

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P960/2016
PERMIT APPLICATION NO. PLN/2015/204

CATCHWORDS

Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit.

APPLICANT	Mr Todd Mitchell Langtry & Ors
RESPONSIBLE AUTHORITY	Macedon Ranges Shire Council
REFERRAL AUTHORITY	North Central Catchment Management Authority, Goulburn Murray Water
RESPONDENT	Fastnet Consulting
SUBJECT LAND	2-4 Davy Street and 121 High Street, WOODEND
WHERE HELD	Melbourne
BEFORE	Laurie Hewet, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	2 and 3 November 2016
DATE OF ORDER	28 December 2016
CITATION	Langtry v Macedon Ranges SC [2016] VCAT 2201

ORDER

- 1 In application P960/2016 the decision of the responsible authority is varied.
- 2 In planning permit application PLN/2015/2014 a permit is granted and directed to be issued for the land at 2-4 Davy Street and 121 High Street Woodend, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of fourteen double storey dwellings, construction of associated buildings and work (earthworks, road works and fencing) removal of vegetation including two (2) non – native trees within the Davey Street road reserve, construction of works within Black Gum Reserve (outlet drains and reserve).

Laurie Hewet
Senior Member

APPEARANCES

For applicant	Mr John Hannagan of Harwood Andrews Solicitor
For responsible authority	Mr Christo Crafford, town planner
For referral authority	No appearances
For respondent	Mr Stephen Bitmead, town planner Mr Bitmead called expert evidence from: <ul style="list-style-type: none">• Mr W Bishop, engineer.

INFORMATION

Description of proposal	The construction of 14 double storey townhouses with associated buildings and works (earthworks and roadworks) and removal of vegetation.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Macedon Ranges Planning Scheme
Zone and overlays	Clause 32.08: General Residential Zone (GRZ). Clause 42.01: Environmental Significance Overlay schedule 4 (ESO4). Clause 44.04: Land Subject to Inundation Overlay (LSIO).
Permit requirements	Clause 32.08-4: a permit is required to construct two or more dwellings on a lot. An application must meet the requirements of Clause 55. Clause 42.01-2: a permit is required to remove, destroy all vegetation, including dead vegetation. Clause 44.00 4-1: a permit is required to construct a building or to construct or carry out works.

Land description

The subject site is located on the north west side of High Street, bounded by Davy Street to the north-west and an un-named fire track to the south-east. The site abuts the Five Mile Creek corridor and a range of recreational facilities to the north of the Creek.

The site comprises six lots and has a total area of 6778m². The site is currently vacant and has a fall towards Five Mile Creek. It contains groups of exotic vegetation at its edges, including a stand of pines towards the south east corner and clusters of poplar trees along the northern and south-western boundaries.

The site is very well located in terms of its proximity to the Woodend Town Centre, being about 250m from a supermarket and 780m from the railway station.

REASONS¹

- 1 This is an application to review the decision of the Responsible Authority to grant a permit for the construction of 14 double storey townhouses at 2-4 Davey Street, Woodend. The application is made on 18 grounds.
- 2 In broad terms the Applicant for Review submits that:
 - The proposal has not adequately responded to an earlier decision of the Tribunal to refuse an application for a similar proposal on the site.
 - The application plans are not sufficiently detailed and/or are not accurate.
 - The flooding impacts of the proposal have not been adequately resolved, especially in relation to the impact on the neighbouring dwelling.
 - The proposal is not acceptable from a neighbourhood character perspective.
 - The proposal is not acceptable having regard to the Council's adopted structure plan and Planning Scheme Amendment C98 which is a seriously entertained planning proposal.
 - In the absence of a subdivision application, the proposal is piecemeal, potentially futile and not consistent with orderly planning.
 - The proposal would be prohibited upon the approval of Planning Scheme Amendment C98.
- 3 This application is a repeat appeal. It represents the third attempt by the applicant to obtain approval for the development of the land. In the original application, the permit applicant withdrew the application during the running of the review hearing. A subsequent application for review was brought by the permit applicant following the failure of the responsible authority to grant a permit in the prescribed time². Following a hearing that took place over three sets of hearing days between May and August 2014, the Tribunal refused to grant a permit.
- 4 The review site is also the subject of a planning scheme amendment intended to give effect to the Woodend Structure Plan. The amendment has been adopted by the Council and, if approved, would rezone part of the site to a Neighbourhood Residential Zone.

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

² *Rite Track Pty Ltd v Macedon Ranges SC* [2014] VCAT 1378

- 5 The Applicant for Review submits that because Amendment C98 is a seriously entertained planning proposal, this application should not be regarded as a repeat appeal because elements of Amendment C98 call for a reconsideration of aspects of the Tribunal's earlier decision. The Applicant for Review also submits that the application conflicts with the strategic direction and detailed controls encompassed within Amendment C98.
- 6 The issues in this case therefore can be categorised as follows:
- Has the proposal responded in an acceptable manner to the matters raised in the earlier decision of the Tribunal, and what is the relevance of that decision?
 - Is the proposal acceptable having regard to the site's physical and strategic context which now includes Amendment C98 as a seriously entertained planning proposal?
- 7 I have concluded that a permit should issue for this proposal.
- 8 The Tribunal's decision in the earlier application is a relevant consideration, as is the extent to which the permit applicant has responded to the Tribunal's criticisms. The plans that are now before me in this case have responded in an acceptable manner to the concerns raised by the Tribunal in the earlier decision. This does mean that the current proposal is acceptable. Amendment C98 is a seriously entertained planning proposal, and it is relevant to my consideration of the merits of the current application. I am satisfied that the grant of a permit will not in any significant way, conflict with the outcomes encouraged by the Woodend Structure Plan. The site's physical and strategic context supports the development of the site in the manner proposed.
- 9 My reasons are set out below.

HAS THE PROPOSAL RESPONDED IN AN ACCEPTABLE MANNER TO THE MATTERS RAISED IN THE EARLIER DECISION OF THE TRIBUNAL, AND WHAT IS THE RELEVANCE OF THAT DECISION?

