VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P360/2022  Permit Application no.P1586/2020 |
| CATCHWORDS | |
| Section 77 *Planning and Environment Act 1987*; Banyule Planning Scheme; General Residential Zone- Schedule 2; Two dwellings; Side by side configuration; Neighbourhood Character. | |

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| **Applicant** | Angela Monteleone |

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| **Responsible Authority** | Banyule City Council |

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| SUBJECT LAND | 2 Eagle Court  EAGLEMONT VIC 3084 |

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| HEARING TYPE | Hearing |

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| DATE OF HEARING | 25 November 2022 |

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| DATE OF ORDER | 15 December 2022 |

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| CITATION | Montelone v Banyule CC [2022] VCAT 1438 |

# Order

1. In application P360/2022 the decision of the responsible authority is set aside.
2. In planning permit application P1586/2020 a permit is granted and directed to be issued for the land at 2 Eagle Court Eaglemont VIC 3084 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Development of two (2) dwellings and tree removal.

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| Megan Carew  **Member** |  |  |

# Appearances

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| For applicant | Peter English, Town planning consultant  He called Robert Thomson, Landscape Architect, Habitat to give evidence. |
| For responsible authority | Shi Yang, Town planner |

# Information

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| Description of proposal | To construct two, double storey dwellings in a side-by-side arrangement. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Banyule Planning Scheme |
| Zone and overlays | General Residential Zone- Schedule 2 (GRZ2)  Vegetation Protection Overlay- Schedule 3 (VPO3)  Development Contribution Plan Overlay- Schedule 1 (DCPO1) |
| Permit requirements | Clause 32.08-6 to construct two or more dwellings on a lot in the GRZ2  Clause 42.02-2 to remove trees in the VPO3 |
| Relevant scheme policies and provisions | Clauses 2, 11, 12, 15, 16, 18, 19, 32.08, 42.02, 45.06, 52.06, 53.18, 55, 65 and 71.02 |
| Land description | The review site is an irregular shape lot located at the court end. It has frontage to the court of 18.31m and a total site area of 1317.8m2. It contains an existing dwelling located towards the rear of the site. The land slopes from the rear to the frontage in the order of 7-8m.  The surrounding area is predominantly residential in nature. |
| Tribunal inspection | 7 December 2022 |

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

## What is this proceeding about?

1. The permit applicant seeks a review of Council’s decision to refuse a permit to construct two double storey dwellings on the land in a side-by-side configuration. The permit applicant says the proposal is an acceptable design response, will sit comfortably within this street and will respect the amenity of the adjoining properties.
2. Council considered that the proposal would not respect the preferred neighbourhood character of the area. Council submits that the side-by-side configuration provides a poor response to the streetscape and that there is insufficient room for landscaping.
3. I must decide if a permit should be granted and if so, what conditions should apply. Having considered the submissions and material before me and the applicable policies and provisions of the Banyule Planning Scheme, I have determined to set aside the decision of the Responsible Authority and grant a permit. My reasons follow.

## WHAT ARE MY FINDINGS?

1. There was no dispute between the parties that the site was suitable for medium density development subject to an acceptable design response to the preferred neighbourhood character and amenity. This is supported by the inclusion of the land within the General Residential Zone and by the policy at Clause 2.03-5 where the site is included within an incremental change area which ‘will provide for well designed single and medium density dwellings.’ Council submitted that:

Development of two dwellings on a lot does not present an ‘in principle’ issue in terms of the broad vision for ‘incremental’ areas in Clause 02.03-5 (previous Clause 21.06 – Built Form) where a moderate increase in housing is sought. Clause 02.03 and Clause 16 of the Banyule Planning Scheme both provide a general level of support for an increase in housing in location that are well served by transport, in areas where future residents have access to local services and employment. This is an area that meets the general criteria.

