

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11482/2021
PERMIT APPLICATION NO.M/2020/1282

CATCHWORDS

Maroondah Planning Scheme; General Residential Zone Schedule 1; Significant Landscape Overlay, Schedule 4; Neighbourhood character; Visual bulk; Double storey at rear; Tree removal and landscaping; Carriageway easement; Frontage and carport; Driveway and vehicle access.

APPLICANT	Shane Greig
RESPONSIBLE AUTHORITY	Maroondah City Council
SUBJECT LAND	9 Mirang Avenue, CROYDON VIC 3136
HEARING TYPE	Hearing
DATE OF HEARING	20 April 2022
DATE OF ORDER	14 June 2022
CITATION	Greig v Maroondah CC [2022] VCAT 682

ORDER

Permit granted

- 1 In application P11482/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application M/2020/1282 a permit is granted and directed to be issued for the land at 9 Mirang Avenue, Croydon in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Subdivision of land in the General Residential Zone, Schedule 1;
 - Construction of a dwelling where there is at least one dwelling existing on the lot in the General Residential Zone, Schedule 1;
 - Creation of an easement; and
 - Removal of vegetation (two trees) in a Significant Landscape Overlay, Schedule 4.

Judith Perlstein
Member

APPEARANCES¹

For applicant	Simon Merrigan of Miller Merrigan
For responsible authority	John Klarica of Calibre Planning

INFORMATION

Description of proposal	Construction of a double-storey dwelling behind the existing dwelling, including access to the rear dwelling and changes to the existing dwelling.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Maroondah Planning Scheme
Zone and overlays	General Residential Zone, Schedule 1 (GRZ1); Significant Landscape Overlay, Schedule 4 (SLO4).
Permit requirements	Clause 32.08-3 – subdivision of land in a GRZ1. Clause 32.08-6 – construct a dwelling if there is at least one dwelling existing on the lot in the GRZ1. Clause 42.03-2 - to remove two trees in the SLO4, specifically <i>Malus Domestica</i> (Apple) trees, referred to as Tree 6 and 7. Clause 52.02 – creation of an easement.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.01, 21.02, 2.06, 21.07, 21.10, 22.02, 32.08, 42.03, 52.02, 52.06, 55, 56, 65 and 71.

¹ Via online forum.

Land description

The subject site is located to the western side of Mirang Avenue. It has a frontage of 18.44 metres, a depth of 47.83 metres and an area of 875 square metres. The site contains a single storey detached rendered dwelling, with a pitched and gabled roof. The site has vehicle access along the southern common boundary, with a garage and outbuilding to the rear. The site has a fall of 1.08 metres from the front (north eastern corner) to the rear (south west) corner. There are two apple trees located adjacent to the rear boundary (with heights of 6 metres to 9 metres). A 3.05m wide drainage and sewerage easement is located along the rear title boundary.²

Aerial and street view images of the subject site are included below.³

Tribunal inspection

Following the hearing, I undertook an unaccompanied inspection of the subject site and surrounding area.



² As described in the council's written submissions at [2].

³ From www.nearmap.com.au, taken on 17 April 2022, and Google maps, May 2021, as well as a more recent image included in the applicant's submission.

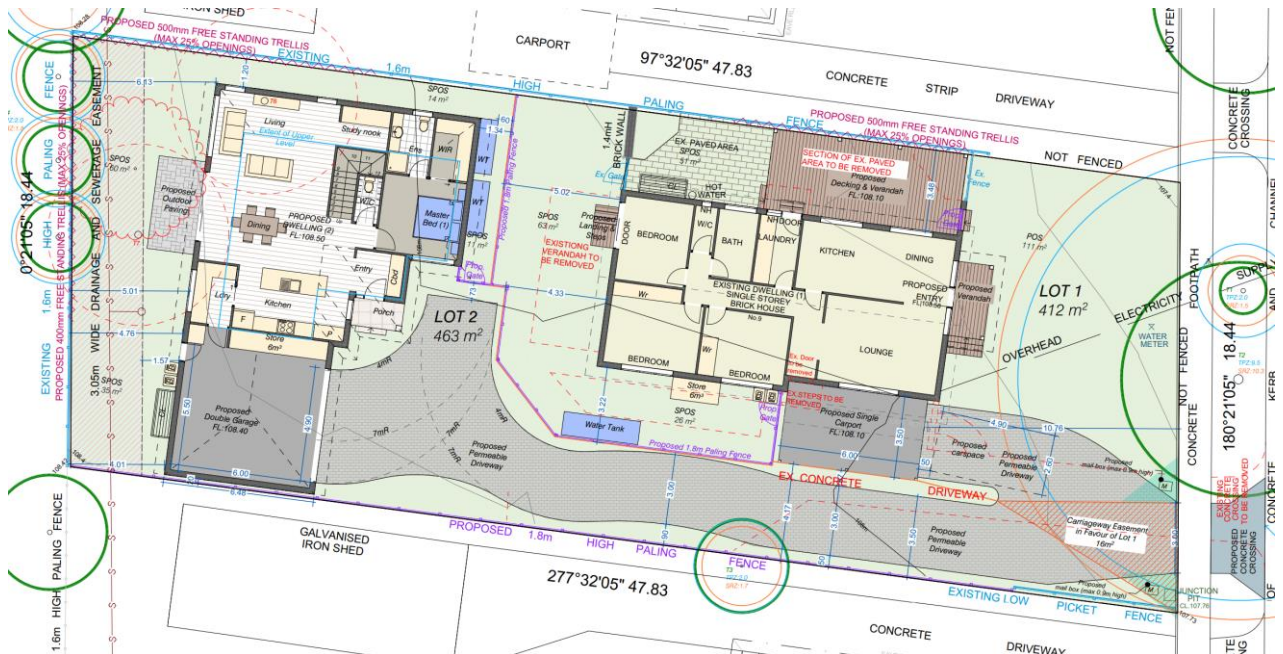


Photograph 1: Looking towards the site and existing dwelling from Mirang Avenue, with new verandah attached to the northern side of the dwelling.

REASONS⁴

WHAT IS THIS PROCEEDING ABOUT?

