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Workroom Design Pty Ltd v Manningham CC [2014] VCAT 587 (16 May 2014)

Last Updated: 29 May 2014

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P2282/2013
PERMIT APPLICATION NO.PL12/023196

APPLICANT	Workroom Design Pty Ltd
RESPONSIBLE AUTHORITY	Manningham City Council
SUBJECT LAND	84-88 Whittens Lane, DONCASTER VIC 3108
WHERE HELD	Melbourne
BEFORE	S. R. Cimino, Member
HEARING TYPE	Hearing
DATE OF HEARING	24 and 25 March 2014
DATE OF ORDER	16 May 2014
CITATION	Workroom Design Pty Ltd v Manningham CC [2014] VCAT 587

ORDER

1. Under clause 64 in schedule 1 of the [Victorian Civil and Administrative Tribunal Act 1998](#) the permit application is amended by:
 - (a) Substituting plans identified as drawing TP01 to TP17 (inclusive) all marked revision D as the application plans.
2. The decision of the responsible authority in relation to permit application no. PL12/023196 is set aside.
3. A permit is granted in relation to land at 84-88 Whittens Lane Doncaster. The permit will allow:
 - The construction of more than one dwelling on a lot (not more than 16 dwellings within a three storey development)

generally in accordance with the endorsed plans.

4. The permit is subject to the conditions set out in Appendix A.

S. R. Cimino

Member

APPEARANCES

Workroom Design Pty Ltd	Ms J Sharp, Barrister, by direct access. <u>Witnesses</u> Mr L Elliott, Town Planner, Urbis. Mr M Sheppard, Urban Designer, David Lock and Associates Mr John Patrick, Landscape Architect, John Patrick and Associates. Mr B Young, Traffic Engineer
Manningham City Council	Ms S Griffiths, Town Planner with Ms L Whinstanley, Strategic Planner.
For Valentino Cerminara and Isaval Pty Ltd	Mr V Cerminara in person

INFORMATION

Description of Proposal	Construction of 16 dwellings within a 3-storey building. The dwellings are configured within two building elements, each containing a row of townhouse style dwellings over basement car parking. One row of dwellings stretches across the front of the land while the rear row extends along the rear boundary.
Nature of Proceeding	<u>Section 77 Planning and Environment Act 1987</u>
Zone and Overlays	Residential 1 Zone Design and Development Overlay – Schedule 8 [DDO8]
Permit Requirements	Clause 32.01-4: Construct more than one dwelling on a lot in the Residential 1 Zone. Clause 43.02-2: Construct buildings and works in DDO8.
Other Planning Scheme provisions	Clauses 10.04, 15, 16, 21.03, 21.05, 21.07, 21.08, 22.08, 22.09, 52.06, 55 and 65.
Land Description	Rectangular development site, comprising three adjoining residential blocks fronting the south side of Whittens Lane, Doncaster. The site has a frontage width of 54.87 metres, depth of 41.45 square metres and an overall area of about 2,274 square metres. A single or double storey brick dwelling occupies each of the three lots. The land is set on sloping terrain, falling by about 9 metres from its highpoint at the northwest corner to the southeast corner. Single and

double storey dwellings occupy surrounding properties. Contextually, the land is within walking distance of the Doncaster Hill Principal Activity Centre.

Cases referred to

SMA Projects v Port Phillip City Council [1999] VCAT 1312

Tribunal inspection

25 March 2014 (accompanied by the parties)

REASONS^[1]

What is this matter about?

1. Workroom Design Pty Ltd lodged a planning permit application with the Manningham City Council seeking permission for the construction of 18 three-storey townhouses on a development site with an area of about 2274 square metres comprising three adjoining lots fronting the south side of Whittens Lane Doncaster. After receiving 17 objections, the Council decided to refuse the grant of a permit on five grounds^[2]. In summary, the grounds of refusal assert that the height of the proposed development, including its basement, fails to meet the requirements of Design and Development Overlay – Schedule 8; it proposes excessive site coverage; fails to meet several of the requirements of Clause 55 and the proposal is contrary to Amendment C96 to the Manningham Planning Scheme.
2. Workroom Design has lodged this application with the Tribunal seeking an order setting aside the Council's refusal and in its place, a direction that a permit be granted for the proposed development. In doing so, it relies on amended plans which reduce the number of dwellings from 18 to 16 as well as other changes which seek to address the concerns raised by Council and the objectors.
3. The Council continues to oppose the proposal despite these changes. It acknowledges that the proposed changes improve some aspects of the proposal, such as such coverage which is now at 59%, but it maintains its concern about the building height, scale and form of the proposed development. Mr Cerminera, the owner of two adjoining properties abutting the subject land's southern boundary, supports the Council's decision to refuse the permit.