1. Within incremental change areas any ‘development must make a positive contribution to the preferred neighbourhood character, including opportunities for tree protection and planting’ (Clause 2.03-5). GRZ2 includes variations to the standards of Clause 55 for site coverage (40%) and landscaping (one tree for every 400m² of site area including one large tree in the front setback). The application of the VPO3 further seeks to protect large trees within this area.
2. At Clause 15.01-5L-01 the site is included within the Garden Suburban Precinct 3. The policy includes objectives for all areas and for all garden suburban areas. Specific strategies for GS3 include to:

* Provide a mix of exotic, native or indigenous trees and understorey vegetation that complements the character of the precinct.
* Encourage the retention of intact, good condition Victorian, Edwardian and Interwar buildings, particularly where individually significant, in a row, or streetscapes of dwellings from these periods.
* Retain the front façade when altering or extending dwellings that contribute to the character of the precinct.
* Incorporate main design themes in correct proportions and scale, from the Edwardian, Interwar, post-war or 1960s era in new development, as appropriate to the street.
* Incorporate second storeys within roof spaces where possible.
* Reflect the architectural style and form of the existing building in second storey additions.
* Match materials of new buildings to the predominant wall and roof materials in the street.
* Match wall and roof materials of existing buildings in extensions to those buildings.
* Use weatherboard or rendered brick in predominantly weatherboard areas south of Banksia Street.
* Use low and permeable front fencing appropriate to the predominant era of dwellings in the street to maintain the view of front gardens in the streetscape.

1. Council submitted that this area has a consistent character with large lots containing significant amounts of vegetation. Council says the proposal will be dominant within the court environs and the extent of accessway and garaging will impact on the streetscape and the ability to provide landscaping. Council submitted that ‘the siting of dwellings in this area is a key component of the character response. Council’s concerns are partly about the siting of the building in the streetscape – primarily the front setback, but additionally the form and spacing of development through the site.’
2. The applicant says that the character is varied, and the design response is acceptable. The applicant relied on the evidence of Mr Thomson in respect to landscaping (the landscape plan is included at Figure 1). The evidence of Mr Thomson was that ‘The front setback is of sufficient size to allow for the retention of the most valuable existing tree and the planting and long term growth of selected tree and other species within a garden designed to provide a better developed and more locally appropriate landscape character than current conditions on site.’
3. Having inspected the site, I find that the character of this area in terms of built form is varied. There is a wide variety if dwelling eras and forms within this precinct, with some very large homes. Within the court itself the adjoining property to the west is more modest post war dwelling, but to the east is a large dwelling, extending almost the full width of the site. The property further east has a three storey scale with a prominent carport within the frontage. The area’s topography strong influences the built form with dwellings often visible across the slopes. What brings this area together is the landscaping both within the public and private realms. Within the court, the wide naturestrip adds to this. Gardens are mature and this provides a softening of built form.
4. I find that the proposed new dwellings are consistent with the emerging scale of built form within this area. The front setback is generous and the design has taken into account the slope of the land with the dwellings cut into the site towards the rear. The upper levels are recessed from the frontage and this will act to moderate the three storey scale. The dwellings are contemporary in appearance but include modulation through materials and finishes. Council sought the recession of the first floor from the garage below for Unit 2. I do not support this change, which will make the garage more prominent.
5. Overall, I am satisfied that the proposal will sit comfortably because:

* The policy seeks a single crossover, and this is achieved in this design, with the existing crossover being widened slightly to accommodate a divided accessway.
* The garage for Unit 2A is located where the current garage is located which has a significant setback from the street.
* The garage for Unit 2 is located on a different angle to the street and will be generally screened by landscaping from the court bowl.
* You will not be able to view both garages easily together because of shape of the land and the court bowl.
* Dwelling entries will be identified by the access paths and stairs. Passive surveillance is provided for at the upper levels. I have required that the entry porch roof for Unit 2A be extend forwards so that it is in front of the garage wall as a permit condition.
* I am satisfied that the landscape plan incorporates new planting that will contribute to the landscape character of this area. I will require the underground water tanks to be located within the paved driveway areas as supported by Mr Thomson.
* The additional width of the naturestrip will also assist the landscape setting of the dwellings.
* The site coverage is slightly higher than the 40% sought within the schedule to the zone at 43.2%. However, the garden area is high at 48.5% and hard surface coverage is less than 60%. I note that the extent of driveway is larger than it needs to be to accommodate the swept paths for the garages. I have included a condition requiring the pavement to be minimised, curves introduced and additional landscaping be provided (for example on the east side of the access to Unit 2A).

