VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1405/2019  Permit Application no. TPA/49510 |

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| APPLICANT | Child and Family Care Network Inc |
| responsible authority | Monash City Council |
| Referral Authority | VicRoads |
| SUBJECT LAND | 583 Ferntree Gully Road GLEN WAVERLEY VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | J A Bennett, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 20 January 2020 |
| DATE OF ORDER | 22 January 2020 |
| CITATION | Child and Family Care Network Inc v Monash CC [2020] VCAT 73 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plan, the following plan filed with the Tribunal:

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| * Prepared by: | Taylors |
| * Drawing numbers: | 21525-D3 Version 02 |
| * Dated: | 27 November 2019 |

1. In application P1405/2019 the decision of the Responsible Authority is set aside. In planning permit application TPA/49510 a permit is granted and directed to be issued for the land at 583 Ferntree Gully Road GLEN WAVERLEY VIC 3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Two (2) lot subdivision and buildings and works associated with the construction of a new car parking area and associated vehicle access.

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| **J A Bennett**  **Senior Member** |  |  |

# Appearances

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| For Child and Family Care Network Inc | Mr John Cicero, Solicitor of Best Hooper Lawyers. He called expert evidence from the following witnesses:   * Mr Dean Simonsen, Arborist of Treemap Arboriculture. * Mr John Kiriakidis, Traffic Engineer of GTA Consultants (VIC) Pty Ltd. |
| For Monash City Council | Ms Maria Marshall, Solicitor of Maddocks Lawyers. |

# Information

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| Description of proposal | Subdivision of the land into two lots and buildings and works to construct a new car park with access via Woodlea Drive. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-1) |
| Planning scheme | Monash Planning Scheme. |
| Zone and overlays | General Residential Zone Schedule 2 (**GRZ2**). |
| Permit requirements | Clause 32.08-3 (Subdivision in GRZ2).  Clause 32.08-9 (Construct a building or construct or carry out works for a section 2 use in GRZ2). |
| Relevant scheme policies and provisions | Clauses 12, 13, 15, 16, 21.08, 21.13, 22,04, 22.05, 22.09, 32.08, 52.06, 65 and 71.02. |
| Land description | The review site is located on the north side of Ferntree Gully Road, one lot east of Woodlea Drive. It is generally square in shape with a frontage to Ferntree Gully Road of 161 metres and total area of 2.45 hectares. The site also incorporates a single residential lot on the west side which has a frontage to Woodlea Drive of 22 metres. At present all access to the site is from Ferntree Gully Road.  The site is occupied by buildings, carparks access driveways and extensive landscaped areas associated with a Long Day Care Centre (**childcare centre**), Cheshire School, together with ancillary training and administration buildings. |
| Tribunal inspection | An unaccompanied inspection of the review site and the locality was undertaken before the hearing on Friday 17 January 2020. |



# Reasons[[2]](#footnote-2)

## Oral decision given at hearing

1. After having heard from the two parties, considered their written and oral submissions and heard from the two witnesses, I gave an oral decision to set aside Council’s refusal to grant a permit. I indicated that I would provide brief written reasons as to why I had determined to grant a permit. What follows are those reasons

## Reasons for my approval

### Why is the land being subdivided and other changes being made?

1. Subdivision of the land is occurring to enable Child and Family Care Network Inc to dispose of most of the site (Lot 2) which is now surplus to its requirements. The funds released by the sale of Lot 2 will be used to support Child and Family Care Network Inc services to be provided elsewhere.
2. Proposed Lot 1 currently accommodates an existing 110 place childcare centre for which a planning permit was granted in April 2003 (Permit No 30042). The childcare centre will remain on Lot 1 along with a relocated Cheshire School which is currently operating within a building on Lot 2. The Cheshire School has an enrolment of 22 students and will be relocated into an existing building on Lot 1.
3. Access to the whole site is currently from Ferntree Gully Road and Lot 2 will retain that access. However, Lot 1 which is positioned across the northern end of the site, requires new access to be provided from Woodlea Drive via a vacant residential lot which at some point was incorporated into the whole site.

