



Planning Enquiries  
Phone: (03) 9688 0200  
Web: [www.maribyrnong.vic.gov.au](http://www.maribyrnong.vic.gov.au)

Clear Form

Office Use Onl

Application No.:

Date Lodged: / /

## Application for a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the end of this form.

**⚠** Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any questions, please contact Council's planning department.

**⚠** Questions marked with an asterisk (\*) must be completed.

**⚠** If the space provided on the form is insufficient, attach a separate sheet

**i** Click for further information.

### The Land **i**

Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

**Street Address \***

Unit No.:

St. No.: 88

St. Name: McDougall Drive

Suburb/Locality: Footscray

Postcode: 3011

**Formal Land Description \***

Complete either A or B.

**⚠** This information can be found on the certificate of title.

If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A

Lot No.: 621

☐ Lodged Plan

☐ Title Plan

☐ Plan of Subdivision

No.: 643386M

OR

B

Crown Allotment No.:

Section No.:

Parish/Township Name:

### The Proposal

**⚠** You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application

**i** For what use, development or other matter do you require a permit? \*

Propose a new rumpus room above the existing garage with external stair access.



Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

Cost \$200000

**⚠** You may be required to verify this estimate. Insert '0' if no development is proposed.

If the application is for land within metropolitan Melbourne (as defined in section 3 of the *Planning and Environment Act 1987*) and the estimated cost of the development exceeds \$1.093 million (adjusted annually by CPI) the Metropolitan Planning Levy must be paid to the State Revenue Office and a current levy certificate must be submitted with the application. Visit [www.sro.vic.gov.au](http://www.sro.vic.gov.au) for information.

**i** Estimated cost of any development for which the permit is required \*



## Existing Conditions

### Describe how the land is used and developed now \*

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

A double-storey dwelling at the front, a single-storey garage at the rear, and private open space in the centre.

☒ Provide a plan of the existing conditions. Photos are also helpful.

## Title Information

### Encumbrances on title \*

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- ☒ Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- ☐ No
- ☐ Not applicable (no such encumbrance applies).

☒ Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

## Applicant and Owner Details

Provide details of the applicant and the owner of the land.

### Applicant \*

The person who wants the permit.

Please provide at least one contact phone number \*

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

### Owner \*

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name:

Title: Mr

First Name: Tony

Surname: To

Organisation (if applicable): Refreshing Homes Pty Ltd

Postal Address:

If it is a P.O. Box, enter the details here:

Unit No.: 808

St. No.: 250

St. Name: Barkly Street

Suburb/Locality: Footscray

State: VIC

Postcode: 3011

### Contact information for applicant OR contact person below

Business phone:

Email: tony.to@refreshinghomes.com.au

Mobile phone: 0433541040

Fax:

### Contact person's details\*

Same as applicant ☒

Name:

Title:

First Name:

Surname:

Organisation (if applicable):

Postal Address:

If it is a P.O. Box, enter the details here:

Unit No.:

St. No.:

St. Name:

Suburb/Locality:

State:

Postcode:

Name:

Same as applicant ☐

Title: Mr

First Name: Mark

Surname: Gallon

Organisation (if applicable):

Postal Address:

If it is a P.O. Box, enter the details here:

Unit No.:

St. No.: 88

St. Name: McDougall Drive

Suburb/Locality: Footscray

State: VIC

Postcode: 3011

Owner's Signature (Optional):


Date:

day / month / year



## Declaration

This form must be signed by the applicant \*

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature:

Date: 9/12/2024

day / month / year

## Need help with the Application?

General information about the planning process is available at [planning.vic.gov.au](http://planning.vic.gov.au)

Contact Council's planning department to discuss the specific requirements for his application and obtain a planning permit checklist. Insufficient or unclear information may delay your application

Has there been a pre-application meeting with a council planning officer

☐

No

☒

Yes

If 'Yes', with whom?: Joshua Seager

Date: 20/09/2024

day / month / year

## Checklist

Have you:



Filled in the form completely?



Paid or included the application fee?



Most applications require a fee to be paid. Contact Council to determine the appropriate fee.



Provided all necessary supporting information and documents?



A full, current copy of title information for each individual parcel of land forming the subject site.



A plan of existing conditions.



Plans showing the layout and details of the proposal.



Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.



If required, a description of the likely effect of the proposal (for example, traffic, noise, environmental impacts)



If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void



Completed the relevant council planning permit checklist?



Signed the declaration?

## Lodgement

Lodge the completed and signed form, the fee and all documents with:

Maribyrnong City Council

PO Box 58

Footscray VIC 3011

Cnr Napier & Hyde Streets

Footscray VIC 3011

### Contact information:

Phone: (03) 9688 0200

Email: [email@maribyrnong.vic.gov.au](mailto:email@maribyrnong.vic.gov.au)

DX: 81112

Deliver application in person, by post or by electronic lodgement.

## MORE INFORMATION

### The Land

Planning permits relate to the use and development of the land. It is important that accurate, clear and concise details of the land are provided with the application.

#### How is land identified


Land is commonly identified by a street address, but sometimes this alone does not provide an accurate identification of the relevant parcel of land relating to an application. Make sure you also provide the formal land description - the lot and plan number or the crown, section and parish/township details (as applicable) for the subject site. This information is shown on the title.

See **Example 1**.

### The Proposal

#### Why is it important to describe the proposal correctly?


The application requires a description of what you want to do with the land. You must describe how the land will be used or developed as a result of the proposal. It is important that you understand the reasons why you need a permit in order to suitably describe the proposal. By providing an accurate description of the proposal, you will avoid unnecessary delays associated with amending the description at a later date.

 Planning schemes use specific definitions for different types of use and development. Contact the Council planning office at an early stage in preparing your application to ensure that you use the appropriate terminology and provide the required details.

#### How do planning schemes affect proposals?

A planning scheme sets out policies and requirements for the use, development and protection of land. There is a planning scheme for every municipality in Victoria. Development of land includes the construction of a building, carrying out works, subdividing land or buildings and displaying signs.

Proposals must comply with the planning scheme provisions in accordance with Clause 61.05 of the planning scheme. Provisions may relate to the State Planning Policy Framework, the Local Planning Policy Framework, zones, overlays, particular and general provisions. You can access the planning scheme by either contacting Council's planning department or by visiting Planning Schemes Online at [planning-schemes.delwp.vic.gov.au](http://planning-schemes.delwp.vic.gov.au)

 You can obtain a planning certificate to establish planning scheme details about your property. A planning certificate identifies the zones and overlays that apply to the land, but it does not identify all of the provisions of the planning scheme that may be relevant to your application. Planning certificates for land in metropolitan areas and most rural areas can be obtained by visiting [www.landata.vic.gov.au](http://www.landata.vic.gov.au). Contact your local Council to obtain a planning certificate in Central Goulburn, Corangamite, Macedon Ranges and Greater Geelong. You can also use the free Planning Property Report to obtain the same information.

See **Example 2**.


#### Estimated cost of development

In most instances an application fee will be required. This fee must be paid when you lodge the application. The fee is set down by government regulations.

To help Council calculate the application fee, you must provide an accurate cost estimate of the proposed development. This cost does not include the costs of development that you could undertake without a permit or that are separate from the permit process. Development costs should be calculated at a normal industry rate for the type of construction you propose.

Council may ask you to justify your cost estimates. Costs are required solely to allow Council to calculate the permit application fee. Fees are exempt from GST.

 Costs for different types of development can be obtained from specialist publications such as Cordell Housing: Building Cost Guide or Rawlinsons: Australian Construction Handbook.

 Contact the Council to determine the appropriate fee. Go to [planning.vic.gov.au](http://planning.vic.gov.au) to view a summary of fees in the Planning and Environment (Fees) Regulations.

**Metropolitan Planning Levy** refer Division 5A of Part 4 of the *Planning and Environment Act 1987* (the Act). A planning permit application under section 47 or 96A of the Act for a development of land in metropolitan Melbourne as defined in section 3 of the Act may be a leviable application. If the cost of the development exceeds the threshold of \$1 million (adjusted annually by consumer price index) a levy certificate must be obtained from the State Revenue Office after payment of the levy. A valid levy certificate must be submitted to the responsible planning authority (usually council) with a leviable planning permit application. Refer to the State Revenue Office website at [www.sro.vic.gov.au](http://www.sro.vic.gov.au) for more information. A leviable application submitted without a levy certificate is void.

### Existing Conditions

#### How should land be described?

You need to describe, in general terms, the way the land is used now, including the activities, buildings, structures and works that exist (e.g. single dwelling, 24 dwellings in a three-storey building, medical centre with three practitioners and 8 car parking spaces, vacant building, vacant land, grazing land, bush block).

Please attach to your application a plan of the existing conditions of the land. Check with the local Council for the quantity, scale and level of detail required. It is also helpful to include photographs of the existing conditions.

See **Example 3**.

### Title Information

#### What is an encumbrance?

An 'encumbrance' is a formal obligation on the land, with the most common type being a 'mortgage'. Other common examples of encumbrances include:

- **Restrictive Covenants:** A 'restrictive covenant' is a written agreement between owners of land restricting the use or development of the land for the benefit of others, (eg. a limit of one dwelling or limits on types of building materials to be used).
- **Section 173 Agreements:** A 'section 173 agreement' is a contract between an owner of the land and the Council which sets out limitations on the use or development of the land.
- **Easements:** An 'easement' gives rights to other parties to use the land or provide for services or access on, under or above the surface of the land.
- **Building Envelopes:** A 'building envelope' defines the development boundaries for the land.

Aside from mortgages, the above encumbrances can potentially limit or even prevent certain types of proposals.

#### What documents should I check to find encumbrances

Encumbrances are identified on the title (register search statement) under the header 'encumbrances, caveats and notices'. The actual details of an encumbrance are usually provided in a separate document (instrument) associated with the title. Sometimes encumbrances are also marked on the title diagram or plan, such as easements or building envelopes.

#### What about caveats and notices?

A 'caveat' is a record of a claim from a party to an interest in the land. Caveats are not normally relevant to planning applications as they typically relate to a purchaser, mortgagee or chargee claim, but can sometimes include claims to a covenant or easement on the land. These types of caveats may affect your proposal.

Other less common types of obligations may also be specified on title in the form of 'notices'. These may have an effect on your proposal, such as a notice that the building on the land is listed on the Heritage Register.

#### What happens if the proposal contravenes an encumbrance on title?

Encumbrances may affect or limit your proposal or prevent it from proceeding. Section 61(4) of the *Planning and Environment Act 1987* for example, prevents a Council from granting a permit if it would result in a breach of a registered restrictive covenant. If the proposal contravenes any encumbrance, contact the Council for advice on how to proceed.



You may be able to modify your proposal to respond to the issue. If not, separate procedures exist to change or remove the various types of encumbrances from the title. The procedures are generally quite involved and if the encumbrance relates to more than the subject property, the process will include notice to the affected party.

**⚠** You should seek advice from an appropriately qualified person, such as a solicitor, if you need to interpret the effect of an encumbrance or if you seek to amend or remove an encumbrance.

#### Why is title information required?

Title information confirms the location and dimensions of the land specified in the planning application and any obligations affecting what can be done on or with the land.

As well as describing the land, a full copy of the title will include a diagram or plan of the land and will identify any encumbrances, caveats and notices.

#### What is a 'full' copy of the title?

The title information accompanying your application must include a 'register search statement' and the title diagram, which together make up the title.

In addition, any relevant associated title documents, known as 'instruments', must also be provided to make up a full copy of the title.

Check the title to see if any of the types of encumbrances, such as a restrictive covenant, section 173 agreement, easement or building envelope, are listed. If so, you must submit a copy of the document (instrument) describing that encumbrance. Mortgages do not need to be provided with planning applications.

**⚠** Some titles have not yet been converted by Land Registry into an electronic register search statement format. In these earlier types of titles, the diagram and encumbrances are often detailed on the actual title, rather than in separate plans or instruments.

#### Why is 'current' title information required?

It is important that you attach a current copy of the title for each individual parcel of land forming the subject site. 'Current' title information accurately provides all relevant and up-to-date information.

Some councils require that title information must have been searched within a specified time frame. Contact the Council for advice on their requirements.

**⚠** Copies of title documents can be obtained from Land Registry: Level 10, 570 Bourke Street, Melbourne; 03 8636 2010; [www.landata.vic.gov.au](http://www.landata.vic.gov.au) – go direct to "titles & property certificates"

## Applicant and Owner Details

This section provides information about the permit applicant, the owner of the land and the person who should be contacted about any matters concerning the permit application.

The applicant is the person or organisation that wants the permit. The applicant can, but need not, be the contact person.

In order to avoid any confusion, the Council will communicate only with the person who is also responsible for providing further details. The contact may be a professional adviser (e.g. architect or planner) engaged to prepare or manage the application. To ensure prompt communications, contact details should be given.

Check with Council how they prefer to communicate with you about the application. If an email address is provided this may be the preferred method of communication between council and the applicant/contact.

The owner of the land is the person or organisation who owns the land at the time the application is made. Where a parcel of land has been sold and an application made prior to settlement, the owner's details should be identified as those of the vendor. The owner can, but need not, be the contact or the applicant.

See **Example 4**.

## Declaration

The declaration should be signed by the person who takes responsibility for the accuracy of all the information that is provided. This declaration is a signed statement that the information included with the application is true and correct at the time of lodgement.

The declaration can be signed by the applicant or owner. If the owner is not the applicant, the owner must either sign the application form or must be notified of the application which is acknowledged in the declaration.

**⚠** Obtaining or attempting to obtain a permit by wilfully making or causing any false representation or declaration, either orally or in writing, is an offence under the *Planning and Environment Act 1987* and could result in a fine and/or cancellation of the permit.

## Need help with the Application?

If you have attended a pre-application meeting with a Council planner, fill in the name of the planner and the date, so that the person can be consulted about the application once it has been lodged.

## Checklist

### What additional information should you provide to support the proposal?

You should provide sufficient supporting material with the application to describe the proposal in enough detail for the Council to make a decision. It is important that copies of all plans and information submitted with the application are legible.

There may be specific application requirements set out in the planning scheme for the use or development you propose. The application should demonstrate how these have been addressed or met.

The checklist is to help ensure that you have:

- provided all the required information on the form
- included payment of the application fee
- attached all necessary supporting information and documents
- completed the relevant Council planning permit checklist
- signed the declaration on the last page of the application form

**⚠** The more complete the information you provide with your permit application, the sooner Council will be able to make a decision.

## Lodgement

The application must be lodged with the Council responsible for the planning scheme in which the land affected by the application is located. In some cases the Minister for Planning or another body is the responsible authority instead of Council. Ask the Council if in doubt.

Check with Council how they prefer to have the application lodged. For example, they may have an online lodgement system, prefer email or want an electronic and hard copy. Check also how many copies of plans and the size of plans that may be required.