Figure 1 Proposed landscaping



1. I note that Council expressed a preference for a lighter colour palette within the design. This was also supported by the permit applicant. I agree that a lighter colour selection would be more consistent with the existing dwellings within this streetscape.
2. Council was also concerned about the provision for landscaping throughout the site and the space provided between the buildings. Council sought a 5m separation between the dwellings in the location of the dwelling 2A laundry to improve the outlook and visual bulk to the kitchen and living areas. I have not required this. I find that the two dwellings in this location are at a similar level and that the design has angled the living areas to gain a more northern outlook.
3. One area of concern was in the northwest corner, Council suggesting that the alfresco area be setback a minimum of 2m from the western boundary. While I am generally satisfied with the landscape response throughout the site, I agree that the roofed alfresco for Unit 2 should be setback. This assists Tree 26 on the adjoining property and provides additional landscaping space.
4. I note that Council did not support the bungalow palms proposed between the dwellings. The evidence of Mr Thomson was that these could be replaced with additional maples if required. I am satisfied that this can be addressed by permit condition.

## VEGETATION PROTECTION

1. All vegetation is proposed to be removed except for one tree, Tree 10 Swamp Cyprus located within the front setback. Under the provisions of the VPO3, Trees 4, 15, 18, 33, 40 and 41 require a permit for removal. Council’s arborist did not raise any concerns about the proposed vegetation removal. There is an encroachment into the Tree protection Zone of Tree 10 and a new pathway proposed around this tree. I am satisfied that this tree can be protected subject to standard conditions.

## Amenity

1. Council did not identify any significant impacts on the amenity of the adjoining properties. Daylight and overshadowing comply with the standards of Clause 55.
2. Council accepted that overlooking could be addressed by permit condition and the permit applicant agreed that Bed 3 of Unit 2A would require screening.
3. There is potential overlooking to habitable room windows in the property to the east from Unit 2. At ground level this is proposed to be addressed by a freestanding screen. While I accept that there is existing overlooking in this location, I have before me a new build. I am not satisfied that the freestanding screen is acceptable. It is not included within the landscaping plan. I find that the deck and windows should be directly screened. The upper level windows will need to demonstrate how screening is provided for.
4. Council sought the replacement of the rear boundary fence for overlooking purposes. The north west section of this fencing is in poor condition and will need replacing. The main 1.7m high section is acceptable given the site cut towards the rear of the site and will maintain acceptable privacy given the conditions on the ground (even though it is less than the 1.8m preferred in Clause 55).

## Car parking and vehicle access

1. The proposal provides the required car parking under Clause 52.06. Council sought swept paths to demonstrate that cars could exit the garages and turn within the two driveways to exit in a forward direction if required. I find that the swept paths demonstrate that this can be comfortably achieved. There is the capacity for the driveways to be further narrowed and landscaping increased, particularly along the eastern boundary near the crossover.
2. The plans include a future line of subdivision along the driveway that does not take into account the shared crossover arrangement. I have included a condition that this line be deleted. Any future subdivision would need to provide either common property or a carriageway easement at the frontage to accommodate the shared arrangement.

## WHAT CONDITIONS ARE APPROPRIATE?

1. 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.

