

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NOS.P47/2023 & P56/2023
PERMIT APPLICATION NO. TPA/53179

CATCHWORDS

Section 82 *Planning and Environment Act 1987* (Vic) works, Special Use Zone – Schedule 2, Environmental Audit Overlay, piecemeal application, visual impact, dust, noise, gas migration risk, stormwater management.

APPLICANTS

P47/2023

Angelo Valente

P56/2023

William Curt Thompson

RESPONDENT

Huntingdale Estate Nominees Pty Ltd

RESPONSIBLE AUTHORITY

Monash City Council

SUBJECT LAND

Lots 1, 2 and 3 of TP803687U, Lot 1 of PS038793, part lot 2 of PS409879V and part of lot 1 of TP805390J 1221-1249 Centre Road, OAKLEIGH SOUTH VIC 3167

HEARING TYPE

Hearing

DATE OF HEARING

8, 9, 10 and 14 August 2023

DATE OF ORDER

28 August 2023

CITATION

Valente v Monash CC [2023] VCAT 989

ORDER

Permit granted

- 1 In applications P47/2023 and P56/2023 the decision of the responsible authority is varied.
- 2 In planning permit application TPA/53179 a permit is granted and directed to be issued for the land at Lots 1, 2 and 3 of TP803687U, Lot 1 of PS038793, part lot 2 of PS409879V and part of lot 1 of TP805390J: within 1221-1249 Centre Road, Oakleigh South Vic 3167, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Works (preloading) in Special Use Zone – Schedule 2
 - Alteration of access to a road in a Transport Zone.

Alison Glynn
Member



APPEARANCES

For Angelo Valente (applicant in P47/2023)	Silvana Valente, legal advocate.
For William Thompson (applicant in P56/2023)	William Thompson, in person.
For Monash City Council – responsible authority in both applications	Natalie Blok, barrister on direct brief with Louise Hicks, barrister on Day 4.
For Huntingdale Estate Nominees Pty Ltd – respondent in both applications	Alexandra Guild, barrister on instruction from Hall and Wilcox solicitors. She called the following witnesses: <ul style="list-style-type: none">• Ian Pedler, geotechnical engineer,• Roger Gibbs, environmental scientist, site remediation expert, and• Tim McBride-Burgess, town planner.



INFORMATION

Description of proposal	<p>Works to apply preload soil to land for soil settlement purposes and remove the soil at the end of the settlement period.</p> <p>The works also include alteration of a road access to Huntingdale Road, which is a road in a Transport Zone.</p>
Nature of proceeding	Applications under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	Special Use Zone – Schedule 2 (‘SUZ2’) General Residential Zone – Schedule 3 (‘GRZ3’) Environmental Audit Overlay (‘EAO’)
Permit requirements	Clause 37.01-4: works in SUZ2 Clause 52.29 – alteration of access to a road in a Transport Zone (Huntingdale Road)
Relevant scheme policies and provisions	Clauses 13, 19.03, 21.08, 21.13, 22.04, 22.05, 37.01, 53.18, 52.29, 65 and 71.02-3.
Land description	<p>The proposal affects land described as ‘Domain 1’ within a broader parcel of land at 1221-1249 Centre Road, Oakleigh South. Domain 1 is a former landfill that has been backfilled and capped but remains unsuitable for urban purposes due to uneven and structurally unsound soil.</p> <p>Further detail about the site and surrounds and the specific planning scheme context is set out in these reasons.</p>
Tribunal inspection	An accompanied site inspection of the site and surrounds was undertaken on 10 August 2023.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Review applications P47/2023² and P56/2023³ are two separate applications brought under section 82 of the *Planning and Environment Act 1987* ('P&E Act') to review Monash City Council's notice of decision ('NOD') to grant a planning permit in application TPA/53179. The NOD, issued on 20 December 2022 is for 'preloading of earth and construction of buildings and works (temporary landfill gas venting trench) and alteration of access to a Transport Zone 2'⁴ and affects land known as 'Domain 1', outlined in black in figure 1 below.

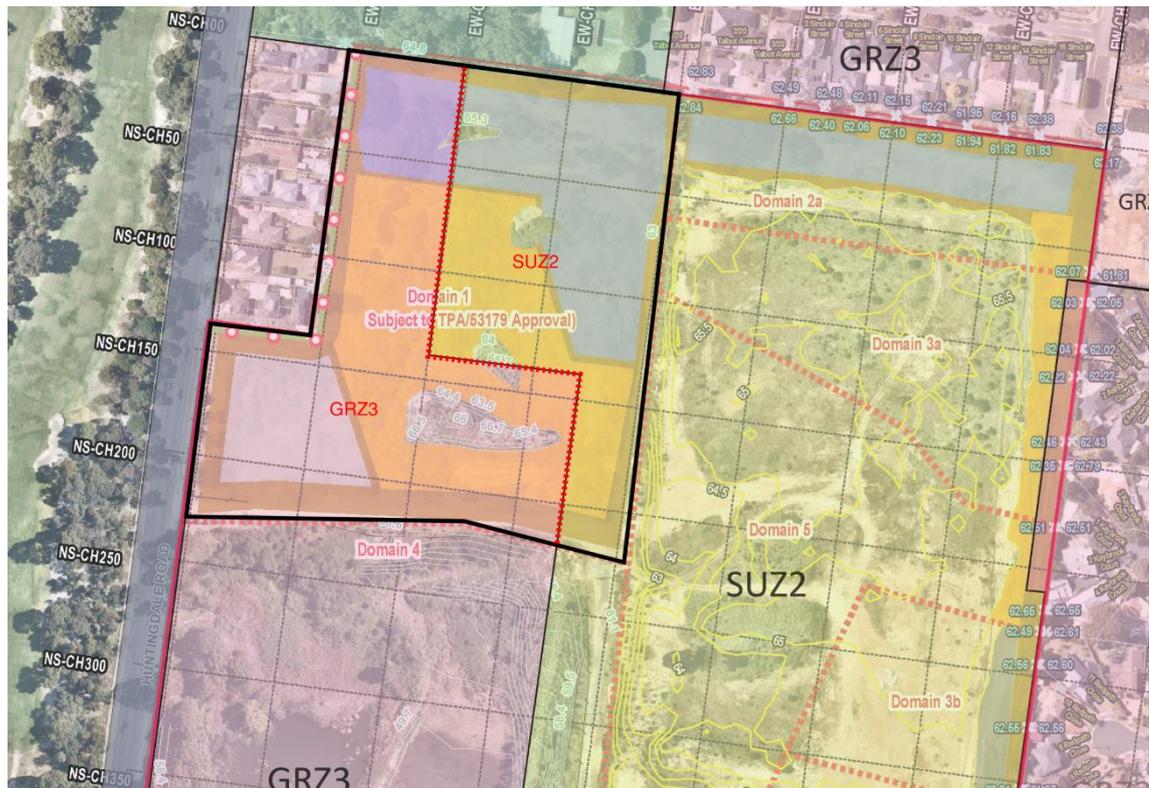


Figure 1 - Location of site relative to zone boundaries and surrounding land. North to the top of the image.

- 2 Domain 1 is one of a number of 'domains' or areas of land within 1221-1249 Centre Road Oakleigh South owned by Huntingdale Estate Nominees Pty Ltd ('Huntingdale'). The location of a number of these domains is also shown in figure 1. The domains generally align with different geotechnical areas of interest across the land owned by Huntingdale and reflect different previous land uses and works. Domain 1 was previously a landfill but is now closed and capped.

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.

² Application of Angelo Valente.

³ Application of William Curt Thompson.

⁴ The approval set out in the NOD dated 20 December 2022.

- 3 Planning application TPA/53179 for works in Domain 1 is one of several planning permit applications being sought by Huntingdale across its land with an aim to bring its whole site into a state that may enable possible future urban uses of the land. The works proposed in Domain 1 include:
- a Importation and stockpiling of fill (preloading) resulting in a height difference of 4 to 5 metres from existing site levels but with battered slopes to its edges; and
 - b removal of the fill at a later stage.
 - c Construction of a temporary land fill gas trench – 196 metres in length and 4-5 metres below the current surface level, along the north east boundary. The green line and red circles in figure 1 above shows the location of a temporary landfill gas trench and the vent rises;
- 4 Domain 1 encompasses land in both Special Use Zone 2 ('SUZ2') and General Residential Zone – Schedule 3 ('GRZ3') as identified in figure 1 above.
- 5 By order of 28 June 2023 in *Valente v Monash CC*⁵ the Tribunal determined a question of law about proceeding P47/2023 that:
- The activities proposed in the planning applications TPA/53179 ... are not characterised as use of the land for extractive industry as defined in clause 73.03 of the Monash Planning Scheme. Further, the activities proposed in the planning applications TPA 53179 ... do not comprise use of the land under the Monash Planning Scheme.⁶
- 6 Parties' submissions all acknowledge that this determination means the consideration of the planning proposal that is subject to planning application TPA/53179⁷ and the two review applications of this proposal, is limited to:
- a. Works for preloading within SUZ2.
 - b. The alteration of access to a road in a Transport Zone in accordance with clause 52.29 of the planning scheme.
- 7 The parties submissions also acknowledge, based on the 28 June 2023 order, that no planning permit is required for the proposed preloading works and associated gas mitigation works undertaken in the GRZ3 part of Domain 1 as they are works not associated with any use of land in the GRZ3 area.
- 8 Huntingdale acknowledges that to undertake the works in the SUZ2 area it requires temporary methane gas trenching and venting structures to be established along the western boundary of Domain 1 in the GRZ3 area and these are integral to the works proposed within the SUZ2 area. Huntingdale

⁵ [2023] VCAT 729.