- 1 The applicant proposes to construct a double storey dwelling to the rear of the existing dwelling on the land at 9 Mirang Avenue, Croydon. To do so, several changes to the existing dwelling are proposed including the removal of the garage at the rear of the land and construction of a carport on the south side of the dwelling. The proposed ground floor plan is reproduced below. The proposal also necessitates the introduction of additional hard paving within the frontage of the land to provide access to the new carport.
- 2 Subdivision of the land into two lots is also sought, as well as the creation of a carriageway easement (shaded in red) on lot 1 to provide driveway access to lot 2 and avoid the need for common property within the subdivision.



- 3 The council determined to refuse to grant a planning permit for the proposed development on several grounds including non-compliance with the council's Residential Neighbourhood Character Policy and, specifically Area 11, within which the review site is located; non-compliance with the objectives of the General Residential Zone, Schedule 1 (**GRZ1**) and the Significant Landscape Overlay, Schedule 4 (**SLO4**); concerns with respect to internal amenity for the existing dwelling, the accessway and failure to comply with objectives and standards of clause 55 of the Maroondah Planning Scheme (**Scheme**).

⁴ The submissions of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding, as well as further material in reply filed by the council following the hearing. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- 4 The permit applicant has requested the Tribunal to review the council's decision.
- 5 Statements of grounds have been lodged by neighbouring residents who are concerned about overdevelopment, privacy, light and overshadowing and sufficiency of car parking. Although those people have elected not to be parties to the proceeding, their statements of grounds are considered.
- 6 The applicant contests the grounds of refusal and considers that the proposal provides a modest and appropriate addition to the available housing stock while retaining an existing dwelling in a way that accords with existing and preferred character, satisfies the Scheme policies and controls and offers appropriate parking facilities.
- 7 I must determine whether the proposal provides an acceptable response to the Scheme and site context, including whether it imposes unacceptable amenity impacts on its neighbours and provides acceptable amenity for its future residents.
- 8 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Scheme, I have decided to set aside the decision of the responsible authority and direct that a permit be granted. My reasons follow.

SCHEME CONTROLS AND POLICY

- 9 The review site is located in the GRZ1 and covered by the SLO4. Planning permission is required for subdivision of land in the GRZ1 and construction of a dwelling where there is at least one dwelling existing on the lot. Permission is required under the SLO4 for removal of two apple trees at the rear of the site. Clause 52.02 of the Scheme provides that planning permission is required for creation of the carriageway easement proposed.
- 10 The GRZ includes the purposes of encouraging development that respects the neighbourhood character of the area and encouraging a diversity of housing types and housing growth particularly in locations offering good access to services and transport. The GRZ1 applies to 'General Residential Areas' and includes variations to the rear and side setbacks, private open space and fencing requirements of clause 55.
- 11 The SLO4 is titled 'Landscape Canopy Protection' and includes the following objectives:
 - To conserve the existing pattern of vegetation, landscape quality and ecosystems within the area.
 - To encourage the re-generation of vegetation.
 - To maintain a dense vegetation canopy that contributes to the special environmental character of Maroondah.
 - To maintain the overall scenic beauty of the municipality.

- 12 The purpose of clause 52.02 is to ‘enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered’. The creation of the easement is a practical requirement to provide access to lot 2 via lot 1 following subdivision of the land, as common property is not sought to be provided. The only affected people are the future residents of each lot.
- 13 State and local policy generally supports increased housing in established areas with access to transport and services. Clause 22.02, developed by the council to ensure consideration of residential neighbourhood character when constructing housing, includes the following objectives:
- To ensure that Maroondah is provided with diverse and sustainable high quality residential environments.
 - To identify neighbourhood character and design elements that are special to maintaining and enhancing the character of the residential areas of Maroondah.
 - To identify and enhance areas of special neighbourhood character in Maroondah.
 - To ensure that all new residential development contributes to the maintenance and enhancement of the canopy vegetation of Maroondah.
 - To provide policy guidance to ensure that new development occurs in a manner that contributes to the preferred neighbourhood character of Maroondah.
 - To ensure that new dwellings are sited and constructed in a manner that contributes to and enhances the preferred neighbourhood character of Maroondah.
- 14 General policies within this clause include:
- Integration with the street*
- Gun barrel driveways hard against boundaries should not be developed.
- The amount of street frontage of a site taken up by crossovers should be limited to one per site.
- Additional crossovers should only be used if it can be demonstrated that there is an exceptional need, an improved design outcome, or where the total lot frontage is in excess of 20 metres.
- Crossover widths should be as follows:
- Single crossover - 3 metres.
 - Double crossover - 5.5 metres.

Landscaping

Developments make provision for the planting of at least one canopy tree in the private open space to each dwelling. The canopy tree should grow to a height that exceeds the roof height of the dwelling.

Front yards make provision for the planting or retention of canopy/specimen trees that grow to a height that exceeds the height of the roof of the dwelling and provide for a framing of the buildings on the site.

- 15 The review site sits within ‘*Neighbourhood area 11 Eastfield*’, where the preferred future character is to be achieved by:

- Ensuring building forms are well articulated and relate to the street.
- Ensuring buildings are setback from all boundaries a sufficient distance to sustain substantial vegetation.
- Ensuring the front setbacks are not dominated by impervious surfacing or car parking structures.
- Strengthening the treed canopy of the neighbourhood in private gardens, streets and areas of parkland.
- Ensuring low front fences.
- Ensuring that development is well buffered from adjacent non-residential uses.

- 16 Relevant decision guidelines are:

- Whether the proposed development makes a positive contribution to the preferred neighbourhood character of the area.
- The ability of the proposed development to contribute to the retention and enhancement of canopy vegetation of the area.
- The ability of areas of open space to provide for the retention and ongoing viability of canopy vegetation on the site.

PROPOSAL AND SITE CONTEXT

- 17 The description of the proposal and site context in the applicant’s submissions is useful in understanding the changes proposed to the review site, in addition to the general explanation included earlier:⁵

The site is a standard residential allotment (875m²) on the west side of Mirang Avenue and is currently developed with a single dwelling and standalone garage in the rear garden... The site is contained within an established residential neighbourhood, which is undergoing considerable infill development nearby and is proximate to local facilities and services.

⁵ In the applicant’s written submission at [1.2].