Contact details are listed in the lodgement section on the last page of the form.

**⚠** Approval from other authorities: In addition to obtaining a planning permit, approvals or exemptions may be required from other authorities or Council departments. Depending on the nature of your proposal, these may include food or health registrations, building permits or approvals from water and other service authorities.

# EXAMPLES

## Example 1

### The Land


Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

#### Street Address \*

Unit No.:	4	St. No.:	26	St. Name:	Planmore Avenue
Suburb/Locality:	HAWTHORN			Postcode:	3122

#### Formal Land Description \*


Complete either A or B.

 This information can be found on the certificate of title.


If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A	Lot No.:	2	<input type="radio"/> Lodged Plan	<input type="radio"/> Title Plan	<input checked="" type="radio"/> Plan of Subdivision	No.:	LP93562
OR							
B	Crown Allotment No.:				Section No.:		
Parish/Township Name:							

## Example 2

 For what use, development or other matter do you require a permit? \*

*Construction of two, double-storey dwellings and construction of two new crossovers.*

 Provide additional information about the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.


## Example 3

### Existing Conditions

#### Describe how the land is used and developed now \*

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

*Single dwelling.*

 Provide a plan of the existing conditions. Photos are also helpful.

## Example 4

### Applicant and Owner Details

Provide details of the applicant and the owner of the land.

#### Applicant \*

The person who wants the permit.

Please provide at least one contact phone number \*

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

#### Owner \*

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name:					
Title:	Mr	First Name:	Len	Surname:	Browning
Organisation (if applicable): Responsible Developers P/L					
Postal Address:					
Unit No.:	4	St. No.:	12	St. Name:	Ardour Lane
Suburb/Locality:	Wycheproof			State:	Vic
			Postcode:	3527	

#### Contact information for applicant OR contact person below

Business phone:	9123 4567	Email:	tcpl@bigpond.net.au
Mobile phone:	0412 345 678	Fax:	9123 4567

#### Contact person's details\*

Same as applicant ☐

Name:					
Title:	Mr	First Name:	Andrew	Surname:	Hodge
Organisation (if applicable): Town Planning Consultants					
Postal Address:					
Unit No.:		St. No.:		St. Name:	PO Box 111
Suburb/Locality:	Parkdale			State:	Vic
			Postcode:	3194	

Name:					
Title:		First Name:		Surname:	
Organisation (if applicable):					
Postal Address:					
Unit No.:		St. No.:		St. Name:	
Suburb/Locality:				State:	
			Postcode:		
Owner's Signature (Optional):					Date:
					day / month / year

## REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 11557 FOLIO 548

Security no : 124118993297N  
Produced 13/10/2024 08:59 PM

### LAND DESCRIPTION

Lot 621 on Plan of Subdivision 643386M.  
PARENT TITLE Volume 11534 Folio 886  
Created by instrument PS643386M 11/03/2015

### REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors  
MARK FRANCIS GALLON  
SALLY JANINE GALLON both of 88 MCDOUGALL DRIVE FOOTSCRAY VIC 3011  
AL957024F 15/06/2015

### ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS643386M 11/03/2015  
Expiry Date 11/03/2025

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987  
AJ247575S 11/10/2011

### DIAGRAM LOCATION

SEE PS643386M FOR FURTHER DETAILS AND BOUNDARIES

### ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 88 MCDOUGALL DRIVE FOOTSCRAY VIC 3011

DOCUMENT END

# Imaged Document Cover Sheet

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**AJ247575S**

11/10/2011 \$107.50 173



Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY  
FOR THE MAKING OF A RECORDING OF AN AGREEMENT**

*Planning and Environment Act 1987*

Lodged by:-

Name: **DLA PIPER AUSTRALIA**  
~~Armstrong, Collins & DeLacy~~  
 Phone: ~~5422 1677~~  
 Address: ~~DX 34032 Kyneton~~  
 Ref: ~~PJMT-tp.104417~~ Customer Code: 425P  
 Code **1390B**.

**Privacy Collection Statement**

The information under this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry

The Authority having made an agreement referred to in *Section 181(1)* of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: Lot 1 on Plan of Subdivision No. 072652 Parish of Cut-Paw-Paw  
 Certificate of Title Volume 8675 Folio 683

Lot 1 on Title Plan 338369B Parish of Cut-Paw-Paw  
 Certificate of Title Volume 8033 Folio 015

Lot 1 on Title Plan 441995X Parish of Cut-Paw-Paw  
 Certificate of Title Volume 8986 Folio 582

Land in Plan of Consolidation 106403  
 Certificate of Title Volume 9226 Folio 731

Authority: Maribyrnong City Council  
 of Cnr. Hyde and Napier Streets, Footscray, Vic. 3011

Section and Act under  
 which agreement made: Section 173 of the Planning and Environment Act 1987

A copy of the Agreement is attached to this application.

Signature for the Authority:

Name of Officer:

**Ann. M. M. M.**

[full name]

Date:

**25 August 2011**

number and signed counterparts of the Agreement for the land owners and Council's records.

Yours faithfully,

**ARMSTRONG COLLINS & DELACY**



Peter Turner

Encl.

**AJ247575S**

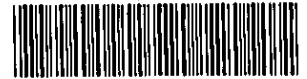
11/10/2011 \$107.50 173





**AJ247575S**

11/10/2011 \$107.50 173



**MARIBYRNONG CITY COUNCIL**

**- and -**

**ECNAM PROPERTIES PTY LTD (ACN 005 500 756) and  
ERITH NOMINEES PTY LTD (ACN 005 023 156)**

**SECTION 173 AGREEMENT**

**Lot 1 on Plan of Subdivision 072652 Parish of Cut-Paw-Paw  
Certificate of Title Volume 8675 Folio 683**

**-and-**

**Lot 1 on Title Plan 338369B, Parish of Cut-Paw-Paw  
Certificate of Title Volume 8033 Folio 015**

**-and-**

**Lot 1 on Title Plan 441995X, Parish of Cut-Paw-Paw  
Certificate of Title Volume 8986 Folio 582**

**-and-**

**Land in Plan of Consolidation 106403  
Certificate of Title Volume 9226 Folio 731**

**52 – 54 Cross Street, Footscray**

**AJ247575S**

11/10/2011 \$107.50 173



**This Agreement** is made on the 26 day of August 2011.

**BETWEEN:**

**MARIBYRNONG CITY COUNCIL** (ABN 86 517 839 961) of Corner Hyde and Napier Streets, Footscray, Victoria ("the Council")

**And**

**ECNAM PROPERTIES PTY LTD** (ACN 005 500 756) and **ERITH NOMINEES PTY LTD** (ACN 005 023 156) both of 435 Barkly Street, Footscray, Victoria ("the Owner")

## **Recitals**

- A. Ecnam Properties Pty Ltd is the registered proprietor of Lot 1 on Plan of Subdivision 072652 Parish of Cut-Paw-Paw being the land described in Certificate of Title Volume 8675 Folio 683 and Erith Nominees Pty Ltd is the registered proprietor of Lot 1 on Title Plan 338369B, Parish of Cut-Paw-Paw being the land described in Certificate of Title Volume 8033 Folio 015 and Lot 1 on Title Plan 441995X, Parish of Cut-Paw-Paw being the land described in Certificate of Title Volume 8986 Folio 582 and the Land in Plan of Consolidation 106403 being the land described in Certificate of Title Volume 9226 Folio 731, situate at 52-54 Cross Street, Footscray ("the land").
- B. The Council is the Responsible Authority pursuant to the Act for the Scheme.
- C. The Owner has made application to the Council for approval of a Development Plan for the proposed subdivision and medium to high density residential redevelopment of the land, as part of the Banbury Village Estate.
- D. As a condition of granting approval for the Development Plan the Council requires, amongst other things, that the Owner enter into an agreement with Council pursuant to Section 173 of the Act, to be registered on the title to the land:
  - (a) to secure compliance with the Statement of Environmental Audit; and
  - (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Scheme in respect of the land.

**AJ247575S**

11/10/2011 \$107.50

173



## Operative Provisions

### 1. Definitions

In this Agreement the terms and words set out in this clause shall have the following meanings unless otherwise indicated by the context:

- 1.1 **"the Act"** means the *Planning and Environment Act 1987*;
- 1.2 **"the Agreement"** or **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement;
- 1.3 **"Environmental Audit Report"** means the Environmental Audit Report prepared by Luke Anthony Cattlin of Tonkin & Taylor Pty Ltd and dated September 2010, a copy of which may be inspected at the offices of the Council on reasonable notice during business hours;
- 1.4 **"Groundwater Quality Management Plan"** means the Groundwater Quality Management Plan annexed to the Statement of Environmental Audit;
- 1.5 **"the land"** means the land described in recital A;
- 1.6 **"Owner"** means Ecnam Properties Pty Ltd and Erith Nominees Pty Ltd and any persons entitled from time to time to be registered as proprietor or proprietors of any estate in fee simple to the land or any part of it, and includes any mortgagee in possession;
- 1.7 **"the Scheme"** means the Maribyrnong City Planning Scheme as amended from time to time;
- 1.8 **"Statement of Environmental Audit"** means the Statement of Environmental Audit dated 15 April 2011 issued in accordance with Part IXD of the *Environment Protection Act 1970* in respect of the land pursuant to the findings of the Environmental Audit Report, a copy of which is annexed to this Agreement;

### 2. Interpretation

All provisions of this Agreement are to be interpreted in the following manner unless otherwise indicated by the context:

- 2.1 Undefined terms or words shall have the meanings given in the Act or the Scheme.
- 2.2 The singular includes the plural and the plural includes the singular.
- 2.3 A reference to a gender includes a reference to each other gender.
- 2.4 A reference to a person includes a reference to a firm, corporation or other corporate body.
- 2.5 If a party consists of more than one person this Agreement binds them jointly and each of them severally.

**AJ247575S**

11/10/2011 \$107.50 173



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- 2.6 A reference to a “planning scheme” or “the Scheme” shall include any amendment, consolidation, or replacement of such Scheme and any document incorporated by reference into such Scheme.
- 2.7 A reference to a statute shall include any statutes amending, consolidating or replacing same and any regulations made under such statutes.
- 2.8 Where in this Agreement the Council may exercise any power, duty or function, that power may be exercised on behalf of the Council by an authorised or delegated officer.
- 2.9 All headings are for ease of reference only and shall not be taken into account in the construction or interpretation of this Agreement.
- 2.10 The introductory clauses to the Agreement are and will be deemed to form part of this Agreement.

### **3. Agreement Under Section 173 of the Act**

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and in so far as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

### **4. Effect of Agreement**

This Agreement shall come into force and effect from the date of this Agreement.

### **5. Disclosure of Agreement**

The Owner must not sell, transfer, dispose of, assign, mortgage, lease, licence or other wise part with possession of the land or any part of it without first disclosing the existence and nature of this Agreement.

### **6. Successors in Title**

It is intended that the covenants hereafter shall run with the land and Council shall have the power to enforce the covenants against any person or persons deriving title from the Owner.

### **7. Owner’s covenants**

The Owner covenants and agrees as follows:

#### **7.1. Statement of Environmental Audit**

- (a) To comply with all the conditions contained in the Statement of Environmental Audit.
- (b) To provide the Statement of Environmental Audit to any person who proposes to become an occupier of the land.

**AJ247575S**

11/10/2011 \$107.50

173



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**7.2. Groundwater Quality Management Plan**

To implement and carry out in full the Groundwater Quality Management Plan.

**7.3. Notice**

To bring this Agreement to the attention of any mortgagee of the land and any assignee, transferee, lessee or licensee of the land.

**7.4 Compliance**

(a) To carry out and comply with the requirements of all statutory authorities and comply with all statutes, regulations, local laws and planning controls in relation to the land.

(b) To take all necessary steps to comply with the obligations of each and every clause in this Agreement.

**7.5 Registration**

To do all things necessary to enable the Council to register notification of this Agreement against the title or titles to the land in accordance with Section 181 of the Act.

**7.6 Mortgagee to be Bound**

To obtain the acknowledgment of and consent to this Agreement of any mortgagee, to be witnessed by its written endorsement on the Agreement.

**7.7 Council's Costs to be Paid**

To pay the Council's reasonable costs and expenses of and incidental to the preparation, execution and registration of this Agreement and its enforcement.

**7.8 Council Access**

To allow the Council and/or its officers, employees, contractors or agents (at any reasonable time) to enter the land to assess compliance with this Agreement.

**8. Notices**

**8.1 Service of Notice**

A notice or other communication required or permitted to be served by a party on another party shall be in writing and may be served:

**AJ247575S**

11/10/2011 \$107.50

173



Section 11.1.1

- (a) personally on the party; or
- (b) by sending it by pre-paid post, addressed to that party at the address specified in this document or subsequently notified to each party; or
- (c) by facsimile to the person's number for service specified in this document or subsequently notified to each party.

## **8.2 Time of Service**

A notice or other communication is deemed served:

- (a) if served personally, upon service;
- (b) if posted within Australia to an Australian address, two business days after posting and in any other case, seven business days after posting; or
- (c) if served by facsimile, at the time indicated on the transmission report produced by the sender's facsimile machine indicating that the facsimile was sent in its entirety to the addressee's facsimile;
- (d) if received after 5.00pm in the place of receipt or on a day which is not a business day, at 9.00 am on the next business day.

## **9. Owner's warranties**

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person which has consented in writing to this Agreement, the only other people who have an interest, either legal or equitable, in the land which may be affected by this Agreement are those that have signed contracts of sale to purchase residential lots on the land.

## **10. Successors in title**

Without limiting the operation or effect which this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the land, successors in title shall be required to do both the following:

- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by the terms of this Agreement.

## **11. General**

### **11.1 Further Assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.



**AJ247575S**



## 11.2 No Waiver

Any time or other indulgence granted by the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Agreement.

## 11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it shall be severed and the other provisions of this Agreement shall remain operative.

## 11.4 Alteration of Agreement

This Agreement may only be altered or modified by a subsequent agreement in writing executed under seal of the Council and signed by the Owner.

## 11.5 Ending of Agreement

- (a) This Agreement shall end in accordance with Section 177 of the Act upon agreement by the parties to this Agreement.
- (b) This Agreement also ends if a Certificate of Environmental Audit is issued for the land in accordance with Part IXD of the *Environment Protection Act 1970* confirming that polluted groundwater at the land has been remediated to restore all beneficial uses. The Owner is not required to obtain a certificate of Environmental Audit for the land and if no such Certificate is issued, this agreement shall continue to run with the title for the land.

## 11.6 Multiple lots

If this Agreement relates to more than one lot and the Owner of that lot has complied with all of the obligations in relation to that lot, the Owner of that lot may request Council to end this Agreement in relation to that lot.