⁶ The determination also relates to a separate review application P269/2023 (permit application TPA/53477). P269/2023 is a joint review application by Mr Thompson and others for works on land in Domains 2a, 3a, 3b and 5.

⁷ That is the subject of the notice of decision to grant a planning permit in TPA/53179.



therefore accepts that planning permit conditions for the proposed works in the SUZ2 area may include requirements for the gas migration management works to be installed and maintained on land that is not the subject of the planning permit for works in the SUZ2 area.

- 9 Geotechnical engineering evidence of Mr Pedler, on behalf of Huntingdale, is that while the planning permit is only required for works in the SUZ2 area, the preloading should occur in even layers across the Domain 1 area to ensure that the land stabilises at an even rate. Huntingdale therefore accepts that planning permit conditions for the works in the SUZ2 area may need to include a requirement to enter an agreement with the council⁸ for the preloading in the SUZ2 area be undertaken in conjunction with preloading works in the GRZ3 area of Domain 1.
- 10 Huntingdale also submits that the description of the land to which the permit relates should be confined to the titles that apply to Domain 1, as set out in figure 2 below. The council agrees that the permit should be limited to the land set out in these lots and no opposition was put by the review applicants to change the land description.

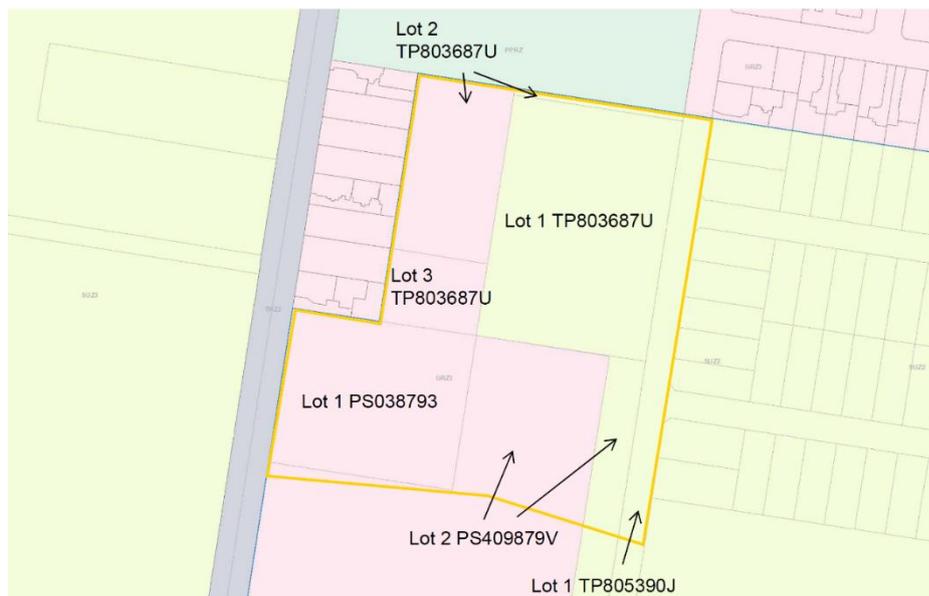


Figure 2 - Lots forming Domain 1 aligned with zone boundaries.

- 11 The scope of consideration before me is therefore to determine:
- a Are the preload works within the SUZ2 area acceptable having regard to the provisions of the planning scheme and the P&E Act. This includes considering how to manage some ‘off-site’ works in the GRZ3 area that are necessary to enable the proposed works in SUZ2?
 - b Is the alteration to the access to Huntingdale Road acceptable?

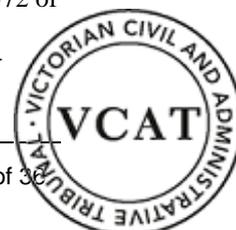
⁸ Through section 173 of the P&E Act.

What is this proceeding not about?

- 12 In setting out what this proceeding is about, it is worth noting what this proceeding is not about.
- 13 As set out above, the preliminary determination as a question of law by the Tribunal is that the proposal is not for the use of the land in either GRZ3 or SUZ2. It is only for works to be assessed under the provisions of the planning scheme and the P&E Act.
- 14 This proceeding is not to consider possible future zoning or planning scheme changes to the land. The broader Huntingdale land at 1221-1249 Centre Road was the subject of planning scheme amendment C129 to the Monash Planning Scheme ('the planning scheme') in 2017-2018. This amendment proposed to rezone all of the Huntingdale land to a Comprehensive Development Zone – Schedule 2 that would have enabled residential uses on Domain 1 as part of a master planned development for the whole site.
- 15 A panel considered submissions opposing the amendment in 2018 and recommended the amendment be abandoned, other than applying an Environmental Audit Overlay ('EAO') across the whole of the land. The conclusions of the panel were based on a number of reasons including that it considered 'the geotechnical or structural issues and their interaction with the management of the contamination remediation works have not been adequately addressed.'⁹ The council subsequently abandoned the amendment other than applying the EAO over the whole site. The proceeding before me is not to reopen or reconsider the merits of this abandoned amendment.
- 16 I was also advised that the council is currently considering a request by Huntingdale to prepare a new amendment to rezone its land but that this request had not yet been endorsed by the council or referred to the Minister for Planning for authorisation as an amendment for exhibition. The proceeding before me is not to endorse or comment on this possible amendment.
- 17 There are other approvals required for works on the land. This includes that an environmental audit is required consistent with the EAO. The EAO, along with the provisions of the *Environment Protection Act 2017* ('the EP Act') require that before a sensitive use¹⁰ commences, or before the construction or carrying out of buildings and works in association with a sensitive use commences:
 - A preliminary risk screen assessment statement in accordance with the *Environment Protection Act 2017* must be issued

⁹ Executive summary of Panel report to Amendment C129 Monash Planning Scheme. (Page 1572 of Tribunal Book).

¹⁰ A sensitive use is set out in the EAO as 'a residential use, child care centre, kindergarten, pre-school centre, primary school, even if ancillary to another use'.



stating that an environmental audit is not required for the use or the proposed use; or

- An environmental audit statement under Part 8.3 of the *Environment Protection Act 2017* must be issued stating that the land is suitable for the use or proposed use; or
- A certificate of environmental audit must be issued for the land in accordance with Part IXD of the *Environment Protection Act 1970*; or
- A statement of environmental audit must be issued for the land in accordance with Part IXD of the *Environment Protection Act 1970* stating that the environmental conditions of the land are suitable for the use or proposed use.

18 The EAO does not trigger a planning permit application for the works before me. Nor is the permit application before me to establish a sensitive use, or works associated with a sensitive use.

19 The overlay sets out that the requirements of the EP Act must be met. In accordance with the requirements of the EP Act, Huntingdale has sought and had approved, an environmental audit for the area of Domain 1 and other land within 1221-1249 Centre Road, Oakleigh South. The audit is subject to a number of conditions that in turn relate to a number of supporting plans and documents. These include reference to a Construction and Environment Management Plan, May 2020 ('CEMP'), prepared by Tetra Tech Coffey.

20 The statement of environmental audit includes a condition that:

The Construction Environmental Management Plan (CEMP), prepared by Coffey Services Australia Pty Ltd and dated 1 May 2020, attached to this Statement, must be updated at the completion of design works and then reviewed and verified by an environmental auditor appointed under the *Environment Protection Act 1970* (or its successor). The final CEMP must be adhered to for the construction period and followed in detail regarding the management of soils, landfill gas and groundwater and implementation of appropriate health and safety measures for site workers.¹¹

21 The Environment Protection Authority ('EPA') is not a referral authority for the permit application before me but the council did notify the EPA of the permit application. The EPA provided a response to the council on 12 November 2021 that comments:

The north west portion of the site is known as Zone 1 in the Statements of Environmental Audit issued for the site.

The proposal is for ground improvement works which includes bringing clean fill onto the site to 'preload' the existing fill to assist with ground consolidation and settlement, as an engineered treatment of uncontrolled fill material in Zone 1 and to investigate settlement patterns of the fill. The gas venting trench is identified as a

¹¹ Statement of Environmental Audit dated 13 May 2020, provided in Tribunal Book volume 2.



requirement of the Audit, prior to any preloading works taking place in Zone 1 of the site.

EPA has no concerns with the work that is proposed.

Given that the proposed measures are required under the Statement of Environmental Audit, Council is not required to undertake a technical review of the proposal, but should seek verification letters that demonstrate compliance with the relevant conditions in the statement of environmental audit¹².

- 22 While this advice from the EPA to the council refers to verifying that compliance with conditions of the audit, this can only be to confirm that nothing in the planning proposal under the P&E Act conflicts with the audit issued in accordance with the EP Act. As the CEMP also sets out, it is prepared to support the environmental audit and any changes to the CEMP need to be reviewed and verified by an appointed environmental auditor.¹³ The review before me is not to review the technical veracity of the environmental audit, any of its conditions or the documents that form part of its approval. The audit is approved in accordance with the EP Act by an auditor authorised under the EP Act.

