VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1027/2019Permit application No. TPA/49820 |
| CATCHWORDS |
| Section 77 *Planning and Environment Act 1987,* Monash Planning Scheme, General Residential Zone - Schedule 3, neighbourhood character, building bulk, access, landscape, secluded private open space area, secluded private open space in front setback.  |
| APPLICANT | 384 Stephensons Road Pty Ltd |
| responsible authority | Monash City Council |
| RESPONDENT | VicRoads |
| SUBJECT LAND | 384 Stephensons Road, MOUNT WAVERLEY Vic 3149 |
| WHERE HELD | Melbourne |
| BEFORE | Alison Glynn, Member |
| HEARING TYPE | Hearing  |
| DATE OF HEARING | 18 October 2019 |
| DATE OF ORDER | 11 December 2019 |
| CITATION | 384 Stephensons Road Pty Ltd v Monash CC [2019] VCAT 1964 |

# Order

### Permit granted

1. In application P1027/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49820 a permit is granted and directed to be issued for the land at 384 Stephensons Road Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of three double storey dwellings.

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| **Alison Glynn****Member** |  |  |

# Appearances

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| For 384 Stephenson Road Pty Ltd | Mr Paul Little, town planner of Planning and Property Partners Pty Ltd.  |
| For Monash City Council | Mr James Turner, town planner. |
| For VicRoads | No appearance  |

# Information

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| Description of proposal | Construction of three, double storey dwellings and alteration of access to a Road Zone Category 1. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 3 (GRZ3)Vegetation Protection Overlay Schedule 1 (VPO1) |
| Permit requirements | Clause 32.08-6: construction of two or more dwellings on a lot in GRZ3.Clause 52.29: Alteration of access to a Road Zone Category 1 (RDZ1). |
| Land description | The site is located on the east side of Stephensons Road, Mount Waverley. The site has a 16.76 metre frontage, depth of 45.63 metres and site area of 732 square metres.The site is occupied by a single storey brick detached dwelling. There is an existing 1.83 metre wide drainage and sewerage easement along the east (rear) boundary. The site has a fall of 1 metre from the north-west to south-west corner of the site. There is a Melaleuca growing in the frontage of the site.The site abuts three, two storey town houses to the north that is part of a six dwelling development, a single storey dwelling to the south and a two storey dwelling to the east. |
| Tribunal inspection | I undertook an unaccompanied inspection of the site and surrounds on 29 October 2019. |

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

## What is this proceeding about?

1. In October 2018 the tribunal affirmed a decision of Monash City Council to refuse to grant a planning permit for five, two storey attached townhouses over a basement car park on the review site. The tribunal refused this proposal principally because it found ‘the scale of the five attached dwellings that includes a first floor that largely mirrors the ground floor footprint will be a stark contrast to the existing multi-dwelling development in this neighbourhood’ and was too bulky an intrusion on the character of the area.[[2]](#footnote-2)
2. 384 Stephensons Road Pty Ltd, (the permit applicant[[3]](#footnote-3)) has now applied for a planning permit for three double storey townhouses with at grade car parking. The buildings remain attached, but only at ground level and form a more conventional townhouse form with a drive along its south, side boundary and ground level secluded private open space generally facing north. The council has refused to grant a planning permit for this new proposal because it maintains the new proposal still fails to provide a building massing that respects the character of the area and does not provide sufficient landscaping. It also submits the areas of private open space are inadequate.
3. The applicant has therefore asked the tribunal to review this 2019 decision of the council in relation to the current proposal.

## What are the key issues?

1. From submissions made I find there are several key questions I need to determine:
	* + - 1. Is the new proposal an acceptable response to the character of the area?
				2. Does the proposal result in unreasonable amenity outcomes to neighbours?
				3. Does the proposal provide sufficient private open space?
				4. Are the access arrangements acceptable?
2. I consider these questions in context of the current provisions of the Monash Planning Scheme and also having regard to findings of the tribunal in the 2018 decision.

## Procedural issues

### Corrected plans

1. During the hearing on 18 October 2019 it became evident that there was an error in the first floor layout plan of dwelling 1 as it did not correlate with the ground floor and garden area plans. The permit applicant acknowledged the issue and a need for the matter to be corrected to then enable the tribunal to finalise its consideration of the merits. I allowed the permit applicant to provide this additional information by order dated 18 October 2019. Subsequent to this the applicant circulated corrected plans on 1 November 2019, further clarified with elevations on 12 November 2019[[4]](#footnote-4). The council advised by email to the tribunal on 14 November 2019 that it made no further comment on the corrected plans.
2. I have considered these corrected plans in my decision making.