## 11.7 Application to Registrar

As soon as reasonably practicable after this Agreement has ended, Council will, at the request and at the cost of the Owner make application to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the register.

**AJ247575S**

11/10/2011 \$107.50 173



### **11.8 No fettering of Council's powers**

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the land or relating to any use or development of the land.

### **11.9 Approvals and consents**

- (a) Unless this agreement expressly provides otherwise, a party may give or withhold an approval or consent in that party's absolute discretion and subject to any conditions determined by that party. A party is not obliged to give its reasons for giving or withholding a consent or approval or for giving a consent or approval subject to conditions.
- (b) Where this Agreement refers to a matter being to the 'satisfaction' of a party, this means to the satisfaction of that party in its absolute discretion.

### **11.10 Assignments and transfers**

A party must not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of each of the other parties.

### **11.11 Governing law and jurisdiction**

This Agreement is governed by the law of Victoria. The parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The parties will not object to the exercise of jurisdiction by those courts on any basis.

### **11.12 Joint and individual liability and benefits**

Except as otherwise set out in this Agreement, any covenant, agreement, representation or warranty under this Agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

### **11.13 Variation**

No variation of this Agreement will be of any force or effect unless it is in writing and signed by each party to this Agreement.

**AJ247575S**

11/10/2011 \$107.50

173



**ENVIRONMENT PROTECTION ACT 1970  
STATEMENT OF ENVIRONMENTAL AUDIT**

I, Luke Antony Cattlin of Tonkin & Taylor Pty Ltd, a person appointed by the Environment Protection Authority ('the Authority') under the *Environment Protection Act 1970* ('the Act') as an environmental auditor for the purposes of the Act, having:

1. been requested by Mr. Greg Birch, of Ecnam Pty Ltd to issue a certificate of environmental audit in relation to the site located at 52-54 Cross Street, Footscray, 3011, Vol. 09226, Fol. 731; and part of Vol. 08675, Fol. 683; and Vol. 08033, Fol. 015 defined as the southern portion of these titles bounded in the NE corner at 313648.142, 5814358.442 and NW corner at 313557.159, 5814368.878 ("the site") owned/occupied by Ecnam Pty Ltd and Erith Nominees Pty Ltd.
2. had regard to, among other things,
  - i) guidelines issued by the Authority for the purposes of Part IXD of the Act,
  - ii) the beneficial uses that may be made of the site, and
  - iii) relevant State environment protection policies/industrial waste management policies, namely
 

SEPP	Prevention and Management of Contamination of Land
SEPP	Groundwaters of Victoria
SEPP	Waters of Victoria (Schedule F6)
IWRR	Industrial Waste Resources Regulations
SEPP	Ambient Air Quality

in making a total assessment of the nature and extent of any harm or detriment caused to, or the risk of any possible harm or detriment which may be caused to, any beneficial use made of the site by any industrial processes or activity, waste or substance (including any chemical substance), and

3. completed an environmental audit report in accordance with section 53X of the Act, a copy of which has been sent to the Authority and the relevant planning and responsible authority.

HEREBY STATE that I am of the opinion that

The site is suitable for medium and high density residential use, commercial, industrial and open space land uses, subject to the following conditions attached thereto.

- Any landscaped area or garden bed must have at least 0.5 m thickness of soil below the finished surface, which is demonstrated to be suitable for the site and consistent with IWRF621 as "fill"
- During site development any soils excavated from below the upper soil layer should be removed from the site and should not be reused on site
- Groundwater is not suitable for use. Groundwater should not be extracted for any existing and potential beneficial uses
- Groundwater quality monitoring is required to be undertaken to confirm the identified pollution of groundwater attenuates (reduces) over time

**AJ247575S**

11/10/2011 \$107.50

173



- Groundwater quality requires monitoring in accordance with the Groundwater Quality Management Plan (GWQMP) appended to this Statement
- The GWQMP as attached to this statement must be complied with.

The condition of the site is detrimental or potentially detrimental to any (one or more) beneficial uses of the site. Accordingly, I have not issued a Certificate of Environmental Audit for the site in its current condition, the reasons for which are presented in the environmental audit report. The terms and conditions that need to be complied with before a Certificate of Environmental Audit may be issued are set out as follows:

- The site has been identified as a source of groundwater pollution potentially compromising beneficial use of groundwater, therefore clean up of groundwater so that all protected beneficial uses of groundwater are restored.
- Removal of soils containing elevated concentrations of TPH C<sub>10</sub>-C<sub>36</sub>, copper, lead, nickel, zinc, benzo(a)pyrene and total PAHs so that all potential beneficial uses of land are restored.

**Other related information:**

- The Authority has determined that groundwater has been cleaned up to the extent practicable.
- The Authority has determined that the site is within a Groundwater Quality Restricted Use Zone (GQRUZ).
- Groundwater at the site is not considered suitable for any beneficial use
- In accordance with clause 19(3) of the SEPP (Groundwaters of Victoria), the Authority may require periodic reassessment of the practicability of groundwater clean up.
- In accordance with section 53ZE of the *Environment Protection Act 1970* the owner/occupier of the site must provide a copy of this Statement to any person who becomes or proposes to become an occupier of the site.
- Some soil may contain odours or discoloration below 300 mm depth at some locations on the site. This material is not considered to impact the proposed use of the site.
- Groundwater monitoring bores present at the site and not required for ongoing monitoring should be decommissioned in accordance with the requirements of "Minimum Construction Requirements for Water Bores in Australia", published by the Land and Water Biodiversity Committee (most recent version).
- This statement supersedes that Statement dated 15<sup>th</sup> September 2010.

This Statement forms part of environmental audit report *Environmental Audit Report, 52-54 Cross Street, Footscray. Tonkin & Taylor, 15<sup>th</sup> September, 2010 ref 1361.1*. Further details regarding the condition of the site may be found in the environmental audit report.

DATED 15<sup>th</sup> April 2011

Signed

Luke Cattlin

ENVIRONMENTAL AUDITOR

(Appointed Pursuant to the *Environment Protection Act 1970*)

**AJ247575S**

11/10/2011 \$107.50

173



## **Groundwater Quality Management Plan Requirements**

### **52-54 Cross Street, Footscray**

#### **Introduction**

This Groundwater Quality Management Plan Requirements (GWQMP) has been prepared as an appendix to the Statement of Environmental Audit which was undertaken at 52-54 Cross Street, Footscray. The objective of this document is to outline the general requirements of a groundwater quality management plan (GWQMP) to be developed for the site and approved by an environmental auditor.

The groundwater beneath the site (northern section) is contaminated with chlorinated hydrocarbons primarily trichloroethene (TCE) and petroleum hydrocarbons related to the historical uses both on-site and off-site.

The site is to be subdivided and developed for medium to high density residential use and ongoing groundwater monitoring is required at the site.

This GWQMP has been prepared to set out procedures for the investigation and management of chlorinated hydrocarbon impacted groundwater beneath the site.

#### **2. Responsibility for GWQMP**

Enam Properties Pty Ltd is responsible for the implementation of the GWQMP.

#### **3. Locations to Be Monitored**

The groundwater monitoring wells to be monitored are located at the northern end of the site. The monitoring wells to be sampled are GW5, GW7, GW8, GW9, GW10 and offsite monitoring well GW15. These wells are identified in the attached site plan prepared by Alpha Environmental Pty Ltd.

It should be noted that should any of the monitoring wells be damaged prior to the completion of the required monitoring period, replacement wells will be required to be installed as the same, or similar location.

Monitoring location GW3 reported petroleum hydrocarbon pollution of groundwater. This location is not included in the monitoring program as the petroleum hydrocarbons were assessed to be an isolated area.

#### **4. Ongoing Monitoring Time and Frequency**

The monitoring frequency is determined to be at 3 to 6 monthly intervals.

Groundwater monitoring is to be conducted until such a time as a definite decreasing trend is observed with the dissolved phase concentrations. Such a decreasing trend should be assessed using a Mann Kendall (or similar comparable method) trend evaluation of the data set that should include data from at least three monitoring events post May 2010.

#### **5. Gauging and Sampling**

All groundwater monitoring works are to be conducted in accordance with EPA Publication 669, Groundwater Sampling Guidelines.

Gauging of water levels within each well is to be undertaken as part of the each monitoring round to confirm groundwater flow direction and hydraulic gradient.

**AJ247575S**

11/10/2011 \$107.50

173



The groundwater monitoring wells should be purged using low flow purging equipment before sampling. During purging, the following water quality parameters should be monitored using a calibrated water quality meter and a flow cell:

- Redox (+/- 10%)
- Dissolved oxygen (+/- 10%);
- Electrical conductivity (+/- 3%);
- pH (+/- 0.05); and
- Temperature (+/- 1 °C)

Purging of groundwater should continue until the above water quality parameters stabilise within acceptable limits. The sampling should be conducted with full adherence to quality control procedures as outlined in the EPA publication.

The groundwater samples should be analysed for a volatile organic compound (VOC) screen.

Groundwater samples should also be analysed for the following natural attenuation (NA) and physicochemical parameters:

- Total Dissolved Solids;
- Major cations (calcium, potassium, magnesium and sodium);
- Major anions (sulphate, chloride, carbonate and bicarbonate);
- Natural attenuation parameters (ferrous iron, total iron and nitrate); and
- Ethene and ethane.

## 6. Evaluation of Results

The results should be compared with the previous monitoring data and trend analysis conducted for the key COPCs at each monitoring location.

For the chlorinated hydrocarbon plume in the north of the site, the following trigger levels had been established to indicate a potential unacceptable risk to site occupants (indoor air inhalation residential land use scenario) as adopted for the previous audit sites (12-36 and 68 Cross Street) adjacent sites to the east and west:

- |                          |                  |
|--------------------------|------------------|
| • Trichloroethene        | 17,000 µg/L;     |
| • Cis-1,2-dichloroethene | 22,000 µg/L; and |
| • Vinyl chloride         | 200 µg/L.        |

If the sample analyses results show exceedences of any trigger values in any of the wells, then a contingency plan will need to be implemented. EPA should also be alerted to exceedence of the trigger values.

## 7. Contingency Plan

A contingency plan will need to be implemented should the data set not suggest a decreasing trend or the concentrations approach 50% of the trigger levels provided above. The contingency plan will need to be developed and approved by an auditor.

## 8. Completion of GQMP

The determination for cessation of the GWQMP is to be via the presentation of the data to an environmental auditor for review of the data developed. The auditor should consult with EPA regarding the data and a methodology for cessation of monitoring at the site. This auditor will review the results of the groundwater monitoring conducted under this GWQMP and will assess the risks posed to beneficial uses of the groundwater and land segment of the environment.



**AJ247575S**

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S.

**Executed as a Deed**

**SIGNED SEALED AND DELIVERED** on

behalf, and with the authority, of the

**MARIBYRNONG CITY COUNCIL** by Jules Gifford

~~David Walmsley~~, <sup>Acting</sup> Manager Strategy and Economic Development, in the exercise of a power conferred by an Instrument of Delegation dated 18 November 2005, in the presence of:

Jules Gifford

Adrian Palmer  
Witness

**EXECUTED by ECNAM PROPERTIES PTY LTD**

(ACN 005 500 756) by being signed by

those persons who are authorised to sign for the company

Director [Signature] Full Name Anna Mance

Usual Address 116 Raglan St South MELB

Director/Secretary Lorraine Full Name LORRAINE MANCE

Usual Address 116 RAGLAN ST SOUTH MELBOURNE

**EXECUTED by ERITH NOMINEES PTY LTD**

(ACN 005 023 156) by being signed by

those persons who are authorised to sign for the company

Director [Signature] Full Name Anna Mance

Usual Address 116 Raglan St South MELB

Director/Secretary Lorraine Full Name LORRAINE MANCE

Usual Address 116 RAGLAN ST SOUTH MELBOURNE

# Imaged Document Cover Sheet


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Document Identification	<b>PS643386M</b>
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<b>PLAN OF SUBDIVISION</b>		<b>STAGE No.</b> --	<b>LRS USE ONLY</b>  <b>EDITION 1</b>	<b>PLAN NUMBER</b>  <b>PS 643386M</b>
<b>LOCATION OF LAND</b> <b>PARISH:</b> CUT PAW PAW  <b>TOWNSHIP:</b> --- <b>SECTION:</b> 13 <b>CROWN ALLOTMENT:</b> 5 (PART) <b>CROWN PORTION:</b> 8  <b>TITLE REFERENCES:</b> VOL FOL  <b>LAST PLAN REFERENCE:</b> LOT A PS.643387K <b>POSTAL ADDRESS:</b> 52-54 CROSS STREET <b>(at time of subdivision)</b> FOOTSCRAY 3011  <b>MGA CO-ORDINATES:</b> E: 313590 ZONE: 55 <b>(of approx. centre of plan)</b> N: 5814320 DATUM: GDA94		<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> <b>COUNCIL NAME:</b> MARIBYRNONG CITY COUNCIL <b>REF:</b> TP293/2011 1. THIS PLAN IS CERTIFIED UNDER SECTION 6 OF THE SUBDIVISION ACT 1988. 2. THIS PLAN IS CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988. DATE OF ORIGINAL CERTIFICATION UNDER SECTION 6 / / . 3. THIS IS A STATEMENT OF COMPLIANCE ISSUED UNDER SECTION 21 OF THE SUBDIVISION ACT 1988. <b>OPEN SPACE</b> (i) A REQUIREMENT FOR PUBLIC OPEN SPACE UNDER SECTION 18 OF THE SUBDIVISION ACT 1988 HAS / HAS NOT BEEN MADE. (ii) THE REQUIREMENT HAS BEEN SATISFIED. (iii) THE REQUIREMENT IS TO BE SATISFIED IN STAGE  <b>COUNCIL DELEGATE</b> <b>COUNCIL SEAL</b> <b>DATE</b> / / .  <b>RE-CERTIFIED UNDER SECTION 11(7) OF THE SUBDIVISION ACT 1988</b> <b>COUNCIL DELEGATE</b> <b>COUNCIL SEAL</b> <b>DATE</b> / / .		
<b>VESTING OF ROADS OR RESERVES</b>				
<b>IDENTIFIER</b>	<b>COUNCIL/BODY/PERSON</b>			
ROAD R1	MARIBYRNONG CITY COUNCIL			
<b>NOTATIONS</b>				
<b>DEPTH LIMITATION</b> DOES NOT APPLY  <b>NOTES:</b>  <b>SURVEY:</b> THIS PLAN IS BASED ON SURVEY		<b>STAGING</b> THIS IS NOT A STAGED SUBDIVISION PLANNING PERMIT No.  <b>THIS IS A SPEAR PLAN</b> LOTS 1 TO 609 (BOTH INCLUSIVE) HAVE BEEN OMITTED FROM THIS PLAN  THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s). PM226, MMB51 LAND NOT IN A PROCLAIMED SURVEY AREA		
<b>EASEMENT INFORMATION</b>				<b>NOTATIONS</b>
<b>LEGEND:</b> A - APPURTENANT E - ENCUMBERING EASEMENT R - ENCUMBERING EASEMENT (ROAD)				<b>ESTATE:</b> --- <b>STAGE:</b> 61 <b>No. OF LOTS:</b> 12 <b>AREA:</b> 2918 m <sup>2</sup> <b>MEL:</b> 41 :J:4
<b>EASEMENT REFERENCE</b>	<b>PURPOSE</b>	<b>WIDTH (METRES)</b>	<b>ORIGIN</b>	<b>LAND BENEFITED OR IN FAVOUR OF</b>
(E-1)	PARTY WALL	0.12	THIS PLAN	RELEVANT ABUTTING LOT ON THIS PLAN
				<b>LRS USE ONLY</b>  STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT RECEIVED <input checked="" type="checkbox"/>  DATE 25 / 2 / 15
				<b>LRS USE ONLY</b>  <b>PLAN REGISTERED</b>  <b>TIME</b> 2:55  <b>DATE</b> 11 / 3 / 2015  S. Bobko ASSISTANT REGISTRAR OF TITLES
				SHEET 1 OF 3 SHEETS
 <b>Breese Pitt Dixon Pty Ltd</b> 1/19 Cato Street Hawthorn East Vic 3123 Ph: 8823 2300 Fax: 8823 2310 www.bpd.com.au info@bpd.com.au		<b>LICENSED SURVEYOR:</b> SIMON P COX <b>SIGNATURE:</b> . . . . DIGITALLY SIGNED . . . . <b>REF:</b> 7352/61		DATE / / <b>COUNCIL DELEGATE SIGNATURE</b> ORIGINAL SHEET SIZE A3
<b>CHECKED</b> N.O	<b>DATE:</b> 20/06/14	<b>VERSION:</b> 4		