The issues

4. This case raises the following issues:
 - Is the height and intensity of the proposed development acceptable having regard to strategic context and DDO8?
 - Is the height and design of the development acceptable having regard to the neighbourhood character?
 - Will the proposed development result in unreasonable impacts on the amenity of neighbouring residential properties?

Decision

5. I must decide if a permit should be granted and, if so, the conditions that it should be subject to.
6. Having considered the submissions and evidence, the details of the proposal, the relevant matters under the planning scheme and legislation and having had the benefit of inspecting the land, neighbouring properties and locality, I have come to the conclusion that a permit should issue for the development of up to 16 dwellings on the land. I find that the land has attributes that make it suited to being redeveloped for medium density housing. The land is also well located within an area where planning policies and strategies as well as DDO8 direct medium density housing development. Subject to some changes to the form of the development, I find the height and visual bulk to be acceptable given the attributes of the land, strategic context and the absence of unreasonable impacts on the neighbourhood character and amenity of neighbouring properties. Detailed reasons for my decision follow.

Consideration

Is the height and intensity of the proposed development acceptable having regard to strategic context and DDO8?

7. The Council has a fundamental difficulty with the three-storey height of the proposed development. The Council accepts that given its size and attributes, the site presents itself as a suitable candidate for a higher density residential development. It accepts that, in principle, such development accords with the purpose of the Residential 1 zone and that there are various policies, both with the state and local sections of the planning scheme's policy frameworks, that support increased housing density in this location, close to the Doncaster Hill Principal Activity Centre [PAC].
8. However, the Council maintains that from a strategic viewpoint, the land is located within an area where the MSS, at Clause 21.05-1, calls for residential development that is well designed, site responsive and will not have adverse impacts on neighbours, the environment, the streetscape and the neighbourhood character.
9. The Council acknowledges that the subject land is within Precinct 2 which applies to specified residential areas surrounding activity centres and along main roads. The Council accepts that a substantial level of change is contemplated within Precinct 2; however, it says varying levels of change with respect to height, scale and built form are anticipated in different parts of the precinct. Further, the Council says it expects development to provide for transition between different parts of the precinct and surrounding residential hinterland areas, particularly those zoned Residential 3. The Council submits that the provisions for sub-precinct B in DDO8-3, the area within which the land lies, contemplate that single and two-storey dwellings only will be considered.
10. The Council submits that the three-storey height of the proposed development is clearly at odds with the strategic intent for the area within which the subject land lies, where single and double storey buildings forms only will be considered. It also says that the intent of the provisions is to facilitate 'townhouse' style developments in this area, and development that does not result in basements exposed above ground level resulting in a visually dominant building.
11. Mr Cerminara supports the Council's position and contends that three-storey development should not be allowed as it is contrary to policies for this location and would have unreasonable impacts on neighbouring properties to the east.
12. I agree with the Council that the land clearly presents itself as a suitable site for higher density residential development. With an area exceeding 2200 square metres, the site is large. The buildings on the site are not particularly important and can be demolished. Vegetation on the land is largely unremarkable. There are no awkward or difficult easements. Although the land is set on sloping terrain, the slope is not so severe so as to be unmanageable. Further, the site is well located within close proximity to a range of services and facilities within the Doncaster Hill PAC.
13. While the site has appropriate physical attributes and locational attributes supporting its potential for higher density housing, it is relevant to also consider the strategic context. The strategic context revolves around its inclusion within Precinct 2 under Council's Residential Framework Plan set out at Clause 21.05 of the MSS. The starting point here is to acknowledge that the MSS contemplates that a substantial level of change is anticipated in Precinct 2.
14. It is true that the MSS identifies sub-precinct B in Precinct 2 as an area where single and two storey dwellings only will be considered. It is relevant that this statement is set out in a policy, not a control such as the DDO which, ultimately, is the statutory tool in place to implement strategy. I see an inconsistency between the MSS and the DDO. The MSS indicates that only single and two-storey development will be considered, yet the DDO itself does not set such a limit. The design objectives clearly indicate support for two-storey townhouse style dwellings with a higher yield in within sub-precinct B. However, the design objectives in DDO8 fall short of saying that three-storey development cannot be contemplated. Rather, the DDO8-3 provisions which apply to the land set a maximum height limit of 10 metres, a height which can readily accommodate three-storey buildings. The proposed dwellings are an example of how this can be achieved.
15. To some extent, the wording set out in the MSS needs to be viewed with a degree of caution and requires the exercise of judgement in its application. I have some difficulty with the words in the MSS which say that '*single and two storey dwellings only will be considered*'. These suggest that buildings above this height will not be considered. In the absence of a statutory control which effectively prohibits buildings higher than two-storeys, it seems to me that where the planning scheme provides the discretion for higher buildings to be contemplated, then the Responsible Authority and this Tribunal standing in its shoes have an obligation to consider such proposals on their merits. It would be quite inappropriate to simply rule out buildings higher

than two-storeys on the strength of a statement in a policy, when the statutory control provides otherwise. As noted by the Tribunal in *SMA Projects v Port Phillip City Council*^[31] ‘...policy can never be more than a guideline, it should not be applied as if it is a mandatory limitation on the exercise of discretion provided for by the scheme’.