### Why does Council oppose the proposal?

1. Council does not support the proposed subdivision for ten reasons. These can be summarised as:
2. Uncertainty about future use and development on Lot 2.
3. Removal of trees to construct the car park and potential damage to a street tree in Woodlea Drive.
4. Insufficient parking, and problematic design and access to the new carpark.
5. Traffic impacts on Woodlea Drive and nearby intersections.

### What are my comments on each of these issues?

1. Having regard to submissions, evidence and my site inspection, my response to each of these is as follows:

#### Uncertainty about future use and development on Lot 2

1. A planning permit will not be required for demolition of any of the existing buildings on Lot 2. Depending on what is eventually proposed for Lot 2, a planning permit will be required for development and may be required for use. Consequentially, any future proposal can be fully vetted by Council including consideration of built form (building height, setbacks to boundaries, materials and colours, etc), landscaping, vehicular access to Ferntree Gully Road and physical and functional relationships with surrounding development including that on Lot 1.
2. I consider that planning permit requirements will provide Council with enough scope to fully assess any future use and development on Lot 2. I acknowledge that Clause 65.02 requires consideration of future use and development, as appropriate when assessing a subdivision application.
3. For the reasons given above, I consider that Lot 2 is large enough to allow a later comprehensive assessment, and I distinguish it from the circumstances in those cases referred to in Council’s submission. In *Merrit v Moira SC[[3]](#footnote-3)* the proposal involved the subdivision of an existing motel whilst in *Butler v Maroondah CC[[4]](#footnote-4)* it involved a six lot subdivision with lots ranging in size from 409m2 to 543m2.
4. Although in principle I support the subdivision as proposed, I do consider that a slight adjustment of the lot layout is desirable. As discussed at the hearing, I do not support the angled boundary between Lots 1 and 2 in the vicinity of the new carpark and consider that the boundary should be ‘squared off’ to provide a more regular and practical interface between the two lots. Such an adjustment also has the benefit of allowing for a redesign of the carpark, results in less intrusion into the TPZ of trees along the northern boundary and provides more scope for pedestrian paths from the carpark and more space for landscaping along the southern boundary. I further discuss the realignment later in my reasons.

#### Removal of trees to construct the car park and potential damage to a street tree in Woodlea Drive

1. An evidence statement was prepared by Mr Simonsen and he attended the hearing to explain his findings, including his root examination of the street tree in Woodlea Drive. Based on that information Ms Marshall advised that Council agrees that, subject to suitable construction management techniques, the new crossover can be constructed as proposed. I accept that the crossover can be constructed without damage to the street tree.
2. Construction of the new car park and driveway will require the removal of 11 trees (Trees 4, 6, 8, 9, 16, 17, 18, 19, 20, 21 and 22). According to the two Arboricultural reports, none of these trees are native to Victoria and Clause 52.17 does not apply.[[5]](#footnote-5) Nor are there any Overlays requiring a permit to remove trees. They could be removed at any time given the absence of planning controls or a Local Law dealing with tree removal.
3. Clause 22.05 is a tree conservation policy which applies given the buildings and works permit. I have had regard to the objectives, policy and decision guidelines and the desire to retain existing semi-mature and mature canopy trees, and the focus on trees with a trunk circumference greater than 500mm, 1200mm above ground, or higher than 10 metres.
4. According to Mr Simonsen only three trees over 10 metres in height are to be removed (Trees 4, 5 and 6 - are all exotics). Although there is encroachment greater than 10% into the TPZ of Trees 3, 7 and 8, my requirement to redesign the car park will lessen or remove the encroachment into the TPZ of Trees 7 and 8 along the northern boundary.
5. The trees being removed have been rated as having a low retention value although I note that the earlier Arboricultural report by Paul Jameson rated them as low to moderate or moderate retention value.
6. Whilst removal of 11 trees in total will be noticeable, I am not persuaded that their removal is so unacceptable given where they are located within the site and their size and condition. There is plenty of space for new planting along the most sensitive residential boundaries to the south and north to supplement those trees being retained. In the longer term I consider that new vegetation has the potential to improve the landscape character and appearance of this part of the site.