WHAT ARE THE KEY ISSUES I NEED TO DETERMINE?

- 23 The review application made by Mr Valente, and represented by Ms Valente ('the Valentés') in review application P47/2023 is that a planning permit for the preload works in Domain 1 should not be issued as:
- The planning application is a piecemeal application; and/or
 - The planning application is not worthy of a permit as it shall not deliver a net community benefit, given that its purpose is to facilitate the construction of housing on land containing putrescible waste, slimes and other unknown waste/objects, which shall remain in situ.
- 24 In summary, the submissions of Mr Thompson, in relation to his review application P56/2023, is that a permit should not be issued for the works in Domain 1 as:
- Nearby residents to the works will suffer unreasonable amenity impacts from dangerous levels of noise pollution, dust and vibration from the proposed works.
 - The works will result in unreasonable visual impact to nearby residents.
 - The potential gas migration that may result from the works will lead to an unsafe environment that cannot be appropriately managed.

¹² Extract of EPA advice to the council as set out in Tribunal book 1 page 878. My emphasis added.

¹³ Page 1 of the CEMP, at page 301 of the Tribunal Book volume 1.

- There is not sufficient confidence that permit conditions will be complied with, including that the works will be removed in a timely manner.
- 25 My reasons below address these matters having regard to the submissions, evidence and information tabled, by examining:
- a Is the permit application piecemeal leading to unordered planning?
 - b Is net community benefit derived from the proposal having regard to its potential amenity impacts and the safety risk associated with the works that are the subject of the permit application before me?

Weight to be given to evidence and peer review reports

- 26 Before turning to an assessment of the issues, it is necessary to address submissions put by the Valentès and Mr Thompson that the evidence of Mr Gibbs and Mr Pedler on behalf of Huntingdale is compromised as they are engineering experts employed by Tetra Tech Coffey, a firm engaged by Huntingdale to work on the whole Huntingdale project area over a number of years.
- 27 While I accept that Mr Gibbs and Mr Pedler are not independent peer reviewers of work undertaken for Huntingdale, I nevertheless find their evidence sufficiently credible as professionals in their fields of expertise. I therefore give some considerable weight to their technical evidence.
- 28 The council also sought a peer review of the geotechnical and environmental engineering reports prepared by Tetra Tech Coffey throughout the application process, through a separate environmental engineering company, Senversa Pty Ltd ('Senversa'). The council did not make these peer review reports available to either Huntingdale or the review applicants prior to the hearing.
- 29 I requested a copy of the material relied on by the council to validate that the peer review was undertaken, as set out in the council report and its submission to the Tribunal. The material was tabled by the council on day 2 of the hearing that was heard over four days, with a break between days 3 and 4. Parties therefore had some time to review the peer review material and respond to any matters arising through the hearing process.
- 30 The Valentès and Mr Thompson also question the independence of Senversa and the council's consideration of the application as they say a truly independent review of the land may conclude that the most suitable use of this land is for open space or other recreational community uses. They submit that as the council has indicated it does not wish to purchase the land for open space it is biased in its view about the future possible use of the land.
- 31 I reiterate that there is no use proposal before me. Decisions about the future use of the land is for separate and future decisions to be made by relevant bodies under the P&E Act. There is nothing in the peer review



material tabled that indicates that the council directed Senversa to a specific or biased outcome. The Senversa peer review sets out the context of the advice sought from the council which was to peer review the specialist technical material provided by Huntingdale to the council regarding environmental and geotechnical issues associated with the CEMP and the preloading proposal for Domain 1. For an application to undertake works for preloading in Domain 1 I am satisfied that evidence and peer review work is sufficiently credible to be given weight in the proceeding before me.

IS THE PROPOSAL PIECEMEAL?

32 The Valentès submit that planning application TPA/52179 is a piecemeal application that justifies outright refusal in accordance with the line of authority established since the High Court decision in *Pioneer Concrete (Qld) Pty. Limited v Brisbane City Council & Ors*¹⁴ and the subsequent principles established in *Rowcliffe Pty Ltd v Stonnington CC*¹⁵ for analysing whether an application is piecemeal. As set out in *Rowcliffe*¹⁶, piecemeal applications involve the following analysis:

- i Is there any risk to orderly planning in this application by excluding a portion of land from the proposal?
- ii Is there any risk to orderly planning involving the excluded portion of the land, by excluding it from the subject proposal? Alternately, is there any constraint of future discretion in respect of the excluded portion of the land?
- iii Is there any inherent unfairness to the public in splitting proposals? This adverts to their need to fight two proposals instead of one, to incur two sets of costs, two lots of time and labour.

Is there risk to orderly planning?

33 The Valentès submit that the permit application that is subject to the review applications before me relies on another planning permit being issued sometime in the future for the permit before me to be properly enacted. This is because the works do not enable a specific use or development of the land. Further, they submit that if a permit is granted in the application before me it will create the perception that a subsequent planning permit will be granted without due regard to concerns raised by objectors to the subsequent planning application. In other words, the decision for preloading in Domain 1 before me, will pre-empt a decision for an application to fill land in Domain 4 and potentially other planning permit applications across the broader Huntingdale land.

¹⁴ [1980] 145 CLR 485.

¹⁵ [2005] VCAT 1535.

¹⁶ Paragraph 28 of *Rowcliffe*.



Context

- 34 As set out in figure 3 below, the works proposed in Domain 1 include importing clean fill over the Domain 1 area (preloading) resulting in a height difference of 4 to 5 metres from the existing site levels with batters at the edges of the domain to retain stability of the preloaded soil to within the Domain 1 area. This also allows for drainage of the land to a legal point of discharge as set out in a separate Site Environmental Management Plan¹⁷.

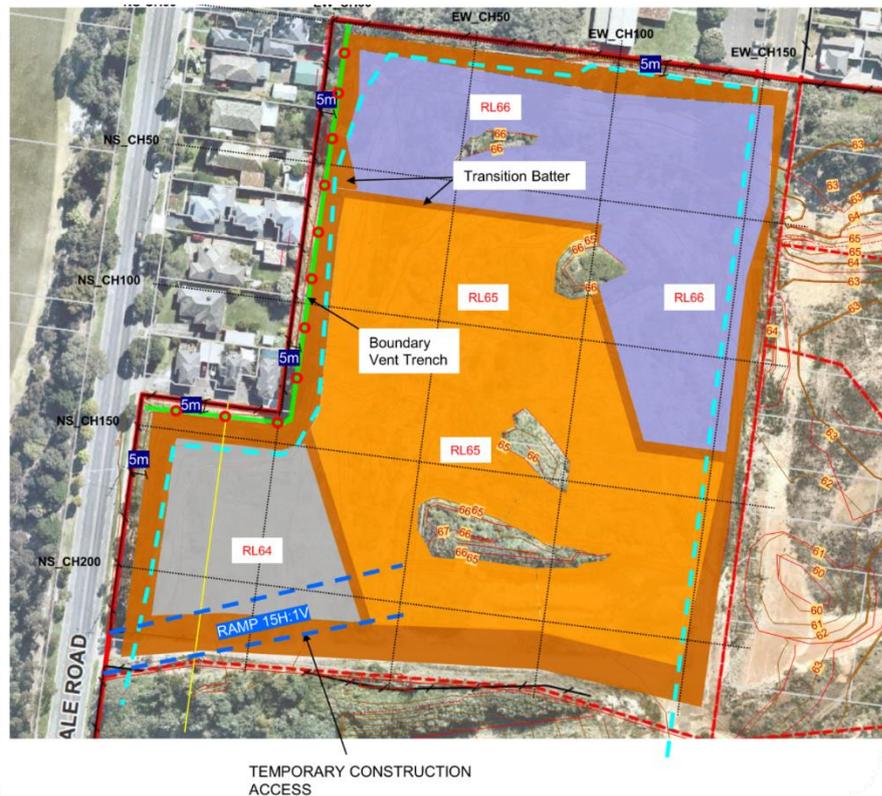


Figure 3 - Preload layout with respect to pit crest (pit crest marked in blue dashed line). Green dashed line shows the line of gas vent locations.

- 35 Figure 3 is an extract from the Domain 1 Preload Design Report ('DPDR') prepared by Tetra Tech Coffey, dated November 2021. The areas marked brown in figure 3 are batters to transition the preload fill to existing ground level, within the Domain 1 area. Different colours mark the different levels of fill transitioning from RL64 in the south-west corner to RL66 in the north-east of the domain.
- 36 Geotechnical evidence of Mr Pedler sets out that preloading Domain 1 is to collect information on the properties of the fill materials in the domain through monitoring of settlement of the preload over time. The results of the monitoring will provide data to assist in predicting future settlement across the Domain 1 site and then used to inform future planning for the land, including what other additional measures may be required to establish urban uses. What measures are required may vary depending on possible

¹⁷ Dated 28 September 2021 – and provided within the material in the Tribunal Book.

future uses. No planning permit for urban use or development has been approved for Domain 1.

