obtain endorsed plans and reports between the time when the Permit was granted and the expiry date, as follows:
   1. Plans under condition 1 on 23 April 2019;
   2. A wind assessment report, acoustic report and a sustainable management plan on 25 June 2019;
   3. A waste management plan on 14 October 2019; and
   4. A construction management plan on 24 October 2019 for early works.
2. Mr McGurn’s report states that a further construction management plan for the development was submitted to Council on 10 February 2020 but has not been approved.
3. I find that there is nothing before me to demonstrate that the applicant is seeking the ‘warehouse’ the Permit. This is a factor that weighs in favour of the extension sought.

### Whether there are any intervening circumstances

1. The Council submits that there are no intervening circumstances bearing upon grant or refusal.
2. In his report, Mr McGurn states that at the time of lodging the request for the extension of time there were no intervening circumstances or changes evident which would bear upon the grant or refusal of the request. Since then, he states that the Covid-19 health crisis has had a significant impact on the construction industry, residential sales transactions and the employment and economic health of Melbourne.
3. The applicant’s submissions are that the Covid-19 health crisis has more recently had a significant impact on the construction industry, residential sales transactions and the ability to commence works on the land under the Permit.
4. Given that the application to extend the Permit was made on 6 February 2020, before the Covid-19 pandemic began to impact the construction industry in Melbourne, I find that it is not a relevant factor which could have influenced the commencement of the development authorised under the Permit. I observe that it could be a relevant factor in terms of the duration of an extension to commence the Permit, but the applicant has asked in its submissions for the date of commencement of the Permit to be extended to 8 November 2021 and the date of completion to 8 November 2024.
5. I consider that the lack of any material or evidence regarding intervening circumstances which have caused the delay in commencing the development weighs against the grant of the extension.

### The total elapse of time since the permit was granted

1. The Council acknowledges that the total elapse of time since the Permit was granted is not unreasonable.
2. The Permit was issued on 8 November 2017, approximately three years ago. It could not be said that the Permit has been held for an unreasonably long period of time. The total elapse of time since the Permit was granted is not lengthy. This is the first extension of time sought. This is a matter that weighs in favour of the extension sought.

### Whether the time limit originally imposed was adequate

1. Amongst other things, the applicant submits that the original time limit under the Permit was inadequate considering the size, scale and complexity of the approved development under the Permit.
2. Mr McGurn’s report states that it is common for a ‘greater’ commencement period of 3-4 years to be authorised for major development approvals, or for extensions of time for commencement to be granted. He states that this is because of the quantum of tasks and the highly detailed nature of the tasks that occur following the grant of a permit, as follows:
   1. Undertaking necessary revisions to the permit plans that flow from the proposal, and securing approved ‘Condition 1’ plans under the permit:
   2. Approval of a construction management plan;
   3. Detailed architectural design and documentation and structural engineering considerations;
   4. Detailed services reports and design and approval with relevant authorities;
   5. Securing building permit;
   6. Preparation of project marketing material and marketing phase;
   7. Sale of apartments or townhouses of sufficient quantity to secure project finance (typically); and
   8. Site preparation and tendering, reviewing and awarding a building contract.
3. Whilst not impugning the time limit set on the commencement of development in the Permit, based on the facts and circumstances of this matter, I am persuaded that the time limit originally imposed for the commencement of the development could have been longer. In reaching this conclusion, I have taken into consideration the size and scale of the development, which is reasonably large. This is a factor that weighs in favour of the extension sought.

### The economic burden imposed on the landowner by the permit

1. The applicant submits that there has been a change in ownership of the land, a contract of sale in respect of which was executed on 12 November 2019, with the purchase settling on 21 August 2020. A change in ownership of land does not, of itself justify an extension of time, and the same considerations would usually apply whether there has been one owner or several owners.[[13]](#footnote-13) The applicant entered into a contract to purchase the land on 12 November 2019, after the Permit expired (on 8 November 2019), so based on the facts and circumstances of this matter, I have not been persuaded that the sale of the land to the applicant can reasonably be considered a major delaying factor in the commencement of the development.
2. Mr McGurn’s report states that in addition to the potential ‘loss’ of development approval under the Permit (which could no longer be granted), there would be the embedded loss of the land value struck in the sale transaction, relative to land that can no longer be developed in that manner. Whilst the new owner may have purchased the land at a price that reflected the ‘value’ of the Permit, based on the facts and circumstances of this matter, I do not consider that it would be appropriate to extend the commencement date of the Permit to circumvent the land owner from experiencing a financial loss a result of the expiry of the Permit.
3. Mr McGurn’s report also states that significant costs could also be anticipated to be incurred in obtaining a new planning approval in terms of fees, design costs and land holding costs. I am not persuaded that the Permit should be extended to avoid the costs of obtaining a new planning permit to develop the land, particularly where these are not costs which are an economic burden on the applicant imposed by a condition or requirement of the Permit itself.
4. The applicant asserts that there would be a severe economic burden imposed on the applicant by the lapse of the Permit and that the estimated cost of development is $66 million. In *Kantor*, Ashley J said in relation to this consideration:

… a stated objective of the legislation is to facilitate development in accordance with, inter alia, the provision of fair, economic and sustainable development of land. In this connection, I consider, the economic burden cast by a permit upon the owner of land could not necessarily be ignored. If the burden appeared to be considerable, it might prove a reason why the owner of land would hasten slowly, whilst intending to proceed with the development. There could be little advantage to the owner or the community in a development commencing promptly but stalling midway for economic reasons.