#### Insufficient parking, and problematic design and access to the new carpark

1. The proposed carpark provides 43 vehicle spaces although Mr Kiriakidis has assessed the statutory rate as being 35 spaces. His calculation is based on 116 children at the childcare centre (0.22 spaces per child = 25 spaces) and 10 staff for the Cheshire School (1 space for each staff member).
2. Mr Kiriakidis has also undertaken an assessment based on the peak demand for the childcare and school coinciding. That would generate a demand of 39 spaces, which is still less than the 43 being provided.
3. I accept Mr Kiriakidis’ analysis having regard to the number of children and staff on site based on both the applicable statutory rate and the potential for the peak demands to coincide.

#### Traffic impacts on Woodlea Drive and nearby intersections

1. Council is also concerned about directing traffic to and from the site onto Woodlea Drive. In response to Council’s concerns, Mr Kiriakidis undertook a Traffic Impact Assessment (TIA) which is contained in section 4 of his witness statement. It his assessment that the projected daily movements will be 406, with 108 in the morning peak hour and 55 in the evening peak hour.
2. Traffic counts have also been taken at the southern end of Woodlea Drive and data sourced for Winmalle Road and the northern end of Woodlea Drive. These record exiting traffic volumes below the daily traffic design capacity based on whether they are classified as an Access Street – Level 1 (Woodlea Drive) or a Connector Road (Winmalle Road).
3. Post development, traffic flows to and from the site in Woodlea Drive are anticipated to be 80% to the south and 20% to the north. This split results in projected traffic volumes increasing to just below the design capacity at the southern end of Woodlea Drive (2860 vehicles per day against an upper capacity of 3000 vehicles per day). The impact to the north is much less and the daily traffic volumes are much lower than the upper design capacity.
4. It was Mr Kiriakidis’ evidence that the increased traffic would not adversely affect the amenity of the residential properties in Woodlea Drive. In answer to a question from Ms Marshall, Mr Kiriakidis estimated that the slight uplift in traffic would be noticeable but not unreasonable.
5. He also assessed traffic impacts at the intersection of Ferntree Gully Road and Woodlea Drive and noted that the Degree of Saturation (DOS) post development indicated that the intersection would be expected to operate satisfactorily.
6. Based on his analysis I am not persuaded that the application should be refused because of unacceptable impacts on Woodlea Drive or the road network more broadly.

### Why is a lot boundary adjustment desirable?

1. I have referred earlier in my reasons to a realignment of the boundary between Lots 1 and 2 to ‘square off’ Lot 1 in the vicinity of the carpark. During the hearing I drew a rough sketch of what I had in mind and I replicate that on the following page to explain how to achieve the outcome I am seeking. The changes required by condition 1 in Appendix A seek to describe what is set out in the diagram and can be used by both the Applicant and Council staff to better interpret the condition 1 changes when amended plans are submitted for approval.
2. Subject to a redesign, I consider that the proposal should be approved. It allows for the future use and development of large parcel of underdeveloped but well located land whilst still retaining the existing child care centre and Cheshire School in this part of the municipality.

## 

## Conclusion

1. In assessing the proposal against the relevant planning provisions, I have concluded that it does represent a net community benefit and that it warrants approval. The conditions are based on those discussed at the hearing, together with changes to achieve a realignment of the boundary between Lots 1 and 2 and a redesign of the carpark.
2. In response to a recommendation by Mr Kiriakidis, I have also included a new condition 21 that loading, unloading and servicing requirements occur within the site and that they occur outside peak drop off and pick up times for the childcare centre and Cheshire School. I have deleted the condition concerning variation to the planning permit and revised the wording in condition 29 as no dwellings are proposed.