Repeat appeals

- 10 The principles for dealing with repeat appeals have been established and accepted over a long period. In broad terms, the principles establish that while the Tribunal is not bound by the first decision of the Tribunal, great weight ought to be accorded to that decision. In the absence of any material change of circumstances of the land, and its surrounds, changes in planning policy and/or changes in the interpretation of the facts or law relevant to the Tribunal's consideration, or changes in the proposal itself, the first decision of the Tribunal should be followed.
- 11 It is important to note however that repeat appeals can fall into one of two categories. A "classic repeat appeal" refers to a circumstance where the permit applicant appears to be doing little more than forum shopping or wearing down the opposition with little material change in the development

or other circumstances. The second category of repeat appeal is often referred to as a “correcting repeat appeal” that is, where the Tribunal has refused an earlier application but indicated a modified form of development or changes that might be acceptable, and the repeat appeal comprises a genuine attempt to address those issues.

- 12 In the case of a correcting repeat appeal Deputy President Dwyer has relevantly commented in a recent case that “...*equity or fairness demands that considerable weight be given to the fact that the applicant has endeavoured to accommodate suggestions as to what would be appropriate*”³.
- 13 It is also important to recognise that irrespective of whether the repeat appeal falls into the category of a ‘classic’ or ‘correcting’ repeat appeal, the role of the Tribunal is not to determine whether the proposal before it would have satisfied the earlier (and perhaps differently constituted) Tribunal. As set out in the decision of Deputy President Dwyer in *Sprut*:

...the role of the Tribunal is to still consider the new application before it on its merits but, in doing so, to give great weight to the Tribunal’s decision on the earlier application having regard to the usual principles that have evolved for this purpose⁴.

The Tribunal’s findings in the earlier application

- 14 The Tribunal in the previous decision made a number of pertinent observations about the proposal it was considering. The application at that time was to construct 17 double storey townhouses on an elevated part of the land with access via Davy Street. A flood path across the balance of the land was to be created.
- 15 The Tribunal commented that there were meritorious aspects to the proposal. It also commented that despite concerns expressed by the Council and residents about the flooding impacts of developing this site, the land is zoned for Residential purposes and has been for many years, and the applicant is entitled to seek to develop the land for residential purposes. The Tribunal found that:
- An elevated fill pad for the proposed townhouses is an acceptable design response to the flooding issues associated with the development of this site.
 - Vehicle access from this site to Davy Street is appropriate, but there should be a modified access route connecting the site to a closer section of Davy Street.
 - Whilst an attached townhouse style of development is different to the existing built form characteristics of this neighbourhood, this does not

³ *Sprut Pty Ltd v Stonnington CC* [2012] VCAT 1675

⁴ [2012] VCAT 1675

mean the proposal cannot be respectful of the neighbourhood character.

- 16 The Tribunal also found that there were aspects of the detail of the design that were not respectful or acceptable. These included:
- The extent of built form being excessive and not striking an acceptable balance between built form and landscaping on the elevated pad itself.
 - Inadequate setbacks and landscaping to Davy Street.
 - Internally, the design of the car parking and access ways, including the internal streetscape presentation and pedestrian circulation was not acceptable.
 - A spoon drain and batter was required along the north boundary, and should be provided in addition to the private open space areas of the townhouses and associated landscaping.
 - The need to improve a sense of openness, increase vegetation and improved resident safety and public surveillance.
 - The lack of pedestrian access to Davy Street.
 - The lack of acoustic attenuation for dwellings within 50m of the football club rooms.
 - The lack of adequate turning areas for garbage vehicles.
- 17 Critically, an issue emerged during the course of the hearing relating to the excavation over a main sewer asset that traverses the middle of the site. Western Water wanted a greater level of separation between its asset and the proposed floodway. The Applicant opposed Western Water's requested condition but the Tribunal concluded that the requirements should be imposed. By doing so however, the Tribunal concluded that the change to the ground level of the floodway would nullify the functionality of the proposed floodway, a fundamental aspect of the proposal that must be achieved in order for it to proceed. Having regard to the significance of the impact of requiring compliance with Western Water's conditions, combined with the other changes identified as being necessary, the Tribunal refused the application in order to provide the applicant with the opportunity to rethink the design concept for the site.

The relevance of the earlier decision

- 18 The Applicant for Review in the current case acknowledges that there are elements of the current proposal that are directed toward the primary reasons for the Tribunal's refusal of the earlier application. Notwithstanding this the Applicant for Review submits that the proposal should not be regarded as a repeat appeal because there is now a seriously entertained planning proposal in the form of Amendment C98, elements of

which call for a reconsideration of aspects of the Tribunal's earlier decision⁵.

- 19 As I have discussed above, my role in this matter is to consider the new application before me on its merits but, in doing so, the previous decision of the Tribunal is a relevant consideration and weight ought to be given to it. For the reasons I discuss below, I am satisfied that the current proposal has responded in an acceptable manner to the Tribunal's reasons for refusing the earlier application, and is therefore a correcting repeat appeal. This does mean that the current proposal is acceptable. Nor does it mean that the Tribunal's findings about matters such as the acceptability of an attached townhouse style of development being acceptable must be followed. Matters such as Amendment C98 appropriately inform my conclusions about the acceptability of those aspects of the proposal.

The permit applicant's response to the Tribunal's earlier decision

- 20 With respect to the current proposal's response to the Tribunal's criticisms of the earlier application, the following aspects of the proposal leads me to conclude that the permit applicant has responded in an acceptable manner:

- The reduction in the built form resulting from the reduction in the number of dwellings from 17 to 14, and the rearrangement of the layout to provide landscaping on the elevated pad, the inclusion of communal open spaces and planting in and around the dwellings.
- Building forms have been separated and vistas and open space corridors have been created.
- The rearrangement of car parking and access ways so that vehicle access and garaging do not dominate the internal streetscape.
- Western Water's preferred solution has been met by retaining the existing sewer infrastructure and providing appropriate ground cover over the sewer.
- Landscaping proposals are appropriate to the site's flood way role.
- The northern abuttal to 6 Davy Street has been appropriately treated with generous setbacks, a functional drainage system, landscaping and limited car access to the northern boundary.
- Setbacks to Davy Street have been increased and landscaped.
- Pedestrian access has been created and dwellings oriented to the north.
- Access to Davy Street has been modified.