### Amendment C125 Part 2

1. Amendment C125 Part 2 to the Monash Planning Scheme was gazetted on 14 November 2019. The amendment altered the neighbourhood character policy at clause 22.01 and changed the zoning of the land from General Residential Zone – Schedule 2, to General Residential Zone – Schedule 3.
2. By order of 15 November 2019 I directed the council to explain in writing how any of the changes arising from the amendment may affect consideration of the proposal and invited the applicant to respond to this explanation and to provide additional information in writing on any impact of this amendment on the proposal.
3. As a result of this order the council provided a written submission on 29 November 2019 and the applicant provided a response on 6 December 2019. I have considered these additional written submissions in my consideration of the proposal.

## Decision making context

1. The tribunal has on many occasions set out tests to address a matter that has been the subject of a previous proceeding[[5]](#footnote-5). As set out in *Sprut* relevant factors to consider are:
* significant changes in the application itself;
* changes in the 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.
1. The parties agreed that in the case before me there are no significant changes in the circumstances of the land and its surrounds. It was also agreed that at the time of the hearing there had not been any material change to policy affecting the site or facts of law relevant to the interpretation of facts surrounding this site at that time. Since then Amendment C125 Part 2 has been introduced into the planning scheme. I address this below in context of the additional written submissions provided.
2. As commenting in *Sprut* a ‘correcting’ repeat appeal[[6]](#footnote-6) ‘is, where the Tribunal has refused an earlier application but indicated a modified form of development or changes that might be acceptable, and the repeat appeal comprises a genuine attempt to address those issues’[[7]](#footnote-7). In the 2018 decision the tribunal found the following[[8]](#footnote-8):
3. The development would have been a bulky intrusion in this neighbourhood that is inconsistent with the prevailing building scale in the area, noting that the scale of the five attached dwellings that included a first floor that largely mirrored the ground floor footprint would be a stark contrast to the existing multi-dwelling development in the neighbourhood.
	* + - 1. The length of the first floor (33.5 metres) with no breaks increased the bulk and scale of the built form throughout the site.
				2. There was sufficient space for planting in the frontage setback to maintain the garden character of this neighbourhood, however, the full enclosure of the frontage for the secluded private open space for Dwelling 1 would detract from the garden character of this area.
				3. The combination of the 3 metre wide driveway and pedestrian access to Dwellings 2-5 limited the ability for landscaping in the south setback. The inclusion of a 700mm wide garden bed abutting the south boundary for a length of 14.5 metres would not provide adequate space for landscape to soften the extent of building proposed in the 2018 proposal.
4. I address these considerations below, in context of the planning scheme provisions and policy as they now stand in the Monash Planning Scheme as a result of Amendment C125 Part 2.

## Is the new proposal an acceptable response to the character of the area?

1. Character for this area continues to be set out in clause 22.01 but this policy has changed, as has the zoning. The preferred character statement that was in place at the time of the 2018 decision stated:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees. Architecture, including new buildings and extensions, will, in the majority of cases, be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated[[9]](#footnote-9).

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrasts between buildings.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Neighbourhoods that are influenced by the naturalistic landscape of the creek valleys or on highpoints and ridges will have a predominance of native trees in both the public and private realm. Trees within lots to be redeveloped will be retained wherever possible in order to maintain the established leafy character. [[10]](#footnote-10)

1. The current policy at clause 22.01 includes the site in a Garden Suburban – Northern area with a preferred neighbourhood character statement that 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. **New development will complement the established buildings through consistent siting, articulated facades and use of materials**. New development will consider energy efficiency and sustainability principles. **Long expanses of blank wall will be avoided**, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. **New development will be screened from the street** **and neighbouring properties by well planted gardens** that will ensure the soft leafy nature of the street is retained. Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

**Buildings will be clearly visible through these low garden settings, and non-existent or transparent front fences**. Additional vehicle crossovers will be discouraged. 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. Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe[[11]](#footnote-11).