NOTE: ALL EASEMENTS ON THIS PLAN ARE PARALLEL  
AND PERPENDICULAR TO RELEVANT TITLE  
BOUNDARIES AND HAVE BEEN EXAGGERATED  
FOR CLARITY PURPOSES

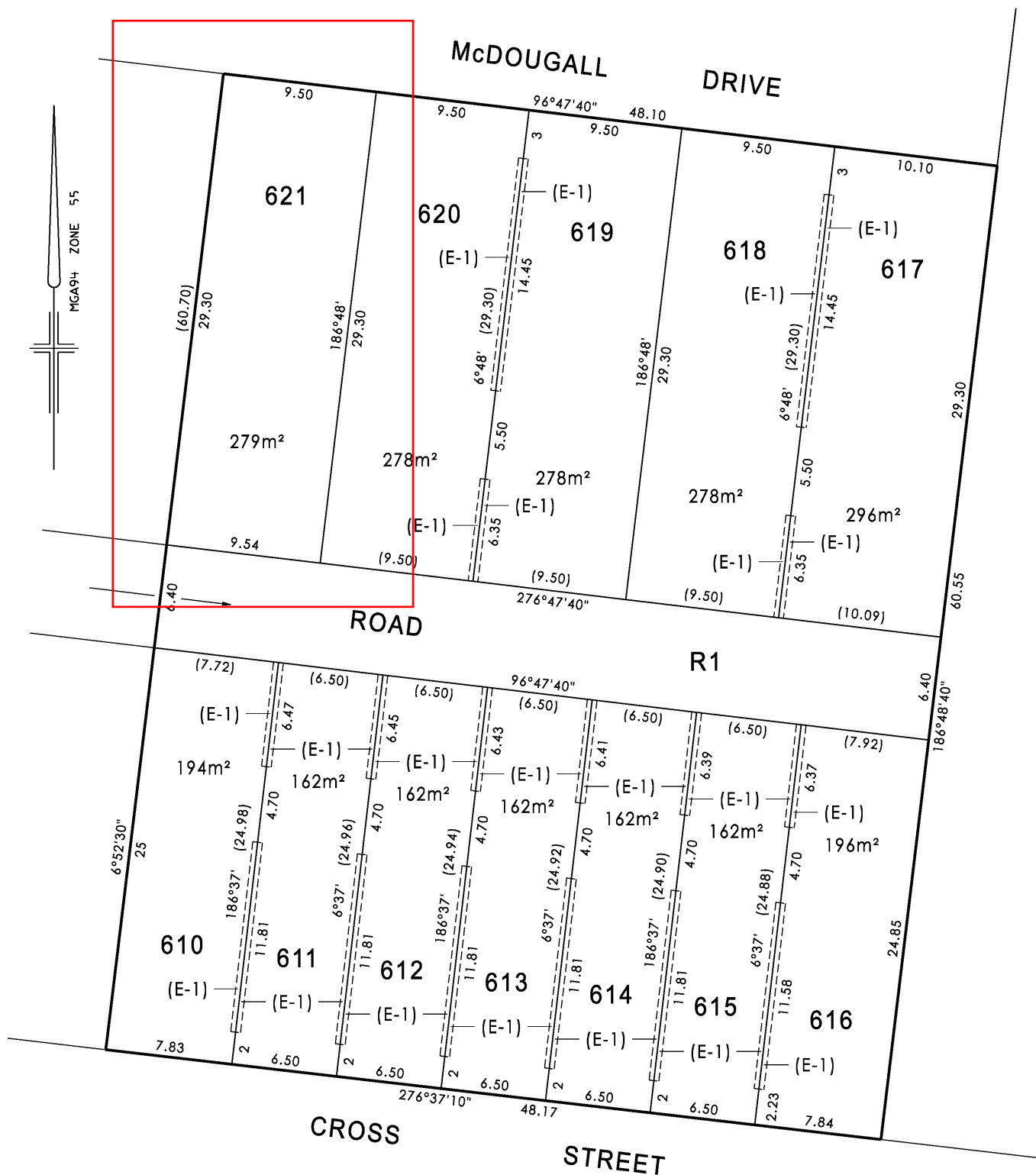
# PLAN OF SUBDIVISION

STAGE No.

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PLAN NUMBER

PS 643386M

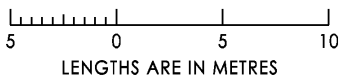


Breese Pitt Dixon Pty Ltd  
1/19 Cato Street  
Hawthorn East Vic 3123  
Ph: 8823 2300 Fax: 8823 2310  
www.bpd.com.au info@bpd.com.au

ORIGINAL  
SHEET  
SIZE  
A3

SCALE  
1:250

SCALE



LICENSED SURVEYOR: SIMON P COX

SIGNATURE: ..... DIGITALLY SIGNED ...

REF: 7352/61

VERSION: 4

SHEET : 2

DATE / /  
COUNCIL DELEGATE SIGNATURE

## PLAN OF SUBDIVISION

STAGE No.

--

PLAN NUMBER

PS 643386M

## CREATION OF RESTRICTION A

Land to Benefit: Lots 610 to 621 (both inclusive) on this plan.

Land to be Burdened: Lots 610 to 621 (both inclusive) on this plan.

In this restriction Transferor means Erith Nominees Pty Ltd

## Description of Restriction

The registered proprietor or proprietors for the time being of any burdened lot must not and must not allow any other person to:

- (a) erect on any lot, any fencing unless it is first approved by the Transferor ;
- (b) remove any fencing previously erected on any lot by the Transferor unless the fencing removed is replaced by fencing which is first approved by the Transferor;
- (c) demolish any building or improvement (or part of a building or improvement) on any lot which was previously constructed by the Transferor, unless the building or improvement (or relevant part thereof) is replaced by a building or improvement which is first approved by the Transferor;
- (d) erect or allow to be erected on any lot, any building or improvement where a building or improvement has previously been erected by the Transferor, other than a building or improvement which is first approved by the Transferor. No more than one dwelling can be constructed on any lot;
- (e) add any extension to, or make any structural alteration to, any building or improvement previously constructed by the Transferor on any lot, other than any extension or structural alteration which has first been approved by the Transferor;
- (f) paint, render or otherwise alter the external façade of any building or improvement on any lot unless first approved by the Transferor;
- (g) place on any lot, any caravan, boat, trailer, plant, machinery or any vehicle having a carrying capacity of one tonne or more, on any part of any lot, except where any such item is not visible from public areas;
- (h) place any clothes drying or airing facilities on any part of any lot, except where such facilities are not visible from public areas;
- (i) erect or affix any sign or notice to any part of any lot, (including any "For Sale" signs) unless first approved by the Transferor;
- (j) affix any external awnings or shutters to any part of a building or improvement on any lot, except where any such external awnings or shutters are not visible from public areas;
- (k) affix any window furnishings to any window within any lot, other than any window furnishings detailed in the specification below or which has first been approved by the Transferor, or tint any external window on any lot except where such window is not visible from public areas;
- (l) erect any shed or pergola on any lot, except where such shed or pergola is not visible from public areas;
- (m) erect or affix any antenna, satellite dish, air conditioning or heating unit on or to any part or any building or improvement on any lot, except where any such item is not visible from public areas or has first been approved by the Transferor;
- (n) use any shed or garage erected on any lot, for anything other than residential purposes and in particular not to use any shed or garage erected on any lot for office or commercial purposes;
- (o) paint or otherwise alter the original colour or type of roofing material of any building constructed by the Transferor on any lot;
- (p) allow the state of repair of any landscaped area at the front of any lot to fall below the standard as at the date of first occupation of the said lot, or to become unkept or fall into a state of disrepair;
- (q) erect on any lot any building or improvement less than the minimum separation distance prescribed under the relevant fire rating provisions of the Building Code of Australia (or any successor or replacement provisions) from any building or improvement on an adjoining lot; and
- (r) allow garbage, recycling or other refuse receptacles to be stored in public view except when placed for collection.
- (s) Each of these restrictions is a separate and distinct restriction, and if any restriction or its application to any person or circumstance becomes invalid or unenforceable then the remaining restrictions will not be affected and each remaining restriction will be valid and enforceable to the fullest extent permitted by law.
- (t) These restrictions will cease and have no further effect on and from the day which is 10 years after registration of this plan.

For the purposes of restriction (k) the 'specifications' are as follows;

SPECIFICATIONSINTERNAL WINDOW FURNISHINGS

Internal window furnishings must be:

- (i) Sunscreen Roller Blinds;
- (ii) Venetian Blinds;
- (iii) Roman Blinds;
- (iv) Hanging Blinds;
- (v) Vertical Blinds;
- (vi) Timber Venetians; or
- (vii) Curtains

Except for Timber Venetians, all blinds or curtains must have a white, cream or grey blackout backing fabric where visible from outside the burdened lot.

Timber Venetians must be one of the following colours:

- cedar/timber with a natural grade lacquer
- white
- charcoal



Breese Pitt Dixon Pty Ltd  
1/19 Cato Street  
Hawthorn East Vic 3123  
Ph: 8823 2300 Fax: 8823 2310  
www.bpd.com.au info@bpd.com.au

SHEET : 3

ORIGINAL

SHEET  
SIZE  
A3

LICENSED SURVEYOR: SIMON P COX

SIGNATURE: . . . . . DIGITALLY SIGNED . . .

REF: 7352/61

VERSION: 4

DATE / / .

COUNCIL DELEGATE SIGNATURE



**Plan of Subdivision PS643386M**  
**Certification of plan by Council (Form 2)**

SUBDIVISION (PROCEDURES) REGULATIONS 2011

SPEAR Reference Number: S015425E  
Plan Number: PS643386M  
Responsible Authority Name: Maribyrnong City Council  
Responsible Authority Reference Number 1: TP407/2011  
Surveyor's Plan Version: 4

**Certification**

☒ This plan is certified under section 6 of the Subdivision Act 1988

**Public Open Space**

A requirement for public open space under section 18 of the Subdivision Act 1988

- ☐ Has been made and the requirement has not been satisfied at Certification
- ☐ Has been made and the requirement has been satisfied at Statement of Compliance (Document updated 04/02/2015)

Digitally signed by Council Delegate: Martine Rolley

Organisation: Maribyrnong City Council

Date: 22/01/2015



# Refreshing Homes Pty Ltd

ABN 816 090 237 34

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## Town Planning Report

Project: Propose Home Extension & Renovation

For: Mark Gallon

Address: 88 McDougall Drive, Footscray

Date: 5 December 2024

## Document Information

<b>Issue Date</b>	5 Dec 2024	<b>Prepared For</b>	Mark Gallon
<b>Prepared By</b>	TT	<b>Project Name</b>	Gallon Rumpus at 88 McDougall Drive
<b>Reviewed By</b>		<b>Project Number</b>	2409-02

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## Table of Contents

<b>1. EXECUTIVE SUMMARY .....</b>	<b>3</b>
<b>2. INTRODUCTION.....</b>	<b>5</b>
2.1 PERMIT REQUIREMENT .....	5
2.2 SUPPORTING DOCUMENTATION .....	6
<b>3. SITE CONTEXT .....</b>	<b>8</b>
3.1 THE SUBJECT SITE.....	8
<b>4. THE PROPOSAL.....</b>	<b>9</b>
<b>5. PLANNING POLICY FRAMEWORK / CONTROLS .....</b>	<b>10</b>
5.1 CLAUSE 15.01-5L NEIGHBOURHOOD CHARACTER.....	10
5.2 CLAUSE 32.08 GENERAL RESIDENTIAL ZONE .....	11
5.3 CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY.....	13
5.4 CLAUSE 45.03 ENVIRONMENTAL AUDIT OVERLAY .....	16
5.5 CLAUSE 45.06 DEVELOPMENT CONTRIBUTIONS PLAN OVERLAY .....	17
5.6 CLAUSE 54 RESCODE .....	19
<b>6. DESIGN RESPONSE .....</b>	<b>20</b>
6.1 COVENANT PS 643386M .....	20
6.2 SECTION 173 – AJ 247575S .....	22
6.3 CLAUSE 15.01-5L NEIGHBOURHOOD CHARACTER.....	24
6.4 CLAUSE 32.08 GENERAL RESIDENTIAL ZONE .....	28
6.5 CLAUSE 43.04 DEVELOPMENT PLAN OVERLAY.....	29
6.6 CLAUSE 45.03 ENVIRONMENTAL AUDIT OVERLAY .....	31
6.7 CLAUSE 45.06 DEVELOPMENT CONTRIBUTION PLAN OVERLAY .....	32
6.8 CLAUSE 54 DECISION GUIDELINE .....	33
<b>7. CONCLUSION .....</b>	<b>48</b>

## 1. Executive Summary

This report supports an application to construct a small, first-floor addition (a rumpus room) above an existing garage at 88 McDougall Drive, Footscray.