⁵ At the time of the Tribunal's consideration of the earlier application the Woodend Structure Plan was an adopted Council document, but had yet to begin any planning scheme amendment process for inclusion into the planning scheme. The Tribunal gave this plan this plan limited weight and, instead, gave greater weight to the existing neighbourhood character (refer paragraph 68)

- 21 The relevance or significance of the permit applicant's response is that by adopting Deputy President's comments in *Sprut* referred to previously, equity or fairness demands that weight be given to the fact that the applicant has endeavoured to accommodate suggestions as to what would be appropriate. The weight to be accorded will vary from case to case, but in this case, I am satisfied that the permit applicant ought to obtain credit because the changes that have been made to the proposal are significant and represent a real and substantive attempt to redesign the proposal. The design changes go beyond a mere "tinkering" with detailed aspects of the original application. Whether the applicant has succeeded in putting forward a proposal that is acceptable, is a matter I address below.

IS THE PROPOSAL ACCEPTABLE HAVING REGARD TO THE SITE'S PHYSICAL AND STRATEGIC CONTEXT WHICH NOW INCLUDES AMENDMENT C98 AS A SERIOUSLY ENTERTAINED PLANNING PROPOSAL?

- 22 The Applicant for Review relies on the provisions of the Amendment C98 to the Macedon Ranges Planning Scheme in support of the submission that the proposal is not an acceptable development having regard to the site's physical and strategic context.
- 23 In broad terms, Amendment C98 implements key aspects of the Woodend Structure Plan by amending the Municipal Strategic Statement (MSS), rezoning land, applying overlays, introducing a new residential zone, and introducing or amending schedules to residential zones.
- 24 In relation to the review site specifically, Amendment C98 proposes the following:
- The front section of the site (fronting High Street) is included in a Historic Residential Precinct in the Neighbourhood Character Precinct Map at Clause 21.13. The preferred future character of the precinct is defined in objectives and strategies and emphasis is placed on distinctive streetscapes of detached, small cottages and large heritage dwellings set in established gardens. New development is encouraged to integrate with the precinct's historic features and buildings.
 - The Neighbourhood Residential Zone (NRZ2) is proposed to be applied to that part of the site included in the Historic Residential Precinct. The NRZ2 prohibits more than two dwellings per lot and imposes a maximum height for residential developments. A minimum lot size of 600m² is included in the schedule. Transitional provisions apply. The mandatory limit on the number of dwellings and the mandatory height limit do not apply to an application to construct a dwelling or residential building made before the approval date of the planning scheme amendment that introduced the zone.
 - The rear section of the site is included in the Garden Setting Neighbourhood Character Precinct. The preferred future character of

the precinct is defined in objectives and strategies and emphasis is placed on retaining dwellings with gardens settings and spacing around them, encourage low scale dwellings and low pitched roofs with detached dwellings and vegetation dominating.

- The General Residential Zone (GRZ2) is proposed to be applied to that part of the site included in the Garden Setting Neighbourhood Character Precinct. A maximum building height is specified in the schedule to the zone.

25 The Applicant for Review submits that Amendment C98 is a seriously entertained planning proposal and it is therefore appropriate to have regard to its provisions in undertaking an assessment of the proposal.

26 Neither the permit applicant nor the Council dispute the relevance of Amendment C98. The Amendment has reached the stage in the approval process for planning scheme amendments, that qualifies it as a relevant matter and its provisions are appropriately accorded weight as a seriously entertained planning proposal. The Amendment seeks to give effect to a strategic document (the Woodend Structure Plan) that has been prepared by the Council as part of a broad consultative process. The Amendment has been exhibited, submissions have been received and a Panel hearing conducted to consider those submissions and to make recommendations to the Council about the Amendment. The Panel has broadly supported the Amendment, and subject to some changes, recommended its adoption. The Council has adopted the Amendment including the Panel's recommended changes, and it has been submitted to the Minister for Planning for approval.

27 The Applicant for Review submits that neither the existing or the preferred character of the neighbourhood is respected by the proposal, and the proposal conflicts with the strategic direction set by the Council for the future of Woodend, reflected in Amendment C98. The Applicant for Review's concerns about the proposed development include the following:

- The bulk and intensity of the development is excessive with units 3 to 6 in particular (four attached dwellings located adjacent to Davy Street) being inappropriate. A reduction on the number of dwellings in this group or the creation of a separation is suggested as a remedy for the excessive bulk created by these dwellings.
- The internal streetscape created by units 3 to 9 is dominated by ground level garages.
- Dwellings 7, 8 and 9 have failed to maximise northern orientation opportunities.
- The setbacks of dwellings from the edges of the elevated pad are inadequate and contribute to visual bulk, especially when combined with the additional height of the pad.

- Visitor car parking is poorly located.
- There is an excessive number of dwellings. A reduction in that number could assist in increasing the setbacks and providing greater landscaping opportunities.
- The extent of built form is excessive and the appropriate balance between landscaped character and built form has not been achieved.
- A diversity of housing types has not been provided.
- Internal vehicle circulation is poorly conceived and is described as being “tight”. The requirements of Clause 52.06-7 have not been met.
- Pedestrian access remains unresolved other than for dwellings 1 to 6.
- The Clause 55 standards and objectives relating to communal open space, car parking, access areas and site facilities, are not met.
- That part of the site proposed to be included in the NRZ3 includes three dwellings and exceeds the mandatory maximum height specified in the zone. This aspect of the proposal specifically, conflicts with the objectives for the Historic Residential Precinct.
- Suitable locations for the provision of medium density housing have been identified in the Woodend Structure Plan and the review site is not one of those locations.

28 There is strong emphasis in the planning scheme as it currently exists and in Amendment C98 on the need for development to be respectful of the existing and preferred character of Woodend. There is also emphasis in the planning scheme at both a state and local policy level, and in the GRZ, to encourage development on sites that enjoy reasonable access to services and facilities, to contribute to housing diversity and affordability objectives, and sustainable settlement patterns. In accordance with the provisions of Clause 10.04 of the planning scheme, decision makers are required to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations. In assessing the merits of this application therefore, I am satisfied that the proposal achieves the appropriate balance called for in the existing planning scheme. I am also satisfied that the proposal achieves a built form outcome that is consistent with the strategic objectives for Woodend encompassed within Amendment C98.

