

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**administrative DIVISION**

planning and environment LIST	vcat reference No. P3289/2009 Permit Application no. P08/2321
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APPLICANT FOR REVIEW	Margaret Campbell, Jenny Bicknell and David Buchanan
responsible authority	Mornington Peninsula Shire Council
PERMIT APPLICANT	T, R and L Safety Beach Joint Venture
SUBJECT LAND	7-9 Nepean Highway, Safety Beach
WHERE HELD	Melbourne
BEFORE	Philip Martin, Member
HEARING TYPE	Hearing
DATE OF HEARING	4 May and 10 August 2010
DATE OF ORDER	27 August 2010
CITATION	Campbell & Ors v Mornington Peninsula SC [2010] VCAT 1457

Order

- 1 The decision of the Responsible Authority in relation in permit application No. P08/2321 is affirmed. A permit is granted in relation to the land at 7-9 Nepean Highway Safety Beach. The permit will allow the construction of two double storey buildings comprising 14 dwellings including a basement carpark, associated vegetation removal/buildings and works and the creation of access to a Road Zone Category 1, generally in accordance with the endorsed plans provided for and subject to the conditions set out in Appendix A to this decision.

Philip Martin Member		
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APPEARANCES

For Applicant for Review	Mr Peter O'Farrell of Counsel by direct brief. He called expert planning evidence from Ms Virginia Jackson of Harlock Jackson Consultants.
For Responsible Authority	Mr Russell Smith (Council planner)
For Permit Applicant	Mr Nick Tweedie of Counsel, by direct brief. Mr Tweedie called the following expert evidence: Mr Marco Negri of Contour Consultants regarding planning issues; Mr Stephen Schutt of Hansen Consultants on landscaping issues; Mr Roger Greenwood of Greenwood Consulting regarding arboricultural issues; and Dr P Riedel of Coastal Engineering Solution Consultants on coastal hazard vulnerability issues.

INFORMATION

Description of Proposal	Construction of two double storey buildings comprising 14 dwellings including a basement carpark and associated vegetation removal/buildings and works, plus the creation of access to a Road Zone Category 1.
Nature of Application	Application under Section 82 of the <i>Planning and Environment Act 1987</i> .
Zone and Overlays	Residential 1, Vegetation Protection Overlay Schedule 1 and Design and Development Overlay Schedule 1.
Reason(s) Permit Required	A permit is required for buildings and works pursuant to the DDO1 (Clause 43.02-2) and the Residential 1 Zone (Clause 32.01-4). A permit is required for vegetation removal under the VPO1 – Clause 42.02.

<p>Relevant Policies and Provisions</p>	<p>The key State planning policies are Clauses 11, 12, 14.01, 15.09, 15.12, 16.02, 18.02 and 19.03.</p> <p>The more relevant MSS/local policy provisions are Clauses 21.04, 21.06, 21.07, 21.08, 22.05, 22.11 and 22.13.</p> <p>Also see the Clause 55 ResCode provisions and Clause 65 General decision making criteria.</p>
<p>Land description</p>	<p>The subject land is located on the north side of Nepean Highway and Safety Beach, in that area between Marine Drive and Dromana Parade. This is a large site (incorporating two lots) with a depth of about 110 metres and a total area of approximately 2800 square metres. The site is adjacent to a Road Zone Category 1.</p>
<p>Site Inspection</p>	<p>The Tribunal inspected the site and surrounds in between the first and the second hearing dates.</p>

Reasons

What does the proceeding about?