16. Perhaps more telling is the absence of a prohibition of development higher than two storeys within DDO8. I would have thought that if the situation is cut and dry in terms of limiting the height of buildings to no more than two-storeys, then the DDO provisions should be drafted to reflect this. Indeed, there are examples of such controls in other planning schemes^[4].
17. I understand that the Council seeks to limit development to two –storeys to provide an appropriate interface with the adjacent land in the Residential 3 Zone. The purpose of the Residential 3 Zone include:

To provide for residential development at a range of densities with a variety of dwellings to meet the housing needs of all households.

To encourage residential development that respects the neighbourhood character.

To limit the maximum height of a dwelling or residential building.

18. The purpose of the zone is similar to the Residential 1 zone, the most notable exception being that which refers to limitations on height. However, the provisions of the Residential 3 zone^[5] allow for buildings with a maximum height of 9 metres, or in the case of those on sloping terrain, 10 metres. Essentially, the maximum height provisions are similar to those in the adjacent Residential 1 Zone under DDO8-3. The controls for the Residential 3 Zone allow for two and three-storey buildings. The objectives of the policy at Clause 22.15 for the Residential 3 Zone encourage a lesser intensity of development which provides for single and double storey dwellings. While the policy must be considered and given weight, it cannot act as a *de facto* statutory control and applied in a fashion that prohibits some thing for which the zone provisions provide discretion.
19. Accordingly, when consideration is given to attributes of the site, its location, the strategic context as a whole and the provisions of DDO8, I am unable to form the view that the statement in the MSS that only single and two-storey dwellings only will be considered is sufficient basis to exclude an appropriately designed higher density development comprising three- storey building height in this part of sub-precinct B. If the Council seeks a clear cut building height, then it should seek to include such a requirement in a statutory control like a DDO. I understand that the Council attempted to do so through Amendment C50, but was unsuccessful. Discretionary height limits remained. While through a further amendment, C96, Council sought to tighten provisions, the reality is that there the planning scheme does not prohibit three-storey development in sub-precinct B.
20. While discretion exists to approve a three-storey building within the 10 metre height, it is not a case of ‘development at any cost’, as suggested by the Council in its submission. Ultimately, it will need to be demonstrated that the design is responsive to its context, neighbourhood character and does not result in unreasonable impacts on amenity. I now turn to these issues.

Is the height and design of the development acceptable having regard to the neighbourhood character?

21. The Council submits that the design of the proposal is unsatisfactory on several fronts. It submits that the overall height and form of the proposed development is visually dominant on both the streetscape and neighbouring properties. It contends that the building should have the ‘townhouse’ typology sought in this location and that development should provide an appropriate transition and buffer between taller development within Precinct 2 and low scale neighbours, particularly those to the rear in the Residential 3 Zone. The Council says that the visual bulk presented by the proposed development together with the lack of suitable landscaping opportunities result in a form of development that is incompatible with the streetscape and neighbourhood character as perceived from neighbouring residential properties.
22. The subject land has a number of direct interfaces with residential properties to the north and south, as well as to the rear or east. Properties to the north and south, as well as those directly opposite fronting the west side of Whittens Lane are within the Residential 1 Zone and within the same sub-precinct. Dwellings to the

east, such as those owned and occupied by Mr Cerminara, are zoned Residential 3 and outside the sub-precinct. The properties to the rear share a common boundary with those in the sub-precinct.