29 The review site exhibits a number of characteristics that make it suitable for a development of the type proposed in this application. It is a large and regularly configured site (the site comprises six lots and has a total area of 6778m²). It is located in an established part of Woodend and enjoys excellent access to the services and facilities available within that town. The site is immediately north of the Woodend town centre with a supermarket being about 250m away, and the railway station is 780m away.

The site has access to reticulated sewerage and water. Public open space, schools, kindergarten and other social and community facilities are immediately available.

- 30 The site is generally flat with a fall from east to west toward Five Mile Creek to its south west boundary. Vegetation on the site comprises non-native grasses, blackberries and other weeds including a colony of silver poplars, willows and Monterey cypress pines.
- 31 The development of the site is constrained by its inclusion in a Land Subject to Inundation Overlay, reflecting its inclusion in a floodway.
- 32 The historic Islay House (the Applicant for Review's property) abuts the review site.
- 33 In arriving at a design solution for the site, the permit applicant proposes an elevated pad in the northern part of the site (elevated about 1.5m above Natural Ground Level) on which the proposed dwellings will be constructed (the floor level of the dwellings will be a further 300mm higher). The balance of the site is given over to communal open space. The proposal presents as five groups of two, three or four attached dwellings, with pitched roofs and gable ends. Vehicle access and pedestrian paths separate the groups of dwellings. Vehicular access is obtained from Davy Street via a curved access way, aligned to preserve existing street trees. Private open space for each dwelling is in the form of balconies and decked areas.
- 34 The design is an acceptable response to the site's opportunities and constraints. I have reached this conclusion because:
 - Development has been confined to the northern section of the site with the balance of the site given over to communal open space which will be used to respond to LSIO issues. The confinement of development to the northern part of the site makes a significant contribution to preserving the landscape qualities of the neighbourhood and the sense of openness that the neighbourhood character policies reference.
 - The proposed dwellings are arranged in separated groups of attached forms. The separation between the groups creates landscaping opportunities and view lines from different parts of the site. The dwellings themselves adopt a conventional townhouse form and combined with selected materials and colours achieve an acceptable "fit" in this locality.
 - The concentration of development to the north of the site, leaves an expanse of open space toward the site frontage, a response that is respectful of the abutting historic dwelling and of the preferred character of the Historic Residential Precinct. The dwellings closest to High Street are setback 41m from the site's frontage.
 - The setbacks to Davy Street are generous and acceptable in terms of their response to the preferred character of the Garden Setting

Neighbourhood. Landscaping opportunities are available within the setbacks. The dwellings fronting Davy Street will sit comfortably in that streetscape.

- The internal layout of the development is logical and functional. The proposal provides a more than acceptable level of internal amenity for future residents. The reliance on balconies for open space for each of the dwellings is acceptable having regard to the expansive area of the site devoted to communal open space and also the accessibility of the site to public open space in the neighbourhood.

35 Because of the success of the design response, there is no aspect of the proposal that conflicts in any substantive or material way with the strategic direction of Amendment C98.

36 With respect to that part of the review site that would be included in the NRZ2 under Amendment C98, the transitional provisions of the zone would allow for the exercise of discretion in circumstances where the number of dwellings and the maximum height of the dwellings are exceeded. In recent years, the Tribunal has considered a number of applications for development in the NRZ that have benefitted from the transitional provisions of that zone. In those cases, the Tribunal has undertaken an assessment of the proposal using a contextual approach to the consideration of the proposal's merits. In those cases, the Tribunal has appropriately acknowledged a shift in the weighting between neighbourhood character and urban consolidation objectives resulting from the application of the NRZ. The shift in the weighting however, has not inevitably and in all cases where transitional provisions apply, led to neighbourhood character assuming greater weight than other relevant policies. The weight applied to different policies will vary from site to site⁶.

37 In this context, and having regard to my findings about the acceptability of the proposal's design response to the existing and preferred character of the neighbourhood, and the strategic direction of Amendment C98, the aspects of the proposal that do not comply with the detailed provisions of the NRZ2, are not sufficient to persuade me that the proposal is unacceptable.

OTHER MATTERS

38 As I have discussed previously, a major consideration for the Tribunal in the earlier application, related to the management of the flood plain associated with Five Mile Creek that lies to the west and marks the extent of a 1% Annual Exceedance Probability (AED). In the earlier case Mr Bishop provided evidence about the proposal's impact on the flood plain and the mitigation measures proposed to address those matters. The Tribunal agreed with Mr Bishop's evidence and his modelling assessment, that the combination of a floodway and raised fill pad provide a satisfactory

⁶ Refer for example to *Australia Mei Jei International Corporation Pty Ltd v Boroondara CC* [2015] VCAT 158 for a summary of Tribunal decisions on this issue.

response to the flooding issues. In relation to Mr Bishop's evidence the Tribunal commented:

Through the course of this hearing, Mr Bishop's assessment has been subject to substantive scrutiny through cross-examination by all parties and by us. His response to this cross examination and the additional assessment of various parameters that might influence flood behaviour indicate to us that the assessment has been sufficient to address the flood issues. This assessment demonstrates that the proposed floodway can convey the necessary flood flows from around the eastern abutment of the High Street bridge without generating adverse increases in velocities or flood depth at the High Street properties of Mr Langtry and Mr Lane. Similarly, the upstream flood conditions at the school or other buildings and infrastructure west of the bridge will not be adversely affected by the proposed development. The assessment also demonstrates that the floodway and pad will not change flood conditions around the re-configured Gilbert Gordon Oval, downstream of the site.⁷

39 The Tribunal also commented specifically on the impact of the proposal on Islay House. The Tribunal concluded as follows:

Mr Bishop's modelling is comprehensive in regard to potential impact upon Islay House, and the projected flood levels even when qualified by the possible error range illustrate minimal change or even a potential improvement to the flood levels in front of Islay House. The flooding risk to Islay House is an existing risk, and we are satisfied that the proposed floodway has been designed so as not to increase this risk, and may potentially lessen the risk.⁸

40 The issue that did concern the Tribunal related to the requirement by Western Water to increase the level of separation between its asset and the proposed floodway. The Tribunal was satisfied that the requirement did need to be imposed but by doing so the functionality of the proposed floodway, would be nullified.