The intention is to retain the existing dwelling and build a double storey four-bedroom dwelling to the rear, where it will not be highly visible from the Mirang Avenue street-view. The proposal also seeks to create a carriageway easement just inside the front of the driveway to allow access to Lot 2, via the driveway of Lot 1. This will eliminate the need for common property and ensures that the crossing is retained as a single width, rather than double. Only two apple trees of low significance are required to be removed to facilitate the proposed development. An extensive landscape design is proposed that will see the introduction of 6 canopy trees, with a mature height exceeding 6m across the entire site, with an extensive understorey planting to improve the amenity for future residents. The siting of the proposed dwelling meets Council policy in terms of boundary setbacks, upper storey recession and overlooking mitigation.

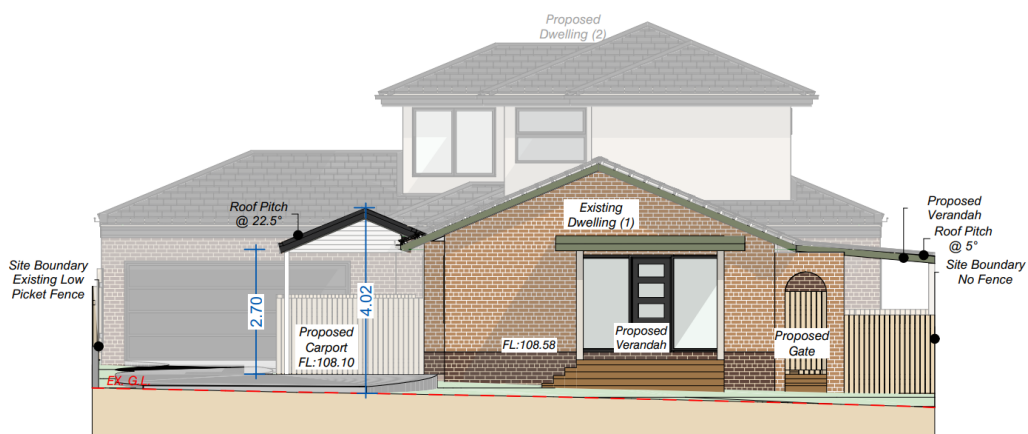
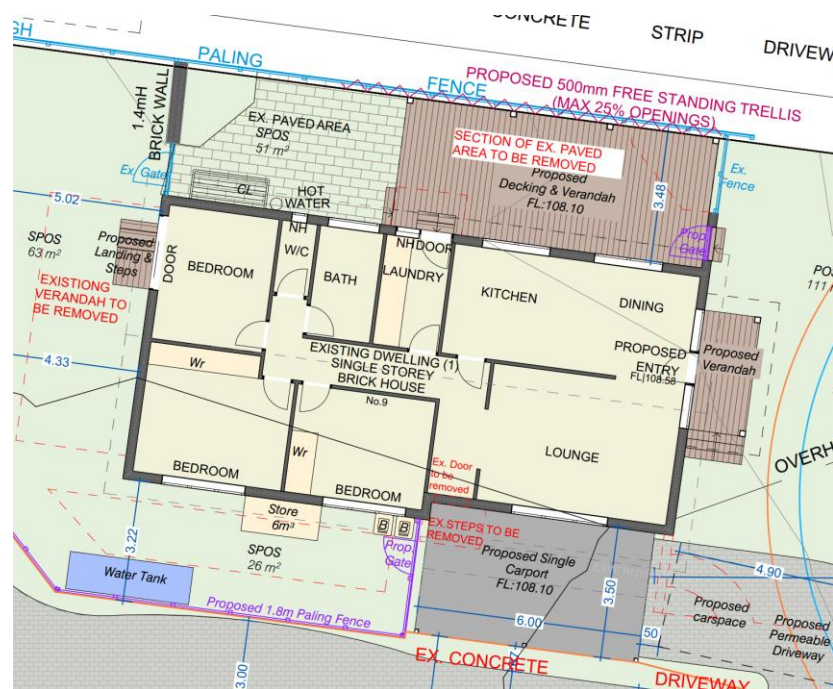
The dwelling has recently undergone an extensive renovation to upgrade the external façade, internal layout and add a decked verandah to the north side. New landscaping has also been introduced in the front garden.

...

The neighbouring properties on all sides are residential development, with examples of two lot infill development with close proximity to the subject site. ...there are many examples of infill development and two-lot subdivision in the area

- 18 The recent renovation to the existing dwelling on the review site has incorporated some elements included in the plans and others not reflected in the application plans for the proposal. For example, a front fence has been constructed where the plans show no fencing, a verandah has been constructed in the area shown as 'proposed decking and verandah' and the existing verandah to the rear of the dwelling has been removed. Included below are an enlarged section of the site plan for dwelling 1 and the streetscape elevation for the proposal, which includes an outline of the new double storey dwelling in the background. Other proposed changes to the dwelling such as a gate from the verandah to the front yard and a new entry and verandah along the front (east) elevation, as can be seen in these plans, have not yet been constructed.
- 19 While only one dwelling exists on the review site, planning permission is not required to undertake these renovations to the dwelling. However, it has been established that in considering an application for a second dwelling, the council, and the Tribunal on review, must assess the entire proposal, including changes to the existing dwelling.⁶

⁶ See *Munjjal v Casey CC* [2010] VCAT 1026 at [19-22].



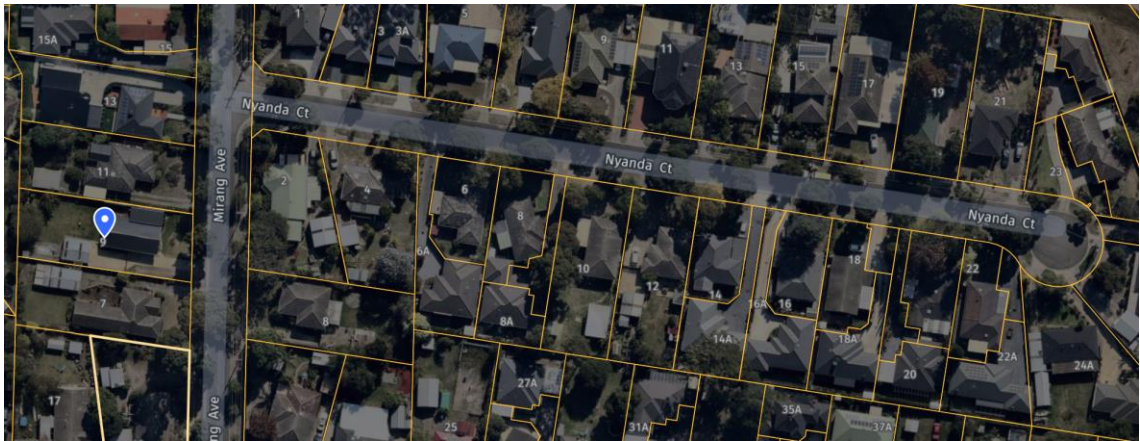
MIRANG AVENUE- STREETScape (EAST) ELEVATION