1. Given the size and scale of the development, the economic burden of the approved development is considerable, and in my view, it can’t be ignored. Based on the facts and circumstances of this matter, I consider that it is a reason why the owner of land may ‘hasten slowly’, whilst still intending to proceed with the development.
2. On this basis, I consider this to be a matter which weighs in favour of the extension sought.

### The probability of a permit issuing should a fresh application be made

1. The Council submitted that the fact that the development is now prohibited by the provisions of the GRZ2 militates heavily against an extension of time. It asserts that the fact that the two towers allowed under the permit will exceed the mandatory height limit by 6 and 7 storeys is clearly contrary to the changed planning regime (amongst other things).
2. For the purpose of assessing the probability of a permit issuing should a fresh application be made for the same development, the transitional provisions in the GRZ2 which applied to the original permit application would not now apply to a fresh permit application.[[14]](#footnote-14) This means that if the request to extend time was refused and a fresh application for a permit was then made it is not possible for the same permit to be granted because the development approved under the Permit is now prohibited. Mr McGurn acknowledges as much in his report, which states that the following provisions of the GRZ2 would prevent the permit from being granted again if a new permit for the development was sought:
   1. The maximum 3 storey and 11 metres building height requirements at clause 32.08-10; and
   2. The mandatory 35% MGAR at clause 32.08-4.
3. With respect to the MGAR, I note that the applicant also submits that 38.2 - 40.7% of the land would be attributable to garden area. This submission is somewhat inconsistent with Mr McGurn’s assessment. It appears that the development may not achieve the minimum 35% MGAR. This is because the driveways for Units 1-7 and the car parking area between Units 2 and 3 appear to have been included in the garden area calculation (as shown on the ‘Garden Area Plan’ submitted by the applicant).[[15]](#footnote-15) The garden areas in front of Units 16-20 also appear larger on the Garden Area Plan than they do in the Landscape Plan submitted by the applicant. Even if I am wrong about this and the mandatory MGAR is achieved by the development, a permit could not be granted if a fresh application was made for the development because it would be prohibited by the 3 storey and 11 metres building height requirement at clause 32.08-10 of the GRZ2.
4. I note that the Council submitted that the development would fall short of meeting the standards and objectives of clause 58 (Apartment developments) in a way that now makes the proposal unacceptable. Based on the facts and circumstances of this matter, I do not consider it necessary to make a finding about this issue in a situation where it is not even possible for a permit to be granted for the development allowed under the Permit, if a fresh application were made.
5. The certainty that a permit could not be issued should a fresh application be made is a factor which weighs against the extension sought. However, the Tribunal has previously extended a permit for something that has become prohibited,[[16]](#footnote-16) and prohibition is not necessarily fatal to a request to extend time to commence a development.[[17]](#footnote-17) The certainty that a permit would not issue if a fresh application were made is one factor to be considered when balancing the matters relevant to the exercise of the Tribunal’s discretion in this matter.
6. As previously discussed, the changes to the GRZ2 to introduce the maximum building height requirement and the MGAR were introduced with transitional provisions. The Permit was granted relying on the relevant exemptions from the building height requirements and the MGAR in the transitional provisions.[[18]](#footnote-18)
7. Based on the facts and circumstances of this matter, I do not consider that the certainty that a permit could not be issued should a fresh application be made is the determining issue, or that I am bound to refuse the request to extend the Permit because of it. This is because I consider the weight to be placed on this factor is diminished by:
   1. The changes to the GRZ2 to introduce the maximum building height and the MGAR having been in place at the time the Permit was issued; and
   2. The Permit having been granted relying on the relevant exemptions from the building height requirements and the MGAR in the transitional provisions.[[19]](#footnote-19)
8. In my view, the transitional provisions do not indicate that a request to extend time to commence a development should be refused because of the maximum building height requirements and the MGAR. In this case, I consider that it would lead to an unfair outcome to rely on the maximum building height requirements and the MGAR to justify the refusal of the first request to extend the Permit. This is particularly the case where the Permit was issued approximately 3 years ago, relying on the exemptions in the transitional provisions in the GRZ2 regarding the maximum building height requirements and the MGAR.
9. Whilst it may be appropriate in this case to extend the time to commence the development at the first request to do so, it is likely that more weight would be placed on the amendments to the GRZ2 regarding the maximum building height and the MGAR, the longer it takes to commence the development.