41 In the current application Mr Bishop again provided expert evidence on these matters and confirmed that his modelling based on the implementation of Western Water's requirements demonstrates:

- The development will have no significant impact on flood levels, flows or velocities in relation to the adjoining private property
- The proposed flood mitigation design will address onsite flood risk and provide a small risk reduction for adjacent private properties.
- Stormwater quantity and quality management can be appropriately addressed as specified in the conceptual design to meet best practice requirements for the development.

⁷ [2014] VCAT 1378 paragraph 21.

⁸ [2014] VCAT 1378 paragraph 26.

- 42 Western Water have advised that their requirements are met by the current proposal. The North Central Catchment Management Authority and Goulburn Murray Water have provided conditional consent to the proposal. The Council's engineers have also examined the proposal and have provided a conditional no objection to the proposal. Other than with respect to matters of detail, the Applicant for Review is also content with the flood mitigation works proposed by the permit applicant.
- 43 During the course of Mr Bishop's cross examination, Mr Bishop provided an answer to a question from Mr Hannagan relating to the impact of the proposal on the development of the neighbouring property (6 Davy Street). After Mr Bishop was excused, Mr Bitmead sought to provide a clarification of Mr Bishop's response to Mr Hannagan's question. I directed that Mr Bishop be recalled in order to provide clarification around his answer to the question⁹.
- 44 I am satisfied that the answer given by Mr Bishop was not accurate but reflected an oversight by Mr Bishop, combined with a misunderstanding of the question, rather than an attempt by Mr Bishop to deceive or conceal information. I am content to accept Mr Bishop's evidence on the substantive matters in this case. I am also satisfied that the lack of a detailed assessment of the proposal's impact on 6 Davy Street, has no significant bearing on the assessment of the current proposal. The modelling that has been undertaken is sufficient to demonstrate that the proposal is unlikely to compromise in a significant way the development of 6 Davy Street. In any event, the development of 6 Davy Street will need to be subject to its own assessment at the appropriate time.

CONCLUSION

- 45 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be varied and a permit issued.
- 46 The permit will include the conditions contained in the Notice of Decision to Grant a Permit issued by the responsible authority with modifications which have regard to the submissions and evidence of the parties and the matters which arise from my reasons.

Laurie Hewet
Senior Member

⁹ Mr Hannagan objected to Mr Bishop being recalled on the basis that his evidence is already tainted and could not be relied on. I advised the parties that recalling Mr Bishop was necessary in order to inform me fully about the issue, and that the weight I give to Mr Bishop's evidence is a matter for me. Upon being recalled Mr Bishop gave evidence under oath.

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	PLN/2015/204
LAND:	2-4 Davy Street, and 121 High Street, WOODEND

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of fourteen double storey dwellings, construction of associated buildings and work (earthworks, road works and fencing) removal of vegetation including two (2) non – native trees within the Davey Street road reserve, construction of works within Black Gum Reserve (outlet drains and reserve).

CONDITIONS:

1. Before the development commences, three (3) copies of amended plans must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans, which must be drawn in scale and fully dimensioned, must be generally in accordance with the plans Revision C, dated 09 February 2016 and prepared by Buckerfield Architects but modified to show the following:
 - (a) The legend on Drawing No TP105 amended to also show the details of all proposed finishes and external colours.
 - (b) The colour of the walls for all dwellings where shown as “off-white oxide render”, substituted with a cream colour to the satisfaction of the Responsible Authority.
 - (c) All plans amended to reference all retaining walls be of “Natural Finish” timber sleeper retaining walls.
 - (d) The provision of Tree Protection Zones (TPZ) for all street trees external to the site but adjoining the site or proposed works, that will be retained within Davy Street and High Street road reserves and the adjoining Crown land. The zones shall be marked “TPZ” to extend to at least the periphery of the foliage canopy to include the drip line of each tree.

- (e) The provision of suitably sized bin collection area(s) internal to the development site to the satisfaction of the Responsible Authority. These areas must also be adequately screened so as to prevent viewing of the stored bins to the satisfaction of the Responsible Authority.
 - (f) Replacement of all grasscrete paver areas with suitable brick paving together with a suitable base, so as to prevent sagging of pavers to the satisfaction of the Responsible Authority.
 - (g) The central footpath through the development and floodplain to High Street be of a sealed construction and designed to prevent slipping. Any proposed concrete path must be suitably coloured so as to blend into the land.
 - (h) The provision of a concrete footpath provided within the High Street road reserve starting from the sealed central internal footpath and connect and matching to the existing concrete footpath along High Street south of the site.
 - (i) The location and design detail of meter boxes for each unit. The meter boxes should be of a muted tone and be appropriately screened from the street with landscaping.
 - (j) The design detail, and location of mailbox(es) for all units.
2. Before the development commences, three copies of an amended landscape plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of this permit. The landscaping plan must be generally in accordance with the landscape plan Revision C dated May 2015 prepared by Zenith Concepts. The plan must be amended to include, but not limited to, the following:
- (a) The changes required by Condition 1 (c) to 1 (h).
 - (b) The changes required by the NCCMA under Condition 52.
 - (c) Any changes required by Western Water under Condition 34.
 - (d) Details of how Willow trees will be removed, treated and disposed of within the property boundaries in accordance with the permit note.
3. A survey of all existing vegetation and natural features.
4. An amended schedule of all proposed trees, shrubs/small trees and ground cover (common and scientific names) recognising the requirements of Condition 2(a).
5. Number of each species to be planted.
6. The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material.

7. Paving, driveway, retaining walls, fence design details and other landscape works including areas of cut and fill having regard to changes required by Condition 1.
8. Details of appropriate automated irrigation systems.
9. Mulch details (to be at least 75mm thick).
10. A maintenance schedule.
11. Deletion of the “Store” (ST) and “bin collection areas” between Unit 2 and Unit 3 to match the Site Plan and detail of the new location for a bin store as per Condition 1.
12. The development as shown on the endorsed plans must not be altered unless with the prior written consent of the Responsible Authority.
13. The vegetation removal hereby approved must be carried out in accordance with the plans endorsed under this permit and only those trees marked to be removed on the endorsed plans shall be removed or destroyed to the satisfaction of the Responsible Authority. No other trees shall be removed unless with the prior written consent of the Responsible Authority.
14. Before the development commences, Crown Allotments 1, 2, 3, 20, 21 and 22, Section 14, T/Woodend P/Woodend must be consolidated to create one allotment under the *Subdivision Act 1988*.
15. Unless with the prior written consent of the Responsible Authority, before the occupation of any dwellings within the development, the following must be undertaken to the satisfaction of the Responsible Authority:
 16. All landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.
 17. All new internal and perimeter fencing shown on the endorsed plans must be constructed to the satisfaction of the Responsible Authority. All construction costs are to be borne by the permit holder and at no cost to Council and/or adjoining neighbours.
 18. All access and egress way to the site and dwellings must be constructed and formed to an all-weather seal standard as approved within the endorsed plans.
19. Prior to development commencing (including any demolition, excavation, tree removal, delivery of building/construction materials and/or temporary buildings), tree protection fencing must be erected for all trees surrounding the construction area including within Davy Street and High Street road reserves and Black Gum Reserve to the satisfaction of the Responsible Authority in accordance with the tree protections zone(s). The fencing must be erected to form a visual and physical barrier, be a minimum height of 1.5