- 1 The owner of the large site at 7-9 Nepean Highway Safety Beach proposes that it be redeveloped for two double storey buildings comprising 14 dwellings and a basement carpark, together with associated vegetation removal/buildings and works and the creation of access to a Road Zone Category 1. The site is currently largely vacant and open, although improved by a modest single storey weatherboard dwelling and associated garage/shed. The main vegetation features are a centrally located single English Oak tree and also a stand of swamp paperbark scrub in the front section of the appeal site. Its size is about 2800m², the site lies in an established residential area about 120 metres from the foreshore and 700 metres from the Dromana commercial area, with good access to the Mornington Freeway. The Permit Applicant has already obtained an approved Cultural Heritage Management Plan.
- 2 In relation to the front section of the appeal site, there is a residential property on either side. A service station is located further towards the foreshore, whereas other residential dwellings continue further away from the coast. The central and rear sections of the appeal site have the one neighbouring property located on the south-east side, whereas the north-west side of the property features a number of other properties which face towards the foreshore but which back-on to the appeal site.
- 3 In relation to the proposed new dwellings, the new front double storey building would (when viewed from the street) feature a remnant scrub area and a ramp leading down to the basement carpark (together with the associated pedestrian entry area). At the ground level, the front building would include dwellings 1-4 and the lower level of dwellings 9 and 10. At its upper level would be dwellings 5-8 and the top level of dwellings 9 and 10. Moving from front to rear, there would then be an open central courtyard area. The new rear building would feature dwellings 11-14, which each have both an upper and a lower level.
- 4 All of the new dwellings which feature at ground level would have a north-west facing courtyard area set back about 4.8 metres from the north-west boundary. The rear-facing wall of the new rear dwelling would be set back 4.6 metres from the rear boundary. The south-eastern edge of the appeal site would feature a side walkway running right through to the rear dwelling, a substantial level of boundary landscape screening, and a ground level side setback for the new dwellings of between 3.5 and 5.1 metres. The upper level side and rear setbacks from the boundary to the closest upper external wall vary between about 3.5 and 5 metres depending on the particular location. Dwellings 1-8 would have two bedrooms, whereas Dwellings 9-14 are proposed to be three bedroom dwellings.
- 5 In relation to the front stand of swamp paperbark scrub, approximately half of the scrub is to be removed to facilitate the new side walkway, basement

ramp and associated landscaping areas. The balance of the scrub in the front area is proposed to be retained in an Owners Corporation (ie body corporate) area.

- 6 Objections have been received from various neighbours to the proposal. However Council has issued a Notice of Decision to Grant a Permit. A number of side neighbours have sought the Tribunal's review of Council's decision, with the hearing of this matter coming before me on 4 May 2010, set down for a day. Their key concerns in their Statement of Grounds are that the proposal would be an over-development, out of character with the locality, have unreasonable external amenity impacts, be contrary to orderly planning and fails to provide a coastal hazard vulnerability report (however by the time of the hearing such a report had been obtained).
- 7 Over this first hearing day I heard submissions from Mr Smith on behalf of Council, and from Mr O'Farrell on behalf of the Applicants for Review. Mr O'Farrell also called expert planning evidence from Ms Jackson. As it became clear that we would not be able to complete the proceeding on the one day, further hearing time was allocated on 10 and 11 August 2010. I indicated that I would use the first morning of this further time to conduct an unaccompanied inspection of the site and surrounds, which I did.
- 8 The key issues arising in this proceeding are as follows:
 - the degree of strategic planning support for the proposal;
 - the existing neighbourhood character situation for the locality;
 - whether the proposal is consistent with the existing neighbourhood character, or alternatively constitutes an overdevelopment;
 - potential external amenity impacts;
 - remnant vegetation issues; and
 - coastal vulnerability issues.
- 9 In summary, I find the proposal to be a reasonable and worthy planning outcome when assessed against each of these benchmarks, and hence I have made orders affirming Council's support for the proposal.

Degree of strategic support for the proposal

- 10 I consider that this has not been one of those cases where strategic planning considerations have played a decisive role. I say this because this is not one of those locations next to an activity centre or a railway station (where typically local policy is expressly encouraging greater levels of medium density housing). Rather, the site here is part of an established residential area in the form of Safety Beach, but some distance from the nearest train station or activity centre. On balance though I find that the relevant State planning policies (eg Clause 12 and the Melbourne 2030 Metropolitan Strategy) provide some degree of strategic support for the more intensive residential utilisation of this type of large site, with the associated urban

consolidation benefits.

- 11 Given the various anomalies and poor drafting of the relevant local policies that were discussed during the hearing, it is difficult to say whether the local policies are specifically encouraging greater medium density housing in Safety Beach (as opposed to larger coastal towns in the municipality). As I indicated during the hearing, I consider that Council should give priority to resolving these anomalies, so as to provide a clearer picture in this regard. Certainly I see no relevant local policies expressly discouraging this type of larger infill proposal on a large lot in an established residential area close to the foreshore.