Does the proposal before me rely on a future permit or constrain a future possible permit?

- 37 The Valentès raise several reasons why they say the proposal is piecemeal.
- 38 First the Valentès submit that the works rely on an approval of a different permit application for works to fill land in Domain 4.
- 39 The NOD to grant a planning permit for works within Domain 1 includes a condition that one of the endorsed documents forming part of the permit is the DPDR. The Valentès submit that this report states that fill be transported onto the site and then removed 12 to 18 months later. Page 7 of the DPDR then states:
- Following the Preload removal, the excavated fill will be transported for backfilling the former quarry pit in Domain 4 (subject to additional planning permits for backfilling). The fill must meet the specific requirements for the importation of fill as outlined in the Backfill Design Specification (Coffey, 2019) **otherwise it will be transported off-site**¹⁸.
- 40 The Valentès submit that as there is no planning permit granted for backfilling in Domain 4 (located directly south of Domain 1, as nominated in figure 1 above), the Tribunal can only make an informed and comprehensive decision regarding the application for preloading of Domain 1 by assessing the backfilling of the former quarry pit in Domain 4.
- 41 The comment in the DPDR states that the removal of the fill may be to Domain 4 or ‘otherwise it will be transported off-site’. There is nothing in the DPDR, or other application material for the proposal before me, that indicates that filling and removal of preload material on Domain 1 can only occur through backfilling into Domain 4.
- 42 Second, the Valentès submit that there is a current application with the council for Domain 4 (TPA/54381) to backfill Domain 4 and this includes ‘reusing stockpiles from other domains on site for backfilling of the quarry pit’. I understand from the submissions of the Valentès that this permit application has yet to be determined by the council.
- 43 The Valentès submit that each of the domains in the broader Huntingdale land are not self-contained, as the preload from other parts of the land are also to be used to fill the quarry void in Domain 4.
- 44 I am not assessing an application to backfill Domain 4 and from the material before me there is nothing in permit application TPA/53179 that relies on Domain 4 being approved either before, in conjunction with, or after approval of Domain 1. Preloading of Domain 1 can occur in accordance with the DPDR regardless of any works in Domain 4.

¹⁸ My emphasis added.



- 45 Third, the Valentès submit that all the current and foreshadowed applications for Domain 1, Domain 4 and also Domains 2, 3 and 5 are interrelated as they relate to the same land and arise from the same facts, circumstances and issues. The tests under *Rowcliffe* are not simply that several permit applications may occur on the same or adjoining land, or even that they may relate to a larger overall project. The overall Huntingdale land is over 19 Hectares in area. Often land on large sites is the subject of multiple planning permits for different stages or areas of development. The fact that there are multiple applications does not in itself create an unacceptably piecemeal proposal. The principles set out under *Rowcliffe* require examination as to whether the interactions between permits and proposals leads to unorderly planning.
- 46 I am satisfied that the preload works in TPA/53179 are a discrete and separate permit that can be undertaken on its own. However, there are two elements about conditions forming part of the NOD that I find are unacceptable as a test of orderly planning. These relate to conditions about cross-referencing to the CEMP and stockpiling in permit conditions.

Conditions referring to the CEMP

- 47 The Valentès submissions comment that the CEMP applies to the whole of the Huntingdale land and includes reference to ‘stage 1’ of the broader project. Stage 1 – Site Rehabilitation, set out on page 3 of the CEMP lists two dot points:
- Preloading activities in Zone 1
 - Filling of the Zone 4 quarry void
- 48 The Valentès submit that this, and other references in the CEMP, interlink the works in the proposal before me with works in other domains. The Valentès also referred to other elements of the CEMP. By example, page 11 of the CEMP has a section titled ‘2.5 – Proposed Site Redevelopment’ and includes the commentary:

Notwithstanding the uncertainty regarding the final development design, the proposed redevelopment will primarily comprise residential land uses, consisting predominantly of high-density dwellings (townhouses and apartments).

Some low-density housing (lots exceeding 300 m²) may be included as part of the proposed redevelopment but will be confined to the northern and eastern site boundaries (i.e. interface with surrounding low-density residential land). The locations of these proposed low-density land uses are highlighted on Figure 3 in Appendix A.

Some medium density housing, commercial (retail) and open space land uses will also be included as part of the overall masterplan.

There is potential that basement construction may be incorporated in the development design in Zones 3, 4 and 5.

- 49 At the hearing I questioned why the CEMP was referred to in the NOD to grant a planning permit for preload works in Domain 1 when the CEMP applies to the whole Huntingdale site and includes provisions and commentary about future possible uses of the Huntingdale land as a whole. The council responded that the CEMP should be cross-referenced as the works proposed in NOD relate to works required by the CEMP and approved environmental audit.
- 50 Huntingdale responded that it acknowledges that there is considerable overlap in planning permit conditions imposed in the NOD, such as the need for a Construction Management Plan (CMP) and amendments to the CEMP, but it had not sought to review any of the permit conditions through a separate application under Section 80 of the P&E Act. Therefore Huntingdale does not seek to contest the conditions proposed by the council, other than some condition changes proposed by the council through the hearing.
- 51 Both the council and Huntingdale submit that if there is a concern that by referencing the CEMP it may lead to some confusion about the extent of approval granted in TPA/53179 the conditions referring to the CEMP could include additional words that the CEMP, as it relates to the permit for Domain 1, is only for the works approved by planning permit TPA/53179.
- 52 I return to some specific issues of changes sought to the NOD conditions as raised during the hearing below. In principle, however, I can understand some of the concerns and confusion identified by the Valentis about what is being approved in TPA/53179.
- 53 As I have already set out, the CEMP is a document that forms part of the environmental audit approval under the EP Act for the whole of the Huntingdale land. I find it inappropriate and not orderly planning to endorse it as a document to form part of the planning permit for preload works in Domain 1, issued in accordance with the P&E Act. The permission sought before me is limited in scope. The permit proposal before me should not be construed as approving any future use of the land as referred to in the CEMP. As set out in the preliminary legal ruling of the Tribunal in *Valente v Monash CC*, the application before me does not include any use of land. The permission required under the planning scheme is to undertake works, in the form of preloading in the SUZ2 area, and access to a Transport Zone.
- 54 Matters of construction management can and should be addressed in a permit issued for the proposed works, but through the use of the CMP, also required in the NOD, not amending a broader CEMP that is approved under the EP Act for a different purpose. Huntingdale, as developer of the land will need to ensure that both the requirements of the EP Act and the P&E Act are met through complying with both its CEMP and the planning permit conditions that include a CMP. The CMP can address amenity considerations specific to TPA/53179.

Stockpiling condition

55 Condition 17 of the NOD (headed ‘Stockpiling’) directs that the importation of any fill soils to the site must be in accordance with EPA requirements as well as the CEMP and ‘associated Site Backfilling Protocol (Coffey 2015)’. This backfilling protocol was tabled during the hearing. Its stated purpose is:

The purpose of this document and the associated works is to provide guidance in assessing the environmental and geotechnical suitability of fill for the backfilling of Zone 4. In doing so, it is intended that the document will provide a specification for the environmental and geotechnical quality of materials proposed for backfill and surety for the appointed Auditor that materials accepted for backfilling are compatible with the proposed end use of the site.

56 No backfilling is proposed in the works that are the subject of the review before me and no permission is being granted for any works in Domain 4 in the proposal before me. It is therefore not appropriate to reference the backfilling protocol in the permit I am considering. I find it would be confusing and potentially lead to unorderly planning to refer to a document for filling in Domain 4 in a permit that only allows preloading in Domain 1.

57 If a permit is pursued and granted for Domain 4 it is that permit that can address a backfilling protocol for Domain 4. Removing any reference to the backfill protocol in TPA/53179 is a matter that can be addressed by varying the conditions forming part of the NOD before me.

Conclusions about interactions with other permits and approvals

58 The preload of Domain 1 can occur separate to other domains and does not rely on the other land to be established. I am therefore satisfied that the application to place preload onto Domain 1 separate to other applications does not pose an unacceptable risk to orderly planning. This is provided the NOD is amended to remove references to the CEMP and backfilling protocol as these documents relate to other parts of the Huntingdale land and for different approvals.

Is there a safety issue if preloading occurs in Domain 1 before backfilling in Domain 4?

59 The Valentines submit that the proposal to preload Domain 1 may create a safety risk of land slipping into Domain 4 that remains a void. They submit that geotechnical risks have not been fully assessed regarding the possible failure modes of the embankment being the former Talbot Road and its interface with surrounding domains containing slimes. This is noting that while Domain 1 has been filled, it originally formed a single quarry void with Domain 4. The Valentines particular concern is that placing preload soil pressure onto Domain 1 may lead to landslip into Domain 4.

60 Mr Pedler’s evidence explained that there has been a safety analysis undertaken of the risk to slip from Domain 1 into Domain 4 and this is the

reason why there is a significant batter along the southern edge of the preload fill proposed in Domain 1 that forms the planning application before me. The safety analysis is set out in an appendix to the DPDR. The council has had the DPDR peer reviewed by Senversa. Advice of Senversa to the council was tabled at the hearing. This peer review advice was that the DPDR sets adequate safety standards.