- 20 With respect to the site context, the three dwellings located adjacent to the review site all contain single storey, single dwellings. However, there are several examples within Mirang Avenue and nearby streets, including Nyanda Court, to the north-east of the review site, that are improved with two dwellings on a lot. Many of these have similar car parking arrangements to that proposed for the review site and some also include double storey at the rear. Of course, there are also many lots where there remains a single dwelling on the lot with a single storey and constructed of brick or brick veneer with pitched tiled roofs.
- 21 Included below are Google maps images of developments that are similar to that proposed. Immediately below is an image of 34 Mirang Avenue, newly constructed with double storey to the rear and a carport attached to the original dwelling, and below that is 30 and 32 Mirang Avenue to its east, both with single storey to the rear.



- 22 Similarly, at 14 to 22 Nyanda Court, each property contains two dwellings, and some have vehicle access similar to that proposed in this application, with single storey at the rear. Below is an image of the properties at 14 and 16 Nyanda Court and an aerial image of the Nyanda Court properties illustrating their proximity to the subject site (which is marked with a pin):





DOES THE PROPOSAL PROVIDE AN ACCEPTABLE RESPONSE TO THE SCHEME AND SITE CONTEXT?

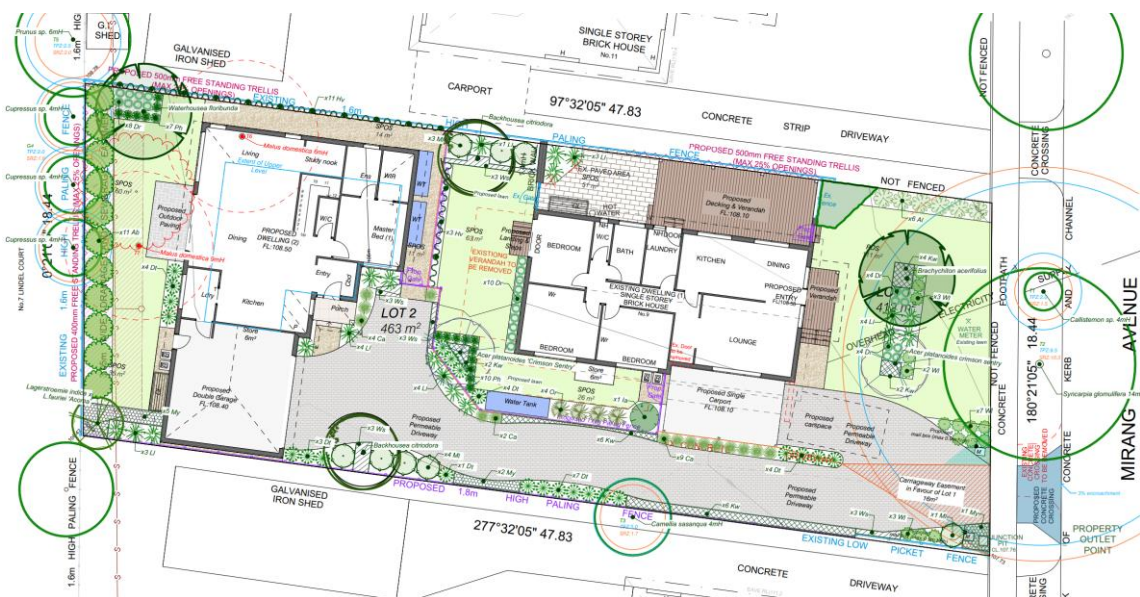
- 23 A proposal for two dwellings on a lot in a location such as this is, in itself, non-contentious. The proposed tree removal in this case is also non-contentious in that the trees are not considered high value for retention and can be appropriately replaced.
- 24 This proposal includes a site coverage of 36%, a garden area of 42% and a building height of under 8 metres. It meets most of the clause 55 standards but does not strictly comply with the varied GRZ1 standard for a 5 metre rear setback and a 5 metre wide area for secluded private open space.
- 25 The key question with respect to this application is whether the retention and renovation of the existing dwelling, and the construction of a second dwelling in the area remaining on the land, provides an acceptable response to the Scheme and site context and an acceptable level of amenity for future residents of both dwellings. The key areas of concern are response to neighbourhood character, which includes landscaping, car parking and access; and internal amenity. I will consider each in turn.
- 26 The issues in this application are similar to that considered by the Tribunal in *Tng v Knox CC* [2015] VCAT 1738, which was a proposal for a second single storey dwelling to the rear of an existing dwelling in a GRZ. In that case the Tribunal also acknowledged that the site could accommodate a form of medium density development which would satisfy broader policies relating to urban consolidation, increased population and housing density, but that there were issues with retention of an existing dwelling. The Tribunal made the following observation:
 - 27 ... It is more often the case with already developed sites that design and layout compromises are needed to 'fit' the development onto the site. I consider that this is the situation here. It is primarily important in achieving the objectives of land use and development planning into the future that compromised designs do not become common established features of landscape character. It is not sufficient for example to propose

that new residential development at the rear of a site will add to housing diversity and affordability if such benefits are outweighed by dis-benefits against other policy positions such as for neighbourhood/landscape character, and siting and design responses. Similarly, the argument that a proposal should be approved because retention of an existing building on the site retains embedded energy, must carry little weight if other elements of the proposal are otherwise compromised. Planning needs to take a more holistic approach than that.

- 27 The role of the Tribunal is to determine if a proposal achieves an acceptable outcome having regard to the balancing of the relevant policies and provisions of the Scheme.