Current neighbourhood character of locality

- 12 It was common ground that Council has not prepared any Neighbourhood Character Statement for this area, providing any specific guidance as to its preferred future character.
- 13 On the other hand, it is very obvious from my inspection of the locality that it is very much going through a process of neighbourhood character evolution. On the one hand, I accept that some larger lots in the local area still feature modest single detached older housing stock (eg the neighbouring lot on the south-east side of the appeal site). These more modest dwellings feature a wide variety of building materials, styles and attractiveness. However there is also a process underway of some of these larger lots being redeveloped more intensively, reflecting the fact that many of the modest dwellings appear to be approaching the end of their normal economic life. A good example is the property two or three lots further to the south-east of the subject land, which has recently been redeveloped with a double storey medium density redevelopment extending (with breaks) through to the rear section of that property.
- 14 In summary, I consider that the existing neighbourhood character displays considerable built form diversity and a process already underway of larger lots being redeveloped in a more intensive manner. In my view this creates a significantly higher level of flexibility in terms of the degree to which large lots in this locality can be more intensively utilised, including double storey development.

Is the proposal consistent with the existing neighbourhood character or would it constitute an overdevelopment?

- 15 I see the key single issue in this proceeding as being whether the proposal is compatible with this existing neighbourhood character, or alternatively whether the proposal constitutes an overdevelopment that would be a poor planning outcome. In considering this issue, I have been assisted by the planning evidence of Ms Jackson on behalf of the neighbours, and of Mr Negri on behalf of the Permit Applicant. Part of this debate has been whether the particular design response adequately responds to the constraints of the site, in terms of respecting the neighbouring properties.

- 16 With this key issue, I have found the planning evidence of Mr Negri more persuasive and my finding is that the proposal does constitute a reasonable neighbourhood character outcome, is suitably respectful of the neighbouring properties and the objectives of Clause 55/the DDO1, and will not constitute an overdevelopment of the site.
- 17 I might have taken a different approach to the proposal if the pattern of surrounding development was more homogeneous and consistently featured modest single dwellings on lots. However, for the reasons set out above, this is not the case. Where other nearby sites have been redeveloped more recently, my inspection confirmed that typically the new built form is double storey and involves more intensive use of larger sites. On the strength of this existing built form diversity and the evolving local and neighbourhood character, I consider that the proposed new built form (whilst quite substantial) can sit comfortably in its context.
- 18 My finding here is reinforced by what I regard as the quite appropriate contemporary design of the new dwelling. I acknowledge that it may introduce contemporary design to this locality to an extent which does not exist presently, and that there may not be another dwelling with a basement ramp in the local area currently. However the introduction of very contemporary architecture in this locality is not in itself necessarily a negative factor - I consider that much of the existing nearby built form is uninspiring/non-descript, and I agree with Mr Negri that the new built form may well provide a significant visual lift to the location.
- 19 In relation to the new basement ramp, with the use of timber rather than metal for the screen associated with the basement ramp door and privacy feature above, I consider the result (whilst a real change) to be an acceptable outcome in this type of location close to the foreshore where there are other large lots where other intensive redevelopment (quite possibly also involving a basement car park) seems likely over time.
- 20 In relation to the contentious front interface between Nepean Highway and the basement ramp/front external wall of the new front building, I consider that the front setback is sufficient to provide an acceptable planning outcome, together with the retained scrub and the suitable use of different surfaces and finishes for this new front elevation. To the extent that the new built form intrudes into the 9.5 metre preferred front setback area under the DDO, I consider the extent of this intrusion to be very marginal and I regard the overall planning outcome as still being acceptable.
- 21 In relation to the new front building which will (front to back) incorporate the equivalent of six double storey dwellings, I can see legitimate room for debate whether a building of this size and depth is appropriate. However on reflection I consider this an appropriate neighbourhood character and planning outcome, with particular reference to:
 - Council's support for the proposal and the very high level of compliance of the new building with the Clause 55 ResCode

Standards;

- the high standard landscaping proposed, which should soften views of the new build form;
- the fact that the new front dwelling will have a substantial front setback, particularly in relation to the remnant scrub area;
- the overall site coverage of 44%, which is very tempered;
- the advantage that all of the new dwellings will have north-west facing private open space areas that should have excellent afternoon solar orientation;
- the new multi-dwelling development on the same side of Nepean Highway about three lots further away from the coast, which also features double storey substantial built form extending deep into that lot;
- the striking contrast between the large size of the neighbouring lot on the south-east side of the appeal site vis-à-vis its very modest sized and older cottage. Given this contrast, it seems reasonable to assume that this neighbouring lot will also be more intensively redeveloped by the current or future owner in the foreseeable future.