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| **J A Bennett**  **Senior Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/49510 |
| Land: | 583 Ferntree Gully Road GLEN WAVERLEY VIC 3150 |

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| What the permit allows |
| In accordance with the endorsed plans:   * Two (2) lot subdivision and buildings and works associated with the construction of a new car parking area and associated vehicle access. |

## Conditions:

### Amended Plans

1. Before the development starts, one copy of 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 substituted by the Tribunal prepared by Taylors (Drawing No 21525-D3, Revision 2 dated 27 November 2019) but further modified to show:
   1. Squaring off the angled boundary between Lots 1 and 2 to create a rectangle that has a southern side which is parallel with the southern boundary of the small residential lot fronting Woodlea Drive. The eastern boundary of the rectangle is to be parallel with the eastern edge of the car park shown on the Version 2 plan but offset to the west to minimise intrusion into the TPZ of Tree 3;
   2. A consequential redesign of the carpark to achieve the following:
      1. The northern edge of the carpark is to be relocated southwards to avoid the TPZ of Trees 7 and 8.
      2. Consequently, the group of six ‘island’ spaces relocated southwards as a result of the deletion of the southern row of spaces west of Tree 3 (see (iii) below).
      3. The southern row of five spaces, including a disabled space, west of Tree 3 deleted.
      4. Additional parking spaces to be provided as an eastern extension of the row of spaces near the entrance driveway.
      5. Removal of spaces, including disabled spaces, outside the TPZ of Tree 3.
      6. The redesign to provide not less than 43 spaces.
      7. Provision of a pedestrian path to provide access between the car park and the childcare centre/Cheshire School.
      8. Dimensions and accessway details of the car parking spaces, including a passing area of at least 6.1 metres wide and 7 metres long at the entrance of the property, clearance to car parking spaces and accessible car parking spaces.
      9. A corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) from the southern edge of the exit lane of the vehicle crossing to provide a clear view of pedestrians on the footpath of Woodlea Drive; and
   3. Notation to read ‘The existing redundant crossing in Woodlea Drive is to be removed and replaced with kerb and channel’.

All of the above are to the satisfaction of the Responsible Authority.

### Tree Management Plan

1. Prior to the endorsement of any development plans, a Tree Management Plan must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will form part of the permit. The plans must specify the exact requirements for tree protection of all trees to be retained as part of the development (including trees on the nature strip and on adjoining properties), and the timing of supervision and certification by the project arborist.

### No Alteration or Changes

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

### Landscaping

1. Concurrent with the endorsement of any plans pursuant to Condition 1, 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, and tree protection measures for all trees to be retained;
   2. provision of canopy trees with spreading crowns throughout the site;
   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 (both 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; and
   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.

### Tree Protection

1. Prior to the commencement of any works (including demolition works) that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, must be marked and provided with a protective barricade and verified by a qualified landscape architect, arborist or horticulturist.
2. All works (including demolition works) within the dripline of any tree to be retained must be supervised by a qualified landscape architect, arborist or horticulturist who must ensure that the works are done in a manner which protects and minimises any damage to those trees.
3. No building material, demolition material or earthworks must be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted.

### Construction Management Plan

1. Prior to the commencement of works on the site (including demolition and excavation), a Construction Management Plan (**CMP**) must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
   1. Hours for construction activity in accordance with any other condition of this permit;
   2. Measures to control noise, dust and water and sediment laden runoff;
   3. Prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   4. Measures relating to removal of hazardous or dangerous material from the site, where applicable;
   5. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
   6. Cleaning and maintaining surrounding road surfaces;
   7. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
   8. Public Safety and site security;
   9. A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises;
   10. A Traffic Management Plan showing truck routes to and from the site;
   11. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
   12. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the CMP;
   13. Contact details of key construction site staff;
   14. Any other relevant matters, including the requirements of VicRoads or Public Transport Victoria.
   15. A requirement that construction works must only be carried out during the following hours:

* Monday to Friday (inclusive) – 7.00am to 6.00pm;
* Saturday – 9.00am to 1.00pm;
* Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines).

1. The provisions, recommendations and requirements of the endorsed CMP must be implemented and complied with to the satisfaction of the Responsible Authority.