Response to neighbourhood character, Area 11 and SLO4

- 28 The retention of the existing dwelling means that the neighbourhood character, with respect to the siting of the dwelling in the streetscape, is retained. While the existing crossover is proposed to be moved slightly to the south and utilised for both dwellings, it will generally be perceived to be in the same location as it is currently. The policies with respect to streetscape, therefore, are generally neutral with respect to the form and visibility of dwelling 1 as it is mostly unchanged.
- 29 The general policies of clause 22.02 seek to limit crossovers to one per site and for single crossovers to be 3 metres wide and the proposal is consistent with this policy. The policy also states that gun barrel driveways hard against boundaries should not be developed. While there will be a driveway along the southern boundary of the site, this is not dissimilar from the existing conditions and it has been designed in such a way as to provide space for shrub planting in several locations along the boundary and for a 6 by 4 metre tree towards the rear of the site. This can be seen in the landscape plan reproduced below.



- 30 Clause 22.02 seeks provision of at least one canopy tree in the private open space of each dwelling and planting of canopy/specimen trees in front yards, exceeding the height of the dwellings and providing for a framing of buildings on the site. The two trees proposed for the front yard will meet this policy, as will the tree planted within lot 2. However, a taller species will be required for lot 1 in order to achieve the aim of exceeding the height of the dwelling. There is sufficient space within the private open space of lot 1 to plant a larger tree and this has been included in permit conditions.
- 31 The description of Area 11 contained in the Maroondah Neighbourhood Character Study, which is a reference document within clause 22.02, describes the area as follows:
- The Eastfield Neighbourhood Area is located in the east of the municipality around the Croydon commercial/recreational heart and parklands. The residential pockets within this area all surround large areas of open space including Eastfield Park and the Eastfield Golf Course. These parkland areas contribute a sense of spaciousness to the neighbourhood and strengthen the presence of ‘green corridors’ throughout the City.
- 32 The preferred future character for this area is described as follows:
- The Eastfield Neighbourhood Area will continue to evolve in a way that preserves its character of distinct residential pockets grouped around large areas of open space. The green ‘leafiness’ of the parklands and golf course will continue into the streets in the form of substantial street trees and well vegetated gardens and the spaciousness of the streets will be maintained through low front fences. Dwellings will be well articulated and relate to the street and areas close to the Croydon Activity Centre will provide opportunities for renewal and a greater variety of housing.
- 33 The golf course is located close to the review site, sitting to the north and east of Nyanda Court. Being located on the western side of Mirang Avenue, the streetscape within which the review site sits does not benefit from having the public open space behind it. However, it is the case that within the broader area, including directly in front of the review site, there are substantial street trees (and trees within the public open space) which provide the ‘green leafiness’ described.
- 34 Both the character study and clause 22 itself include the following description of how to achieve the preferred future character of Area 11:
- Ensuring building forms are well articulated and relate to the street.
 - Ensuring buildings are setback from all boundaries a sufficient distance to sustain substantial vegetation.
 - Ensuring the front setbacks are not dominated by impervious surfacing or car parking structures.

- Strengthening the treed canopy of the neighbourhood in private gardens, streets and areas of parkland.
 - Ensuring low front fences.
 - Ensuring that development is well buffered from adjacent non-residential uses.
- 35 Together with the decision guidelines which focus on the retention, enhancement and ongoing viability of canopy vegetation, and the objectives of the SLO4, it is clear that a landscape response is essential in any proposal.
- 36 The council submitted that the landscaping proposed does not provide an acceptable response to the SLO4 objectives or the landscaping objectives of clause 55.03-8. It submits that the proposal fails to provide adequate landscaping to screen and soften the development from adjoining properties and the adjacent reserve area.
- 37 The plans provide for a garden area of 42% and sufficiently large spaces to facilitate meaningful planting without compromising recreational areas. Having regard to the clear policy intent for substantial vegetation in this area, I consider it appropriate to require an additional large canopy tree to be planted within the front setback of dwelling 1. Together with the landscaping proposed in the landscape plan and replacement of the tree in the secluded private open space of dwelling 1 with a larger species, this will result in an enhancement of the site, making a positive contribution to the preferred future character of the area and providing screening and softening of the dwellings from adjoining properties. Subject to those minor changes, I consider that the removal of the two apple trees is appropriate and that the proposed landscaping responds acceptably to the requirements and objectives of the GRZ1, SLO4, clause 22.02 and clause 55.
- 38 The policy also refers to low front fences and the ability to see into the vegetated front gardens. While the proposal does not include any fencing, a front fence has recently been constructed on the site, as can be seen in the image provided by the applicant as photograph 1 and included in the information section of this decision. The fence is a low picket fence that fits appropriately into the neighbourhood and is consistent with the outcomes sought by the policy. I have included a condition requiring that the front fence be shown on the plans.
- 39 The double storey dwelling at the rear of the site does differ from the surrounding properties which are all improved with single storey dwellings. However, double storey is not prohibited or non-existent in this area and is an acceptable inclusion in a GRZ1, subject to having an acceptable impact on surrounding properties. While it will be visible from the street, it will not have an impact on the general streetscape given its location more than 30 metres from the street frontage. The first floor will sit a minimum of 6.3 metres from the rear boundary, 6.74 metres from the southern boundary and

3.14 metres from the northern boundary, and is well setback from the ground floor. These setbacks, together with screening of windows to limit overlooking, and the planting proposed, will provide an acceptable outcome for neighbouring properties. Contrary to the council's submission, I find there is sufficient space between and around the dwellings to provide for planting as sought by the Scheme and that the inclusion of double storey form at the rear of this site will not detract from the character of the neighbourhood.

- 40 With respect to the streetscape, the preferred outcome for Area 11 includes ensuring the front setbacks are not dominated by impervious surfacing or car parking structures. It is the case that the design response provides for additional hard paving in the front setback to provide access to the new carport to be constructed to the south of the existing dwelling.
- 41 There are several decisions that have considered this precise issue, many in the same Area 11. The decision of *Garratt v Maroondah CC*⁷, determined in 2006, relates to the land at 16 Rowan Street, Croydon, which is in the same zone and overlay as the review site and is also in Area 11. The preferred character and relevant policies with respect to Area 11 were the same in 2006 as they are now. The Tribunal made the following comments about these issues:

- 17 The policy pertaining to car parking structures is common to the majority of Character Areas, as well as reflected in the overall policies. From my inspection of the area, I do not agree with Council that a key feature of the character of the area relates to the absence of car parking structures within the front setback of the street. One does not have to look far to find examples of car parking protruding in front of the dwelling setback within the area as a whole, many examples being provided by Mr. Garratt. Nevertheless, the predominant character is garages at the side or rear of dwellings.

...