Potential external amenity impacts

- 22 In terms of the interface between the new buildings and the neighbouring property to the south-east, I consider the side setback of the new buildings to be suitably respectful, together with the significant break between the two new buildings in the form of the central courtyard. This neighbouring property has the benefit of significant landscape screening along the common boundary in its own front yard, which in itself provides significant privacy protection. There will also be the privacy and visual bulk benefits of the new boundary landscape screening to be planted as part of the proposal. I support the modifications discussed at the hearing of reducing the gap in this boundary landscaping from 10 metres down to 5 metres, where the landscape screening stops to provide for the stairwell midway along the south-east side of the new front building.
- 23 Turning now to those neighbouring properties which back on to the north-west side of the appeal site, there is a benevolent interface with those properties at the rear section of this side boundary, given the large sheds on the other side of this boundary. In relation to the neighbouring area alongside the new front building, my inspection confirmed that this neighbouring area already has the benefit of significant landscape screening on its side of the common boundary.
- 24 Accordingly, I see the main issue here as being the design response to the more open backyard areas which exist roughly two-thirds of the way along the north-western side boundary. In this regard, the design response has been to position the central courtyard adjacent to this more sensitive

backyard area. I consider this approach to be sensible and a good planning outcome which addresses this interface issue in an acceptable manner.

- 25 I consider that the shadow plans provided with the application indicate that there are no significant overshadowing issues. With respect to privacy issues, I am satisfied that any privacy concerns with the neighbours can be adequately dealt with by way of the further modifications to the screening of the new upper level dwellings discussed during the hearing – see the final version of the permit conditions attached.

Remnant vegetation issues

- 26 It was common ground at the hearing that the contentious remnant vegetation issue is not the removal of the mature English Oak tree, but rather the proposal to remove about half of the stand of swamp paperbark scrub located in the front section of the site. One key reason why much of this front scrub has survived is that the front driveway currently is quite narrow, and in a more informal dirt form. A permit is required for the relevant vegetation removal under the Vegetation Protection Overlay Schedule 1 affecting the site. I heard expert evidence on this issue from Mr Greenwood in the course of the hearing.
- 27 In relation to this proposed removal of about half of the remnant swamp paperbark scrub, I can indicate that I might have looked differently at this aspect of the proposal if this remnant scrub had been located on land with a non-residential form of zoning, or if the scrub was located in a different section of the site where it might be more readily preserved.
- 28 However I see the critical aspect of this issue as being that the bulk of the remnant scrub which needs to be removed lies on that part of the site which needs to be cleared so as to create the revised pedestrian and vehicle access across the south-eastern end of the frontage to the appeal site.
- 29 In all circumstances, I consider it reasonable and consistent with the objectives of the VPO1 (in an established residential area like this zoned Residential 1) for some of the relevant remnant scrub to be removed to facilitate this vehicular and pedestrian access across this south-eastern section of the lot frontage. With lot as large as this ie about 2800m², in my view it is reasonable:
- To take the approach that it is a reasonable planning outcome per se that the proposal includes a more intensive degree of built form than the modest single dwelling which currently exists.
 - To conclude that the necessary vehicle and pedestrian access arrangements for the new more intensive built form will require significantly wider vehicle access (plus proper pedestrian access) than the relatively narrow driveway which currently exists.
 - To remove about half of the remnant scrub to facilitate this wider access, provided that the bulk of this removal goes no further than is

necessary for this purpose (which I am satisfied is the case here).

- 30 It is also a significant plus for this aspect of the proposal that (compared to many other surrounding dwellings) there will still be a significant level of remnant scrub retained in the balance area of the front yard of the appeal site. In other words, my inspection confirmed that many other nearby properties have suburban style front yards which strongly feature grass and/or non-indigenous vegetation. Clearly this is not one of those more sensitive locations with such consistent native front landscaping that the proposed removal of the scrub would create a “missing tooth” effect.
- 31 For the removal of any doubt, I am also satisfied that the new development can adequately accommodate the preservation of the existing large trees on the neighbouring properties closer to the coast, noting that the Permit Applicant agreed that the permit conditions could include a Tree Management Plan. A suggested condition to this effect was provided to me by the parties after the hearing, along with a proposed “vegetation off-set” condition.
- 32 In relation to the permit conditions set out below which includes the requirement to prepare a Vegetation Management Plan, I have reviewed the various correspondence from the parties regarding potentially including a bullet point requirement that the remnant front scrub must be periodically inundated as part of its management. I have declined to include this bullet point on the strength of Council’s opposition to same (Council seem well placed to bring specialist expertise to this issue).