- 61 The safety issue is one for Huntingdale to continue to manage as its obligations for occupational health and safety. As a question of orderly planning the DPDR provides sufficient resolution that preload in Domain 1 can occur on its own land in the form proposed with the batter in the southern part of Domain 1. It is not dependent on Domain 4 being remediated or filled at the same time to ensure safety from landslip.
- 62 Provided the permit before me is clearly confined to permitting and managing works on Domain 1 in accordance with the P&E Act I am satisfied it does not prejudice or constrain future discretion over decisions made across the broader Huntingdale site either through the P&E Act or the EP Act.
- 63 Finally, I note that as an orderly planning outcome, I concur with the recommendation of Mr Pedler that the preload work in the SUZ2 area (requiring the planning permit) should occur in conjunction with the remainder of the preload work that does not need a planning permit in the GRZ3 area. An agreement made under section 173 of the P&E Act to ensure the work in both zones occurs concurrently is appropriate and can be enacted by permit condition.

Is there any inherent unfairness to the public in splitting proposals?

- 64 The third principle set out in *Rowcliffe* to assess piecemeal applications is whether there is any inherent unfairness to the public in splitting proposals. The Valentès submit that the application to preload Domain 1, along with a separate Tribunal proceeding to review a decision to approve preload in Domains 2, 3 and 5 and a current permit application to fill land in Domain 4 are a package that should have been applied for together in one permit application. The Valentès submit this is because the applications directly impact the cumulative effects of the preloading of fill on Huntingdale land, the environment and the amenity of the neighbouring properties. They submit that ‘to do otherwise distorts, diminishes and undermines a proper and fair assessment of such impacts across the site, given the scale, volume, intensity, frequency and duration of the preloading of fill material across the land and the backfilling works of Domain 4.’
- 65 The Valentès further submit that Huntingdale has split the planning applications regarding the preloading of fill material and backfilling ‘in order to gain an unfair advantage. Accordingly, the scale, nature, volume, intensity, frequency and duration of the works is fractionalised.’

- 66 While arguably all of the preloading works and the backfilling of Domain 4, could have been included in the one planning application, this does not make the application before me inherently unfair or pose unorderly planning. The works across the whole site are the works, regardless of whether they occur in one application or several.
- 67 The proposal before me has been undertaken through a public process and is described by the applicant as a first and investigative stage. There is a potential inconvenience that different permit applications require consideration by the council, affected neighbours and potentially the Tribunal, but this does not diminish the scope of works or make the proposal before me unorderly.
- 68 The proposal before me is identifiable as a discrete set of works that apply to Domain 1 only. It does not rely on a future use occurring, although it will prepare the land for a yet to be determined use. Nor does the proposal rely on other land, (other than the works in the GRZ3 area of Domain 1 that can be addressed by an agreement) for the works to occur in an orderly manner. I am satisfied that application TPA/53179 is not piecemeal but an orderly application for a single permit for works in accordance with the P&E Act.

WILL THE PROPOSAL RESULT IN UNREASONABLE OFF-SITE AMENITY IMPACTS?

- 69 Both the Valentines and Mr Thompson submit that the proposed works will lead to unreasonable and unmanageable amenity impacts including dust, noise, vibration and possible odour as well as visual impact to nearby residential properties. They also question the safety of residents being close to the gas migration protection works that form part of the preloading works.
- 70 Mr Thompson submits that the preload works that require a planning permit will result in unreasonable dust, noise and vibration to the extent that the works should not be permitted. He submits that the impacts to nearby residents are so adverse that net community benefit will not be derived. With this he referred to his lived experience of previous preload works that occurred close to his home that abuts Domain 5, east of Domain 1. This previous work resulted in vibration recorded in video taken by Mr Thompson within his house. He also set out issues he experienced with noise, dust and the visual impact of the preload fill rising over the height of his rear boundary fence.
- 71 Huntingdale acknowledges that works undertaken around 2017-2018 in the eastern part of the Huntingdale land were not managed as well as they could have been. This included issues with drainage runoff and the need to install silt fences as well as managing dust and noise. The accompanied inspection included a view of the land directly behind Mr Thompson's property where silt fences and earth mounds (now grassed) were visible.

Can potential amenity impacts be reasonably managed?

- 72 Huntingdale relies on agreed permit conditions with the council to manage a number of amenity impacts and relies on evidence of Mr McBride-Burgess in relation to the planning assessment of the issues. Huntingdale also called evidence from Mr Gibbs to explain measures proposed to protect against possible gas migration during the works across Domain 1. I address these below in context of the permit trigger, which is the works within the SUZ2 area, but in knowledge that these works rely on works in the GRZ3 area to manage potential gas migration.
- 73 Mr McBride-Burgess's planning evidence is that there is expected to be some amenity impacts, including noise, dust and vibration, but these can be managed and accepted as a temporary construction measure to bring the land into a state that can then be put to a future urban use.
- 74 The Valentines and Mr Thompson submit that Mr McBride-Burgess's evidence does not assist in making a proper assessment as to whether the site is appropriate for housing, as referred to in his written evidence. His written evidence comments that housing future population in Monash is expected to increase and that the review site 'represents a significant opportunity to contribute to this housing growth whilst also facilitating an outcome that can assist in protecting other established residential areas and maintain the garden city character of the municipality'.
- 75 When asked questions about this issue at the hearing, Mr McBride-Burgess qualified that the land may be put to various future uses and that the proposal is not for use.
- 76 The proposal before me is not for any use of the land. The permit trigger is for works in SUZ2. In this zone the use of the land for dwellings is prohibited. A decision about the future uses that may be permissible on the SUZ2 land or through any possible rezoning of the SUZ2 land is not before me. I therefore give no weight to Mr McBride-Burgess's evidence about what the future use of the land may be or whether the site is suitable for housing.
- 77 What is relevant is that currently Domain 1 is currently not fit for any urban purpose, even recreational use, due to its previous use and works that have left the site geotechnically unstable. The preload works are a relevant set of works to be undertaken to enable a future, yet to be determined, urban use.
- 78 Mr McBride-Burgess' evidence includes commentary on whether the proposed planning permit conditions in the NOD can acceptably manage off-site impacts that may arise from the proposed works. Mr McBride-Burgess acknowledges that there is likely to be some impact through noise, dust and vibration, but to the extent that the works that require a permit are in the SUZ2 land they are partly isolated from existing dwellings and the works are temporary.

- 79 Mr McBride's evidence about the visual impact of the works acknowledges that the existing scattered vegetation which has established over time in Domain 1 will be removed and replaced with unvegetated soil stockpiles. His evidence is that while the earth mounds may appear less aesthetically pleasing than the existing conditions, the works are akin to the demolition phase of a building project. His evidence is that the works are a temporary and necessary impost to prepare the site for any future use.
- 80 The works that require the planning permission are in the SUZ2 area and somewhat isolated from residential properties. The works will impact properties that abut Huntingdale Road with works, integral to the works in the SUZ2 area occurring in the directly adjoining GRZ3 area. None of these property owners are parties to the proceeding. I have given some consideration to the impact of the works as a whole as the works within the SUZ2 area cannot occur without the works in the GRZ3 area.

The relevance of whether the works are temporary

- 81 Mr McBride-Burgess was questioned by Mr Thompson as to what might constitute temporary and whether it remains acceptable to tolerate the likely noise and vibration impacts when their 'temporary' nature may include several years of loading the stockpiling and then removing it. Mr McBride-Burgess responded that even if the works are there for up to five years they are temporary both in time scale and because they are there to serve a purpose and then removed.
- 82 In preparing a former landfill for a usable urban purpose there will be some amenity impost in the capping process done to date and now the proposed stabilising process through preloading. To achieve a longer term purpose of bringing the land into a physical standard for any urban use, there needs to be an acceptance of some amenity impacts in the short term (in this case up to five years).
- 83 Mr Thompson also submits that there is not sufficient confidence that permit conditions will be complied with, including that the works will be removed in a timely manner. This is noting that preload earth mounds that were placed near his property in 2017-18 remain on-site and have not been removed. I was advised that the works in the eastern part of the Huntingdale land are not restricted by a planning permit condition that requires their removal after a specified time. It is therefore not possible to directly compare these circumstances with the proposal before me.
- 84 The proposal before me includes an accepted permit condition that the works must be ongoing, monitored and removed after five years. There is nothing to indicate this cannot be achieved and there are avenues for the responsible authority to enforce permit conditions if needed.

