 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P1484/2020  Permit Application no.YPA/50166 |

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| **Applicant** | Anthony Huljak |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 27 Bolwarra Street  CHADSTONE VIC 3148 |

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| HEARING TYPE | Hearing |

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| DATE OF HEARING | 18 June 2021 |

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| DATE OF ORDER | 9 August 2021 |

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| CITATION | Huljak v Monash CC [2021] VCAT 893 |

# Order

### Amend permit application

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 plans, the following plans filed with the Tribunal:

* Prepared by: Metro Building Designers
* Drawing numbers: TP01 – TP06 incl.
* Dated: 19 April 2021

### Permit granted

1. In application P1484/2020 the decision of the responsible authority is set aside.
2. In planning permit application YPA/50166 a permit is granted and directed to be issued for the land at 27 Bolwarra Street CHADSTONE VIC 3148 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Development of two dwellings on a lot in a General Residential Zone, Schedule 3.

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| Peter Gaschk  **Member** |  |  |



# Appearances

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| For applicant | Mr Mark Walden, Town Planner with St Wise Pty Ltd |
| For responsible authority | Mr Gareth Gale, Town Planner with Gareth Gale Consulting Pty Ltd |

# Information

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| Description of proposal | Demolish the existing dwelling and associated structures, along with the removal of vegetation, and construct two double storey dwellings in a side-by-side configuration. |
| 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 (the Scheme) |
| Zone and overlays | General Residential Zone, Schedule 3 (GRZ3) |
| Permit requirements | Clause 32.08-6: To construct two or more dwellings on a lot. |
| Relevant scheme policies and provisions | Clauses 11.02-1S, 11.01-1R, 15.01-2S, 15.01-5S, 16.01-2S, 16.01-3S, 16.01-1R, 21.04, 22.01, 32.08, 52.06, 55, 65 and 72.01 |
| Land description | The site at 27 Bolwarra Street, Chadstone (the review site) is located on the northern side of Bolwarra Street, located between Carramar Street and Bega Street, Chadstone.  The subject land is generally rectangular in shape, with an angled frontage of 15.2m, depth of 38.0m and an overall area of approximately 592sqm. It has a fall of approximately 2.0m from south to north and 1.8m wide easement that runs along the rear boundary.  The land is occupied by a detached single storey dwelling accessed by an existing vehicle crossing at the western end of the frontage. Existing planting contains small shrubs and trees with a 1.3m high, welded mesh fence along the frontage. There are no street trees located in the front nature stip. A power pole and telecommunication pits are located on the western side nature strip.  Adjoining the review site to the north are two, single storey dwellings, one behind the other. To the south is St Mary Magdalen’s Primary School. To the east is a double storey, brick dwelling set back 6.6m from the street frontage. To the west is a single storey weatherboard dwelling set back 5.4m from the street frontage.  The review site is in a well-established residential area, offering good access to a range of community services and facilities and public transport options. A neighbourhood centre is located on Amaroo Street, with comfortable walking distance to various local parks nearby. The nearest activity centres are on Warrigal Road to the west, and near Jordan Station to the northeast. |
| Tribunal inspection | Undertaken unaccompanied 3 July 2021. |

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

## What is this proceeding about?

1. This is an Application for Review by Anthony Huljak **(the applicant)** under s.77 of the *Planning and Environment Act 1987*, against council’s determination to issue a Notice of Refusal to Grant a Planning Permit **(No. YPA/50166)** for the construction of two attached dwellings on a lot, **(the proposal)** on land at 27 Bolwarra Street, Chadstone **(the review site)**.
2. Council acknowledges that PNPE9 plans lodged by the applicant prior to the hearing have improved some of the development shortcomings. It has modified its grounds by removing Clause 55 overlooking and energy efficiency concerns. Council did not contest the substitution of the revised plans at the hearing and had prepared its submission based on these plans. These plans now become the substituted plans by this order.
3. Council says:

… the proposal does not respond to the preferred landscape character for the area within which it sits – known as ‘Garden City Suburbs’. Within these ‘hinterland’ locations, a strong landscaping response is sought for front, side and rear setbacks.

The preferred character sought by the Planning Scheme also seeks to discourage the prominence of vehicular accommodation / hard-stand as well as to bring about a detached character by virtue of side setbacks.

A ‘side by side’ development on a relatively narrow allotment presents challenges to this character. This is because such typologies generally bring about multiple crossovers to the streetscape and press close to side boundaries in the front portion of the lot.