Coastal vulnerability issues

- 33 I accept that it is appropriate for the Tribunal to take a cautious approach to coastal vulnerability issues for new residential housing near foreshore areas, and that this has become an increasingly important issue through decisions like *Gippsland Coastal Board v South Gippsland SC (No 2)* [2008] VCAT 1545 and the very recent decision of *Taip v East Gippsland SC* [2010] VCAT 1222.
- 34 I rely on the evidence of Dr Riedel presented at the hearing in finding that there are no unreasonable coastal vulnerability issues associated with the proposal. I am also satisfied there are no unreasonable flooding aspects to the proposal.
- 35 I acknowledge that the site is relatively low-lying, reflecting its location close to the foreshore. It has been assessed as having a 1:100 flood level of 4 metres.
- 36 However, the site has the benefit of being uphill of Marine Parade and Nepean Highway, inland of those roads and located a reasonable horizontal distance away from the actual foreshore. Part of the design response has been ensuring that the entrance area to the basement carpark is 4 metres in height, that the ground level floor height of the new dwellings will be slightly higher again, and that the basement ramp will feature a pop-up

barrier which is activated in the event of a significant level of water pooling at the bottom of the basement. I am satisfied with the explanation provided at the hearing regarding how this pop-up barrier will operate in practice.

- 37 In summary, I consider that the proposal has adequately responded to the coastal vulnerability and flooding issues through the features/aspects I have described above. Dr Riedel's evidence (which I consider to be credible) was that the appeal site is sufficiently high and located sufficiently far away from the foreshore that there is no unreasonable coastal hazard risk. My finding here is reinforced by the fact that there was no suggestion from any party that Safety Beach is a known problem area in terms of the risk of storm floods/high tides etc.

Conclusion

- 38 For the reasons set out above, I find that the proposal is worthy of approval and I have affirmed Council's support. See my orders above and the conditions set out in the Appendix to this decision, which reflect my final modifications, which have taken into account the discussion of the relevant conditions during and particularly at the end of the hearing process.

Philip Martin Member		
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APPENDIX

PERMIT APPLICATION NO:	P08/2321
LAND:	7 & 9 Nepean Highway, Safety Beach
WHAT THE PERMIT ALLOWS:	The construction of two double storey buildings comprising 14 dwellings including a basement carpark and associated vegetation removal/ buildings and works plus the creation of access to a Road Zone Category 1, generally in accordance with the endorsed plans

conditions

Amended plans required

- 1 Before the development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit (the plans must be drawn to scale with dimensions and three copies must be provided). The plans must be generally in accordance with the plans submitted with the application but be amended to show:
 - (a) The removal of the front paling fence and its replacement with a rural style fence.
 - (b) Greater articulation of the front façade:
 - generally in accordance with the recommendations at paragraphs 83-84 of the expert planning report of Mr Marco Negri of Contour Consultants dated April 2010 including the associated graphics annexed at the back of that report showing an additional window feature; but
 - including the use of timber rather than metal slats for the new door/screen associated with the ramp entrance, including a different treatment of the upper half of this screening (eg slats at wider gaps), with the aim of visually softening the view of this door/screen when viewed from the public realm.
 - (c) Disabled ramp access along the communal pathway.
 - (d) Consistency between the layout on the site plans and floor plans for units (9-14).
 - (e) In relation to the stairwell vertical window on the south-east side of the new front dwelling, this window must be screened or use opaque glass up to 1.7 metres.

- (f) The deletion of all upper level roofing outside the stairwell and landing areas.
- (g) All references to 'moveable screening' to be replaced with the words 'moveable sunscreens'.
- (h) Additional screening for the upper level balconies of Dwellings 5-8 so as to comply with Clause 55 Standard B22.
- (i) The northern edge of the vehicular crossover shall be splayed to improve entry conditions on Nepean Highway as detailed in condition 12.
- (j) A schedule of all colours, which are to be of muted tones.
- (k) The provision at the permit holder's expense of a new side boundary fence for each side boundary (or, where appropriate, trellis added to the existing side fence) so as to make the top of the fence/fence and trellis 1.7 metres above the ground level floor height.
- (l) The glass on the southern balconies notated as 'frosted glass'.
- (m) Suitable fixed privacy screening for the upper level of Dwellings 9,10,11 and 14 so as to comply with Clause 55 Standard B22.