## conclusion

1. Balancing the matters relevant to the Tribunal’s discretion, I am persuaded that more time ought to be allowed for the owner of the land to proceed. Based on the facts and circumstances of this matter, I consider that it is appropriate to provide an extension of time under the Permit based on the following factors:
   1. I am unable to conclude that the change in planning policy justifies a refusal to grant the first request to extend the Permit. The issue of whether there has been a change in planning policy since the grant of the permit is one of the factors to be considered when balancing the matters relevant to the exercise of the Tribunal’s discretion in this matter. I am not persuaded that the change in emphasis in planning policy in terms of neighbourhood character necessitates reconsideration of the appropriateness of the development in the form approved under the Permit, such that I am bound to refuse the first extension of the Permit;
   2. There is nothing to indicate that the owner is seeking to warehouse the Permit;
   3. Steps have been taken to act on the Permit as demonstrated by the endorsement of plans and other documents required under the Permit by the Council;
   4. The Permit was granted approximately three years ago, so it has not been held for a long period of time;
   5. The economic burden associated with the Permit is significant, which may affect the timing of the commencement of the development;
   6. The development allowed under the Permit remains a reasonable outcome in a context where less weight is to be placed on the fact that a permit would not issue if a fresh application were made. This is because the changes to introduce the maximum building height requirement and the MGAR were in place at the time the Permit was granted. In addition, the Permit was granted relying on the exemptions from the building height requirement and the MGAR in the transitional provisions in the GRZ2;
   7. Whilst a first extension to a permit is not an automatic right, this is the first request to extend the Permit; and
   8. The owner is seeking an extension of two years from the date that the Permit expired to commence the development, (by 8 November 2021) which requires it to act on the Permit soon.
2. The Permit allowed for the completion of the development within six years from the date of issue (by 8 November 2023) presumably because of the large scale of the development. On the basis of the owner’s specific request for a further three years to complete the development (by 8 November 2024) I will extend the time to complete the development to 8 November 2024.
3. For the reasons given above, the decision of the responsible authority is set aside. I will order that the permit be extended to allow the development to commence by 8 November 2021 and to be completed by 8 November 2024.

|  |  |  |
| --- | --- | --- |
| **Juliette Halliday**  **Member** |  |  |

1. The submissions 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. [↑](#footnote-ref-1)
2. Written submissions on behalf of the responsible authority were filed by Planology and written submissions on behalf of the applicant were filed by Planning and Property Partners. [↑](#footnote-ref-2)
3. [2017] VCAT 1360. [↑](#footnote-ref-3)
4. Noting that the application for review form answers ‘no’ in response to the question ‘Has the development or a stage of the development started?’ [↑](#footnote-ref-4)
5. Noting that the permit application was originally lodged with Council on 13 July 2016. The relevant transitional provision is now at clause 32.08-15 of the GRZ2. I understand that at the date of the issue of the Permit the transitional provision was at clause 32.08-14 of the GRZ2. [↑](#footnote-ref-5)
6. See *A Genser and Associates (Aust) Pty Ltd v Yarra CC* [2004] 2640 at [46]. [↑](#footnote-ref-6)
7. See for example *A Genser and Associates (Aust) Pty Ltd v Yarra CC* [2004] 2640; *12 Fitzroy Street St Kilda Pty Ltd v Port Phillip CC* [1999] VCAT 1496 at [46]. [↑](#footnote-ref-7)
8. (1997) AATR 285. [↑](#footnote-ref-8)
9. [2018] VCAT 1634 at 11. [↑](#footnote-ref-9)
10. See *AMV Homes Pty Ltd v Moreland CC (Includes Summary)(Red Dot)* [2015] VCAT 1699. [↑](#footnote-ref-10)
11. Refer to *Pong* at paragraph [53]. [↑](#footnote-ref-11)
12. Refer to clauses 21.04-3 and 22.01-2 of the Scheme in this regard. [↑](#footnote-ref-12)
13. Refer to *First Watusi Pty Ltd v Port Phillip CC* [1998] VCAT 509; *Farag v Kingston CC* [2014] VCAT 608 and *Dromana Beach Pty Ltd v Mornington Peninsula SC* [2018] VCAT 1825. [↑](#footnote-ref-13)
14. Being the transitional provisions at clauses 32.08-6 and 32.08-15 of the GRZ2. [↑](#footnote-ref-14)
15. Driveways and car parking areas are excluded from the definition of ‘garden area’ at clause 73.01 of the Scheme. [↑](#footnote-ref-15)
16. For example, see *King Shine Pty Ltd v Bayside CC* [2016] VCAT 1490. [↑](#footnote-ref-16)
17. See *AMV Homes Pty Ltd v Moreland CC (Includes Summary)(RedDot)* [2015] VCAT 1699. [↑](#footnote-ref-17)
18. Being the transitional provisions at clauses 32.08-6 and 32.08-15 of the GRZ2. [↑](#footnote-ref-18)
19. Ibid. [↑](#footnote-ref-19)