The proposal is subject to several planning controls and overlays, specifically the General Residential Zone (Clause 32.08), the Development Plan Overlay (Clause 43.04), the Environmental Audit Overlay (Clause 45.03), and ResCode provisions (Clause 54), including Standards A10 and A11.

Key considerations addressed in the report include:

- **Covenant PS 643386M:** The covenant, set to expire on 11 March 2025, is likely to hold little significance for the beneficiary, Erith Nominees Pty Ltd.
- **Neighbourhood Character:** The design respects and reinforces the existing urban form, reflecting the industrial heritage and contemporary aesthetic of the Banbury Village precinct. Height, massing, and materiality are carefully chosen to integrate seamlessly with surrounding dwellings.
- **Development Plan Overlay:** The proposal constitutes a minor modification to an existing approved development plan. It does not undermine the strategic vision established for the precinct and maintains consistency with the plan's objectives for scale, form, and land use.
- **Environmental Management:** Although the site is within an Environmental Audit Overlay and previously subject to contamination management, the limited nature of the proposed works and adherence to established soil handling protocols ensure no significant increase in environmental risk. The project team seeks Council's discretion to waive any preliminary risk screen assessments, given the low-impact scope of the addition.
- **Amenity Considerations:** Potential amenity impacts such as overlooking, overshadowing, and bulk have been minimized through thoughtful design solutions. Variations to setback (A10) and boundary wall height (A11) standards are justified by existing conditions and contextual factors, with negligible impact on adjoining properties.

In conclusion, the proposal aligns with planning policy objectives, remains consistent with the approved development plan, protects neighbourhood character, manages environmental

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considerations responsibly, and achieves a high standard of amenity for the site and its surroundings. The application respectfully seeks Council's support and approval.

## 2. Introduction

This planning report, prepared by Refreshing Homes Pty Ltd on behalf of Mr. Mark Gallon, supports a planning permit application for the proposed renovation and addition at 88 McDougall Drive, Footscray.

The subject site is located within the Banbury Village precinct and encompasses approximately 278 sqm. It is currently occupied by a double-storey dwelling at the front, private open space in the middle, and a single-storey garage at the rear.

The proposed works involve constructing a 41.7 sqm rumpus room addition above the existing garage, as well as adding an external staircase to provide access to this new structure.

As noted, the subject site lies within the Banbury Village precinct, an area recognized for its evolving urban character and the integration of industrial heritage features. The proposal seeks to complement the local architectural language by introducing a modest new volume that aligns with the established built form, scale, and materiality prevalent throughout the neighbourhood.

This application involves a registered restriction under Covenant PS 643386M, which requires obtaining the approval of Erith Nominees Pty Ltd for any proposed extension. In addition, the amendment to the existing Development Plan acknowledges and respects the strategic objectives underpinning the precinct's future growth and evolution.

The design respects both the General Residential Zone provisions and the strategic outcomes envisioned under the relevant Development Plan Overlay. While the proposed works will trigger certain permit requirements, each element has been carefully considered to ensure a balanced outcome that maintains residential amenity, upholds environmental responsibility, and complies with established planning controls.

The following sections detail the relevant permit triggers, the applicable planning framework, environmental considerations, and the ways in which the proposal addresses these requirements.

### 2.1 Permit Requirement

The **Maribyrnong Planning Scheme** requires a planning permit for the following:

#### 2.1 Permit Requirement

A planning permit is required due to several triggers arising from the applicable zoning and overlay controls, as well as specific site and design considerations:

**Covenant PS 643386M:**

The covenant requires that the benefitted party, Erith Nominees Pty Ltd, be notified of any proposed extension. While the covenant is set to expire on 11 March 2025, and meaningful engagement with Erith Nominees Pty Ltd may be unlikely, the applicant requests that Council proceed with notifying the beneficiary as part of the notice and review process.

#### **Neighbourhood Residential Zone (Clause 32.08-5):**

The subject site is located in a Neighbourhood Residential Zone. A permit is required to construct or extend one dwelling on a lot less than 300m<sup>2</sup>. As this proposal involves adding a first-floor to the garage on a 278 m<sup>2</sup> site, it triggers a permit requirement under this clause.

#### **Development Plan Overlay (Clause 43.04-2):**

The site is subject to a Development Plan Overlay, which requires that any new development or modification to an approved development plan be undertaken with a permit. The proposed amendment to the development plan to allow the rumpus addition aligns with the existing strategic vision but formally necessitates a planning permit.

#### **Environmental Audit Overlay (Clause 45.03-1):**

Land within the Environmental Audit Overlay is subject to specific requirements to ensure that potentially contaminated land is suitable for residential use. While a Preliminary Risk Screen Assessment is typically required, given the minor nature of the proposed works and minimal soil disturbance, the applicant seeks Council's consideration to waive this requirement.

#### **ResCode Standards (Clause 54) – Standards A10 and A11:**

The proposal will result in a minor variation to the side and rear setback requirements (Standard A10) and wall height on the boundary (Standard A11). These variations trigger permit assessment under ResCode and require justification demonstrating that the overall outcome remains consistent with the desired neighbourhood character and amenity objectives.

## **2.2 Supporting Documentation**

This application is supported by the following documents:

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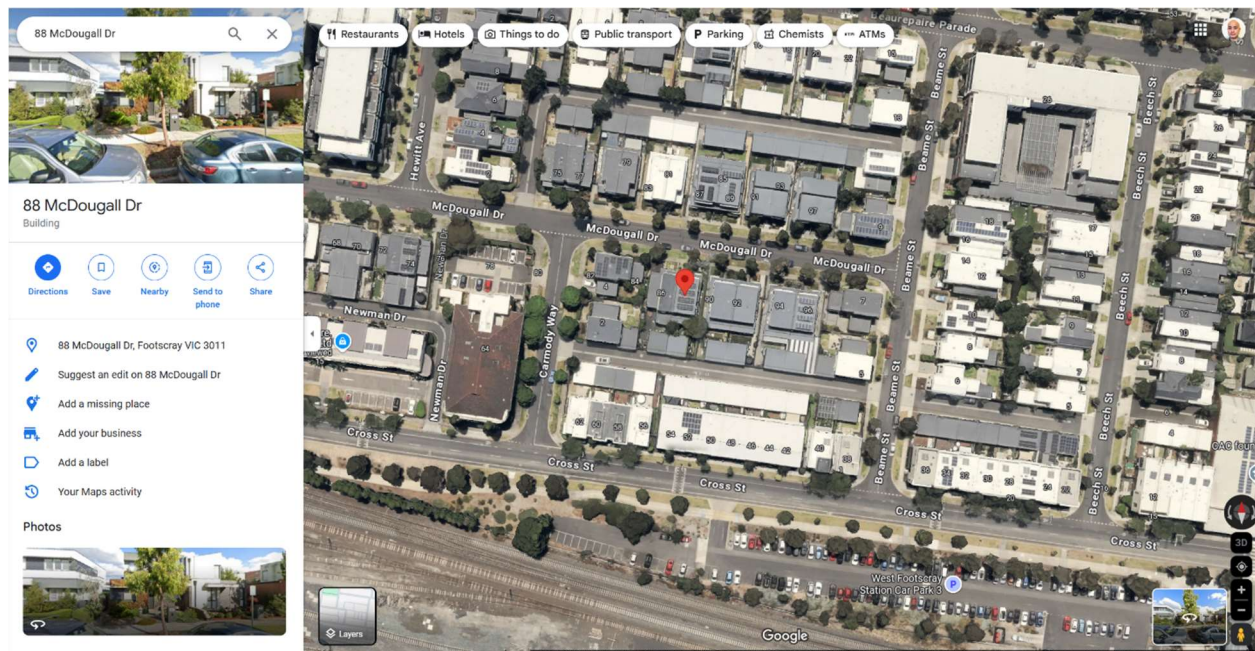
	Document	Prepared By
1	Planning Permit Application Form	Refreshing Homes Pty Ltd
2	Certificate of Title	Included
3	Town Planning Report	Refreshing Homes Pty Ltd
4	Architectural Drawings	Refreshing Homes Pty Ltd

By addressing the requirements of the Maribyrnong Planning Scheme and demonstrating compliance through detailed documentation, this proposal ensures minimal impact on the neighbouring properties and enhances the existing residential amenity.

## 3. Site Context

### 3.1 The Subject Site

Location	88 McDougall Drive, Footscray VIC 3011
Site Area	Approximately 278 sqm
Easement	None
Covenant	<b>PS 643386M</b> – <u>Further Discussion in Section 6.1</u>
Section 173	<b>AJ 247575S</b> – <u>Further Discussion in Section 6.2</u>
Existing Built Form	The site consists of a double-storey dwelling at the front, a single-storey garage at the rear, and private open space in the centre.
Vehicle access	Vehicle access is provided via a rear laneway leading to the existing garage.
Vegetation	The private open space features citrus trees. Small ornamental shrub along the boundary fence.
Zone	The subject site is located within a General Residential Zone with a Schedule 1 variation
Overlay	The subject site is affected by:  Development Plan Overlay (Clause 43.04) Environmental Audit Overlay (Clause 45.03)





## 4. The Proposal

The proposal involves constructing a new rumpus room above the existing double garage at the rear of 88 McDougall Drive. By adding a modest upper-level volume, the project retains the fundamental footprint of the property while creating valuable additional space for flexible use.

This upper-floor addition will integrate with the existing built form, employing a contemporary cube-like design and compatible materials that complement the established streetscape character of the Banbury Village precinct. Positioned at the rear laneway interface, the rumpus room will not significantly alter the primary presentation of the dwelling from the street.

Internally, the addition will provide a practical and adaptable space suitable for storage, hobbies, or creative pursuits. Careful attention to layout, window placement, and material quality ensures the new rumpus room enhances the overall functionality and comfort of the home.

## 5. Planning Policy Framework / Controls

### 5.1 Clause 15.01-5L Neighbourhood Character

Policy	Clause 15.01-5S – Neighbourhood Character
A	<p><b>Objective</b></p> <p>To recognise, support and protect neighbourhood character, cultural identity, and sense of place.</p> <p>Support developments that respects the existing neighbourhood character or contributes to a preferred neighbourhood character</p>

## 5.2 Clause 32.08 General Residential Zone

Zone	Clause 32.08 – General Residential Zone
A	<p><b>32.08 Purpose</b></p> <ul style="list-style-type: none"> <li>- To implement the Municipal Planning Strategy and the Planning Policy Framework.</li> <li>- To encourage development that respects the neighbourhood character of the area.</li> <li>- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.</li> </ul>
B	<p><b>32.08-2 Table of uses</b></p> <p>Section 1 – Permit not required</p> <ul style="list-style-type: none"> <li>- Dwelling</li> </ul>
C	<p><b>32.08-3 Subdivision</b></p> <p>Not applicable</p>
D	<p><b>32.08-4 Minimum Garden area requirement</b></p> <p>Not applicable because the site is smaller than 400sqm</p>
E	<p><b>32.08-5 Construction and extension of one dwelling on a lot</b></p> <p><b>Permit Trigger</b> – A permit is required to construct or extend one dwelling on a lot less than 300sqm.</p> <p>A development must meet the requirements of Clause 54.</p> <p>This is not a VicSmart application, as it also seeks approval under Clause 54 - A10 for side and rear setbacks.</p>
F	<p><b>Clause 32.08-6 Construction and extension of a small second dwelling</b></p> <p>Not applicable</p>
G	<p><b>Clause 32.08-7 Construction and extension of two or more dwellings on a lot</b></p> <p>Not applicable</p>

H	<p><b>32.09-8 Requirements of Clause 54</b></p> <p>A Schedule to this zone may specify the requirements of:</p> <ul style="list-style-type: none"> <li>- Standard A3, A5, A6, A10, A11, A17 and A20 of Clause 54 of this scheme</li> </ul> <p>If a requirement is not specified in a schedule to this zone, the requirement set out in the relevant standard of Clause 54 applies.</p>
I	<p><b>32.08-9 Residential aged care facility</b></p> <p>Not applicable</p>
J	<p><b>32.08-10 Section 2 use</b></p> <p>Not applicable</p>
K	<p><b>32.09-11 Maximum building height requirement</b></p> <ul style="list-style-type: none"> <li>- The building height must not exceed 9m; and</li> <li>- The building must contain no more than 2 storeys at any point.</li> </ul> <p>The proposal complies with Clause 32.09-11</p>

Schedule 1	<b>Schedule 1 Variations</b>
L	<p><b>1.0 Neighbourhood character objectives</b></p> <p>None specified</p>
M	<p><b>3.0 Requirement of Clause 54</b></p> <p>No variation to Clause 32.08</p>

### 5.3 Clause 43.04 Development Plan Overlay

Zone	<b>Clause 43.04 – Development Plan Overlay</b>
	<p><b>43.04 Purpose</b></p> <ul style="list-style-type: none"> <li>- To implement the Municipal Planning Strategy and the Planning Policy Framework</li> <li>- To identify areas which require the form and conditions of future use and development to be shown on a development plan before a permit can be granted to use or develop the land.</li> </ul>
	<p><b>43.04-1 Objectives</b></p> <p>A schedule to this overlay may specify objectives.</p>
	<p><b>43.04-2 Requirement before a permit is granted</b></p> <p><b>Permit Trigger</b> – A permit must not be granted to use or subdivide land, construct a building or construct or carry out works until a development plan has been prepared to the satisfaction of the responsible authority.</p> <p>A permit granted must:</p> <ul style="list-style-type: none"> <li>- Be generally in accordance with the development plan.</li> </ul>
	<p><b>43.04-3 Exemption from notice and review</b></p> <p>Subject to Council’s review and discretion.</p>

Schedule	<b>Schedule 10 Variations</b>
	<p><b>1.0 Objectives</b></p> <p>None</p>
	<p><b>2.0 Requirement before a permit is granted</b></p> <p>Responsibility authority is satisfied that the works will not prejudice the future use or development of the land.</p>
	<p><b>3.0 Conditions and requirements for permits</b></p>

	<p><b>Open Space</b></p> <p>Not applicable in this application</p> <p><b>Integrated Transport Plan</b></p> <p>Not applicable in this application</p> <p><b>Adverse Amenity Impacts</b></p> <p>To the satisfaction of the responsible authority.</p> <p><b>Conservation Management</b></p> <p>Not applicable in this application</p> <p><b>Provide Design Guidelines</b></p> <p>Not applicable in this application</p> <p><b>Environmental Management Plan</b></p> <p>Not applicable in this application, other than complying with Section 173 under the Certificate of Title</p> <p><b>Developer Contribution</b></p> <p>Not applicable in this application</p>
	<p><b>4.0 Requirements for the Development Plan</b></p> <p><b>Amenity Impacts Requirements</b></p> <p>The amenities considerations listed under this section are not applicable to this application.</p>