## Conclusion

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

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| Megan Carew  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | P1586/2020 |
| Land | 2 Eagle Court  EAGLEMONT VIC 3084 |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Development of two (2) dwellings and tree removal. |

## CONDITIONS

### General plans

1. Before the development permitted by this permit commences, 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 then form part of the permit. The plans must be drawn to scale with dimensions and be submitted in an electronic format acceptable to the Responsible Authority. The plans must be substantially in accordance with the advertised plan submitted 06/08/2021 with the application but modified to show:
2. Deletion of the proposed subdivision lines from the development plans.
3. Replacement of the rear boundary fence to at least 1.8 metres in height where required;
4. Reduction of the Dwelling 2 alfresco area from the western boundary with minimum 2 metres setback to provide more landscaping opportunity;
5. Amended vehicle swept path diagrams and associated design modifications (where relevant) demonstrating that vehicles are able to enter and exit the site in a satisfactory manner in accordance with the provisions of Clause 52.06-9 (Design Standards for Parking) of the Banyule Planning Scheme;
6. A reduction in the extent of hard paving for the driveways taking into account the vehicle swept paths in Condition 1(d) above and a consequential increase in the width of the landscaping areas. Driveways to be curvilinear with landscaping strip along the southern boundary and constructed of concrete/permeable with muted colours;
7. Any separate structure containing electrical meters or other site services must not exceed 1.5 metres in height and must be located behind the front line of the dwelling facing the street or adjacent to the side boundary fence.
8. Gas and water meters to be nominated on the plans and sited or screened to minimise visibility from neighbouring properties and the public realm;
9. The location for any split system air conditioner units and/or hot water systems to minimise visibility from the public realm and neighbouring properties;
10. The mail boxes located in accordance with Australia Post guidelines;
11. Landscape and tree zones to be clearly marked with hatching, colour coding or similar and distinguished from useable open space areas;
12. Provision of a minimum 5000L rainwater storage tank for each of the dwellings including its location, sizing and a notation of the connections and end use. Underground rainwater storage tanks are not to be located within the front landscaping areas.
13. Privacy screening to Bedroom 3 of Unit 2A to meet Standard B22.
14. Privacy screening to the eastern elevation of Unit 2 including the deck area to meet standard B22.
15. Corner splays on each side of the accessway in accordance with Design Standard 1 of Clause 52.06 where possible;
16. Provision of hard standing bin area;
17. The location and dimensions of shading devices, to be provided to all north facing windows as external fixed horizontal overhangs and to all east and west facing windows as adjustable external shading devices eg. louvres, screens, external blinds/shutters, (unless shaded by adjacent buildings or fences), to the satisfaction of the Responsible Authority;
18. Alternative selection of the roof colour to minimise urban heat island effect, with a maximum Solar Absorptance (SA) level of 0.70;
19. A schedule of external building materials, colours and finishes, including details of cladding and roofing materials; the schedule should be presented on a separate sheet and must include colour samples;
20. Development Drainage Plans in accordance with Condition 2 of this permit;
21. A Landscape Plan in accordance with Condition 3 of this permit;
22. Any recommendations of the amended Sustainable Design Assessment (SDA) in accordance with Condition 5 of this permit;
23. An amended Sustainable Design Assessment (SDA) in accordance with Condition 5 of this permit;
24. An Environmentally Sustainable Development (ESD) Drawing in accordance with condition 6 of this permit;
25. An amended Water Sensitive Urban Design (WSUD) Drawing in accordance with condition 7 of this permit;
26. Tree Preservation Fencing in accordance with Condition 11 of this permit.

### Development Drainage Plans

1. Before the development permitted by this permit commences, Development Drainage Plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be prepared by a suitably qualified engineer or similar person showing a properly prepared design with computations for the internal drainage and method of disposal of stormwater from all roofed areas and sealed areas including:
2. The use of an On-site Stormwater Detention (OSD) system;
3. The connection to the Council nominated legal point of discharge;
4. The outfall drainage works necessary to connect the subject site to the Council nominated Legal Point of Discharge;
5. The integration, details and connections of all Water Sensitive Urban Design features in accordance with the endorsed Sustainable Design Assessment and STORM report and include drainage details as a result of landscaping;
6. The Tree Protection Zone and Structural Root Zone of Tree #1, #6-8, #10, #22, #26, #28, 35-38 and #42 as identified in the submitted Arboricultural Report shown to be retained.