meters above ground level, and include signage clearly marked “Tree Protection Zone – No Entry” on all sides.

- Once erected the fencing must be inspected by the Responsible Authority.
20. The tree protection fencing shall be maintained in good condition and may only be removed upon completion of all development works, to the satisfaction of the Responsible Authority. Should temporary access be necessary within the Tree Protection Zone during the period of construction, the Responsible Authority must be informed prior to relocating the fence (as it may be necessary to undertake additional root protection such as bridging over with timber).
 21. Unless with the prior written consent of the Responsible Authority, the following actions must NOT be undertaken in any tree protection Zone (TPZ) as identified on the endorsed plan, to the satisfaction of the Responsible Authority:
 - (a) Materials or equipment stored within the zone;
 - (b) Nothing is to be attached to any tree (including temporary service, wires, nails, screws or any other fixing device);
 - (c) Open cut trenching or excavation works or filling (whether or not for laying of services) undertaken within the zone without prior written Council consent;
 - (d) Changes to the soil grade level within the zone.
 - (e) Any construction works.
 22. Council is to be informed within 48 hours of any damage to tree trunks, crown or root systems of any tree required to be retained. All damage is to be immediately repaired by a qualified arborist to the satisfaction of the Responsible Authority. Cut branches and roots are not to be sealed with wound sealing products unless specified by the Responsible Authority.
 23. Vegetation removal and disposal must not damage vegetation stands to be retained and to drainage lines and/or water courses to the satisfaction of the Responsible Authority.
 24. No other trees/vegetation shall be removed, damaged, destroyed, felled, lopped or uprooted unless with the prior written consent of the Responsible Authority.
 25. Prior to commencing any works on the land, the applicant/developer shall be required to undertake (at no cost to the Responsible Authority or owner

of Islay House) a dilapidation report and a pre-development inspection of Islay House, by a suitably qualified person(s). It is also required to monitor changes in this regard during development on a regular basis and for a period of up to two years after completion of the floodway. The applicant is also responsible for any costs directly related to any damage caused to the building structure of Islay House conditions to the satisfaction of the Responsible Authority.

26. Prior to the commencement of any works the site must be surveyed and pegged to clearly establish the correct boundaries of the site to the satisfaction of the Responsible Authority.

MRSC ENGINEERING, INFRASTRUCTURE & PROJECTS UNIT CONDITIONS

27. Prior to the commencement of works, a Waste Management Plan be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plan must specify:
- a. Dimensions of waste collection areas.
 - b. The number of bins to be provided.
 - c. Method of waste and recyclables collection.
 - d. Hours of waste and recyclables collection.
 - e. Method of presentation of bins for waste collection.
 - f. Private collection contractors

Waste collection from the development must be in accordance with the plan to the satisfaction of the Responsible Authority.

28. Prior to the commencement of works, an 'Asset Protection Permit' must be obtained from Council for any of the following:
- (a) Works within Council road reserves or on Council stormwater drainage assets.
 - a. Entry into a building site by means of a motor vehicle having a gross weight exceeding two tonnes.
 - b. New crossover or existing crossover upgrading works.
29. Prior to the commencement of works, a Construction Management Plan must be submitted to and approved by the Responsible Authority. The management plan must show:

- (a) Measures to control erosion and sediment and sediment laden water runoff including the design details of structures.
- (b) Dust control.
- (c) Where any construction wastes, equipment, machinery and/or earth is to be stored/stockpiled during construction.
- (d) Where access to the site for construction vehicle traffic will occur.
- (e) The location and details of a sign to be erected at the entrance(s) of the site advising contractors that they are entering a 'sensitive site' with prescribed tree protection zones and fences.
- (f) The location of any temporary buildings or yards.

Development works on the land must be undertaken in accordance with the endorsed Construction Management Plan to the satisfaction of the Responsible Authority.

30. Prior to the occupation of the development, the following works must be constructed or carried out to the satisfaction of the Responsible Authority:

- (a) A new vehicle crossing off Davy Street including any culvert crossings across any watercourse or open drain. The crossing is to have a minimum width of 5.5m with larger dimensions at bends. Fill batters must not exceed 1 in 4 slope or alternatively barriers must be provided.
- (b) A new sealed court head within the Davy Street road reservation at the connection of the new vehicle crossing. The court head is to have a minimum radius of 9.3m.
- (c) A concrete footpath provided within the High Street road reserve starting from the sealed central internal footpath and connect and matching to the existing concrete footpath along High Street south of the site.

Detailed construction plans for the above works must be submitted to and approved by the Responsible Authority including payment of plan checking and supervision fees.

31. Prior to the occupation of the development, the site is to be provided with a drainage system to a design approved by the Responsible Authority and such that:

- (a) The development as a whole is provided with legal point/s of discharge approved by the Responsible Authority and any other statutory authority from which approval must be received for the discharge of

drainage.

- (b) Stormwater drainage, detention and quality treatment systems are generally in accordance with the Storm Water Management Plan (February 2016) prepared by Water Technology Pty Ltd.
 - (c) Storm water runoff from all buildings, tanks and paved areas must be drained to a legal point of discharge.
32. Prior to the occupation of the development, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:
- (a) Constructed to the satisfaction of the Responsible Authority.
 - (b) Properly formed to such levels that they can be used in accordance with the plans.
 - (c) Drained and maintained.

Car spaces, access lanes and driveways must be kept available for these purposes at all times.