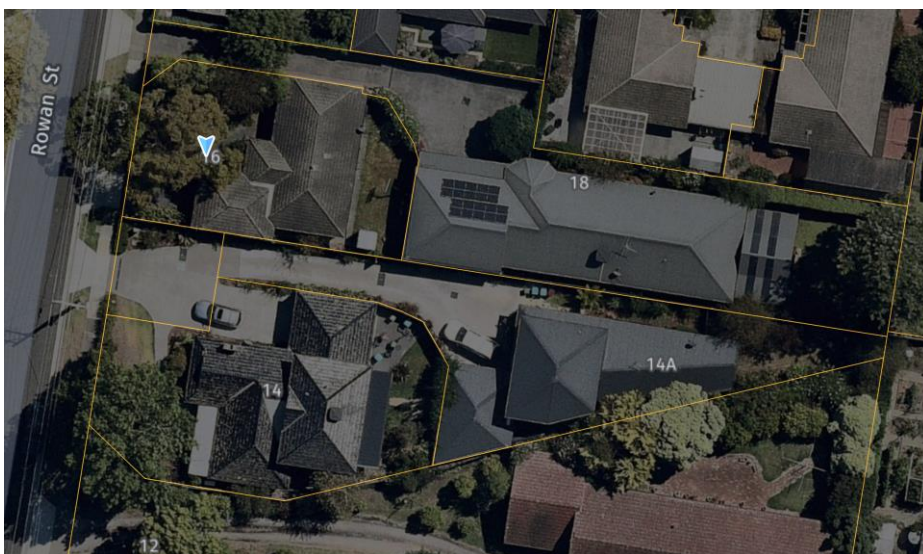
- 19 In my opinion, the question to be answered in respect to such proposals is whether the second crossover and carport result in the domination of the front setback and accordingly impact on the character of the area. In this case, the site enjoys a wide frontage (18.28 metres) and the second crossover complies with the standards of B14 of Clause 55. There is ample opportunity for landscaping within the frontage and I have required additional tree planting through permit conditions. ... In this context, I am not persuaded that the second crossover and carport will result in the dominance of the frontage by car parking.

⁷ [2006] VCAT 1005.

- 42 An image of 16 Rowan Street is included below. It differs from the proposal now before the Tribunal in that it includes two separate crossovers and a carport forward of the dwelling.



- 43 Interestingly, however, the adjacent property at 14 Rowan Street has since been developed with access and car parking areas similar to the current proposal, and differ in that both dwellings are double storey and both have garages. The landscaping strip provided as a separation between the driveway of lot 1 and 2 is also similar to that proposed for the review site. This can be seen in the following street and aerial images.



- 44 With respect to Rowan Street and this decision, the council provided the following comments following the hearing, noting that Area 11 includes a large and varied area:

Indeed, Rowan Street has been developed into a unique streetscape (for example it has a very different character to Eastmead Road, the street to the east of Rowan Street), which is very different and out of sync with the preferred character and Mirang Avenue. Therefore, the streetscape of Rowan should not be used as a reliable gauge of the neighbourhood character of the area.

Importantly, the issues raised in the decision for 16 Rowan Street, Croydon related entirely to the issue of dominance of car parking in that particular streetscape and context, with no other issues raised. Whereas numerous other issues have been raised with regard to the subject proposal.

- 45 Of course, each decision must be determined on its own facts and circumstances. My inspection of the review site and surrounding area, however, aligned with that of the Tribunal in 2006, in that there are several examples within the same character area of car parking structures within front setbacks. Some of those have already been referred to in this decision. It appears that this design response has increased since 2006. In *Tng v Knox CC*, cited earlier, the Tribunal expressed a concern about ‘compromised designs’ arising from retention of existing dwellings and said that they should ‘not become common established features of landscape character’. In this area, this has become a common feature of the area and cannot be considered inconsistent with existing character. Whilst not ideal, it is not unusual in the environs.
- 46 The question remains, however, as to whether the design response for this application results in the front setback being dominated by impervious surfacing and car parking structures. The retention of a single crossover to the site allows for a wider area of green space at the front of the site, narrowing slightly to allow for the entry to the carport for dwelling 1. The council conceded in oral submission that the wide driveway arrangement does not exceed 40% of the street frontage width and therefore complies with the access standard B14 of clause 55.03-9.
- 47 The driveway areas are proposed to be constructed of permeable paving and low planting is provided directly adjacent to each side of the crossover at the site entry. Most importantly, there remains a large area of open space at the front of lot 1 where canopy trees, vegetation and grass can be planted to contribute to the preferred character of the area. The result, therefore, will be a mixed frontage comprising both car parking and landscaped areas, where the landscaping will remain the dominant aspect. The landscaping proposed is also an improvement on the existing site conditions and will complement and enhance the preferred character of Area 11.

Internal amenity

- 48 The council submitted that the proposal fails to provide an acceptable level of internal amenity for dwelling 1 due to the way in which the secluded private open space is provided.
- 49 The existing dwelling has private open space areas to the front and rear that meet the minimum 80 square metres required by the varied standard. However, the schedule to the zone requires a secluded private open space area of 60 square metres, with a minimum dimension of 5 metres and convenient access from a living room.
- 50 The open plan living/dining area is provided with access to the deck and verandah to the north of the dwelling, but this area and the uncovered space directly to its west, has a width of only 3.48 and not 5 metres and does not comprise 60 square metres in area. The open space to the rear of the dwelling does have a width of 5 metres but does not have convenient access from a living area.
- 51 Given the amount of open space provided in total for dwelling 1, the objective of clause 55.05-4 can be met even if the dimensions do not meet the standard. However, the objective is to provide adequate private open space for the reasonable recreation and service needs of residents. I consider that changes to the plans are required to achieve this objective.
- 52 The following images, provided by the applicant, show the verandah during construction and the living and kitchen area of the existing dwelling that face north to the verandah. The original 'photograph 1', included earlier, shows the enclosed fully constructed verandah area as it appears from the street.