1. There are now also objectives and decision guidelines in GRZ3. The objectives are:
* To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.
* To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.
* To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.
* To support new development that locates garages and carports behind the front walls of buildings
1. The decision guidelines require me to consider:
* Whether the development provides an appropriate transition to built form on adjoining sites.
* The robustness of proposed materials and finishes.
* The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
* The location and number of vehicle crossovers.
* The impact of the development on nature strips and street trees.
* The location, quantity and species of vegetation provided
1. The schedule sets out varied requirements to the provisions of clause 55. The proposal exceeds most of these including that it has 35% site permeability, over the minimum 30%, has a site coverage of 38.5%, well below the maximum required 50% and meets all the varied side and rear setback requirements.
2. The physical context remains the same as set out in the 2018 decision. I do not repeat this in full, but of particular relevance affirm that:
* The context of this neighbourhood includes a mixture of single and two storey dwellings and intermittent multi-dwelling development, with a number of recent developments and others under construction nearby.
* There are many other multi-dwelling developments in the area, including to the immediate north at 380 Stephensons Road. This site contains six, two storey townhouses located around a central driveway with three dwellings abutting the review site.
* To the south of the site is a single storey brick dwelling at 386 Stephensons Road. This dwelling has a 2 metre brick fence along the frontage and paved parking area at the entrance of the driveway. Other features of this dwelling include an extended brick garage and shed abutting the common boundary.
* To the rear (east) is a two storey brick and weatherboard dwelling at 3 Howell Drive.
* Fencing along Stephensons Road is mixed and includes some higher fences to combat vehicle noise.
* Gardens in this area include a mixture of mature exotic trees and shrubs in front and rear gardens. The existing street trees also contribute to the garden character of the neighbourhood.
1. Addressing the preferred character for the area needs to be considered in context of this physical setting.

### Building presentation and setting

1. The council submits that while it considers the new proposal is an improvement on the 2018 proposal it remains too visually bulky and lacks sufficient recession at the first floor. This combines with what it says is a lack of landscape space around the buildings. It reinforces this submission in response to changes to clause 22.01 stating:

It is the Councils submission that there is inadequate separation between the dwellings, including minimal articulation between the upper and lower storey walls, to maintain the spaciousness sought in the Garden City suburbs and that this also results in a visual bulk which is excessive.

The decision guidelines in the schedule to the zone also call for *an appropriate transition to built form on adjoining sites.* It is the Council’s submission that the development is excessively bulky when viewed from neighbouring properties.

1. Relative to other existing developments in the immediate area I am satisfied that the proposal provides two storey form in a sufficiently respectful manner. The proposal before more provides a more conservative response than sought in 2018 that better replicates the current and emerging character of other two storey townhouses in the area. This site, on Stephensons Road, is near numerous other double storey townhouses, many with attached ground floor form. In this context, I find it is consistent with current preferred character statement to complement the establish buildings of the area.
2. The council submits that the overall upper storey mass of the proposal with limited articulation and recessive elements does not meet the character direction to preserve backyard character by incorporating generous articulation and setbacks including ground floor setbacks sufficient in width to support screening trees. The development includes some parts that cantilever, but they are not substantive, or limit landscape space. Mostly they cover over car parking areas, rather than garden spaces.
3. The rear upper level form is unusual and would be somewhat bulky in some locations. In this instance, however, I find it is acceptable as the rear interface is to a similar height and length, double storey wall on the adjacent site to the rear. The proposed rear upper level will be contextual of this setting. To the north, the rear double storey form sits in general alignment with a double storey dwelling on the site to the north.
4. The council maintains that the proposal is inconsistent with the neighbourhood character objective of the GRZ3 due to the limited opportunity for landscaping due to the inclusion of decks and hard paving within and along the driveway.
5. Firstly, I must comment that the new preferred character statement is somewhat contradictory in its vision for front yards, stating, ‘*new development will be screened from the street by well planted gardens’* but in the next paragraph says, ‘*buildings will be clearly visible through these low garden settings*, *and non-existent or transparent front fences*.’ I can only assume the use of the word ‘screening’ is not screening in the conventional sense of concealing something, but landscaping to softening building form to the street.
6. The proposal includes landscape to its front and rear boundaries and with potentially sufficient landscaping along its north and south side boundaries[[12]](#footnote-12). Provided that the open space areas include sufficient room for tree planting I find the overall presentation of the three double storey dwellings can be respectful of the site context and the preferred character sought for the area.
7. The landscaping along the southern boundary remains limited, noting this was a criticism of the tribunal in the 2018 proposal, but the proposal before me is for a much more recessive upper level built form that is further from the south boundary and not continuous two storey form. I am therefore less concerned that there is limited landscape along this southern side boundary to soften the upper form.
8. The character directions of the planning scheme, as it now stands clarify that there is a need to limit driveway space. At the same time, the proposal needs to service three dwellings in a location on a main road where there is a need to turn vehicles on site and exit in a forward motion. This in turn leads to a long, drive similar to that on other developments, such as to the direct north. The alternative is to provide a basement car park, as was proposed in 2018, but this led to its own issues.
9. The proposal before me includes canopy planting in the rear yard, that was not attainable in the 2018 proposal due to building form and basement deep into the lot. The council remains concerned that the new proposed rear setback and drive do not provide sufficient space for landscaping. I am satisfied the proposal before me meets the current landscape objectives of the GRZ3 schedule. This includes meeting the open space and landscape requirements, provided some minor alteration to dwelling 2, for reasons I set out below.