Managing dust, noise and vibration

- 85 The NOD includes conditions that require dust, noise and vibration to be managed in a framework that must also comply with relevant EPA standards. The Senversa peer review identifies the rationale to some of the permit conditions in the NOD, such as the need to vegetate the preload stockpiles to minimise soil erosion.
- 86 As set out in a letter of advice from Senversa to the council dated 12 August 2022, Senversa comments that the:
- ...environmental audit and subsequent opinion did not appear to include a review of all aspects of construction environmental management of works associated with the pre-loading (surcharging) or geotechnical considerations. While consistent with environmental auditing practice, the scope of Mr Mival's environmental audit and subsequent opinion may not address all environmental issues that might concern surrounding residents and factor into Council's broader consideration of the planning application. Most notably, dust generation, slope stability, erosion control and stormwater management impacts associated with the pre-construction works may not have been considered on the basis that these matters would not normally form part of the scope of contaminated land audits.
- 87 The peer review therefore assesses potential amenity issues such as dust, vibration and noise. The advice of Senversa recommends that a 'preloading environmental management plan' be prepared to reflect the preload geotechnical and amenity aspects of the development. The Senversa comments that a management plan should address the requirements of EPA Publication 1834 *Civil construction, building and demolition guide (November 2020)* and also include various measures to monitor, manage and resolve potential issues associated with dust, noise and vibration. These elements were included by the council in the NOD but as amendments to the CEMP rather than a new, site specific management plan.
- 88 As I have already set out, I find the required CMP condition in the NOD should manage issues specifically related to Domain 1 rather than amending the CEMP that has a different purpose and applies to the whole Huntingdale land. My findings correlate with the Senversa advice to provide a separate management plan for Domain 1 rather than amending the CEMP.
- 89 Provided the works are managed through a condition to establish and implement a more detailed CMP, I am satisfied that the potential amenity impacts of dust, vibration and noise can be reasonably managed for the proposed five year life of the works. The NOD conditions also include separate conditions that direct the permit holder to undertake acoustic testing at the request of the council.

Stormwater drainage

- 90 The Valentès and Mr Thompson also questioned how the site will be drained and whether this relied on drainage into Domain 4. A drainage plan



in the form of a Site Environmental Management Plan details that the drainage will be managed with silt traps and silt fencing and will drain to a legal point of discharge out to Huntingdale Road. Proposed permit conditions require that a stormwater management plan be provide and that drainage is to a legal point of discharge.

- 91 An existing Site Environmental Management Plan demonstrates that drainage has been considered in the preload design works contained within Domain 1 and can be further refined through a stormwater management plan to be endorsed under the permit. This is consistent with stormwater management policies of the planning scheme.

Visual impact

- 92 Mr Thompson submits that the stockpiling will cause unreasonable visual impact to nearby residential neighbours. Mr McBride-Burgess' evidence comments that given the permit trigger is only for the SUZ2 land, the visual impact of permitted mounding will be somewhat shielded by stockpiling works that can occur in the GRZ3 area without a planning permit. He acknowledged that this is a peculiar situation but nonetheless the way that the planning assessment needs to be made based on the planning permit triggers.
- 93 I agree that the mounding needs to be put in context that mounding can occur in the GRZ3 area without a planning permit. It is the land in the SUZ2 that is to be assessed as a visual impact. Even acknowledging that it will occur as an integrated set of works across Domain 1, the works remain a relatively short term visual impost in the scope of the residential amenity currently enjoyed by the neighbours to the west and the nearest property to the north-east at 20 Talbot Avenue. The works will also be visible from the adjoining Davies Reserve. Again as temporary works, albeit up to five years, I am satisfied the potential visual impost is reasonable.
- 94 Mr Pedler's geotechnical evidence also made some comment about visual impact of stockpiling. I give this no weight given his expertise is in geotechnical matters not visual impact. Mr Pedler acknowledged in questions that he had perhaps stepped beyond his expertise in making comments about visual amenity but he had done so to qualify assertions made by objectors that the stockpiling may be seen for hundreds of metres. I rely on my own review of the site and surrounds from the accompanied inspection, as well as submissions and the evidence of Mr McBride-Burgess in making my findings about visual amenity impact.
- 95 Proposed permit conditions require stockpiles or earth mounds to be seeded with grass-seed to minimise dust and erosion and this should also reduce visual impact. As I noted at the hearing, the condition that requires the preload to be removed 'to the satisfaction of the responsible authority' will need to ensure that the council is satisfied that the land, after stockpile soil



is removed, is left in a stable state so that it does not cause dust, drainage or unreasonable visual amenity issues.

- 96 The remaining issue of visual amenity is that the proposal requires removal of several trees in the SUZ2 area. Their removal does not trigger a planning permit but there is a Tree Conservation Policy at clause 22.05 of the planning scheme that applies to all land in the municipality. This policy sets out that before deciding upon any application the responsible authority will consider whether any existing semi-mature or mature canopy tree that contributes to the Garden City and neighbourhood character is to be removed by development.
- 97 A tree removal plan is an appendix to the DPDR and identifies four individual trees and a group of tree trees that will need to be removed for the works in the SUZ2 land. This plan aligns with trees identified in an arborist report forming part of the application material¹⁹. The plan includes removal of two trees, trees 52 and 65 that are rated 'Moderate B' in the arborist report. This report states that both these trees are *Eucalyptus botryoidis* and, as Moderate B trees should be retained 'where possible'. The other trees and vegetation are graded Moderate C, or low, with the arborist report indicating such vegetation is of less significance or concern if removed.
- 98 Mr McBride-Burgess responded to questions about tree removal by commenting that the vegetation to be removed is limited and required to enable any future use of the land through the preload works. I also queried the council about comments in its officer report that trees being removed could be addressed in future permit applications, in context of the piecemeal submissions made by the Valentis. The council relies on the evidence of Mr McBride-Burgess that the loss of the trees is acceptable noting that there is no planning permit trigger for their removal.
- 99 I am satisfied that the loss of the trees is acceptable in context of the works proposed, noting that the trees are not specifically protected by the planning scheme. They are an unavoidable loss for the works proposed. Any future use or development of the land will need to consider how such use or development interfaces to the adjoining park and residential properties and will need to consider the policy framework of the planning scheme at that time in relation to new planting.

Managing possible gas migration

- 100 The DPDR and associated documentation in the planning application include provision for a temporary trench and venting system to monitor, absorb or expel any gas that may seep to the edge of Domain 1 through the GRZ3 area from the former landfill as a result of the preloading works. Mr Gibbs' evidence sets out that the known site contamination in Domain 1

¹⁹ As set out in Arboricultural Assessment and Report – Treelogic – 15 September 2021. Commencing a page 642 of the Tribunal Book.



and the potential for the preloading works to influence ground gas migration leads to the need to construct the temporary boundary venting system (prior to preloading) in Domain 1. His evidence is that the proposed system is an ‘appropriately conservative precautionary measure to protect against ground gas migration during the works (i.e. to minimise the potential risk of harm)’. The works are also a requirement of the environmental audit completed at the site and current EPA notices issued through this process.

- 101 Huntingdale submits that a permit condition could possibly address migration risk works as works in the GRZ3 are works integral to the SUZ2 preload permit area, but that it is sensible that the condition requires an agreement be entered into given the works are in effect ‘off-site’ from the SUZ2 area that triggers the planning permit.
- 102 Mr Thompson and the Valentés question if it is acceptable to impose a risk on the adjoining residential properties that face Huntingdale Road from possible gas migration. This is noting that the risk management is to address the increased risk that gas may seep out through pressure applied to the land in the preload process across both the SUZ2 and GRZ3 area.
- 103 The works proposed to minimise any risk from gas migration are a series of works that include a physical barrier, material within a trench along the western boundary of Domain 1 to absorb gas and gas vents in this area to expel any gas that may seep out from the previous landfill of the site. The landfill occurred some 40 years ago. Mr Gibbs’ evidence is that the risk of gas migration after this time period is much lower than what it would have been when the landfill first occurred.
- 104 The gas mitigation works are a precautionary measure and appropriate to be undertaken as part of the works proposed. They are works that have been assessed by Tetra Tech Coffey and Senversa, as well as the EPA and the environmental auditor. There is nothing before me to indicate that the risk of gas migration is unusually high or unmanageable from these technical assessments or that in context of planning policies to minimise environmental risk, the preload works create an unmanageable or unreasonable risk.
- 105 In context of the planning permit being sought, the works can be managed through the use of agreement between the council and Huntingdale to ensure that they are constructed and managed through the preload process.

Conclusion

- 106 Overall I am satisfied that while some amenity impacts may occur from the works to nearby residential properties and the adjoining park, these are reasonable and can be managed through appropriate planning permit conditions. On balance of the ability for the works to improve the usability of the existing SUZ2 land for some future purpose I am satisfied the works are acceptable.



IS THE ROAD ACCESS ACCEPTABLE?

- 107 The proposal includes altering an existing road access to Huntingdale Road at the south-west corner of Domain 1, inside the GRZ3 area. This triggers a planning permit under clause 52.29 of the planning scheme. The permit application as it relates to the access alteration was referred to the Head, Department of Transport as the relevant referral agency and road manager of Huntingdale Road.
- 108 The Head, Department of Transport does not object to the altered access subject to permit conditions. These conditions form part of the NOD and are not opposed by Huntingdale. Other conditions of the NOD require a traffic management plan to address truck movements inside the land that are also not opposed by Huntingdale.
- 109 From the material before me I am satisfied that the proposal, as it relates to the alteration of access to Huntingdale Road, is acceptable.

WHAT CONDITIONS ARE APPROPRIATE?