- 53 The application plans are unclear in that they show an existing 1.6 metre paling fence with a proposed 500 millimetre free standing trellis above on the site plan, but show the entire structure including roof and wall, on the elevation plans (both included in this decision at page 10).
- 54 During the hearing, the applicant agreed that the covered area should not be included in a calculation of private open space.
- 55 The effect of the verandah construction with roof and wall is to enclose that space. While there remains an opening to the east and the area is open to the west and the remaining rear private open space, the area has been designed to be able to be used at all times. While this 'extra room' may be the preference of the current owners and is certainly a useful space, it removes solar access, and access to northern light, from the primary kitchen and living area of the dwelling and results in a situation where access to usable open space is not able to be provided from a living area. Having regard to the provisions of the Scheme, I consider this to be an unacceptable condition.
- 56 In addition, the plans show a 1.4 metre brick wall and a gate separating the northern private open space from the western private open space of this dwelling. This further separates this section from the larger area of private open space provided at the rear of the dwelling and constrains access. There does not appear to be a need, or a reason, for this separation.
- 57 In order to meet the objective of clause 55.05-4 and provide northern light to the kitchen and living area of dwelling 1, I have included conditions requiring either removal of the roof of the verandah or its replacement with an openable or translucent roof, and removal of the brick wall and gate separating the north and west sections of private open space for dwelling 1.
- 58 With respect to internal amenity for dwelling 1, the design response has also resulted in the construction of a carport connected to the south side of the dwelling, directly adjacent to the window of the lounge area. Again, this has the potential to both remove light from and reduce amenity of this space. I have included a condition requiring translucent roofing be provided to the carport to ensure sufficient solar access to that window is retained. While not ideal, this will result in an acceptable outcome.

- 59 Finally, with respect to dwelling two, the council raised concerns about the non-compliance with the varied private open space standard at the rear of that dwelling. Although on average, the secluded private open space has a dimension of 5 metres, the width differs along the boundary with between 5 and 6 metres provided towards the north side of space, adjacent to the living and dining area, and only 4 metres provided towards the south, adjacent to the clothesline and the rear of the garage. While not strictly meeting the numerical standard, I find that the way in which this space has been designed is an acceptable response which meets the relevant objective.

OTHER ISSUES

- 60 The council traffic engineers expressed the view that vehicles parked in lot 1 should be able to conveniently exit the site in a forward direction. I agree with the submissions of the applicant, that this is the existing condition for the site, and ‘vehicles from lot 1 will continue to safely reverse out onto Mirang Avenue, which is a quiet suburban street and not subject to high volumes of traffic’.⁸ More importantly, vehicles from dwelling 2 are able to exit the site in a forward direction rather than reverse down a long driveway.
- 61 In considering the acceptability of the two dwellings on the review site and determining that a permit should be granted for the construction of the second dwelling and removal of the two trees, I confirm that the proposal also meets the requirements of clause 56 of the Scheme with respect to residential subdivision and that a permit should be granted for the two lot subdivision as proposed. As a result of those decisions, it follows that a permit should also be granted for the proposed carriageway easement. The requirement in clause 52.02 to consider the interests of affected persons relates only, in this case, to future residents of lot 1 and 2 whose interests will be served by allowing the easement to be created.
- 62 In terms of the specific concerns raised by neighbouring residents, I confirm my finding that the proposal meets the objectives of clause 55 of the Scheme with respect to overshadowing, daylight and privacy, provides the required amount of car parking and does not result in unacceptable impacts to neighbours.

WHAT CONDITIONS ARE APPROPRIATE?

- 63 In determining the conditions of permit, I have had regard to the draft conditions discussed at the hearing and the submissions of the parties as well as the matters arising from my reasons above.

⁸ In the applicant’s written submissions at section 4.5.

CONCLUSION

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

Judith Perlstein
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	M/2020/1282
LAND	9 Mirang Avenue, CROYDON VIC 3136

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Subdivision of land in the General Residential Zone, Schedule 1;
- Construction of a dwelling where there is at least one dwelling existing on the lot in the General Residential Zone, Schedule 1.
- Creation of an easement; and
- Removal of vegetation (two trees) in a Significant Landscape Overlay, Schedule 4.

CONDITIONS

Amended Plans

- 1 Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will form part of the permit. The plans must be drawn to scale with dimensions. The plans, including the landscape plan, must be generally in accordance with the plans advertised, but modified to show:
 - a) Provide translucent roofing to the proposed carport on Dwelling One.
 - b) Alter the external door in Dwelling Two's garage to open outwards.
 - c) The newly constructed verandah to the north of the existing dwelling, as constructed, with the following wording 'roof of the verandah to be removed or replaced with an openable or translucent roof'.
 - d) Replacement of the *Backhousia citriodora* proposed in the private open space of lot 2 with a tree that will grow to a height that exceeds the roof height of the dwelling, such as the *Waterhousea floribunda* 'Sweeper'.
 - e) The detail of the recently constructed front fence.
 - f) The planting of an additional large canopy tree in the frontage of Lot 1.
 - g) Removal of the brick wall and gate separating the north and west sections of private open space for Dwelling One.

Layout not altered

- 2 The layout of the development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority

Construction plans for paving required

- 3 Before any building or works start, construction plans for all parking areas and access lanes to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The construction plans must be consistent with the endorsed development plans and landscaping plans.

Car park and access lanes

- 4 Before the development is occupied, the area(s) set aside for the vehicle parking, access lanes and driveways as shown on the endorsed plans must be:
 - a) Surfaced with a durable all-weather seal.
 - b) Drained to the nominated legal point of discharge.to the satisfaction of the Responsible Authority.

Construction of vehicle crossing

- 5 Before the new dwelling is occupied, the owner must at its cost construct a new concrete vehicular crossing at right angles to the road to suit the proposed driveway to the satisfaction of the Responsible Authority. The vehicle crossing must be a minimum 2.2m offset from the neighbouring vehicle crossing, measured at the property boundary.

Construction plans for drainage required

- 6 Before any building or works start, Drainage Plans (including calculations) prepared by a suitably qualified drainage engineer to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Drainage Plans will be endorsed and will form part of this permit. The Drainage Plans must show:
 - a) Show all drainage works associated with the development including any drainage works required beyond the boundaries of the land.
 - b) Show nominated legal point of discharge.
 - c) Convey stormwater runoff by means of underground drains to the nominated legal point of discharge.
 - d) Prevent overland flows from having a detrimental effect on the environment or adjoining properties;

- e) Limit the permissible Site Discharge (PSD) to the equivalent of a 35% impervious site coverage, or the pre-developed discharge rate, if it is less than 35% impervious site coverage, to the satisfaction of the Responsible Authority; and
- f) Provide appropriate stormwater detention storage to limit the maximum discharge rate to the PSD.