(Tribunal emphasis added)

1. The applicant does not agree with this assessment. He submits the substituted plans have addressed council’s key issues raised in its grounds of refusal. This includes:

* Design modifications that increase front, side and rear setbacks.
* A new courtyard along the southeast boundary to reduce the length of boundary wall.
* Roof form altered to remove parapet elements and provide a fully pitched roof.

## What are the key issues?

1. Having considered the submissions and supporting material, including photos, reports and plans provided by the parties, I consider the key issues I need to address are:

* Does the proposed development provide an appropriate neighbourhood character and landscaping outcome?
* Does the proposal satisfy the objectives of Clause 55 and appropriately address built form and amenity impacts?

1. I address each of these issues below in the context of relevant Scheme provisions, submissions from the parties and observations of the site and surrounds from my site inspection.
2. I find the proposed development provides an acceptable neighbourhood character outcome on the review site that is sought under the relevant provisions of the Scheme. I consider the design response achieves an appropriate balance in the context of the site and surrounds. Including consideration of the existing and emerging built form, preferred neighbourhood character and improved landscaping opportunities provided to the front and rear of the site.
3. Provision of onsite car parking was not contested between the parties. In this regard council was concerned with the extra crossover and hardstand area created by the side-by-side design response. I deal with this particular concern below. I am satisfied appropriate car parking and access has been provided on site as required under Clause 52.06 of the Scheme.
4. Both parties also agree the strategic policy setting, GRZ3 zoning and physical setting, support opportunities to provide some modest increase in dwelling density on the review site.
5. In this respect, State policy at Clause 11 emphasises opportunities for consolidation, redevelopment, and intensification of existing urban areas. State Policy also seeks to direct more housing near activity centres and public transport. Local policy at 21.04 and 22.01 also reinforces redevelopment potential in appropriate locations identified in the Scheme. I accept submissions from both parties that this intensification must be balanced against new development that complements and addresses preferred neighbourhood character.
6. I am satisfied the addition of one dwelling on the site is generally consistent with the State and local policy setting in the Scheme that applies to the site. This includes consistency with the relevant zone schedule objectives found under GRZ3, that emphasises new residential development should contribute to the *preferred garden city character*.

## Does the proposed development provide an appropriate neighbourhood character and landscaping outcome?

1. This review centres on whether the design response has appropriately addressed preferred neighbourhood character. Particularly garden city character, that emphasises new development must be set within a landscaped context and new buildings should be subservient to its landscaped setting.
2. Council says the proposed development is inconsistent with new residential development policy introduced through Amendment C125 (AmC125) to the Scheme, particularly amended Clauses 21.04 and 22.01[[2]](#footnote-2). It says Amc125 has lifted the *design bar* for new development. It submits the design response fails to achieve architectural and urban design outcomes for the review site that positively contributes to the preferred neighbourhood character.
3. Council’s written submission highlights this in the following statement:

It is clear that the preferred character of a well-landscaped garden setting is ‘front and centre’ within local policy. There is an extensive amount of policy that seeks such outcomes throughout both 21.04 and 22.01 in addition to that contained at Clauses 32.08 (Schedule 3).

1. I note Schedule 3 to the GRZ is titled Garden City Suburbs and includes the following Neighbourhood Character Objectives that are relevant in my assessment of this matter:

* 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. In the context of these objectives, variations are also sought to Clause 55 and must be considered as part of any new residential development assessment:

* Minimum street setback: Minimum 7.6m
* Site coverage: 50%
* Permeability: 30%
* Landscaping: Minimum of one canopy tree and one canopy tree per 5.0m of site width. Vegetation in front, side, and rear setbacks and on both sides of accessways.
* Side and rear setbacks: Minimum 5.0m rear setback.
* Private open space: Overall area of 75sqm consisting of secluded private open space (SPOS) and 35sqm (min) at side or rear.
* Front fence: Maximum 1.2m height.

1. Decision Guidelines in Schedule 3 also include the following matters to be addressed:

* 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. I note these provisions are reinforced within Category 8: Garden City Suburbs - Monash Housing Strategy 2014[[3]](#footnote-3) and within Clause 22.01 (Residential Development & Character Policy) where the review site is identified within the Garden City Suburbs – Northern Areas. I have underlined key character design elements and settings in the Preferred Character Statement below:

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.