### Front setback and front fence

1. The amended plans, along with corrected first floor plans confirm the front setback is now at least 7.6 metres from the street, meeting the standard requirement of the GRZ3 schedule. The corrected first floor includes some variation and articulation, through use of stepping the northern bedroom back from the main façade line and includes a small balcony.
2. The main criticism of the council about the front setback is the use of part of this space for secluded private open space.
3. In the 2018 proposal the tribunal was critical of what was a high front fence to the street noting that ‘a more site responsive design would have been the partial enclosure of the frontage setback to include some of the front garden visible in the street’[[13]](#footnote-13). The proposal before me does this, with the secluded open space to dwelling 1 being in part of the front setback, with landscaping in front of this high fence to Stephensons Road. In combination of the revised front façade and landscape response to Stephensons Road I am satisfied the presentation to the street is acceptable.

## Does the proposal result in unreasonable amenity outcomes to neighbours?

1. Following on from my findings about character above I also find the impact of visual bulk to adjoining properties acceptable. The proposal is broken up at upper level and more recessed in from its side boundaries. I also note that there are no neighbours opposed to the development.
2. The proposal does not unreasonably overshadow any adjoining property due to the more recessed upper form and can include relevant measures to ensure there is no unreasonable overlooking.
3. Draft permit conditions provided by the council include a requirement for screening of all habitable room windows on the south elevation of dwelling 1. As was discussed at the hearing, there is a potential need for bedroom 4 of dwelling 1 to either have its south facing window screened, or relocated to face east. I say ‘potentially’ as the adjoining habitable window to the south at 386 Stephensons Road faces its entry path and drive, so is not ‘secluded’ in a way that necessarily warrants screening. Nevertheless the applicant is not opposed to providing screening, but also agreed an alternative is to relocate the window to face east. This would maintain reasonable seclusion as it would not be facing any adjoining secluded private open space. I will include a condition that the dwelling meet Standard B22 so that alternatives can be addressed through the endorsement of plans process.

## Does the proposal provide sufficient private open space?

1. The council is concerned that dwelling 2 lacks sufficient open space. This dwelling has a secluded private open space area of exactly 35 sqm which is the minimum requirement of the planning scheme. The proposal does not provide the requisite 75 sqm of total private open space to this dwelling.
2. The applicant contends that while the broader requirement is not met, the proposal provides for sufficient room in the secluded private open space area for the recreational needs of residents.
3. While this area meets the minimum requirement I am also mindful that this space is relied on for on-site service needs, including bin storage and clothes lines. The six cubic metres of external storage is also limited to an above bonnet cage in the garage. When combining this limited landscape and recreation space with the landscape aims of the Monash Planning Scheme that emphasise landscaping in the GRZ3 area I am concerned that the space for recreation in the 35sqm provided is limited. As a three bedroom home I am concerned the space is insufficient for the objectives for both open space and landscaping to be met.
4. I therefore find the secluded private open space area of dwelling 2 should be increased in size. As suggested at the hearing, dwelling 2 can include a larger secluded open space by converting what is currently a laundry and galley kitchen area to open space, that will be partly covered by a first floor above. This will require the ground floor guest bedroom to be deleted and replaced with the kitchen and laundry relocated into this space.
5. The applicant acknowledged, that while it did not see a need for this change, it was one that could be implemented by permit condition. I will impose such a condition in order to ensure the dwelling can meet both the landscape / character objectives to be met, while also providing sufficient room for on-site services and recreation space for residents of this dwelling.

## Are the access arrangements acceptable?

1. While the council included a ground of refusal that the access arrangements were insufficient Mr Turner submitted at the hearing that the council was satisfied this issue could be addressed through permit condition of VicRoads to ensure that vehicles can enter and exit in a forward motion. The council submitted it accepts the swept path analysis provided by the applicant in relation to this matter.
2. Mr Little on behalf of the permit applicant acknowledged that it was important that cars can enter and exit in a forward motion given that Stephensons Road is a busy road. He offered that in addition to the VicRoads condition, condition 1 of the permit should include confirmation that the driveway has turning circles that enable forward access and egress. I agree this is an important component of the development and will impose such a permit condition.