23. Single and double storey dwellings occupy properties on Whittens Lane near the subject land, while single storey dwellings occupy properties to the rear. In addition to the nature of the built form, other notable features of the neighbourhood character include the slope of the terrain and variation in the type and amount of vegetation found in properties.
24. It would be fair to say that planning policy, the purpose of the Residential 1 Zone and the objectives of Clause 55 all call for an outcome that is respectful of the neighbourhood character. However, as the Tribunal has said time and time again, the notion of respectful development does not mean 'more of the same' or 'no change'. Rather, respectful development must seek to 'fit in' with both the strategic and physical context that applies.
25. In this case, it is clear that the land is in Precinct 2 where substantial change is contemplated by the Council's MSS. The MSS also makes it clear that the expectations as to the intensity of development on the periphery of the precinct, such as on land adjacent to the Residential 3 Zone, should be tempered compared to what could be anticipated elsewhere. In such circumstances, a balance needs to be struck between policies which, on the one hand call for more housing and 'change' in the precinct, and those which call for an outcome that is respectful of the neighbourhood character.
26. One of the tasks to be undertaken under the planning scheme provisions is site analysis. The reason for this task is to identify relevant site attributes, both opportunities and constraints, to inform the design response. This is because not all sites are the same, some will offer better opportunities than others for development. Ultimately, what is acceptable will need to be assessed on a site by site basis.
27. In this case, a large site comprising three adjoining properties has been assembled. Its attributes and strategic location clearly provide a good opportunity for medium density housing. The opportunity provided is superior to that of smaller sites as it is likely that impacts, particularly those on the amenity of neighbouring properties, are able to be managed on a larger site.
28. The site has a large frontage. It has a frontage to a street with buildings of varying height. The proposal seeks to manage the three-storey height along the streetscape by providing a double storey dwelling at both the northern southern ends of the front row as a form of transition to the north and south^[6]. The front setback responds to DDO8 with the uppermost level stepped back further. Vehicle access limited to one point and landscaping is provided within the setback area. Further, the design of the development involves dwellings are designed in the 'townhouse' typology sought under the provisions for this part of Precinct 2. The contemporary design style is also appropriate. I agree with the view expressed by Mr Sheppard that all of these measures work toward allowing for the introduction of a satisfactory three-storey form into this streetscape which provides suitable transition, setbacks and landscaping. A satisfactory design response which introduces a three-storey form to the streetscape is possible here given the substantial width and size of the subject land.
29. Concerns about the type of front fence are misplaced. The fence is low and allows for views into the development.
30. In relation to the rear row of dwellings, I acknowledge that the built form is designed to step down the slope of the land. It also provides a rear setback that allows for reasonable landscaping, as well as central break between dwellings 12 and 13 and stepping back of the upper level from the rear boundary to reduce the continuity and mass of the built form across the rear boundary. The site coverage is less than 60 per cent.
31. The sensitive interfaces are to the north, south and east. I accept that the above measures contribute to the satisfactory insertion of a three-storey building within the 'rear of the site' context, but I am unable to find that they go far enough as far enough. Single storey dwellings, some set on lower terrain and private open spaces are exposed to the rear part of the subject land. As such, the insertion of a three-storey built form on higher terrain is a tricky proposition, particularly in terms of ensuring there is a reasonable transition to neighbouring dwellings on lower terrain and their private open space areas.
32. After reviewing the proposal and having the benefit of the site inspection, I conclude that the mass of the rear row of dwellings needs to be reduced to provide for a reasonable 'insertion' and transition into the surrounding backyard context. Specifically, I consider that the top level of Units 9, 10, 15 and 16 should be deleted, so that the built form is reduced to two-levels, to provide a reasonable transition and interface with neighbouring dwellings and their open spaces. I find the uppermost level of the middle section of this row,

comprising Units 11, 12, 13 and 14 to be acceptable given the existence of tall and dense row of Cyprus pines along the rear boundary of No 21 Outlook Drive. As noted by Mr Sheppard, these trees provide a dense and effective screen that will effectively block out views from the neighbouring property to the central section of the building. Given the importance of these trees, it is appropriate that I include conditions requiring the assessment of the impact of the development on the root system and the implementation of measures to ensure that the construction of the development does not harm their health.

33. With the deletion of the upper most levels, as described above, I find that the proposed development can be accommodated within what is commonly referred to as the '*backyardscape*' of the immediate context. This results in the level of development directly adjacent to the sensitive areas on neighbouring properties reduced to two-storeys. The setbacks will easily comply with Standard B17. The stepped form provides suitable transition. Landscaping will further soften the visual impact of the built form. The extent of visual bulk visible from neighbouring properties would be satisfactory and strikes a reasonable balance between the need to achieve a satisfactory 'neighbourhood character' outcome that provides a suitable transition to neighbours while allowing for change that increases housing density in this part of Precinct 2.

Will the proposed development result in unreasonable impacts on the amenity of neighbouring residential properties?