(Tribunal emphasis added)

1. Both parties agree the design bar has been lifted because of Amc125. Particularly noting the emphasis on achieving a garden landscape setting for all new residential development.
2. In this proposal, I find the proposed development has achieved an appropriate and balanced design response to the key Preferred Character Statement elements I have highlighted above.
3. Based on my inspection of the site and surrounds, the area has a mixed character setting, with older, single storey, detached housing that is clearly transitioning. These dwellings are being replaced by newer, contemporary styled tandem and side by side development, in double storey form, as well as many developments including dual and single crossovers. This character setting was also noted by Member Watson when she considered a side-by-side styled dual occupancy in Amaroo Street to the west.[[4]](#footnote-4)
4. I acknowledge that policy seeks to discourage new developments that includes dual crossovers. In this side-by-side development proposal, a second crossover has been located further from the eastern side boundary, with a varied front setback averaging between 6.2m to 7.6m. However, I do not consider these variations to be fatal to the streetscape setting in this location.
5. It is relevant that both zone and policy provisions do not prohibit the use of side-by-side developments. Nor do they prohibit double crossovers. These matters are to be considered on a case-by-case basis. Nevertheless. I agree with council the preferred character emphasis seeks to ensure that new development will achieve built form that sits within a landscaped garden setting.
6. My inspection confirmed the power pole located in front of the review site within the nature strip does not allow for a second crossover on the east side of the site. This would have been preferred. However, it has been placed more mid-site and at angle to the street. I agree with the applicant that this design response has resulted in sufficient clearance from the power pole, and this arrangement is workable for safe and convenient access to the two singe car garages.
7. I also acknowledge the splayed frontage results in a varied front setback for the proposed development. However, I am satisfied the varied setback still enables the provision of appropriate landscape setting to the street. In this regard, it is relevant the review site is located mid-block and adjoins similar splayed setbacks to the existing dwellings at 25 and 29 Bolwarra Street. I am also satisfied that canopy trees can be provided in the front setbacks of each proposed dwelling and the overall height of 7.5m (rear elevation at NGL), with pitched roof form, provides an appropriate design response and transition in built form in this location. Particularly when considering the physical setting and context of the large double storey dwelling located at 25 Bolwarra Street.
8. Significantly, the use of the side-by-side design on the review site results in an increased rear setback for both dwellings. This enables a minimum setback of 7.8m provided at ground level and 9.2m at upper level. I consider these rear setbacks are a positive design outcome associated with this development and allows for additional canopy trees to be planted to the rear of the site.
9. I also note there is a clear side setback achieved from the west boundary. The proposed garage is setback roughly 1.0m from the western boundary, which opens out to its rear (north) to varied setbacks between 1.75m and 2.19m. The proposed side setback along the eastern boundary is more problematic, including a combination of on boundary walls and up to 2.0m setbacks.
10. I consider the proposed study area for Dwelling 2 located towards the frontage and proposed on this eastern boundary, should be deleted from the design. I accept this built form seeks to perform a visual function in providing a stronger façade presence, in combination with the proposed font porch entrance to the street. However, I consider deletion of the study area would achieve more opportunity for side boundary landscape planting that is sought by policy.
11. In addition, I consider the proposed swimming pool located on boundary to the rear of dwelling 2 also adds further built form on boundary. The applicant was not able to explain to me how this built form would present to the side boundary, noting it would include some additional retaining wall structure along that boundary.
12. Given this design uncertainty, I propose to delete the swimming pool structure from the proposed design. Further application could be made to include this structure by amendment to plan, once further details of the structure were established and clarified to council’s satisfaction.
13. I note there were no materials schedule or coloured elevations provided with the application. Submitted plans indicate the front elevation, together with the sides and rear at upper level, include lightweight foam cladding. The council was not supportive of this treatment, questioning its durability over the longer term. The applicant was unable to clarify its long-term durability.
14. I am satisfied that an appropriate level of upper-level articulation has been achieved to side and rear boundaries through the design response. However, I agree with the council that greater use and combination of feature brickwork and other cladding materials at upper levels at the front and side elevations should be considered. I find this treatment would be more in keeping with the preferred character statement. I will include a condition on permit to this effect.
15. I agree with the council that the proposed landscape plan tabled with the applicant’s submission lacks sufficient detail and rigour. I accept the indicative landscape plan demonstrates that preferred canopy tree planting can be achieved on the review site. However, I support the council’s submission seeking a new landscape plan to be submitted by permit condition for its approval.
16. Subject to the additional design changes outlined above, I am satisfied the proposed development will achieve an appropriate and satisfactory response to the key character elements sought under the zone schedule objectives. Including those supporting local policy provisions at Clauses 21.04 and 22.01 I have considered and highlighted above.