## Conclusion

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

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| **Alison Glynn****Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/49820 |
| Land: | 384 Stephensons Road Mount Waverley |

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| What the permit allows |
| In accordance with the endorsed plans:* Construction of three double storey dwellings.
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## Conditions:

1. Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans but modified to show:
	1. Plans corrected to correlate with:
		1. Drg No 18-60 TP-05E, TP-06F and TP-13E as circulated to the responsible authority and Victorian Civil and Administrative Tribunal on 1 November 2019, and
		2. Drg No 18-60 TP-08E and TP09E as circulated to the responsible authority and Victorian Civil and Administrative Tribunal on 12 November 2019.
	2. The ground floor of dwelling 2 amended to increase the size of its secluded private open space area by relocating the kitchen and laundry area to the area currently occupied by the guest bedroom thereby deleting this guest bedroom.
	3. Privacy screening along the north side of the first floor balcony for Dwelling 1.
	4. Bedroom 4 of dwelling 1 to either:
		1. Show privacy screening to its south facing window; or
		2. This south facing window moved to face east.
	5. Provision of a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of the proposed vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road, to Council’s satisfaction.
	6. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street, which is at or behind the setback alignment of buildings on the site or in compliance with Council’s “Guide to Electricity Supply Meter Boxes in Monash”.
	7. Tree protection zones for adjoining trees and tree protection measures are specified in the arborist report.
	8. Details of vehicle swept paths to confirm that vehicles and enter and exit the site in a forward motion.

### No Alterations

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties
3. Stormwater discharge is to be detained on-site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
4. The nominated point of stormwater connection for the site is to the southeast corner of the property where the entire site's stormwater drainage must be collected and free drained via a pipe to 225 mm Council drain in the rear easement of the property via a 900 mm x 600 mm junction pit to be constructed to Council Standards. Note: - If the point of discharge cannot be located then notify Council's Engineering Division immediately
5. Any new connection into a Council easement drain requires the approval of the Council’s Engineering Division prior to the works commencing.
6. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council drains and these works are to be inspected by Council (telephone 9518 3555)

### Vehicle Crossovers

1. All new / altered vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
2. All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
3. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
4. The development must be provided with a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep ( within the property) on both sides of each vehicle crossing to provide a clear view of pedestrian on the footpath of the frontage road.

### Urban Design

1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

### Completion of Buildings and Works

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### Landscaping

1. Before the commencement of buildings and works, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-
	1. the location of all existing trees and other vegetation to be retained on site
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas
	4. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material
	5. the location and details of all fencing
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
	7. details of all proposed hard surface materials including pathways, patio or decked areas

When approved the plan will be endorsed and will then form part of the permit.

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

### VicRoads condition

1. Vehicles must enter and exit the site in a forward direction at all times

### Permit Expiry

1. his permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
	1. The development has not started before two (2) years from the date of issue.
	2. The development is not completed before four (4) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**- End of conditions -**

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. [↑](#footnote-ref-1)
2. Paragraph 45 - *384 Stephensons Road Pty Ltd v Monash CC* [2018] VCAT 1601. [↑](#footnote-ref-2)
3. Both of the 2018 proposal and the current proposal. [↑](#footnote-ref-3)
4. As a result of discussions between the applicant and the council as set out in the email to the tribunal on 12 November 2019. [↑](#footnote-ref-4)
5. We particularly refer to *Sprut Pty Ltd v Stonnington CC* [2012] VCAT 1675. [↑](#footnote-ref-5)
6. See *Reid v Nillumbik SC (No 3)* [2011] VCAT 925 per Senior Member Byard. [↑](#footnote-ref-6)
7. Paragraph 16 – *Sprut.* [↑](#footnote-ref-7)
8. Paraphrased from *384 Stephensons Road Pty Ltd v Monash CC* [2018] VCAT 1601. [↑](#footnote-ref-8)
9. My emphasis added. [↑](#footnote-ref-9)
10. Monash Planning Scheme [cl 22.01-4] – pre Amendment C125 Part 2. [↑](#footnote-ref-10)
11. My emphasis added. [↑](#footnote-ref-11)
12. Noting my further discussion about the secluded open space of dwelling 2 below. [↑](#footnote-ref-12)
13. Paragraph 62 – *384 Stephensons Road Pty Ltd v Monash CC* [2018]. [↑](#footnote-ref-13)