Landscape plan required

- 2 Before the development starts, amended landscape plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit (the plans must be drawn to scale with dimensions and three copies must be provided). The plans must be generally in accordance with the plans submitted with the application but be amended to show:
 - (a) the current development layout;
 - (b) details of all trees/vegetation to be retained;
 - (c) the removal of *Eucalyptus ovata* from the planting schedule and an increase in number of *Eucalyptus pauciflora* to compensate its removal;
 - (d) the removal of any environmental weeds as per Mornington Peninsula Weeds Brochure from the planting schedule.
 - (e) The removal of the two spot-heights erroneously included on the landscaping plan.
 - (f) The gap in the new boundary screening alongside the stairwell on the south-east side of the new front building reduced from 10 metres to five metres.

Layout

- 3 The layout of the land, the size and type of the proposed buildings and

works, including the materials of construction, on the endorsed plans must not be altered or modified without the consent of the Responsible Authority.

Revegetation & stabilisation

- 4 All disturbed surfaces on the land resulting from the development must be revegetated and stabilised to the satisfaction of the Responsible Authority.

Materials and colours

- 5 The materials and colour of the exterior finish of the building must be in accordance with the endorsed plans unless with the further permission of the Responsible Authority.

Landscaping - before use starts

- 6 Before the initial occupation of any dwelling approved by this permit starts, landscaping works as shown on the endorsed plans must be completed and then maintained, to the satisfaction of the Responsible Authority.

Construction Plans

- 7 Before any works associated with the development starts, detailed construction plans to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. The plans must be drawn to scale with dimensions and four copies must be provided.

The plans must show:

- All areas of the development being drained by means of an underground drainage system to retain a post development 1 in 10 year storm event for the critical storm duration on the property. Discharge from site must be limited to an equivalent pre-development flow based on a 1 in 2 year storm event for the critical storm duration and connected to the existing underground drainage system in front of the subject site.
- A drainage system on the site being designed to ensure storm water runoff exiting the site meets the current best practice performance objectives for stormwater quality, as contained in the Urban Stormwater Best Practice Environmental Management Guidelines (Victorian Stormwater Committee, 1999).
- A drainage surcharge route within the development to avoid inundation of any dwellings.
- The shared vehicle crossing being constructed to a standard acceptable to VicRoads (Road Management Authority) and the Responsible Authority.
- The design of all vehicle movements entering and exiting the

property being in a forward direction.

- Vehicular crossings being constructed to the road to suit the proposed driveways.
- Sight distance for vehicles and pedestrians not being unduly restricted at the exit from site by fencing or landscaping works.

8 Before the initial occupation of the development, the areas set aside for the parking of vehicles and access lanes as shown on the endorsed plans must be:

- Constructed
- Properly formed to such levels that they can be used in accordance with the plans
- Surfaced with reinforced concrete, asphalt or paving.
- Drained and maintained.
- Line marked to indicate each car space and all access lanes

to the satisfaction of the responsible authority.

Telstra access

9 Before construction of any hard standing surfaces starts within the land the developer must request Telstra Australia to undertake the laying of suitable cables and conduits to ensure the provision of telephone services to each unit intended to use as a separate occupancy.

Lighting

10 Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.

Screening

11 All screening devices to be installed and maintained prior to the initial occupation of the development to the satisfaction of the Responsible Authority.

VicRoads

12 The northern edge of the vehicular crossover shall be splayed to improve entry conditions on Nepean Highway to the satisfaction of the Responsible Authority.

13 The existing vehicle crossover to Nepean Highway must be removed and the footpath, nature strip and kerbing reinstated to the satisfaction of the Responsible Authority.

14 The developer must obtain all necessary approvals from the appropriate authorities for the relocation /removal of infrastructure affected by the

crossing.

- 15 The relocation/removal of infrastructure shall be at the cost of the developer.