34. The Council and Mr Cerminara raise concerns about the impact on amenity, particularly with respect to the presentation of unreasonable visual bulk to neighbours; overshadowing of private open space; overlooking; inadequate car parking and drainage.
35. In relation to visual bulk, I have outlined my views in the preceding part of these reasons. Subject to the changes which I require to the rear row of dwellings, I find that the proposal will not result in the presentation of unreasonable visual bulk.
36. Mr Cerminara expresses concerns about shadows cast onto his property. I have reviewed the shadow diagrams. It is clear that the proposed development will start to impact on Mr Cerminara's property from about 2 pm onwards. After this time, the development would cast shadows, but these would be within those cast by the row of Cyprus pines. Even if the Cyprus pines were not there, the extent of shadows easily meets Standard b21 on 21 Outlook Drive.
37. The proposal will result in a minor increase in shadows over the private open space 1A Outlook Drive. However, the deletion of the upper levels of Units 15 and 16 will reduce this impact resulting in compliance with Standard B21.
38. The shadow impacts are acceptable.
39. The potential for overlooking stems from the east facing middle floor balcony and upper level master bedroom window of the rear row of dwellings as well as the upper floor east facing balcony and north facing living room window to Unit 8. The balconies and windows are capable of being treated to achieve compliance with Standard B22. I would hope that in dealing with this issue, a creative design approach is adopted which allows for outward views, but prevents direct views into the sensitive open spaces and windows of neighbouring properties. Something a bit more sophisticated than screening to 1.7 metres above floor level should be possible.
40. The amount of car parking provided meets the requirements of Clause 52.06 for both residents and visitors. The layout is satisfactory. No reduction in parking is requested.
41. In relation to concerns about drainage, it will be necessary for a full drainage plan to be provided as part of the building approve. Such plan will resolve drainage issues to the satisfaction of the Council.

Conclusion

42. For the reasons set out above, I will set aside the Council's decision. A permit is granted. The land is suited to being redeveloped for medium density housing. Given the attributes of the site and policy context, I find that a three-storey development is acceptable on this site. With some reduction in building volume, and other conditions as discussed, the proposal represents a reasonable response to the neighbourhood character and will not result in unreasonable impacts on amenity.
43. I have reviewed the draft conditions presented by the Council. I have made the appropriate amendments to implement the changes I require. I also will require modifications to the landscape plan to replace an existing

tree in the northwest corner with a new tree. The Council and Mr Cerminara accept that the existing tree is in poor condition and should be replaced. Changes to ensure no unreasonable overlooking are to be shown on amended plans. To protect the Cyprus Pines on Mr Cerminara's property, I include a condition requiring the preparation of a Tree Management Plan. Having considered the submissions of the parties, I have deleted a number of draft conditions which require unnecessary changes to plans and/or other requirements which are unreasonable or not necessary given the nature of the proposal.

S. R. Cimino
Member

APPENDIX A

PERMIT APPLICATION NO:	PL12/023196
LAND:	84-88 Whittens Lane Doncaster
WHAT THE PERMIT ALLOWS:	The construction of more than one dwelling on a lot (not more than 16 dwellings within a three-storey development) generally in accordance with the endorsed plans.

CONDITIONS

Amended Plans

1. Before the development starts, two (2) copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans prepared by WORKROOM identified as drawing TP01 to TP17 (inclusive) all marked revision D but modified to show:
 - (a) The top level of Units 9, 10, 15 and 16 deleted and the internal layout of dwellings reconfigured as appropriate;
 - (b) In accordance with the recommendations of an Arborist as set out in the plan required under condition 24, measures to protect the health of the Cyprus Pines located within 21 Outlook Drive located adjacent to the common boundary with the subject land;
 - (c) Sufficient head room clearance for the type of waste collection vehicle which is to be used to collect waste from within the subject land, if required;
 - (d) any relevant changes as a result of the endorsed waste management plan;
 - (e) all principles / initiatives referenced in the submitted SMP and any relevant changes as a result of the endorsed SMP;
 - (f) all habitable room windows and private open spaces within the development to meet the objectives of clause 55.04-6 (Overlooking) and clause 55.04-7 (Internal views) of the Manningham Planning Scheme;
 - (g) location of all permeable surfaces;
 - (h) front fencing to be brought to the front property boundary;
 - (i) a full schedule of materials and colours for all external works.

Endorsed Plans

2. The layout of the site and the size of buildings and works shown on the approved plans must not be modified for any reason, without the prior written consent of the Responsible Authority.
3. Floor levels shown on the endorsed plans must not be altered or modified. Any alterations must be approved in writing by the Responsible Authority.