- 110 As already set out, the NOD requires alteration to confirm that the land to which the permit applies is that within Domain 1. It also requires amendment to remove reference to ‘use’ of land. For the reasons already set out I also find that some restructuring of conditions in the NOD is required to remove reference to amending the CEMP but instead to include further detail and specifications to address amenity issues through the CMP separately required in the NOD.
- 111 In addition to making changes to delete the CEMP but to move requirements for dust, noise and vibration management in the CMP I have deleted the separate condition 10 of the NOD that required a vibration management plan. This is provided for in the requirements for a CMP and does not need to be repeated in a separate condition.
- 112 Huntingdale and the council agree that the conditions for gas venting should be amended to include them as an agreement under section 173 of the P&E Act as the works relate to land separate to the land to which the permit is granted, being the SUZ2 land. The agreement is also required to manage the recommendation of Mr Pedler that the preload works occur evenly across the Domain 1 area with some of this land sitting outside of SUZ2 where the planning permit applies for preload works. With this it is logical that the gas venting condition also forms part of the same agreement as is proposed and agreed between Huntingdale and the council.
- 113 Huntingdale submits the agreement should require the gas works to be implemented before preload stockpiling starts, but not before other preparatory site works and vegetation removal occurs. Huntingdale submits that the council’s proposed requirement that the agreement be entered into ‘prior to the endorsement of plans’ may lead to delay if finalising detail of the agreement or the plans takes time. I find the agreement should be entered into before the permitted preloading works start. This is the



conventional timing trigger and ensures the agreement content aligns with endorsed plans and documents that will form part of the permit that are also required before the works start. There is no need to insert an explanatory footnote about what the approved works are in the permit, as suggested by Huntingdale, as the approved works are confined by the final DPDR, CMP and stormwater management plan to be endorsed as part of the permit.

- 114 Condition 2 of the NOD refers to endorsing a number of documents including a ‘Workplan For Zone 1 Temporary Boundary Venting Measures prepared by Tetra Tech Coffey dated 11 November 2021’ as part of the permit. This should not be a separate, stand-alone document to be endorsed under the permit as it relates to works directed by the agreement. I therefore have only referred to this document in the condition that directs what needs to be included in the agreement.
- 115 I have also adopted the recent guidelines for writing planning permit conditions issued by the Department of Transport and Planning by including a new condition 1 that at all times what the permit allows must be carried out in accordance with the requirements of any document approved under the permit to the satisfaction of the responsible authority. This then avoids the confusion that currently exists in condition 1 of the NOD and the amendments sought by the council to refer to ‘plans’ that form part of various documents and changes to requirements of reports and documents, such as the DPDR, as recommended by Mr Pedler, but are additional requirements of the DPDR, not an amendment to a particular plan. The relevant documents that form part of the permit and need to be either created, amended or finalised for form endorsed documents can then be more clearly set out.
- 116 As already set out I have included the condition that stockpiling must accord with EPA requirements but removed reference to the CEMP and a 2015 backfilling protocol as they are not specific to the Domain 1 preload works approved by the permit.
- 117 A separate condition requires the construction of the works to occur within set hours, except with the written consent of the responsible authority. Mr Thompson requested that the hours of operation condition should include a requirement for the permit holder or the council to forewarn neighbours of any such changes. I agree with comments of Huntingdale that this is both impractical and unnecessary.
- 118 It is unreasonable to direct notice be given to neighbours for occasional changes. Changes to hours may occur through short notice issues such as weather conditions. Amending the construction hours will be at the discretion of the council. If it is an on-going change to hours then it will be at the discretion of the council as to whether this is a change it is willing to make under secondary consent, or if it should require a formal amendment to the permit with notice to relevant neighbours. This is noting that the direct abutments of the SUZ2 land, to which the permit applies, are limited.



119 Finally I have deleted the following three NOD conditions:

28. The land must not be used as a waste transfer station or for refuse disposal.
29. No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.
30. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

120 None of these conditions relate to the permit granted. Condition 28 is not necessary and confusing as no use for a waste transfer station is granted in the permit. Similarly conditions 29 and 30 are not necessary. No buildings are approved in the permit and nor is approval granted for any rubbish storage. What is approved is only works for preloading, and alteration of the road access to Huntingdale Road. There may be some short term structures to accommodate workers and equipment but clause 62.02-1 of the planning scheme sets out that ‘a temporary shed or temporary structure for construction purposes’ is exempt from the need for any planning permit under the planning scheme. The management of these issues through construction process is also addressed in the CMP condition.

CONCLUSION

121 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Alison Glynn
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53179
LAND	Lots 1, 2 and 3 of TP803687U, Lot 1 of PS038793, part lot 2 of PS409879V and part of lot 1 of TP805390J: within 1221-1249 Centre Road, Oakleigh South Vic 3167.

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Works (preloading) in Special Use Zone – Schedule 2
- Alteration of access to a road in a Transport Zone.

CONDITIONS

- 1 At all times what the permit allows must be carried out in accordance with the requirements of any document approved under this permit to the satisfaction of the responsible authority.

Domain 1 Preload Design Plan

- 2 Before the works start, a Domain 1 Preload Design Plan must be approved and endorsed by the responsible authority. The Domain 1 Preload Design Plan must:
 - (a) be prepared to the satisfaction of the responsible authority,
 - (b) be submitted in electronic form,
 - (c) be generally in accordance with Domain 1 Preload Design Report prepared by Tetra Tech Coffey, dated November 2021, but amended to show the following details:
 - i The location and height of the proposed silt fencing to be shown on sectional diagrams.
 - ii The location and minimum setbacks of the proposed swale drain to adjoining properties and identified on sectional diagrams.
 - iii Clarification of the level of compaction and target densities of the preload stockpiles to be documented to ensure the stability of the stockpile slopes around the perimeter of the site.
 - iv Confirmation and documentation of the level of compaction of any existing fill underlying the perimeter slopes of the pre load stockpiles.



- v Documentation that the preload fill must be placed in even layers and track rolled across the site, with the maximum difference in the height of placed preload fill being no more than 1 metre.
- vi A requirement that the survey of the settlement plates during construction must be conducted initially on a fortnightly basis which may be extended out to monthly as settlement trends become evident.

The provisions and requirements of the endorsed Domain 1 Preload Design Plan must be implemented and complied with by the permit holder to the satisfaction of the Responsible Authority.

Construction Management Plan (CMP)

- 3 Before the works start, a Construction Management Plan (CMP) must be approved and endorsed by the responsible authority. The Construction Management Plan must:
- (a) be prepared to the satisfaction of the responsible authority,
 - (b) be submitted in electronic form,
 - (c) provide specific construction management for the works permitted by this permit, including providing the following details:
 - i A construction program that is generally in accordance with the submitted “Construction Program Estimate & Sequence of Preload Earthworks and Venting Barrier Works”;
 - ii Hours for construction activity in accordance with any other condition of this permit and including a timetable of designated working hours highlighting what noise and vibration sensitive tasks can be undertaken when;
 - iii Appropriate measures to control noise, dust and water and sediment laden runoff;
 - iv Documentation to verify that the works align with relevant sections of the following standards, guidelines and consents:
 - (1) Statement of Environmental Audit ref. CARMs: 70403-2 Service Order No.: 8004092 (EPA, 2020).
 - (2) *Occupational Health & Safety Regulations 2017*.
 - (3) AS3798-2007: Guidelines on Earthworks for Commercial and Residential Developments.
 - (4) EPA Publication 1828.2 Waste disposal categories – characteristics and thresholds (March 2021).
 - (5) EPA Publication 1968.1 Guide to classifying industrial waste (August 2021)



- (d) Detail the applicable environmental values and required indicators and objectives for the ambient sound environment outlined in the Environment Reference Standard1 (ERS), the requirements of EPA Publication 1834 Civil construction, building and demolition guide (November 2020).
- (e) Provision for Dust management including:
 - i Requirement that pre-load stockpiles must be vegetated, or other appropriate method (such as soil binder) for the top surface of the stockpile as soon as reasonably practicable following placement to assist in dust management.
 - ii Include definitive requirements for when dust monitoring must be conducted.
 - iii Include definitive weather conditions and observations that require works to cease.
- (f) Provision for Noise and Vibration Management including:
 - i Detail the applicable environmental values and required indicators and objectives for the ambient sound environment outlined in the Environment Reference Standard1 (ERS), the requirements of EPA Publication 1834 Civil construction, building and demolition guide (November 2020).
 - ii Include methods for controlling noise and vibration at the source.
 - iii Develop a timetable of designated working hours highlighting what noise and vibration sensitive tasks can be undertaken when.
 - iv Develop a procedure for approval of any noise/vibration sensitive tasks that need to be completed outside of designated working hours.
- (g) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (h) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network;
- (i) A program for the cleaning and maintaining surrounding road surfaces;
- (j) 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;
- (k) Measures to provide for public safety and site security;
- (l) A Traffic Management Plan showing truck routes to and from the site and other details consistent with the Traffic Management Plan prepared by Cardno dated 29 September 2021 and include;



- i 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.
- ii A 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;
- (m) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (n) The provision of contact details of key construction site staff;

The provisions and requirements of the endorsed Construction Management Plan must be implemented and complied with by the permit holder to the satisfaction of the Responsible Authority.