33. The development is to be constructed in accordance with Macedon Ranges Shire Council's Policy Engineering Requirements for Infrastructure Construction (June 2010).
34. No polluted and/or sediment laden run-off is to be discharged directly or indirectly into drains or watercourses. Soil erosion control measures must be employed throughout the development works in accordance with Construction Techniques for Sediment Pollution Control (EPA 1991) and Environmental Guidelines for Major Construction Site (EPA 1995) to the satisfaction of the Responsible Authority.

DEPARTMENT OF ENVIRONMENT AND PRIMARY INDUSTRIES CONDITIONS

35. No polluted and/or sediment laden run-off or other concentrated flow of water (excluding the direct connection to the Council drainage pit) is to be discharged directly or indirectly into the adjoining Crown land.

Works

36. To prevent impacts on Crown land, all works are to be contained within the freehold land and must take place from the freehold side of the boundary unless directly related to the connection works to the Council drainage pit.

Adjoining Crown Land

37. No plant, machinery or associated equipment, is to be permitted on the adjoining Crown land unless directly related to drainage works within Black Gum Reserve.
38. Adjoining Crown land must not be used for truck turning areas, parking areas or temporary stack sites during the construction of buildings or works.

Weeds and Pathogens

To prevent the spread of weeds and pathogens all:

- (e) earth moving equipment and associated machinery must be made free of soil, seed and plant material before being taken to the works site and again before being taken from the works site on completion of the project.
- (f) excavated material, including topsoil, taken from the works site to be returned later must be stored on a clean site free of weeds.
- (g) areas where earth moving has occurred must be monitored for a period of three years to assess any weed infestations that may occur as a result of soil disturbance and/or the importation of sand gravel and other material used in the construction process. Any weed infestations resulting from soil disturbance and/or the importation of sand gravel and other material used in the construction process must be controlled.

Note:

- The adjoining Crown land is not to be used for access, storage of materials or rubbish. Any private use of Crown land requires consent and/or licensing from the Department of Environment, Land, Water and Planning.
- The applicant will also need to apply for Land Owner consent and pay a fee of \$1,920.00 plus GST prior to commencement of works. The contact for this is Graeme Oxlade on 54304704.

COUNTRY FIRE AUTHORITY CONDITIONS

Hydrants

39. Prior to the issue of a Statement of Compliance under the Subdivision Act 1988 the following requirements must be met to the satisfaction of the CFA:
 - (a) Above or below ground operable hydrants must be provided. The maximum distance between these hydrants and the rear of all building envelopes (or in the absence of building envelopes, the rear of the lots) must be 120 metres and the hydrants must be no more than 200

metres apart. These distances must be measured around lot boundaries.

- (h) The hydrants must be identified with marker posts and road reflectors as applicable to the satisfaction of the Country Fire Authority.

Note:

- CFA's requirements for identification of hydrants are specified in "Identification of Street Hydrants for Firefighting Purposes" available under publications on the CFA web site (www.cfa.vic.gov.au).

Roads

40. Roads must be constructed to a standard so that they are accessible in all weather conditions and capable of accommodating a vehicle of 15 tonnes for the trafficable road width.
41. Proposed roads must have a suitable trafficable width to allow the unimpeded access of emergency fire fighting vehicles (notwithstanding any parking restrictions that Council may apply) to the satisfaction of CFA.
Note: the minimum trafficable width MUST be 3.5 metres with .5 metres unobstructed on each side.
42. Dead end roads and cul-de-sac's more than 60m in length from the nearest intersection must have a turning circle with a minimum radius of 8m (including roll-over kerbs if they are provided); T or Y heads of dimensions specified by the CFA may be used as alternatives.

WESTERN WATER CONDITIONS:

43. The ground level over the sewer main must not be reduced to a RL below 550.00 maintaining a minimum 600mm cover over the sewer main at all times.
44. All buildings must be setback 1.5 metres from the centre line of the sewer main.
45. No trees must be planted within 1.5 metres from the centre line of the sewer main.
46. Stormwater must not be allowed to be collected or be retained over the sewer main. All stormwater must be allowed to flow naturally over the sewer main.
47. Payment of new customer contributions for each dwelling created by the development, such amount being determined by Western Water at the time

of payment.

48. Prior to the commencement of any construction works the owner/developer must enter into an Agreement with Western Water to arrange for the sewer main traversing the site to be relined by a Western Water approved contractor. All works associated with the relining of the sewer must be at the owner/developers expense unless otherwise agreed in writing by Western Water and must be done to Western Water's satisfaction.
49. Prior to the commencement of any construction works the existing sewer main traversing the site must be accurately located and its location confirmed on site.
50. During construction the alignment of the existing sewer main must be clearly marked on site with clearly identifiable crossing points. Crossing points over the sewer main must be kept to a minimum and must have a mounding treatment over the sewer main.
51. Upon completion of all construction works associated within the development the owner/developer must arrange with Western Water to have the existing sewer main within the development site checked with a CC TV to determine its condition at the owner/developer's expense.
52. Any damage that may have been caused to the sewer main as a result of the construction works must be repaired or replaced at the owner/developers expense and to the satisfaction of Western Water.
53. The owner developer must enter into a Buildover Agreement with Western Water for all construction works over the existing sewer main. The form of such Agreement shall be to the satisfaction of Western Water.
54. Any existing sewerage manhole affected by the buildings and works must be raised to the finished surface level and have its lid replaced with a heavy duty trafficable manhole cover.
55. A new sewer connection point must be cut in that is capable of servicing the entire development at the owner/developers expense and to the satisfaction of Western Water.
56. The operator under this permit shall be obliged to enter into an Agreement with Western Water relating to the design and construction of any sewerage or water works required. The form of such Agreement shall be to the satisfaction of Western Water. The owner/applicant shall make a written request to Western Water for the terms and conditions of the agreement.

GOULBURN-MURRAY WATER CONDITIONS

57. All wastewater from each of the dwellings must be disposed of via connection to the reticulated sewerage system in accordance with the requirements of Western Water.
58. All construction and ongoing activities must be in accordance with sediment control principles outlined in 'Construction Techniques for Sediment Pollution Control' (EPA, 1991).
59. All stormwater discharged from the site must meet the urban run-off objectives and Standard C25 as specified in Clause 56.07-4 of the Victorian Planning Provisions. All infrastructure and works to manage stormwater must be in accordance with the requirements of the Responsible Authority.