	<p><b>Environmental Audit Requirements</b></p> <p>Not applicable in this application</p> <p><b>Submission of Plans</b></p> <p>This application solely pertains to the siting and approved design guidelines outlined in the existing Development Plan related to 88 McDougall Drive</p>
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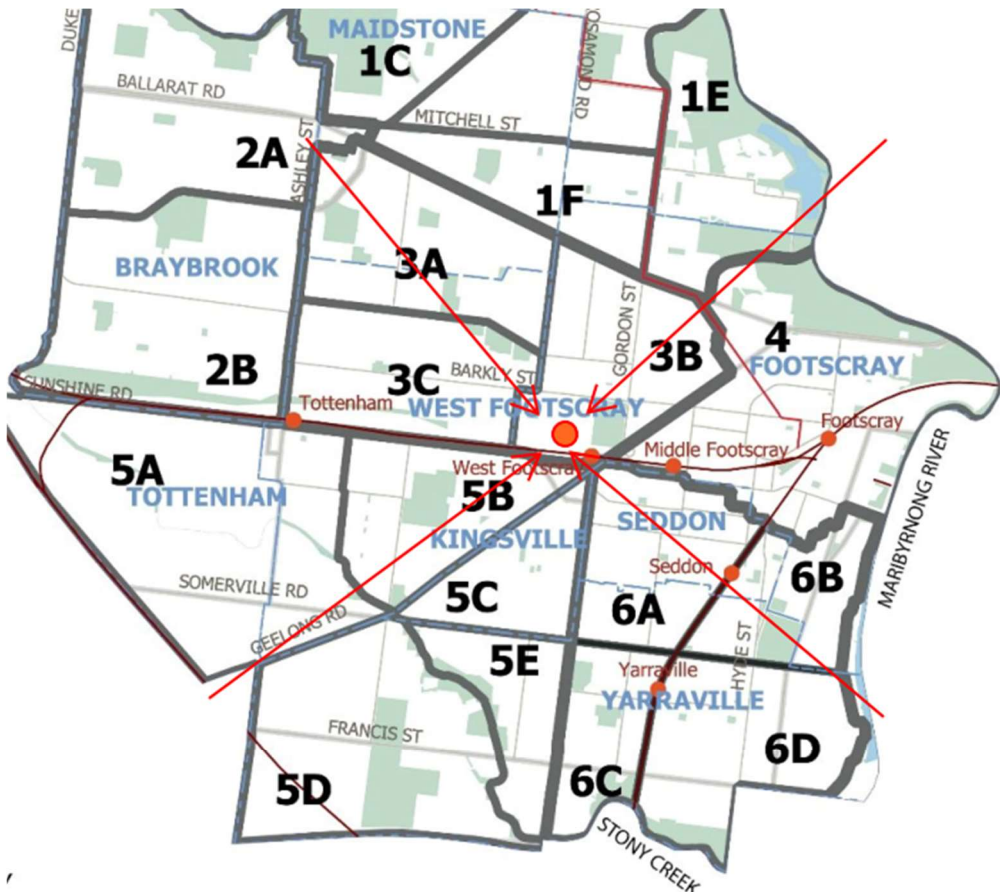
## 5.4 Clause 45.03 Environmental Audit Overlay

Particular Provision	<b>Clause 45.03 – Environmental Audit Overlay</b>
	<p><b>45.03 Purpose</b></p> <ul style="list-style-type: none"> <li>- To implement the Municipal Planning Strategy and the Planning Policy Framework</li> <li>- To ensure that potentially contaminated land is suitable for a use which could be significantly adversely affected by any contamination.</li> </ul>
	<p><b>45.03 Application</b></p> <p>This provision applies to land in an Environmental Audit Overlay and applies whether or not a permit is required.</p>
	<p><b>45.03-1 Requirements</b></p> <p><b>Permit Trigger:</b></p> <p>Before the construction or carrying out of buildings and works, a preliminary risk screen assessment statement in accordance with the EPA2017 must be issued stating that an environmental audit is not required for the use.</p> <p><b>Exemption from requirement</b></p> <p>The requirement... does not apply to the construction or carrying out of buildings and works if:</p> <ul style="list-style-type: none"> <li>- The buildings and works are associated with an existing sensitive use ... .. and the soil is not disturbed.</li> </ul>



## 5.5 Clause 45.06 Development Contributions Plan Overlay

Particular Provision	<b>Clause 45.06 – Development Contribution Plan</b>
	<b>45.06 Purpose</b> <ul style="list-style-type: none"> <li>- To implement the Municipal Planning Strategy and the Planning Policy Framework</li> <li>- To identify areas which require the prepare</li> </ul>

Schedule	<b>Schedule 2 Variations</b>																																																																																				
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	Area 3B	2,054	253	2,307

## 5.6 Clause 54 ResCode

Particular Provision	Clause 54 – ResCode
	<p><b>54 Purpose</b></p> <p>To implement the Municipal Planning Strategy and the Planning Policy Framework</p> <p>To achieve residential development that respects the existing neighbourhood character or which contributes to a preferred neighbourhood character.</p> <p>To encourage residential development that provides reasonable standards of amenity for existing and new residents.</p> <p>To encourage residential development that is responsive to the site and the neighbourhood.</p>
	<p><b>Application</b></p> <p>The provisions of this clause apply to an application to construct a building associated with one dwelling on a lot.</p> <p><b>Applicable Clauses:</b></p> <p>All of Clause 54 except Clauses 54.03-7 and 54.03-8</p>
	<p><b>Requirements</b></p> <p>If a development meets standard A3, A4, A5, A6, A9, A9.1, A10, A11, A12, A13, A14, A15, A16, A17 or A20, it is deemed to meet the objective for that standard.</p> <p>Where standard A3, A4, A5, A6, A9, A9.1, A10, A11, A12, A13, A14, A15, A16, A17 or A20 is met the decision guidelines for that standard do not apply to the application.</p>
	<p><b>Permit Trigger</b></p> <p><b>Standard A10</b> – Side and rear setback objective</p> <p><b>Standard A11</b> – Walls on boundaries objective</p>

## 6. Design Response

Section 6 addresses the Decision Guidelines concerning the identified permit triggers, evaluating them based on the Planning Policy Framework and controls outlined in Section 5 of this report.

### 6.1 Covenant PS 643386M

#### Background

The document '00745574280122024101309590001.PDF' (submitted as part of this application) confirms that:

- There are no easements affecting the subject site.
- A general restriction is registered on the Certificate of Title (as shown in '00745574280012024101309590001') and is set to expire on 11 March 2025.
- Under the terms of this restriction, any proposed extension requires the approval of Erith Nominees Pty Ltd.

#### Procedural Request

Should Council determine that the proposed addition to the existing garage (to create a rumpus area) is suitable for public notice and review, we respectfully request that Council issue the required notification to Erith Nominees Pty Ltd.

#### Justification

- The relevant restriction will expire on 11 March 2025. Given that any approvals, construction activities, or occupancy associated with this proposal will occur well after this date, the practical influence of Erith Nominees Pty Ltd in this matter is expected to be minimal.
- We contacted Breese Pitt Dixon (BPD) Pty Ltd (the surveyor who prepared the original Plan of Subdivision) to identify a current agent or representative for Erith Nominees Pty Ltd. BPD indicated that no such agent or representative is assigned for timely review and comment. Correspondence confirming this is attached as '20241206 Communicate with BPD'.
- A basic company search from the ASIC registry (attached as '2d3234333238373933333') confirms that Erith Nominees Pty Ltd remains active. However, no current telephone or email contact details are publicly available, and the company does not appear to maintain a website or other readily accessible point of contact.

In view of the impending expiry of the restriction and the lack of an actively engaged representative, formally notifying Erith Nominees Pty Ltd through Council's established notice and review process appears to be the most practical and procedurally sound course of action.

# Refreshing Homes Pty Ltd

ABN 816 090 237 34

[www.refreshinghomes.com.au](http://www.refreshinghomes.com.au)



Any construction works on site will commence well after 11 March 2025, considering the necessary steps of obtaining a Planning Permit, following that securing the Building Permit approval, engaging a builder, and organising VMIA insurance.

This approach ensures compliance with the registered restriction while recognising its limited practical impact given the timeline for the construction of this proposal.

## 6.2 Section 173 – AJ 247575S

### Context

A Section 173 Agreement, as detailed within the Environmental Audit Statement and accompanying Groundwater Quality Management Plan (GWQMP) provided (reference documents: 'AJ247575S' and attached environmental audit reports), outlines environmental monitoring and management obligations linked to the broader development site.

These obligations largely pertain to groundwater quality monitoring, soil contamination management, and potential remedial works required to ensure that the land remains suitable for medium to high density residential use, as well as other intended land uses.

For instance, the Environmental Audit Statement notes:

- “The site is suitable for medium and high density residential use, commercial, industrial and open space land uses, subject to the following conditions attached thereto.”
- “Any landscaped area or garden bed must have at least 0.5 m thickness of soil below the finished surface which is demonstrated to be suitable for the site and consistent with IWRF621 as ‘fill’.”
- “During site development any soils excavated from below the upper soil layer should be removed from the site and should not be reused onsite.”
- “Groundwater is not suitable for use. Groundwater should not be extracted for any existing and potential beneficial uses.”

The GWQMP further requires that:

- “Groundwater quality requires monitoring in accordance with the Groundwater Quality Management Plan (GWQMP) appended to this Statement.”
- “Removal of soils containing elevated concentrations of TPH C10–C36, copper, lead, nickel, zinc, benzo(a)pyrene and total PAHs so that all potential beneficial uses of land are restored.”

These conditions primarily address overarching contamination and monitoring requirements at the precinct level. The agreement ensures that ongoing groundwater monitoring, soil remediation (if required), and adherence to environmental guidelines are maintained by the original development proponent or appointed environmental managers.

### Relevance to the Current Proposal

Our proposal involves adding a rumpus area to an existing garage on a single residential lot within the larger subdivision. This lot forms part of the overall development previously subjected to the Environmental Audit and Section 173 Agreement.

Given the scale and nature of this proposal, its impact on existing environmental management measures is minimal. The construction work for the proposed addition involves limited excavation—essentially, only to form footings for four new structural columns.

To ensure compliance with the Section 173 Agreement and the related Environmental Audit requirements, the following measures will be implemented:

- All soil handling during footing construction will be carried out in accordance with established environmental guidelines and the procedures outlined in Drawing A05. This includes dust suppression, immediate off-site removal of excavated soils, proper disposal in accordance with Environmental Authority guidelines, and immediate filling of footing holes to minimize exposure to potentially impacted soil.
- The developer's ongoing groundwater and soil management obligations, as referenced in the Section 173 Agreement and Environmental Audit documents, remain unaffected by this small-scale construction work. Our project's compliance actions, while minimal in scope, acknowledge and support the broader environmental management framework already in place for the entire precinct.

## Reference to Architectural Drawing A05

In response to the requirements of the Section 173 Agreement and associated Environmental Audit conditions, Drawing A05 will include the following note to guide on-site activities:

### **"Environmental Compliance Note:**

In accordance with the Section 173 Agreement and associated Environmental Audit requirements for contaminated land, the contractor shall:

- Wet the area during drilling of footing holes to suppress dust.
- Promptly remove excavated soil from the site and dispose of it in compliance with Environmental Authority guidelines.
- Immediately fill footing holes with concrete after excavation to prevent dust emissions.
- Adhere to all Environmental Authority requirements for contamination risk management. The builder is responsible for ensuring compliance with these measures and maintaining all relevant documentation.

## Justification

By incorporating these measures and referencing the Section 173 Agreement conditions, the proposed rumpus addition acknowledges the established environmental obligations without materially impacting the existing contamination mitigation or groundwater monitoring strategies.

## 6.3 Clause 15.01-5L Neighbourhood Character

### Preapplication Feedback

Early concepts were submitted to Council for preliminary feedback in September 2024 for a proposed addition above the existing garage at the rear laneway of 88 McDougall Drive, Footscray.

The pre-application advice (ref: 494/2024) raised some aspects of the proposal which are addressed in the current design proposal.

The design recommendations have generally been adopted with the exception of the suggested gable roof form (pg 3, dot point 2 of ref 494/2024). The rationale for the proposed cuboid form is to ensure consistency with the overall architectural character of the immediate context, which includes contemporary, cubic-built forms that reflect the Banbury Village industrial heritage. Additionally, the client's objective is to maximize internal storage space, and the cubic form efficiently meets this requirement. The resulting overall height of approximately six metres is complementary to the residence on the lot and aligns with the prevailing scale of nearby dwellings, ensuring the addition does not appear overbearing or incongruous.

The proponent has discussed the proposal with immediate neighbours at 86 and 90 McDougall Drive, providing them with copies of the concept. Their indication that they are not opposed to the cube form reinforces that the design successfully integrates with the local streetscape and does not generate significant amenity concerns.

The proposal does not unduly impact on immediate neighbours, as there are no overlooking issues due to careful window design and placement. Shadow projection studies demonstrate that the addition will not adversely affect the open space areas of 86 or 90 McDougall Drive, thereby maintaining adequate access to sunlight and preserving residential amenity.

### DESIGN JUSTIFICATION REFERRING TO THE SITING AND DESIGN GUIDELINES - BELOW

#### BANBURY VILLAGE - SITING AND DESIGN GUIDELINES (rev G, 2008)

*Banbury Village will celebrate the industrial history of Footscray and embrace the future through the creation of a diverse and vibrant village that accommodates differing dwelling densities, architectural styles and a high quality public realm. (pg 3)*

This proposal adds to the architectural diversity of the precinct and contributes positively to the laneway character. The use of metal cladding and considered windows on the south elevation echoes the area's industrial heritage and contemporary reinterpretations found throughout Banbury Village.



The proposed flat roof and cubic massing blend with the dominant built forms across the precinct, reinforcing the variety envisioned by the guidelines while maintaining a sense of cohesion with adjacent built fabric.

## Building Height

*Envelop heights for most house typologies, excluding apartment buildings, will not exceed 9 metres. The design intent is that dwellings would generally be designed within these envelopes. (pg 2)*

The proposed first-floor addition over the existing double garage is approximately 6.1 metres in height, well below the 9-metre guideline envelope. This height correlates with the scale of the main residence on the lot and other buildings in the immediate precinct, preserving the intended scale hierarchy of the neighbourhood.

By staying within these parameters, the proposal ensures that the addition is visually integrated and does not challenge the established pattern of building heights.