Sustainability Management Plan

4. Before the plans are endorsed an updated Sustainability Management Plan (SMP) that outlines proposed sustainable design initiatives and commitments must be submitted to and approved in writing by the Responsible Authority. Upon approval the SMP will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives and commitments outlined in the endorsed SMP to the satisfaction of the Responsible Authority. The SMP must be generally in accordance with the SMP prepared by Green Suburban dated May 2013 submitted with the application but further modified to address planning policy at clause 21.10 (Ecologically Sustainable Development) and policy at clause 55.03-5 (Energy efficiency) of the Manningham Planning Scheme and include measures that achieve current best practice outcomes and include, but not be limited to, the following:
 - (a) Construction Management plan;
 - (b) Building Energy Management;
 - (c) Water sensitive design;
 - (d) Construction materials;
 - (e) Indoor environment quality;
 - (f) Waste Management;
 - (g) Quality of public & Private Realm;
 - (h) Transport;
 - (i) Demolition & construction; and
 - (j) Commissioning and operations,
5. All works must be undertaken in a manner that minimises soil erosion, and any exposed areas of soil must be stabilised to prevent soil erosion, to the satisfaction of Responsible Authority. These include:
 - (a) Silt fence(s) and sediment pond(s) is installed during the construction period to the satisfaction of Responsible Authority;
 - (b) Measures are taken to minimise the amount of mud, dirt, sand, soil, clay or stones deposited by vehicles on the abutting roads when vehicles are leaving the site; and
 - (c) Measures are taken to ensure that no mud, dirt, sand, soil, clay, stones and concrete wash into, or be allowed to enter, the storm water drainage system.
6. Prior to the occupation of the development, a report from the author of the SMP report approved pursuant to this permit, or similarly qualified person or company, must be submitted to the satisfaction of the Responsible Authority. The report must confirm that all measures specified in the SMP have been implemented in accordance with the approved SMP.
7. The principles / initiatives referenced in the endorsed SMP (including any amendments required by condition 1 on this planning permit), must be implemented to the satisfaction of the Responsible Authority. The endorsed SMP must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the prior written approval of the Responsible Authority.

Car Parking, Crossovers and Footpaths

8. Prior to the occupation of the development, all basement car parking spaces must be line-marked, numbered and signposted to provide allocation to each dwelling and visitors to the satisfaction of the Responsible Authority and maintained at all times to the satisfaction of the Responsible Authority.
9. The development must provide no fewer than three (3) visitor car parking spaces within the development to be used for no other purpose and maintained at all times to the satisfaction of the Responsible Authority.

Vehicle Crossings and Accessways

10. The design and construction of the new vehicle crossing must comply with the following:
 - (a) The vehicle crossing shall be constructed in accordance with City of Manningham Standard Drawings and Specifications;
 - (b) The development's finished floor levels relative to footpath and road levels must be such that pedestrian and vehicular access accord with the Australian/New Zealand Standard AS/NZS 2890.1:2004;
 - (c) Council may permit the adjustment of Building Line levels to provide access in accordance with AS/NZS 2890.1:2004. The designer may also need to alter finished floor levels just inside the property in order to provide satisfactory access;
 - (d) Before a vehicle crossing permit can be issued the developer must obtain a "Vehicle Crossing Permit" and the crossing must be constructed to the satisfaction of the Responsible Authority.
11. Prior to the occupation of the development, all redundant vehicle crossovers must be removed and the footpath, nature strip and kerbing reinstated to the satisfaction of Responsible Authority. All costs associated with these works must be borne by the permit holder.
12. The costs of all of road infrastructure reinstatements and rectification works associated with utility service provision and building works must be borne by the developer.
13. Any damaged road(s) and footpath(s) adjacent to the development site as a result of the development must be reinstated to the satisfaction of the Responsible Authority. All costs associated with these works must be borne by the permit holder.
14. The development's finished floor levels relative to the existing footpath and road levels must be such that pedestrian and vehicular access accord with the Australian/New Zealand Standard AS/NZS 2890.1:2004.
15. All existing kerb and channel, and road pavement surface levels must not be altered. Council may permit the adjustment of Building Line levels to provide access in accordance with AS/NZS 2890.1:2004.

Construction Management

16. Before the commencement of works, two copies of a Construction Management Plan (CMP) must be submitted to and approved by the Responsible Authority. When approved the CMP will form part of the permit. The plan must address, but not be limited to, the following:
 - (a) A liaison officer for contact by residents and the responsible authority in the event of relevant queries or problems experienced;
 - (b) Hours of construction;
 - (c) Delivery and unloading points and expected frequency;
 - (d) On-site facilities for vehicle washing;
 - (e) Parking facilities/locations for construction workers;
 - (f) Other measures to minimise the impact of construction vehicles arriving at and departing from the land;
 - (g) Methods to contain dust, dirt and mud within the site, and the method and frequency of clean up procedures;
 - (h) The measures for prevention of the unintended movement of building waste and other hazardous materials and pollutants on or off the site, whether by air, water or other means;
 - (i) An outline of requests to occupy public footpaths or roads, and anticipated disruptions to local services;
 - (j) The measures to minimise the amount of waste construction materials, including details how the commitment to reduce or reuse 50% of construction waste going to landfill outlined in the SMP is achieved;
 - (k) The measures to minimise noise and other amenity impacts from mechanical equipment/construction activities, especially outside of daytime hours; and
 - (l) Adequate environmental awareness training for all on-site contractors and sub-contractors.
17. During construction, the following must occur:
 - (a) any stormwater discharged into the stormwater drainage system to comply with EPA guidelines;