### Drainage

1. One copy of the plans for the drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of works. The plans are to show enough information to determine that the drainage works will meet all drainage conditions of the permit.
2. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.
3. The plans must show:

(a) a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge; and

(b) the nominated point of discharge is the east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 225 mm Council drain in the nature strip via a 900 mm x 600 mm junction pit to be constructed to Council Standards.

If the point of discharge cannot be located, then notify Council’s Engineering Division immediately.

1. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
   1. a trench grate (minimum internal with of 150 mm) located within the property boundary and not the back of footpath; and/or
   2. shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
   3. another Council approved equivalent.
3. All stormwater collected on the site to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.
4. The nominated point of stormwater connection for the site is to the existing internal private drainage system. The system must be able to cater for the additional amount of impervious area and be in a satisfactory condition prior to connection and works being carried out.
5. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.

### Vehicle Crossovers

1. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.
2. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
3. Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.

### Unloading, loading and servicing requirements

1. All unloading, loading and servicing required for Lot 1 must occur within the site and must take place outside the peak drop off and pick up times for the childcare centre and Cheshire School.

### Completion of Buildings and Works

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

### Subdivision

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas to each lot shown on the endorsed plan in accordance with that authority’s requirements and relevant legislation at the time.
3. All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour of the relevant authority for which the easement or site is to be created.
4. The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.
5. The owner of the land must enter into an agreement with:

* a telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider’s requirements and relevant legislation at the time; and
* a suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

1. Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:

* a telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider’s requirements and relevant legislation at the time; and
* a suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media Authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

1. Prior to the issue of a Statement of Compliance for this subdivision:
   1. the development, including landscaping and storm water drainage works, must be completed in accordance with Planning Permit No. TPA/49510 to the satisfaction of the Responsible Authority;

OR

* 1. the owner of the land to which this permit relates must enter into an agreement with the Responsible Authority under Section 173 of the *Planning and Environment Act 1987*. In addition to the usual provisions, the agreement must provide for the following matters:

1. Except with the consent of the Responsible Authority, the land and any lot created by the subdivision of the land may only be developed in accordance with the development authorised in Planning Permit No. TPA/49510 and depicted in the plans endorsed under that permit;
2. Lodge with the Responsible Authority, a bond, bank guarantee or similar security equivalent to 150% of the cost of landscaping each unfinished lot and/or the common property of the proposed development, for the satisfactory completion of the development of the land and the landscaping works.
   1. If the landscaping works are not provided to the satisfaction of the Responsible Authority, the Responsible Authority may provide the landscaping works and deduct the cost thereof (including supervision) from any bond, bank Guarantee or similar security lodged pursuant to agreement;
   2. The costs of the Responsible Authority in relation to the agreement are to be borne by the owner.
3. Prior to the issue of a Statement of Compliance, the Owner must enter into and comply with an agreement with Melbourne Water Corporation for the acceptance of surface and storm water from the subject land directly or indirectly into Melbourne Water’s drainage systems and waterways and other matters in accordance with the powers of Melbourne Water Corporation under the *Water Act 1989*.
4. The applicant or owner pursuant to Clause 53.01 of the Monash Planning Scheme must pay to the Council a sum equivalent to 5 per cent (5%) of the site value of all the land in the subdivision being a contribution for Public Open Space. This payment must be made before a Statement of Compliance is issued.

This payment must be made within 12 months of the date of this permit. If payment is not made within 12 months of the date of this permit, Council will request a revaluation of the site value at each anniversary and will vary the amount of the payment accordingly.

### Permit Expiry

1. This 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.
   3. The plan of subdivision is not certified within two (2) years from the date of issue.
   4. The plan of subdivision is not registered within five (5) years from the date of issue.

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

**- End of conditions -**

1. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-1)
2. The submissions and evidence of the parties, any supporting exhibits given at the hearing, and the statements of grounds filed; have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-2)
3. *Merrit v Moira SC* [2005] VCAT 93. [↑](#footnote-ref-3)
4. *Butler v Maroondah CC* [2016] VCAT 1212. [↑](#footnote-ref-4)
5. Definition of native vegetation in Clause 73.01 [↑](#footnote-ref-5)