Please note the plans must show all protected and/or retained trees on the development site, on adjoining properties where tree canopies encroach the development site and along proposed outfall drainage and roadway alignments (where applicable) and every effort must be made to locate services away from the canopy drip line of trees and where unavoidable, details of hand work or trenchless installation must be provided.

### Landscape Plan

1. Before the development permitted by this permit commences, a satisfactory detailed landscaping plan must be submitted to and approved by the Responsible Authority. Such plan must be generally in accordance with the landscape concept plan prepared by Habitat dated July 2021 and must show:
2. Amendments required by Condition 1 of this permit;
3. The identification of existing vegetation (which is not intended to be removed), and nomination of vegetation for removal throughout the site;
4. Provision of formed garden beds with edging along the front property boundary and within the front setback to prevent cars parking;
5. Planting adjacent to driveways and within landscaping zones to consist of varying heights and species;
6. Provision of a minimum of:
   1. 1 large canopy tree (mature height of at least 12m) planted at a semi-advanced state (minimum pot size 40 litre) within the front setback; and
   2. 2 medium canopy trees (mature height of at least 8m) planted at a semi-advanced state (minimum pot size 16 litre), with 1 provided within the front setback and 4 provided within all dwellings secluded private open spaces;
7. An indigenous and/or drought tolerant planting theme;
8. A schedule of all proposed trees, shrubs and ground cover, which includes the location and size at maturity of all plants, the botanical names of such plants and the location of all areas to be covered by grass, lawn or other surface material as specified;
9. Tree species and planting locations must be carefully selected to avoid canopy or root conflicts with overhead wires, easements and existing trees;
10. Location and details of paving, steps, retaining walls, water tanks, clotheslines, fence design details and other landscape works including cut and fill;
11. Location, details and cross section drawings of all Water Sensitive Urban Design features in accordance with the endorsed Sustainable Design Assessment and STORM report, with reference to connection details on the engineering plans.

When approved the plan will be endorsed and form part of this permit. Landscaping in accordance with this approved plan and schedule must be completed prior to the occupation of the development.

### Sustainable Design Assessment (SDA)

1. Before the development permitted by this permit commences, an amended Sustainable Design Assessment (SDA) must be submitted to and approved by the Responsible Authority. The SDA must be generally in accordance with the SDA prepared by Green Rate Sustainable Building Consultant but modified to include:
   1. An “Implementation Schedule”, identifying the responsible parties and project stage of each ESD strategy (e.g. Building User Guide – Developer – Prior to Occupancy)
   2. Preliminary NatHERS energy ratings are to be provided to alongside the SDA & BESS Report (The National Construction Code is set to reform in 2022 with changes proposed to Section J - Energy Efficiency including a proposed minimum 7-star energy rating for new dwellings. In order to future proof your development proposal, we recommend that you propose 7-star energy ratings for all proposed dwellings & provide the preliminary NatHERS Reports).

When approved the SDA will be endorsed and form part of this permit.