- (b) stormwater drainage system protection measures must be installed as required to ensure that no solid waste, sediment, sand, soil, clay or stones from the premises enters the stormwater drainage system;
 - (c) vehicle borne material must not accumulate on the roads abutting the site;
 - (d) the cleaning of machinery and equipment must take place on site and not on adjacent footpaths or roads;
 - (e) all litter (including items such as cement bags, food packaging and plastic strapping) must be disposed of responsibly; and
 - (f) all site operations must comply with the EPA Publication TG302/92.
18. In the event of excavation causing damage to an existing boundary fence, the permit holder must repair or replace the affected fencing to the satisfaction of the Responsible Authority with all costs borne by the permit holder.
19. The endorsed CMP must be implemented and complied with at all times to the satisfaction of the Responsible Authority unless with the further written approval of the Responsible Authority.

Waste Management

20. Before the plans are endorsed, two (2) copies of an amended Waste Management Plan (WMP) must be submitted and approved to the satisfaction of the Responsible Authority. When approved, the WMP will form part of the permit. The WMP must detail how best practice standards are achieved based on the Manningham City Council – Waste Collection for Residential Developments in Manningham – Guidelines for Developers and take include but not be limited to the following:
- (a) Waste collection vehicles able to access and manoeuvre within the basement (perform a 3-point turn) with restricted head clearance.
 - (b) All waste collection may be undertaken within the site.
 - (c) All waste collection vehicles must only enter and exit the site in a forward direction.
 - (d) All waste must be collected by a private contractor.
 - (e) Adequate bin storage on-site for the development.
 - (f) Number of units to be developed.
 - (g) Calculations showing that all occupiers will be sufficiently catered for with the proposed number of garbage and recycling bins (estimated garbage & recycling generation rates).
 - (h) A description on how the residents will access the waste facilities;
 - (i) Details on the size and aesthetics of the waste storage area located at each unit.
 - (j) A plan showing that the bin storage area is sufficient to cater for the number of bins.
 - (k) The equipment and systems to be used for collection and disposal of garbage and recyclables on the site.
 - (l) Details on the signage and education on use of services.
 - (m) Address how the residents will dispose of any hard waste material.
 - (n) Details of facilities for washing bins and waste storage areas.
 - (o) Details of ventilation systems if bins are in enclosed areas.
 - (p) Details on how vermin will be prevented from accessing the bins.
 - (q) Confirmation of the hours and frequency of pick-up of bins, with regard to potential noise impacts to the surrounding neighbourhood.
21. The collection of all waste must be in accordance with the approved Waste Management Plan. Rubbish, including bottles and packaging material, must at all times be stored within the development and screened from external view and be managed to the satisfaction of the Responsible Authority in accordance with the approved Waste Management Plan.

Development Contributions

22. Before the completion of the development, a Development Contribution as agreed by the Responsibility Authority in accordance with Clause 45.06 Development Contributions Plan Overlay Schedule 1 – Doncaster

Hill Development Contributions Plan of the Manningham Planning Scheme, must be paid in full to the Responsible Authority.

Landscaping

23. Before the commencement of works, a landscaping plan, generally in accordance with the plan by John Patrick Pty Ltd identified as drawing VCAT 01 dated February 2014, prepared by a suitably qualified landscape architect showing species, locations, approximate height and spread of proposed planting, must be submitted to the Responsible Authority for approval. The landscaping plan must show species, locations, approximate height and spread of proposed planting and the retention of existing trees and shrubs, and include, but not be limited to:
- (a) Deletion of the existing tree at the northwest corner and replacement with a suitable species;
 - (b) In accordance with the recommendations of an Arborist set out in the plan required under Condition 24, measures to protect the health of the Cyprus Pines located within 21 Outlook Drive located adjacent to the common boundary with the subject land;
 - (c) a minimum of one (1) canopy tree, capable of reaching a minimum mature height of 8.0 metres, within the front setback of the site. The tree must be a minimum height of 1.5 metres at the time of planting; and
 - (d) tree protection measures for the brush cherry tree located in the south-west corner of the site during the construction phase.
24. Before the development commences, a Tree Management Plan must be prepared to the satisfaction of the Responsible Authority. The Tree Management Plan must be prepared by an Arborist or other suitably qualified person to the satisfaction of the Responsible Authority. The Tree Management Plan must set out:
- (a) measures to protect existing trees on the land to be retained as part of the development during construction and maintain continued health after construction;
 - (b) measures to protect the health of the Cyprus Pines in 21 Outlook Drive located near the common boundary with the subject land.

The Tree Management Plan must be implemented to the satisfaction of the Responsible Authority.