Stormwater Management Plan

- 4 Before the works start, a stormwater management plan must be approved and endorsed by the responsible authority. The stormwater management plan must:
- (a) be prepared to the satisfaction of the responsible authority,
 - (b) be submitted in electronic form,
 - (c) include details of the proposed stormwater management system, including drainage works and retention, detention and discharges of stormwater to the drainage system,
 - (d) demonstrate how all relevant standards set out in the planning scheme relating to stormwater management will meet the objectives in the planning scheme, including modelling and calculations,
 - (e) be generally in accordance with the Site Environmental Management Plan prepared by Verve dated 28 September 2021, but amended to show the following details:
 - i Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - ii The location and height of the proposed silt fencing to be shown on sectional diagrams prepared by Tetra Tech Coffey.
 - iii The location and minimum setbacks of the proposed swale drain to adjoining properties and identified on sectional diagrams on the plans prepared by Tetra Tech Coffey.
 - iv The location of the crest of the sand quarry pits in relation to the property boundaries.



The provisions and requirements of the endorsed Stormwater Management Plan must be implemented and complied with by the permit holder to the satisfaction of the Responsible Authority.

Section 173 Agreement

- 5 Before the works start, the owner of the land must enter into an agreement with the responsible authority under section 173 of the *Planning and Environment Act 1987*. The agreement must provide the following:
- (a) Before any placement of fill for preloading (excluding pre-works that may include stripping, stockpiling of existing soil, transport of vegetation and soils, shaping of work areas, establishment of access tracks, and works required for environmental management purposes):
 - i The boundary venting system described in the Workplan for Zone 1 Temporary Boundary Venting Measures, November 2021 must be installed in accordance with the Workplan verified by the appointed environmental auditor or a revised workplan subsequently verified by the appointed environmental auditor.
 - ii An appointed environmental auditor must be engaged to verify the installation and completion of the temporary boundary venting system.
 - iii Designated hold points are to be enforced where construction of the boundary venting system as per the agreed design is not practicable to enable discussion and endorsement of the proposed design change from the auditor.
 - (b) Following the construction of the boundary venting system:
 - i On-going landfill gas monitoring must be implemented in accordance with the auditor approved workplan or a revised plan verified by an appointed environmental auditor.
 - ii Works must comply with *Victorian Occupational Health and Safety (OH&S) Regulations 2017*. The Site Manager must ensure appropriate OH&S measures are implemented and that all site personnel (including those employed / engaged by sub-contractors) are aware of all potential OH&S issues at the site.
 - iii Monitoring for the presence of hazardous ground gases or a potentially explosive or oxygen deficient atmosphere using an LEL meter must be undertaken as part of any ground opening works.
 - iv Existing gas monitoring infrastructure must be maintained.
 - (c) The works other than the boundary venting system that are:
 - i described in the Domain 1 Preload Design Report prepared by Tetra Tech Coffey, November 2021 (as amended in accordance with this permit); and



- ii not authorised by this permit,
must be completed no later than the completion of the works authorised by this permit, unless otherwise agreed in writing with the Responsible Authority.
- (d) The agreement to end upon the earlier of:
- i Completion of the works authorised by this permit (TPA/53179);
or
 - ii Construction and installation of permanent boundary gas venting in accordance with condition 5(b) of the Statement of Environmental Audit for Zone 1 as verified by an appointed environmental auditor.

All costs of preparation, execution registration and removal of the agreement must be borne by the owner of the land, or the future Owners Corporation, including those costs incurred by the Responsible Authority.

Stockpiling

- 6 The importation of any fill soils to the site must be in accordance with *Environment Protection Act 2017* and is subordinate regulations and guidelines.
- 7 The batter surfaces of the proposed pre-load surcharge stockpile must be vegetated (e.g. with grass seed) as soon as reasonably practicable to reduce further the potential for surface soils erosion. The top surface of the pre-load must be either vegetated or utilise another other appropriate method (such as a soil binder) to reduce potential for soil erosion.
- 8 The height of the stockpiles must at all times be limited so that no part is higher than the RL heights shown in the endorsed Domain 1 Preload Design Plan forming part of this permit.

Site Management

- 9 Contact details of the key site personnel on-site and the principal contacts for registration and resolution of complaints must be clearly displayed in a highly visible location external to the site at all times during the preloading and stockpiling works.
- 10 All complaints received in relation to the works must be managed, addressed and resolved by the operator within 24 hours (or 48 hours in the case of the weekend) of receipt. Details of all complaints and the action taken by the operator must be immediately provided to the Responsible Authority.
- 11 Construction may operate only between the hours of:
 - Monday to Friday, 7:00am-6:00pm.
 - Saturday, 8:00am-12:00pm.



- No work permitted on Sunday or public holidays.

Unless the Responsible Authority gives consent in writing.

- 12 At the immediate request of the Responsible Authority, the applicant must limit the scale of, or cease operations, which emit dust during windy days when dust levels are unacceptable.
- 13 At the immediate request of the Responsible Authority, the applicant must arrange for the external cleaning of any adjacent properties unduly affected by dust from the works being undertaken. The cleaning works as requested by the Responsible Authority, are to be undertaken at full cost of the developer/operator.
- 14 The applicant must ensure that vehicles leaving the site have clay and soil removed from their wheels before entering public roads. Street sweeping of roads surrounding the development is to be undertaken as requested by the Responsible Authority at full cost of the developer/operator.
- 15 Sediment traps or similar, must be installed to prevent the transportation of sediment, litter and wastes oil, grease and detergents from vehicles to the stormwater system and adjoining properties. Sediment control measures are to be designed in consultation with and implemented to the satisfaction of City of Monash Engineering Division.
- 16 Any unused portion of the property must be kept drained, tidy and mown at all times to the satisfaction of the Responsible Authority
- 17 Parking areas and access lanes must be kept available for these purposes at all times
- 18 A sign to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3 square metres
- 19 The loading and unloading of goods from vehicles must only be carried out on the land.
- 20 Vehicles under the control of the operator of the use or the operator's staff must not be parked on Centre Road, Huntingdale Road, Talbot Avenue, Sinclair Street, Alvina Street, Clarinda Road, Crawford Road, Eulinga Road, Elder Street, Scotsburn Avenue, Coonil Street, Hardy Court, Redpath Close, Kaybrook Court and Ashbrook Court.
- 21 The amenity of the area must not be detrimentally affected by the approved works, through the:
 - (a) transport of materials, goods or commodities to, from and within the land.
 - (b) through vehicle movements (including parking of trucks and reversing beepers etc) in any other way.
 - (c) appearance of any works or materials.



- (d) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil.
 - (e) presence of vermin.
- 22 At the immediate request of the Responsible Authority the owner must take action to respond to amenity and nuisance issues raised by the Responsible Authority including suspending operations upon request.

Acoustic Testing

- 23 At the request of the Responsible Authority, the owner or occupier must, supply an assessment by a qualified acoustic consultant of noise levels emitted from the site with readings taken at times and locations specified by the Responsible Authority. The cost of the assessment is to be borne by the owner or occupier. If necessary, additional noise control features must be installed in consultation with an acoustic engineer, or activities and noise sources on the premises regulated at the direction of and to the satisfaction of the Responsible Authority. The frequency of this request will be at the discretion of the Responsible Authority.

Stormwater management

- 24 The stormwater management system approved by the responsible authority and included in the endorsed stormwater management plan must be constructed, managed and maintained to the satisfaction of the responsible authority.
- 25 The details of the stormwater management system must not be altered from the details in the endorsed stormwater management plan without the written consent of the responsible authority
- 26 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into adjoining properties, Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 27 The stormwater drainage system is to be inspected every month or after any rain event greater than 10 millimetres.
- 28 Sediment collected by the sediment fence is to be removed and fences maintained and/or replaced to prevent the transportation of sediment to the stormwater system and adjoining properties.
- 29 The silt fences should be inspected at the same time and cleaned if required in line with the manufacturer's specification. Should there be any signs of a loss of integrity in sections of the silt fence, these should be replaced.
- 30 Inspection and maintenance will be the ongoing responsibility of the permit holder.
- 31 The site must be drained to the satisfaction of the Responsible Authority. All stormwater and water runoff from the site must be directed to the Point of Connection as detailed in the Legal Point of Discharge report.



Stormwater must not be allowed to flow into adjoining properties including the road reserve.

Department of Transport Conditions (ref PPR:37852/21)

- 32 Before the works start, the crossover and driveway on Huntingdale Road are to be constructed to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 33 No right-turn movements into or out of the site by heavy vehicles are permitted between the hours of 6.00am-9.30am and 3.30pm-7.00pm on weekdays.
- 34 No heavy vehicles associated with the works are permitted to be stopped/parked on Huntingdale Road.
- 35 Before the works start, a truck wheel-wash must be installed at the property boundary to enable all mud and other tyre borne debris from vehicles to be removed prior to exiting the land. The truck wheel-wash must be maintained in good order during the construction phase of the development and may be removed at the end of the construction phase of the development with the prior approval of the Head, Transport for Victoria.
- 36 Vehicles must enter and exit the site in a forward direction at all times.

Completion of works

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

Removal of works

- 38 At the end of the settlement/surcharge of the preload material or five (5) years from the date of this permit, whichever occurs earlier, all the preload fill material must be removed from Domain 1 to the satisfaction of the Responsible Authority unless otherwise agreed in writing by the Responsible Authority.

Expiry of permit

- 39 This permit will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

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 –