### Environmentally Sustainable Development (ESD) Drawing

1. Before the development permitted by this permit commences, a dedicated ESD Drawing demonstrating all features claimed within the SDA Report must be submitted to and approved by the Responsible Authority. The drawing/s must include the following:
   1. The Water Efficiency (WELS) Rating for water fixture/fitting and appliances as nominated in the SDA and their respective locations;
   2. Water efficient garden design features annotated i.e. indigenous plant species, mulched garden beds, drip irrigation;
   3. The NatHERS Energy Rating for each dwelling, annotated and emboldened;
   4. The Hot Water unit type and energy rating;
   5. The Heating System type and energy rating;
   6. The Cooling System type and energy rating;
   7. All electric (no natural gas uses) development features;
   8. External Lighting including Motion Detectors in their respective locations;
   9. Internal lighting type and density of installation required to achieve 4 W/sqm efficiency;
   10. Clothes lines/efficient clothes dryer installed location;
   11. Solar panels installed location, their system size (kW), inverter level system and respective locations;
   12. The Water Sensitive Urban Design (WSUD) measures on the property (as calculated using STORM or MUSIC) claimed, i.e Rainwater Tanks, Raingardens, Permeable Paving, etc and the path of connection to their respective end use, such as rainwater tank connection to toilets;
   13. Cross-flow ventilation paths annotated for each room, noting the minimum window opening required to meet the calculated to meet 2% or 1 m² opening requirement;
   14. Location and depth of fixed external shading devices to northern windows;
   15. Section details of external shading devices to northern windows demonstrating an appropriate shading angle for preventing summer sun for Melbourne to the satisfaction of the Responsible Authority;
   16. Location and type of adjustable shading devices to east and west facing windows (i.e internally fitted louvres, internal blinds, external blinds/shutters/etc);
   17. The location of double-glazed windows annotated with glazing specification (U value and SHGC) on each window;
   18. Placement of living areas annotated for orientation to the north to benefit from passive heating (must directly face between 20°W & 30° E of solar north);
   19. Placement of living and bedroom spaces annotated for access to natural light;
   20. Bicycle space infrastructure location and details (bicycle spaces need to be securable and cannot be located on the floor of a garage hindering parking spaces);
   21. Electrical Vehicle charging infrastructure;
   22. On-site Food and Garden Waste management facilities both external (compost bins/worm farms, etc) to dwelling and internal in kitchen joinery capable of containing bins for multiple waste streams;
   23. Food production areas nominated on plans in open space areas with garden equipment storage facilities nearby;
   24. Aerial assessment of the proposed vegetated site coverage; this is the area covered in vegetation such as canopy tree cover, plantings and grass;
   25. Details of the proposed green walls/facades/roofs including sectional details, product information, plant species, soil profiles, maintenance and watering details. A plan notation should be included that the green walls will be provided with irrigation;
   26. Tap and Floor Waste (drain) locations in private open spaces and balconies;
   27. Design measures annotated to minimise the urban heat island effect eg. light coloured roof, light coloured paving, vegetated site coverage;
   28. Product specification of paints /sealants/adhesives/carpets/ engineered wood (as applicable) which meet maximum total indoor pollutant emission limits eg. VOC or formaldehyde;
   29. Building materials which are of low embodied energy annotated on plan eg. reused from site, recycled bricks, rammed earth.

When approved the assessments and plans will be endorsed and form part of the permit.

### Water Sensitive Urban Design (WSUD) Drawing

1. Before the development permitted by this permit commences, an amended WSUD Drawing demonstrating all features claimed within the Melbourne Water STORM/MUSIC report and SDA/SMP report is to be submitted to and approved by the Responsible Authority.
   1. A dedicated drawing including all features, their location and corresponding catchment area (m²) as claimed in the Melbourne Water STORM Calculator/ MUSIC Modelling Reporting Tool;
   2. An excerpt of the most recent Melbourne Water STORM Calculator or MUSIC Modelling Report included on plan with a pass rate that reflects the SDA report;
   3. A Maintenance Schedule for stormwater treatment devices such as rainwater tanks, toilet connections and raingardens, including responsibility, key serviceable components and frequency of maintenance;

It must include the following;

* 1. The location and storage volume (Litres) of rainwater storage tank(s), pumps and connections to end-uses, such as toilets and laundry, as claimed;
  2. A roof plan demonstrating the portion of the roof diverted into the rainwater treatment/storage device;
  3. The location, area (m²) and sectional details of raingardens proposed for use in the stormwater drainage system. NB: Where in-ground raingardens or buffer strips are proposed, the grade of driveway must demonstrate that sufficient fall exists to connect to the device/s;
  4. The location and type of other proprietary devices employed to improve the quality or reduce the loads of stormwater run-off from the site;

When approved the assessments and plans will be endorsed and form part of the permit.