25. Before the release of the approved plan under Condition 1 on this permit, a \$10,000 cash bond or bank guarantee must be lodged with the Responsible Authority to ensure the completion and maintenance of landscaped areas and such bond or bank guarantee will only be refunded or discharged after a period of 13 weeks from the completion of all works, provided the landscaped areas are being maintained to the satisfaction of the Responsible Authority.
26. Before the occupation of the development, landscaping works as shown on the approved plans must be completed to the satisfaction of the Responsible Authority and thereafter retained and maintained to the satisfaction of the Responsible Authority.

Stormwater – On-site detention system

27. The owner must provide and maintain an on-site stormwater detention storage or other suitable system (which may include but is not limited to the re-use of stormwater using rainwater tanks), to limit the Permissible Site Discharge (PSD) to that applicable to the site coverage of 35 percent of hard surface or the pre existing hard surface if it is greater than 35 percent. The PSD must be approved by the Responsible Authority prior to the commencement of works and must meet the following requirements:
- (a) Be designed for a 1 in 5 year storm.
 - (b) Storage must be designed for 1 in 10 year storm.
 - (c) Be maintained by the owner in accordance with construction plans approved by the Responsible Authority.
28. Before the commencement of works, the construction plan for the system required by this permit must be submitted to and approved by the Responsible Authority. The system must be maintained by the Owner thereafter in accordance with the approved construction plan to the satisfaction of the Responsible Authority.

Stormwater and Drainage

29. Stormwater must not be discharged from the subject land other than by means of drainage to the legal point of discharge. The drainage system within the development must be designed and constructed to the requirements and satisfaction of the relevant Building Surveyor. A connection to Council maintained assets must not be constructed unless a Miscellaneous Works Permit is first obtained from the Responsible Authority.
30. The whole of the subject land, including landscaped and paved areas, must be drained to the proposed on-site detention system to the satisfaction of the Responsible Authority.

Site Services

31. All services, including water, electricity, gas, sewerage and telephone, must be installed underground and located to the satisfaction of the Responsible Authority.
32. All upper level service pipes (excluding stormwater downpipes) must be concealed and screened respectively to the satisfaction of the Responsible Authority.

Completion

33. Before the occupation of the approved development, landscaped areas must be fully planted and mulched or grassed generally in accordance with the approved plan and to the satisfaction of the Responsible Authority.
34. All brickwork on or immediately adjacent to the boundaries of the site as shown on the endorsed plans and where visible from an adjoining property must be cleaned and finished to the satisfaction of the Responsible Authority.
35. Privacy screens and obscure glazing required in accordance with the approved plans must be installed prior to occupation of the dwellings to the satisfaction of the Responsible Authority and retained and maintained thereafter to the satisfaction of the Responsible Authority.
36. All plant and equipment that is not installed within the building must otherwise be installed in the area of plant and equipment on the roof of the building, unless otherwise agreed in writing with the Responsible Authority.
37. No air-conditioning units are to be installed on any balcony or façade so that they are visible from outside the site.
38. Any clothes-drying rack or line system located on a balcony must be lower than the balustrade of the balcony and must not be visible from off the site to the satisfaction of the Responsible Authority.
39. An intercom and an automatic basement door opening system (connected to each dwelling) must be installed, so as to facilitate convenient 24 hour access to the basement car park by visitors, to the satisfaction of the Responsible Authority.
40. A centralised TV antenna system must be installed and connections made to each dwelling to the satisfaction of the Responsible Authority. No individual dish antennas may be installed on balconies, terraces or walls, to the satisfaction of the Responsible Authority.
41. Buildings, paved areas, drainage and landscaping must be maintained to the satisfaction of the Responsible Authority.
42. Garbage and recycling storage areas must be maintained in a neat and tidy condition to the satisfaction of the Responsible Authority.
43. Prior to the occupation of the development all fencing must be in a good condition to the satisfaction of the Responsible Authority.

Lighting

44. Communal lighting must be connected to reticulated mains electricity and be operated by a time switch, movement sensors or a daylight sensor to the satisfaction of the Responsible Authority.

Noise

45. All noise emanating from any mechanical plant must comply with the relevant State noise control legislation

and in particular, any basement exhaust duct/unit must be positioned, so as to minimise noise impacts on residents of the subject building and adjacent properties to the satisfaction of the Responsible Authority.

Permit Expiry

46. This permit will expire if one of the following circumstances apply:

- (a) The development is not started within two (2) years of the date of this permit; and
- (b) The development is not completed within four (4) years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within six (6) months afterwards.

--- End of Conditions ---

[1] I have considered all submissions presented by the parties although I do not recite all of the contents in these reasons.

[2] The grounds of refusal are set out in detail in the Refusal to Grant a Permit issued on 1 October 2013

[3] [\[1999\] VCAT 1312](#)

[4] For example see DDO1 in the Bayside Planning Scheme.

[5] See Clause 32.06-5

[6] This is on the western row of dwellings with direct frontage to Whittens Lane

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