NOTE: If a Section 173 Agreement is to be entered into for the deferral of buildings/works prior to the issue of a Statement of Compliance, consideration should be given to submitting a staged drainage plan which will allow for separate drainage provision for each lot (including individual storm water detention systems if required).

Drainage works required

- 7 Before the development is occupied, the drainage and associated works shown on the Drainage Plans must be constructed in accordance with those plans to the satisfaction of the Responsible Authority. Within 14 Days of the completion of the works, certification by a suitably qualified engineer must be submitted to the Responsible Authority certifying that works have been completed in accordance with the Drainage Plans.

Control sediment laden run off

- 8 During the construction of the development, methods to control sediment laden runoff in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999) must be implemented to the satisfaction of the Responsible Authority to minimise sediment laden runoff and stormwater pollution from leaving the land.

Time limit – development only

- 9 This permit will expire if any of the following circumstances applies:
 - a) the development is not started within two years of the date of this permit; or
 - b) the development is not completed within four years of the date of this permit.

In accordance with Section 69 of the *Planning and Environment Act 1987*, a request may be submitted to the Responsible Authority within the prescribed timeframes for an extension of the periods referred to in this condition.

Layout not altered - Subdivision

- 10 The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Construction Plans for Drainage Required (retained existing dwelling)

- 11 Prior to certification of a plan of subdivision, Construction Plans for Drainage as required for the development must be submitted to and approved by the Responsible Authority.

Section 173 Agreement - Subdivision

- 12 Before the Statement of Compliance is issued under the *Subdivision Act 1988*, all buildings, works, drainage (including any on-site detention system) and landscaping on the land (including common property), required by Planning Permit M/2020/1282 must be completed to the satisfaction of the Responsible Authority.

Alternatively, if these buildings and works are not completed, the land owner must enter into an agreement pursuant to Section 173 of the *Planning and Environment Act 1987* with the Responsible Authority to provide that:

- a) In accordance with Section 181 of the *Planning and Environment Act 1987* the agreement will be registered with the Registrar of titles and will run with the land;
- b) Except with the Responsible Authority's prior written consent all buildings, works, drainage (including any on-site detention system) and landscaping on the land (including common property) must be in accordance with the plans and conditions of Planning Permit No. M/2020/1282 and must be completed prior to the occupation of any new dwelling on the land, to the satisfaction of the Responsible Authority;
 - i. Regardless of any right conferred by the Maroondah Planning Scheme;
 - ii. Regardless of any subdivision of the land; and
 - iii. Even if Planning permit No. M/2020/1282 expires, is cancelled or otherwise ceases to operate; and
- c) After the completion of the development of a lot created under this permit, no buildings or works comprising the development may be altered or extended without the further prior written consent of the Responsible Authority;

- d) The owners of all lots connecting to the on-site detention system shown on the approved drainage plans under Planning Permit No. M/2020/1282 maintain the system to the satisfaction of the Responsible Authority.
- e) Notwithstanding b) above, the proposed new driveway paving contained within the boundary of Lot 1, associated with the existing dwelling and proposed carport/garage, under Planning Permit M/2020/1282, must be completed within 12 months of the issue of a Statement of Compliance for the subdivision (or a later date approved in writing by the Responsible authority), to the satisfaction of the responsible authority, and

All costs (including legal costs) associated with the preparation and review of the agreement and the registration of the agreement on the Certificate of Title for the land must be paid by the owner.

Notwithstanding the above, any buildings, drainage or other works (eg, works on a lot containing an existing dwelling) specifically required to be completed prior to the issue of a Statement of Compliance by other conditions of this permit, are not deferred by this Agreement.

Complete works on lot containing existing dwelling

- 13 Before the Statement of Compliance is issued under the *Subdivision Act 1988*, except with the further written consent of the responsible authority, all proposed new works on, or for, the lot containing the existing dwelling including:
- the new single carport
 - 6m³ external store,
 - clothes line (where required),
 - New driveway paving within boundaries of Lot 1 to access the carport
 - Provide translucent roofing to the proposed carport on Dwelling One.
 - Provide trafficable access to existing dwelling within carriageway area.
 - drainage on, and for, Lot 1 in accordance with the approved Drainage Plans (including but not limited to any on-site detention system, or stormwater reuse proposed for Lot 1),
- must be completed to the satisfaction of the Responsible Authority.

Subdivisions exempt from section 55 referral

- 14 The owner of the land must enter into agreements with the relevant authorities for the provision of water supply, drainage, sewerage facilities, electricity and gas services to each lot shown on the endorsed plan in accordance with that authority's requirements and relevant legislation at the time.
- a) All existing and proposed easements and sites for existing or required utility services and roads on the land must be set aside in the plan of subdivision submitted for certification in favour to the relevant authority for with the easement or site is to be created.
 - b) The plan of subdivision submitted for certification under the *Subdivision Act 1988* must be referred to the relevant authority in accordance with Section 8 of that Act.

Telecommunications – Agreement required pursuant to clause 66.01-1

- 15 The owner of the land must enter into an agreement with:
- a) A telecommunications network or service provider for the provision of telecommunication services to each lot shown on the endorsed plan in accordance with the provider's requirements and relevant legislation at the time; and
 - b) A suitably qualified person for the provision of fibre ready telecommunication facilities to each lot shown on the endorsed plan in accordance with any industry specifications or any standards set by the Australian Communications and Media authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Telecommunications – Statement of Compliance required pursuant to clause 66.01-1 (subject to exceptions)

- 16 Before the issue of a Statement of Compliance for any stage of the subdivision under the *Subdivision Act 1988*, the owner of the land must provide written confirmation from:
- a) A telecommunications network or service provider that all lots are connected to or are ready for connection to telecommunications services in accordance with the provider's requirements and relevant legislation at the time; and
 - b) A suitably qualified person that fibre ready telecommunication facilities have been provided in accordance with any industry specifications or any standards set by the Australian Communications and Media authority, unless the applicant can demonstrate that the land is in an area where the National Broadband Network will not be provided by optical fibre.

Time limit - Subdivision

- 17 This permit will expire if any of the following circumstances applies:
- a) The plan of subdivision is not certified within two years of the date of issue of this permit; or
 - b) The registration of the subdivision is not completed within five years of the 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 –