### Notification of Responsible Authority of other matters

1. Before the development permitted by this permit commences, the owner of the land must ensure the Responsible Authority is notified when any plans/documents required by external agencies and shown as conditions on this permit are approved by those agencies and provide copies of any such approval.

### Development Infrastructure Levy

1. Prior to the commencement of development, the permit holder must pay to Banyule City Council a development infrastructure levy and community infrastructure levy in accordance with the amount specified in Table 6 of the *Banyule Development Contributions Plan 2016-17, September 2018*. The contribution amount payable in the table will be adjusted annually from 1 July 2017, each year to cover inflation, by applying the Consumer Price Index for Melbourne (All Groups) as published by the Australian Bureau of Statistics.

### Tree Protection

1. Prior to the commencement of any building and or demolition works on the land, a Tree Protection Zone (TPZ) must be established and maintained during and until completion of all buildings and works including landscaping, around the following trees in accordance with the distances and measures specified below, to the satisfaction of the Responsible Authority:
   1. Tree protection zone distances:
2. Tree #1- 2 metre radius from the centre of the tree base.
3. Tree #6- 2 metre radius from the centre of the tree base.
4. Tree #7- 2 metre radius from the centre of the tree base.
5. Tree #8- 2.9 metre radius from the centre of the tree base
6. Tree #10- 8.2 metre radius from the centre of the tree base
7. Tree #22- 2 metre radius from the centre of the tree base
8. Tree #26- 3.9 metre radius from the centre of the tree base
9. Tree #28- 2 metre radius from the centre of the tree base
10. Tree #35- 2 metre radius from the centre of the tree base
11. Tree #36- 2 metre radius from the centre of the tree base
12. Tree #37- 2 metre radius from the centre of the tree base
13. Tree #38- 2 metre radius from the centre of the tree base
14. Tree #42- 2.5 metre radius from the centre of the tree base
    1. Tree protection zone measures are to be established in accordance to Australian Standard 4970-2009 and including the following:
       1. Erection of solid chain mesh or similar type fencing at a minimum height of 1.8 metres held in place with concrete feet.
       2. Signage placed around the outer edge of perimeter fencing identifying the area as a TPZ. The signage should be visible from within the development, with the lettering complying with AS 1319.
       3. Mulch across the surface of the TPZ to a depth of 100mm and undertake supplementary watering in summer months as required.
       4. No excavation, constructions works or activities, grade changes, surface treatments or storage of materials of any kind are permitted within the TPZ unless otherwise approved within this permit or further approved in writing by the Responsible Authority.
       5. All supports, and bracing should be outside the TPZ and any excavation for supports or bracing should avoid damaging roots where possible.
       6. No trenching is allowed within the TPZ for the installation of utility services unless tree sensitive installation methods such as boring have been approved by the Responsible Authority.
       7. Where construction is approved within the TPZ, fencing and mulching should be placed at the outer point of the construction area.
       8. Where there are approved works within the TPZ, it may only be reduced to the required amount by an authorised person only during approved construction within the TPZ and must be restored in accordance with the above requirements at all other times.
       9. For street trees, protection must be to the extent of the entire nature strip where the Calculated Tree Protection Zone (TPZ) occurs (not obstructing a footpath or cross-over).
       10. For neighbouring trees, protection must be to the extent of the calculated Tree Protection Zone (TPZ) where it occurs within the subject Land.
       11. Ground protection must be laid down where access is required through a TPZ outside the fenced area detailed in (a). It must consist of a permeable membrane beneath a layer of mulch or crushed rock with rumble boards on top. Rumble boards should be of a suitable thickness to prevent soil compaction and root damage. Ground protection must only be removed once all buildings and works have been completed.
15. During the construction of any buildings or works, the following tree protection requirements must be carried out to the satisfaction of the responsible authority.
    * + - 1. Where the driveway/paved area is within the TPZ of Tree #10, it must be constructed at the existing soil grade using porous materials that allows water to penetrate through the surface and into the soil profile. There must be no grade change within the TPZ, and no roots are to be cut or damaged during any part of the construction process.