## Overlooking


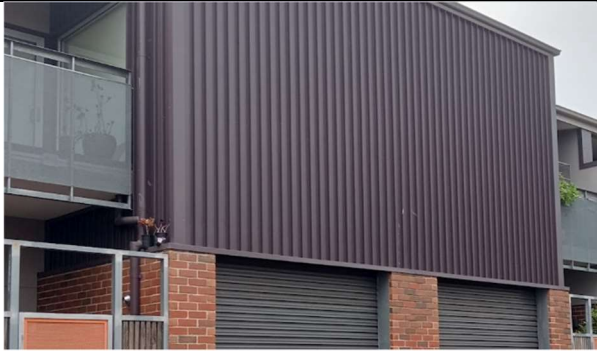


Window placement and glazing have been carefully considered to mitigate overlooking. The window on the north elevation is set at a sill height of 1700mm and glazed with opaque glass, ensuring privacy for both occupants and neighbours. Windows on the south elevation face the laneway and do not overlook Secluded Private Open Space, thus preserving the privacy and amenity of nearby properties.

This approach respects the sensitive interface between private and public realms and aligns with best practice in urban design.

## Building Materials

*The combination of materials, colours and textures should be consistent with contemporary architecture and used to build cohesive streetscapes while reducing two-storey mass. (pg 36)*

External cladding materials are proposed to be metal cladding, chosen to reflect the industrial character and established palette within Banbury Village. The material, coloration, and texture have been selected to harmonize with the local context—particularly the architectural language and finishes found in the vicinity of the former Olympic Tyres building and other contemporary projects. This ensures a cohesive streetscape character and visually moderates the perceived mass of the upper-level addition.



	
<p>Cross Street Building Character</p>	<p>Olympic Tyre Office Rear Additions</p>
	
<p>Beaurepaire Parade Building Character</p>	<p>7 Beame Street – Addition completed in Year 2024</p>

## Garage Architecture

*Double and split-level articulation should be utilised to assist in façade detailing while reducing the mass of garage doors and accentuating the entry locations. Rear access garages are encouraged where possible to enhance streetscapes. (pg 37)*

The proposal builds upon the existing double garage with an upper-level addition, maintaining the current vehicle access arrangement consistent with the established laneway character. The incorporation of windows along the southern elevation provides visual interest, breaks up the massing, and engages positively with the laneway environment.

Existing vegetation, such as the deciduous creeper, will further soften the building's appearance, enhancing the sense of greenery and offering passive climatic benefits. The external staircase will be screened to prevent overlooking of adjacent private open space, demonstrating sensitivity to neighbouring residential amenity.

	
<p>Subject location Rear of 88 McDougall Drive, Footscray</p>	<p>Proposed Rumpus over Garage</p>

Overall, the proposed addition above the existing garage contributes to an interesting and articulated laneway streetscape. Its height, form, materials, and detailing are compatible with the Banbury Village Siting and Design Guidelines and are not readily visible from the broader street network, maintaining a harmonious relationship within the local urban fabric.

## 6.4 Clause 32.08 General Residential Zone

### Decision Guidelines – Evaluating Permit Application for Clause 32.08-5:

ID	Clause	32.08 Decision guidelines	Design Response
1	32.08-14	The Municipal Planning Strategy and the Planning Policy Framework.	Refer to the following within this section of the report.
2	32.08-14	The purpose of this zone	<b>Residential Zone Compliance</b>  This project is located within a residential zone, with the use remaining unchanged. The existing dwelling's residential use is consistent with the designated purpose and represents the optimal use of the site.
3	32.08-14	The objectives set out in the schedule to this zone	No variation. The proposal complies as per ID 2.
4	32.08-14	Any other decision guidelines specified in a schedule to this zone	Not Applicable.
5	32.08-14	The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in GRZ	Solar Panel Consideration. Neighbours do not have solar panels, making this clause not applicable to the current proposal.
6	32.08-14	The applicable objectives, standards and decision guidelines of Clause 54 (ResCode)	Refer to Section 6.8 of this report for further details.

## 6.5 Clause 43.04 Development Plan Overlay

ID	Clause	Decision guidelines	Design Response
1	43.04-2	A permit granted must be generally in accordance with the development plan.	<p>The proposed addition of a rumpus room above the existing garage is a minor modification to a previously approved built form under the development plan.</p> <p>While this application seeks to amend the relevant development plan to allow for the proposed rumpus area, the key parameters of the approved framework, such as land use, general building envelope, and site coverage, remain consistent with the established vision and principles governing the precinct.</p>
2	43.04-2	A permit granted must include any conditions or requirements specified in a schedule to this overlay	The applicant acknowledges that any permit issued will be subject to conditions outlined in the applicable schedule to the DPO.
3	43.04-3	Exemption from notice and review. If a development plan has been prepared to the satisfaction of the responsible authority, an application under any provision of this planning scheme is exempt from the notice requirement.	<p>Under the terms of the DPO, once a development plan has been approved to the satisfaction of the responsible authority, applications in accordance with or generally consistent with that plan are exempt from public notice and review requirements.</p> <p>As this proposal involves only a minor amendment to the existing approved framework and remains aligned with the DPO's intended outcomes, it will similarly benefit from this exemption.</p>
4	43.04-3 S10 2.0	Responsibility authority is satisfied that the works will not prejudice the future use or development of the land.	<p>The proposed addition will not compromise the broader development objectives of the precinct or limit future opportunities for the site or surrounding properties.</p> <p>The rumpus addition is confined to an existing built structure (the garage) and involves no changes to broader circulation, land subdivision, or infrastructure arrangements.</p>

5	43.04-3 S10 3.0	Adverse Amenity Impact	<p>The proposal has been carefully designed to ensure no adverse amenity impacts on adjoining properties or the public realm.</p> <p>Refer to Section 6.8 of this report for further details.</p>
6	43.04-3 S10 4.0	Submission of Plans	<p>Documents related to the proposed amendment to the 88 McDougall Drive portion of the Development Plan is submitted with this application for Council's review and consideration.</p>

## 6.6 Clause 45.03 Environmental Audit Overlay

ID	Clause	Decision guidelines	Design Response
1	45.03-1	Preliminary risk screen assessment statement in accordance with the EPA2017	<p>The proposed works—limited to adding a rumpus area above an existing garage—are minor in nature and involve only minimal ground disturbance.</p> <p>The excavation required is restricted to the footings for several new structural columns, and each step of the process will be managed in accordance with the established environmental protocols set out for this site, including dust suppression, immediate off-site disposal of excavated material, and controlled backfilling.</p> <p>Given the limited scope, the absence of any significant change to the site’s use, and adherence to existing contamination management measures, there is no material increase in the risk to human health or the environment. The proposed works do not introduce new exposure pathways nor significantly alter the current environmental conditions.</p> <p>As such, a Preliminary Risk Screen Assessment (PRSA) under the Environment Protection Act 2017 is not proposed due to the low-risk nature of this minor addition. Should Council find that the associated risks are sufficiently low, we respectfully request that the requirement for a PRSA be waived for this application. This approach acknowledges the practical considerations of the project’s scale and the robust environmental controls already in place.</p>


## 6.7 Clause 45.06 Development Contribution Plan Overlay



Pursuant to Clause 45.06 S3.0, the applicable development contribution cost is calculated per dwelling.


Since this proposal does not involve the addition of any new dwellings, the development contribution is \$0.



## 6.8 Clause 54 Decision Guideline

ID	Clause	Decision guidelines	Design Response
1	54.01	Neighbourhood and site description and design response	<p>The proposed first-floor addition above the existing garage on Lot 621, Plan of Subdivision 643386M (Parent Title: Volume 11534, Folio 886), aligns with the established residential typology and architectural character of the Banbury Village precinct.</p> <p>The 41.7-square-metre addition reflects the surrounding built form, utilising cube massing and a flat roof, consistent with nearby structures. The proposed height of 6.1 metres matches the neighbouring dwellings, while the cladding material and colour adhere to the Siting &amp; Design Guidelines (Rev G, 2008) and are commonly used in the area.</p> <p>The original construction drawings for this Lot show a total building footprint (dwelling and garage) of 164.18 square metres on a 279-square-metre Lot, equating to 58.5% site coverage. The proposed addition above the garage maintains the private open space of the property and does not encroach further upon it.</p>  <p>Sited at the rear of the property, the addition will have no impact on the streetscape amenity. The cube massing is in keeping with the prevailing architectural</p>

			<p>style of the precinct, ensuring harmony with the existing character.</p> <p><b>Subject Site: 88 McDougall Drive, Footscray</b></p> <p>The proposed addition mirrors similar structures in the area. For example:</p>  <p>A recent project at 7 Beame Street, approximately 57 metres from the site, features similar massing and design.</p>  <p>The Olympic Tyres redevelopment includes rear additions to the former office "showroom" building on Newman Drive, with comparable first-storey forms in scale and materiality, located approximately 84 metres from the site.</p>
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			The proposed addition demonstrates sensitivity to the established character of Banbury Village while complementing the evolving architectural landscape of the area.
2	54.02-1	<p>Neighbourhood character objective</p> <p><b>Standard A1</b></p> <p>The design response must be appropriate to the neighbourhood and the site.</p>	<p>The proposed design respects the existing and preferred neighbourhood character, which is predominantly defined by two-storey dwellings with cubic building massing.</p> <p>The design responds thoughtfully to the site's features by working within the existing building envelope, specifically with an addition above the existing garage.</p> <p>The proposed building height aligns with the established neighbourhood character, ensuring visual harmony with surrounding structures.</p> <p>The design also draws inspiration from the material palette commonly used across Banbury Village, maintaining consistency with the precinct's architectural style.</p> <p><b>Building Typology:</b></p> <p>A notable reference includes a recent first-floor addition above a garage on Beame Street, which mirrors the proposed typology and demonstrates compatibility with the surrounding context.</p> 

3	54.02-2	<p>Integration with the Street objective</p> <p><b>Standard A2</b></p> <p>Dwellings should be oriented to front existing and proposed streets.</p> <p>High fencing in front of dwellings should be avoided if practicable.</p> <p>Dwellings should be designed to promote the observation of abutting streets and any abutting public open spaces.</p>	Existing & Unchanged
4	54.03-1	<p>Street Setback objective</p> <p><b>Standard A3</b></p> <p>Walls of buildings should be set back from streets:</p> <ul style="list-style-type: none"> <li>- At least the distance specified in a schedule to the zone, or</li> <li>- If no distance is specified in a schedule to the zone, the distance specified in Table A1.</li> </ul>	Existing & Unchanged
5	54.03-2	<p>Building height objective</p> <p><b>Standard A4</b></p> <p>The maximum building height should not exceed the maximum height specified in the zone, schedule to the zone or an overlay that applies to the land.</p>	<p>The maximum height permitted in this zone is 9 metres.</p> <p>The proposed building height of 6.1 metres complies with Standard A4.</p>
6	54.03-3	<p>Site coverage objective</p> <p><b>Standard A5</b></p>	The site coverage is 58.4%, which complies with Standard A5.

		<p>The site area covered by buildings should not exceed:</p> <ul style="list-style-type: none"> <li>- The maximum site coverage specified in a schedule to the zone, or</li> <li>- If no maximum site coverage is specified in a schedule to the zone, 60 per cent.</li> </ul>	
7	54.03-4	<p>Permeability objectives</p> <p><b>Standard A6</b></p> <p>The site area covered by pervious surfaces should be at least:</p> <ul style="list-style-type: none"> <li>- The minimum area specified in a schedule to the zone; or</li> <li>- If no minimum area is specified in a schedule to the zone, 20 per cent of the site.</li> </ul>	<p>The permeable surface is 40.9%, complying with Standard A6.</p>
8	54.03-5	<p>Energy Efficient protection objectives</p> <p><b>Standard A7</b></p> <p>Buildings should be:</p> <ul style="list-style-type: none"> <li>- Oriented to make appropriate use of solar energy.</li> <li>- Sited and designed to ensure that the energy efficiency of existing dwellings or small second dwellings on adjoining lots is not unreasonably reduced.</li> <li>- Sited and designed to ensure that the performance of existing rooftop solar energy systems on dwellings or small</li> </ul>	<p>The proposal includes northerly windows, carefully designed in height and size to avoid overlooking.</p> <p>The shadow cast by the addition does not impact any solar panel of neighbouring properties, ensuring no interference with current energy efficiency.</p> <p>Furthermore, any future solar panels installed by neighbours are likely to be positioned above their houses rather than their garages, eliminating the possibility of impacting their solar gain for energy efficiency considerations.</p> <p>The proposal complies with Standard A7</p>

		second dwellings on adjoining lots.	
9	54.03-6	<p>Significant trees objectives</p> <p><b>Standard A8</b></p> <ul style="list-style-type: none"> <li>- Development should provide for the retention or planting of trees, where these are part of the neighbourhood character.</li> <li>- Development should provide for the replacement of any significant trees that have been removed in the 12 months prior to the application being made.</li> </ul>	The proposal does not involve the removal of any trees, thereby complying with Standard A8.
10	54.03-7	<p>Building setback</p> <p><b>Standard A9</b></p> <ul style="list-style-type: none"> <li>- Walls of a small second dwelling should be set back behind the front wall of the existing dwelling on the lot, facing the frontage.</li> <li>- Porches, pergolas, verandahs, and eaves should not encroach into the setback of this standard.</li> </ul>	Not applicable
11	54.03-8	<p>Safety and accessibility</p> <p><b>Standard A9.1</b></p> <p>A small second dwelling should be provided with a clear and unobstructed path from the frontage that:</p> <ul style="list-style-type: none"> <li>- Has a minimum width of at least 1 metre, with no encroachments. If the path is longer than 30 metres, the</li> </ul>	Not applicable

		<p>path should have a minimum width of at least 1.8 metres.</p> <ul style="list-style-type: none"> <li>- Has a minimum clear height of at least 2 metres, with no encroachments.</li> <li>- Has a gradient no steeper than 1 in 14.</li> <li>- Has a cross fall no steeper than 1 in 40.</li> <li>- Is sealed or has an all-weather access.</li> </ul>	
12	54.04-1	<p>Side and rear setbacks objective</p> <p><b>Standard A10</b></p> <p>A new building not on or within 200mm of a boundary should be set back from side or rear boundaries:</p> <ul style="list-style-type: none"> <li>- At least the distance specified in a schedule to the zone, or</li> <li>- If no distance is specified in a schedule to the zone, 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.</li> </ul>	<p><b>Permit Trigger</b></p> <p>Standard A10 mandates that new buildings not located on or within 200mm of a boundary must adhere to a minimum setback distance proportional to their height. The proposed upper-level addition encroaches into the required setback envelope by approximately 2,460mm (height) and 1,743mm (depth) of the neighbour at 86 McDougall Street.</p> <p><b>Justification for Variation:</b></p> <p><b>1. Contextual Integration:</b></p> <p>The proposal reflects the established character of the neighbourhood, where garages and ancillary structures are commonly situated close to or on boundaries.</p> <p>This addition harmonises with the spatial rhythm of the area and avoids creating a visually obtrusive form from the public realm.</p> <p><b>2. Limited Visual Impact:</b></p>