## Does the proposal satisfy the objectives of Clause 55 and appropriately address built form and amenity impacts?

1. I note that the varied GRZ schedule character objectives addressing site coverage, permeability, minimum garden area, private open space, canopy tree planting and front fence heights, have generally been satisfied by this development.
2. I also note that council has accepted the substituted plans have addressed its substantive clause 55 concerns around overlooking and energy efficiency. I have also discussed and am satisfied that specific clause 55 variations sought under Schedule 3 of the GRZ have been addressed as detailed under my preferred character assessment.
3. I find the proposed development, with the additional design changes I have outlined above, satisfies the key objectives and varied standards associated with Clause 55. I am satisfied the proposed development appropriately addresses built form and will not result in adverse amenity impacts to adjoining properties.

## What conditions are appropriate?

1. Council’s draft conditions tabled at the hearing were discussed with the parties at the conclusion of the hearing. I have considered the respective submissions made by the parties in my assessment of the draft conditions. Apart from additional design changes that seek new elevation treatments of upper levels, remove the proposed study area and swimming pool for Dwelling 2, together with some minor edits that do not change the intent or content of the permit conditions, I am satisfied the proposed conditions tabled by council are appropriate for the reasons I have set out above.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions as set out in the attached Appendix A to this decision.

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| Peter Gaschk  **Member** |  |  |

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# Appendix A – Permit Conditions

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| Permit Application No | YPA/50166 |
| Land | 27 Bolwarra Street  CHADSTONE VIC 3148 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Development of two dwellings on a lot in a General Residential Zone, Schedule 3. |

## Conditions

1. Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the responsible authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council prepared by Metro Building Designers, Plan No. TP01-06 inclusive, VCAT issue and dated 19 April 2021, but modified to show:
   1. Deletion of the study area of Dwelling 2 proposed along the eastern boundary to be replaced with side landscape planting to the requirements and satisfaction of the responsible authority.
   2. Deletion of the swimming pool structure of Dwelling 2 from the proposed design.
   3. Combination of feature brickwork and other cladding materials at the upper level elevations of the proposed dwellings provided to the front and side elevations of each dwelling to the requirements and satisfaction of the responsible authority.
   4. 6m3 storage area for each dwelling.
   5. All internal fences to have a minimum height of 1.8m.
   6. The visitor/tandem parking spaces in front of each garage is to have a minimum length of 5.4 metres from the property boundary.
   7. All garages must be at least 6 metres long and 3.5 metres wide for a single space measured inside the garage.
   8. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located 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”.
   9. A corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
   10. A Landscape Plan in accordance with Condition 3 of this Permit.

### Layout not to be Altered

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

### Landscape Plan

1. Concurrent with the endorsement of any plans requested 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. The Landscape Plan must show:
   1. A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan.
   2. A planting schedule of all proposed trees, shrubs, and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names, and quantities.
   3. The location of any fencing internal to the site.
   4. Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development.
   5. Planting to soften the appearance of hard surface areas such as driveways and other paved areas.
   6. Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site.
   7. Location of any retaining walls associated with the landscape treatment of the site.
   8. Details of all proposed surface finishes including pathways, accessways, patio or decked areas.
   9. The location of external lighting (if any).
   10. Landscaping and planting within all open areas of the site.

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

### Tree Protection

1. Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the responsible authority.
2. No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the responsible authority.

### Landscaping Prior to Occupation

1. Before the occupation of any 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 thereafter maintained to the satisfaction of the responsible authority.

### Drainage

1. The site must be drained to the satisfaction of the responsible authority.
2. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
3. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
4. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the responsible authority.
5. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the responsible authority.

### Vehicle Crossovers

1. All disused or redundant vehicle crossovers must be removed, and the area reinstated with footpath, nature strip, kerb, and channel to the satisfaction of the responsible authority.
2. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the responsible authority.
3. 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.

### Car Parking

1. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:
2. Garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport.
3. In accordance with Australian Standard for Off - Street Car Parking AS/NZS 2890.1, the maximum grade within a parking module measured parallel to the angle of parking is to be 1 in 20. Measured in any other direction is to be 1 in 16.

### 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.

### Satisfactory Continuation and Completion

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

### 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:

* The development has not started before 2 years from the date of issue.
* The development is not completed before 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

1. within six (6) months afterwards if the development has not commenced; or
2. within twelve (12) months afterwards if the development has not been completed.

**– 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. Amendment C125 was introduced into the Scheme in November 2019. Both Clauses 21.04 and 22.01 were amended by this amendment. [↑](#footnote-ref-2)
3. The Monash Housing Strategy 2014 is a Reference Document in the Scheme. [↑](#footnote-ref-3)
4. See *Blueprint Pty Ltd v Monash CC* [2017] VCAT 1720. [↑](#footnote-ref-4)