### Occupation of Development

1. Unless otherwise agreed in writing by the Responsible Authority the development permitted by this permit must not be occupied until the development has been completed to the satisfaction of the Responsible Authority in accordance with the permit and endorsed plans (including, but not limited to built form and layout, parking, landscaping, drainage, street numbering, replacement of street trees).

### ESD Inspection

1. Prior to the issue of Statement of Compliance or Occupation (whichever comes first), the owner or developer must notify Council’s Development Planning section that the development is complete to allow for an inspection of ESD features as shown on the endorsed documents. Council will visit the site to inspect or require suitable evidence to be provided, to ensure ESD features have been installed, to the satisfaction of the Responsible Authority.

*\*Please retain all manufacturers stickers on window glazing, WELS and Energy Ratings for fixtures and appliances, hot water services, heating and cooling units for evidencing purposes.*

### General

1. The development as shown on the endorsed plans or described in the endorsed documents must not be altered or modified except with the written consent of the Responsible Authority.

### Car Parking/Access

1. Areas set aside for the parking of vehicles together with the aisles and access lanes must be properly formed to such levels that they can be utilised in accordance with the endorsed plans and must be drained and provided with an all-weather seal coat. The areas must be constructed, drained and maintained in a continuously useable condition to the satisfaction of the Responsible Authority.
2. Areas set aside for the parking and movement of vehicles as shown on the endorsed plan(s) must be made available for such use and must not be used for any other purpose to the satisfaction of the Responsible Authority.
3. Vehicular access or egress to the subject land from any roadway or service lane must be by way of a vehicle crossing constructed in accordance with Council’s Vehicle Crossing Specifications to suit the proposed driveway(s) and the vehicles that will use the crossing(s). The location, design and construction of the vehicle crossing(s) must be approved by the Responsible Authority. Any existing unused crossing(s) must be removed and replaced with concrete kerb, channel and naturestrip to the satisfaction of the Responsible Authority prior to occupation of the development. All vehicle crossing works are to be carried out with Council Supervision under a Memorandum of Consent for Works which must be obtained prior to commencement of works.

### Urban Design and Landscaping

1. All external surfaces of the building elevations must be finished in accordance with the schedule on the endorsed plans and maintained in good condition to the satisfaction of the Responsible Authority.
2. All pipes (except down-pipes), fixtures, fittings and vents servicing any building on the site must be concealed in service ducts or otherwise hidden from external view to the satisfaction of the Responsible Authority.
3. Outdoor lighting must be provided, designed, baffled and located to the satisfaction of the Responsible Authority such that no direct light is emitted outside the boundaries of the subject land.
4. Unless otherwise agreed in writing by the Responsible Authority, all telecommunications and power connections (where by means of a cable) and associated infrastructure to the land must be underground to the satisfaction of the Responsible Authority.
5. The owner must ensure that the garden areas shown on the endorsed plan and schedule shall only be used as gardens and shall be maintained in a proper, tidy and healthy condition to the satisfaction of the Responsible Authority. Should any plant be removed or destroyed it may be required to be replaced by a plant of similar size and variety.
6. Unless otherwise agreed in writing by the Responsible Authority, no vegetation (other than that indicated on the endorsed plan or exempt from planning permission under the provisions of the Banyule Planning Scheme) shall be damaged, removed, destroyed or lopped.

### Permit Expiry

1. This permit will expire if one of the following circumstances applies:
   1. The development is not started within two (2) years of the issue date of this permit.
   2. 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 –**

1. The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)