Note:

- Application must be made to Goulburn-Murray Water prior to construction of any dams on the subject land. A licence must be obtained where surface or groundwater supplies are taken and used for commercial irrigation purposes or if a dam is to be constructed on a waterway as defined under the *Water Act* 1989. For further information, the applicant should contact Goulburn-Murray Water Diversion Operations on 1800 013 357.

NORTH CENTRAL CATCHMENT MANAGEMENT AUTHORITY CONDITIONS

60. The finished floor level of all new dwellings must be constructed a minimum of 600 millimetres above the 1% AEP flood level of 551.2 metres AHD, i.e. no lower than 551.8 metres AHD.
61. The new dwellings must be located on a fill pad with a finished surface level of 551.5 metres AHD. The fill pad must be limited to the area shown in the civil sketches prepared by Taylor Thomson Whitting dated 08/02/2016. No fill is permitted to be placed within two metres of the north-eastern property that adjoins 125 High Street and 6-8 Davy Street, Woodend.
62. The floodway must be constructed in accordance with the Stormwater Management Plan prepared by Water Technology dated February 2016.
63. Prior to the commencement of works, the landscape plan must be amended to ensure that the floodway area contains only lightly scattered clear trunk over-storey trees and under-storey grasses.

64. Prior to the commencement of works, a separate permit for any new or modified storm water connection, must be obtained directly from the North Central CMA. Please contact North Central CMA on 03 5440 1896 to obtain a full understanding of the North Central CMA's requirements.
65. Prior to the commencement of any works, appropriate silt control measures must be installed to prevent sediment laden runoff from entering the waterway. The silt control measures must be maintained throughout the construction period.

Note:

- Flood levels for the 1 % AEP (100 year ARI) flood event have been determined for this area under provisions of the *Water Act 1989*. The applicable 1% AEP flood level for the location of the proposed dwellings is 551.2 metres AHD.
- North Central CMA has requested that the landscape plan be amended to ensure that the floodway remains unobstructed. Flood modelling undertaken by Water Technology indicates that some planting within the floodway and High Street interface is possible, however it is the understanding of North Central CMA that the modelling has only allowed for a light scattering of clear trunk over-storey trees and under-storey grasses. The proposed planting in the south east corner of the site (adjoining 125 High Street) includes shrubby type trees/plants and appears to be inconsistent with the modelling undertaken by Water Technology.

VICROADS CONDITIONS

66. Prior to the development coming into use, plans must be submitted to and approved by the Roads Corporation. When approved by the Roads Corporation, the plans may be endorsed by the Responsible Authority and will then form part of the permit. The plans must be drawn to scale with dimensions and copies must be provided.
67. The plans must be annotated but not restricted to show:
 - (a) The provision of a 3.0 metre (min) Basic Left (BAL) turn treatment on the Calder Highway at the intersection of Owen Street.
 - (b) Kerb and channel on the south-west corner of the intersection of the Calder Highway and Owen Street.

68. Upon the approval of the functional layout, a detailed design must be carried out to the satisfaction of the Roads Corporation. Subsequent to the approval of the detailed design stage layout, a 'Detailed Design Stage' Road Safety Audit (RSA) must be submitted to the Roads Corporation for approval. The RSA must be undertaken by an independent VicRoads pre-qualified audit team and be conducted in accordance with AustRoads – Guide to Road Safety Part 6 – Road Safety Audit (2009).
69. When the detailed engineering layouts are approved, an additional copy must be submitted to the Roads Corporation. The detailed engineering plans for roadworks must be amended to address any issue raised in the Road Safety Audit to the satisfaction of the Roads Corporation and the Responsible Authority prior to the approval of the plans.
70. Before the use approved by this permit commences, all road works at the intersection of the Calder Highway and Owen Street must be completed at no cost and to the satisfaction of the Roads Corporation.

Notes:

- *Separate consent for works within the road reserve and the specifications of these works is required under the Road Management Act. Please contact VicRoads prior to commencing any works.*
- The Basic Left Turn treatment must be designed in accordance with:
 - Austroads (2010) Guide to Road Design, Part 4A, Figure 8.2; and
 - *An operating speed of 70 km/h as per VicRoads Supplement to the Austroads Guide to Road Design - Part 3.*

ONGOING REQUIREMENTS

71. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.
72. All external lighting must be designed, baffled and located so as to prevent adverse effect on adjoining land, to the satisfaction of the Responsible Authority.

73. Parking areas, access lanes and driveways as indicated on the endorsed plans, must be kept available for these purposes at all times, to the satisfaction of the Responsible Authority.
74. Air-conditioning and other plant and equipment installed on the subject building(s) shall be positioned and baffled so that they are not visible from a public road nor located on the roof of any building and noise disturbance is minimised, to the satisfaction of the Responsible Authority.
75. Noise from any air conditioners or other plant and equipment must not be audible or within acceptable limits within a habitable room of any adjoining dwelling to the satisfaction of the Responsible Authority.
76. Provision shall be made for the storage and disposal of garbage in accordance with the endorsed Waste Management Plan to the satisfaction of the Responsible Authority.
77. The site shall be so ordered and maintained, including during construction, so as not to prejudicially affect the amenity of the locality by reason of appearance, noise, fumes etc.
78. Measures must be undertaken to minimise any loss of amenity to the neighbourhood from the development caused by dust, noise, the transport of materials to and from the land and the deposit of mud and debris on public roads, to the satisfaction of the Responsible Authority.
79. The amenity of the locality must not be adversely affected by the activity on the site, the appearance of any buildings, works or materials, emissions from the premises or in any other way, to the satisfaction of the Responsible Authority.
80. The 2m wide swale drain between the site and the adjoining land known as 6-8 Davy Street and 125 High Street must be maintained, mowed and cleaned on a regular basis to ensure the proper functioning of the drain to the satisfaction to the satisfaction of the Responsible Authority.

PERMIT EXPIRY

81. This permit will expire if one of the following circumstances applies:
 - (a) The development is not commenced within two years of the date of this permit.
 - (b) The development is not completed within four 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 6 months afterwards if the development has not commenced, or 12 months after if the development has commenced but is not yet completed.

- End of conditions -