Department of Sustainability and Environment

- 16 A plan indicating all trees/vegetation to be retained, which is 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.
- 17 Prior to clearing works, the boundaries of all native vegetation stands to be removed and retained must be clearly marked on the ground or marked with tape or temporary fencing. The works side of the temporary fencing will be the prescribed works area.
- 18 Vegetation must be felled inside the prescribed works area to avoid damaging remaining vegetation located outside this area.
- 19 To prevent damage to remaining site vegetation no machinery or associated equipment must be permitted outside the building envelope as identified on the endorsed plans.
- 20 No parking of vehicles or stockpiling of soil/materials is to occur on native vegetation that is to be retained and protected. Areas must be designated for these purposes and clearly signed.
- 21 All earthworks must be undertaken in a manner that will minimise soil erosion and adhere to *Construction techniques for Sediment Pollution Control* (EPA 1991) and any exposed areas of soil must be stabilised to prevent soil erosion, to the satisfaction of the Responsible Authority.
- 22 Offset measures in accordance with Clause 15.09 of the Planning Scheme are achieved to the satisfaction of the Responsible Authority.
- 23 Environmental weeds as per Mornington Peninsula Weeds Brochure must not be planted on the subject land. Any existing environmental weeds are to be removed from the site.
- 24 To prevent the spread of weeds and pathogens, all track construction and maintenance equipment, 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.

Off-set Condition

25. Before the removal of any vegetation from the Land, an offset plan to the satisfaction of the Department of Sustainability and Environment must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed and form part of this permit. The offset plan must show appropriate offsets for the removal of the native vegetation as shown on the endorsed plans. This off-set plan must:

- (a) be drawn to scale with dimensions (where appropriate) and three copies must be provided.
- (b) show appropriate offsets, in accordance with clause 15.09, to compensate for the requisite habitat hectares of vegetation lost.
- (c) include details of the following:
 - means of calculating the offsets;
 - locations where offsets will be provided;
 - type of offsets to be provided for each location;
 - details of revegetation including number of trees, shrubs and other plants; species mix and density;
 - means of interim protection for newly established vegetation until established;
 - methods of permanent protection for the offsets;
 - persons responsible for implementing and monitoring the offset plan;
 - time frames for implementing the offset plan; and
 - details of any earthworks, drainage and other works.

Tree Management Plan

26. Before the development commences, a tree management plan prepared by a suitably qualified arborist which is generally in accordance with the recommendations contained in the Arboricultural Construction Impact Assessment Report prepared by Roger Greenwood and dated April 2010 must be submitted to and approved by the Responsible Authority. When approved, the tree management plan will form part of this permit and all works must be done in accordance with the tree management plan. The tree management plan must detail measures to protect and ensure the viability of trees on adjoining lots to the north west and must comprise at least three sections as follows:

- (a) Pre-construction: details to include how appropriate tree protection zones will be identified and, where appropriate, fence (or if not fenced how they will be protected), the height and type of any fencing or barrier around the tree protection zone, amount and type of mulch to be placed above the tree protection zone and method of cutting any roots or branches which extend beyond the tree protection zone.
- (b) During-construction: details to include supervision of works where necessary by a qualified arborist, reporting and documentation of any works within any identified tree protection zone, provision of a watering regime during construction and the method of protection of exposed roots, and a statement of recommended methodology for any works within the tree protection zones including works associated

with the construction of decks, footings for the dwellings, dividing walls between the units, planting of trees pursuant to the approved landscape plan, boundary fencing and installation of any services.

- (c) Post-construction: details to include watering regime and time of final inspection when fences and barriers can be removed and when protection works can cease.

Vegetation Management Plan

27. Before the development commences, a vegetation management plan with respect to the retained area of *Melaleuca ericifolia* located within the front setback must be prepared to the satisfaction of the responsible authority by an appropriately qualified and experienced person. When approved, the vegetation management plan will be endorsed and will become part of the permit. The vegetation management plan will indicate that actions that must be taken during and after the construction of new works to identify and protect the retained *Melaleuca ericifolia* within the site frontage. The plan must include appropriate measures with respect to proposals for the ongoing management of the retained vegetation, including:

- weed eradication and management;
- rehabilitation and replanting of vegetation;
- species to be used;
- rubbish removal;
- the erection of any protective fencing; and
- the timing of any restoration and maintenance work.

Time for Starting and Completion

28 This permit will expire if one of the following applies:

- the development is not started within two years of the date of this permit; or
- The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the above periods if a request is made in writing before the permit expires or within the following three months.