			<p>The encroachment is minor and carefully mitigated through thoughtful design choices, including material selection, windows, and finishes that align with the prevailing neighbourhood character.</p> <p>These measures reduce the visual prominence of the upper-level volume.</p> <p><b>3. No Significant Amenity Loss:</b></p> <p>The boundary in question adjoins a neighbouring garage already situated at or near the boundary, ensuring no meaningful impact on the adjacent property's usable outdoor space, views, or internal amenities.</p> <p>There are no significant changes to sunlight access, ventilation, or privacy for neighbouring residents, preserving their amenity.</p> <p><b>4. Minimised Site Disturbance:</b></p> <p>By utilising the existing built footprint, the proposal avoids unnecessary site disturbance and retains ample open space.</p> <p>The design prevents encroachment further into the site, which could have created more pronounced impacts on site amenity or open space.</p> <p><b>Conclusion:</b></p> <p>Although the proposed addition does not strictly comply with Standard A10 setback requirements, the minor variation is justified as it:</p> <ul style="list-style-type: none"> <li>Integrates seamlessly with the neighbourhood's built form,</li> </ul>
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			<ul style="list-style-type: none"> <li>Ensures minimal visual and amenity impacts, and</li> <li>Provides an efficient and balanced design response that respects the surrounding residential environment.</li> </ul> <p>The proposal represents a considered and appropriate response to the site and context, supporting the overall residential character and amenity of the area.</p>
12	54.04-2	<p>Walls on boundaries objective</p> <p>Standard A11</p> <p>A new wall constructed on or within 200mm of a side or rear boundary of a lot or a carport constructed on or within 1 metre of a side or rear boundary of a lot should not abut the boundary:</p> <ul style="list-style-type: none"> <li>For a length more than the distance specified in a schedule to the zone; or</li> <li>If no distance is specified in a schedule to the zone, for a length of more than: <ul style="list-style-type: none"> <li>10 metres plus 25 per cent of the remaining length of the boundary of an adjoining lot, or</li> <li>Where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports, whichever is the greater.</li> </ul> </li> </ul>	<p><b>Permit Trigger</b></p> <p>Standard A11 establishes a maximum height of 3.6m for walls located on or within 200mm of a side or rear boundary. While the length of the wall on the boundary remains unchanged, the proposed addition exceeds the height limit, reaching approximately 6.1m along the boundary towards the neighbour at 86 McDougall Street.</p> <p><b>Justification for Variation</b></p> <p><b>1. Existing Boundary Conditions:</b></p> <p>The boundary adjoins a garage located on the neighbouring property. This existing structure sets a precedent for built form along the boundary and ensures that the interface is not critical for open space, light access, or outlook for the adjoining property.</p> <p>The additional height will be perceived against the backdrop of the neighbour's existing built form rather than as an intrusion into open or sensitive areas.</p> <p><b>2. Minimal Impact on Neighbouring Occupants:</b></p>

			<p>The neighbour's garage provides both a physical and visual buffer, mitigating any sense of enclosure or dominance from the proposed wall height.</p> <p>The increased height does not significantly impact sunlight access, outlook, or privacy, as the adjoining structure is used for vehicle storage and ancillary purposes rather than sensitive living spaces.</p> <p><b>3. High-Quality Design and Material Treatment:</b></p> <p>The upper-level addition incorporates thoughtful material selections, windows, and finishes that align with the established neighbourhood character.</p> <p>These design measures reduce the visual bulk, breaking up the façade to avoid a monolithic appearance and ensuring compatibility with the surrounding built environment.</p> <p><b>4. Consistency with Neighbourhood Character:</b></p> <p>Banbury Village and the surrounding area feature robust built forms close to or on boundaries, reflecting its historical industrial roots and contemporary design evolution.</p> <p>The proposal respects and responds to this context, maintaining a form and scale consistent with the established architectural patterns.</p> <p><b>Conclusion</b></p>
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			<p>Although the proposed addition exceeds the height limit specified in Standard A11, it is justified by:</p> <ul style="list-style-type: none"> <li>• The existing built form conditions of the neighbouring property,</li> <li>• The negligible impact on neighbouring residents due to the garage's buffering function,</li> <li>• The high-quality design response mitigating visual impact, and</li> <li>• The alignment with the historical and architectural character of the area.</li> </ul> <p>The variation is minor, contextually appropriate, and does not detract from the surrounding residential environment.</p>
13	54.04-3	<p>Daylight to existing windows objective</p> <p><b>Standard A12</b></p> <p>Buildings opposite an existing habitable room window should provide for a light court to the existing window that has a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky.</p> <p>The calculation of the area may include land on the abutting lot.</p>	<p>There is no impact on the daylight access to existing windows. Complies with Standard A12.</p>
14	54.04-4	<p>North-facing windows objective</p> <p><b>Standard A13</b></p> <p>If a north-facing habitable room window of an existing dwelling or small second dwelling is within 3 metres of a boundary on an abutting lot, a building should be setback from the boundary 1 metre, plus 0.6 metre for every</p>	<p>There is no impact to north-facing windows. Complies with Standard A13.</p>

		metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres, for a distance of 3 metres from the edge of each side of the window. A north-facing window is a window with an axis perpendicular to its surface oriented north 20 degrees west to north 30 degrees east.	
15	54.04-5	<p>Overshadowing open space objective</p> <p><b>Standard A14</b></p> <p>Where sunlight to the secluded private open space of an existing dwelling or small second dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.</p>	The proposal complies with Standard A14 by ensuring no overshadowing of all neighbour's private open space for 5 out of the 6 reference hours.
16	54.04-6	<p>Overlooking objective</p> <p><b>Standard A15</b></p> <p>A habitable room window, balcony, terrace, deck or patio should be located and designed to avoid direct views into the secluded private open space and habitable room windows of an existing dwelling or small second dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio. Views should be measured within a 45 degree angle from the plane</p>	 <p>The proposal overlooks the neighbour's non-habitable roof located opposite the subject site, specifically at the rear of 54 and 56 Cross Street, as shown in the attached photo.</p>

		<p>of the window or perimeter of the balcony, terrace, deck or patio, and from a height of 1.7 metres above floor level.</p> <p>A habitable room window, balcony, terrace, deck or patio with a direct view into a habitable room window of an existing dwelling or small second dwelling within a horizontal distance of 9 metres (measured at ground level) of the window, balcony, terrace, deck or patio should be either:</p>	<p>The space adjacent to the neighbour's existing garage is narrow and is not currently used as private open space for enjoyment.</p> <p>Additionally, it is unlikely to be converted into a functional and enjoyable private open space in the future.</p> <p>As the spaces overlooked by the proposal are non-habitable areas, the proposal does not impact any private open spaces and complies with Standard A15.</p>
16	54.05-1	<p>Daylight to new windows objective</p> <p><b>Standard A16</b></p> <p>A window in a habitable room should be located to face an outdoor space clear to the sky or a light court with a minimum area of 3 square metres and minimum dimension of 1 metre clear to the sky, not including land on an abutting lot,</p>	Complies
17	54.05-2	<p>Private open space objective</p> <p><b>Standard A17</b></p> <p>A dwelling should have private open space of an area and dimensions specified in a schedule to the zone.</p> <p>If no area or dimensions is specified in a schedule to the zone, a dwelling with a small second dwelling on the same lot should have secluded private</p>	The proposal includes 50.6 sqm of private open space, complying with Standard A17.

		open space consisting of an area of 25 square metres and a minimum dimension of 3 metres at the side or rear of the dwelling with convenient access from a living room.	
18	54.05-3	<p>Solar access to open space objective</p> <p><b>Standard A18</b></p> <p>The private open space should be located on the north side of the dwelling, if practicable.</p>	Solar access to open space remains unchanged and therefore complies with Standard A18.
19	54.06-1	<p>Design detail objective</p> <p><b>Standard A19</b></p> <p>The design of buildings, including:</p> <ul style="list-style-type: none"> <li>- Facade articulation and detailing,</li> <li>- Window and door proportions,</li> <li>- Roof form, and</li> <li>- Verandahs, eaves and parapets,</li> </ul> <p>should respect the existing or preferred neighbourhood character.</p>	<p>The proposal incorporates design details that align with the existing neighbourhood character, featuring a cubic building form and external cladding consistent with the precinct's architecture and the recommendations outlined in the Banbury Village Siting &amp; Design Guidelines.</p> <p>The proposed addition utilises a flat roof design, mirroring the architectural style of surrounding buildings. The guttering detail will match the existing guttering on garages within the precinct, maintaining visual consistency.</p> <p>External cladding is proposed as metal sheeting with a profile and colour similar to those used in the area, ensuring integration with the local built environment.</p> <p>The design complies with Standard A19.</p>
20	54.06-2	<p>Front fence objective</p> <p><b>Standard A20</b></p> <p>A front fence within 3 metres of a street should not exceed:</p>	The existing conditions remain unchanged and comply with Standard A20.

		<ul style="list-style-type: none"><li>- The maximum height specified in a schedule to the zone, or</li><li>- If no maximum height is specified in a schedule to the zone, the maximum height specified in Table A2.</li></ul>	
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## 7. Conclusion

This proposal seeks to add a rumpus room above an existing garage at 88 McDougall Drive, Footscray.

In doing so, it engages several permit triggers, including:

- Covenant PS 643386M,
- Clause 32.08-5 (General Residential Zone),
- Clause 43.04-2 (Development Plan Overlay),
- Clause 45.03-1 (Environmental Audit Overlay), and
- Clauses 54.04-1 and 54.04-2 (Standards A10 and A11) related to side and rear setbacks and walls on boundaries.

The design has been carefully considered to ensure that the built form, height, massing, and material selection respect the prevailing neighbourhood character, as per the Neighbourhood Residential Zone objectives and the Banbury Village Siting and Design Guidelines.

It integrates well within the existing streetscape and laneway context, maintaining a scale and palette that reflect both the industrial heritage and contemporary architectural language of the area.

In compliance with Covenant PS 643386M, given the covenant's nearing expiry and the absence of an engaged representative, notifying Erith Nominees Pty Ltd remains largely a procedural safeguard rather than a substantive influence on the proposal's implementation.

Although the proposal involves minor variations from Standards A10 and A11, these are justified by the established built conditions, the presence of the neighbour's garage on the adjoining boundary, and the resultant negligible impact on neighbouring amenity.

The development plan amendment is limited and does not undermine the strategic vision established under the Development Plan Overlay. The addition will not prejudice future site development or use and will remain consistent with the overall planning framework.

Lastly, the minimal soil disturbance and adherence to environmental management measures, along with the anticipated post-approval construction schedule, support a request to waive a Preliminary Risk Screen Assessment under the Environmental Audit Overlay. The low-risk nature of these works ensures that human health and the environment are not compromised.

In summary, the proposal aligns with relevant planning policy directions, addresses the required permit triggers, and contributes positively to the character and amenity of the precinct. It is therefore submitted that the application warrants approval, subject to the appropriate conditions imposed by the responsible authority.



**tony.to@refreshinghomes.com.au**

---

**From:** Allan Cantsilieris <AllanC@bpd.com.au>  
**Sent:** Friday, 6 December 2024 4:30 PM  
**To:** tony.to@refreshinghomes.com.au  
**Cc:** gallon.mark@gmail.com  
**Subject:** RE: Request for Approval Under Covenant PS643386M - 88 McDougall Drive, Footscray

Hi Tony,

Thanks for your email.

I believe in this case that you would just need the consent of the Transferor at the time, who in this case was Erith Nominees Pty Ltd as shown just below the list of burdened lots (if still in existence). Normally this would be in the form of a letter sign by an appropriate representative, after you've supplied them the same docs you attached for review.

We wouldn't have any details or records on them now given the age, although I do note that the restriction actually expires on the 11<sup>th</sup> of March next year (point (t)). So not long until you wouldn't need their consent. Otherwise it may fall to council and/or the building surveyor for the appropriate permit process.

Apologies we couldn't be more help, but please let me know if any questions.

Thanks,  
Allan

**Allan Cantsilieris**  
Project Manager Survey

**T** 03 8823 2300  
**M** 0416 069 619  
**W** bpd.com.au  
1/19 Cato Street Hawthorn East VIC 3123



## Merry Christmas

We wish you a Merry Christmas and a fantastic New Year.

Please note that our office will be closed from lunchtime on Friday the 20th of December, reopening on Monday the 13th of January.

We look forward to working with you in 2025.



---

**From:** Information <info@bpd.com.au>  
**Sent:** 06 December 2024 14:36  
**To:** Allan Cantsilieris <AllanC@bpd.com.au>  
**Subject:** FW: Request for Approval Under Covenant PS643386M - 88 McDougall Drive, Footscray

## Information

**T** 03 8823 2300  
**W** bpd.com.au  
1/19 Cato Street Hawthorn East VIC 3123



## Merry Christmas



We wish you a Merry Christmas and a fantastic New Year.

Please note that our office will be closed from lunchtime on Friday the 20th of December, reopening on Monday the 13th of January.

We look forward to working with you in 2025.

This email and any attachments are confidential

---

**From:** [tony.to@refreshinghomes.com.au](mailto:tony.to@refreshinghomes.com.au) <[tony.to@refreshinghomes.com.au](mailto:tony.to@refreshinghomes.com.au)>  
**Sent:** Friday, December 6, 2024 11:39 AM  
**To:** Information <[info@bpd.com.au](mailto:info@bpd.com.au)>  
**Cc:** 'Mark Gallon' <[gallon.mark@gmail.com](mailto:gallon.mark@gmail.com)>  
**Subject:** Request for Approval Under Covenant PS643386M - 88 McDougall Drive, Footscray

You don't often get email from [tony.to@refreshinghomes.com.au](mailto:tony.to@refreshinghomes.com.au). [Learn why this is important](#)

**Hi Breese Pitt Dixon Pty Ltd,**

Thank you for the brief discussion over the phone. My name is Tony, and I am an architect designing for the client, Mr Mark Gallon on his addition and renovation at 88 McDougall Drive, Footscray.

## Covenant PS643386M

This correspondence seeks approval under Covenant PS643386M, which stipulates that the current proprietor must not undertake any extensions without the prior approval of the Transferor named in the Covenant.

## The Proposal

The proposed works involve the addition of a rumpus room above the existing garage.

We believe this addition will have no detrimental effect on the community or the value of surrounding properties, remaining within the scope of reasonable residential work on a residential site.

## Attachments:

- 00745574280012024101309590001 – 88 McDougall Drive Certificate of Title
- 00745574280122024101309590001 – Covenant PS643386M
- 20241205 88 McDougall Dr – Architectural Design documents

Kindly advise us, and copy the proprietor, Mr Mark Gallon (copied in with this email) regarding the process and requirements for obtaining the necessary approval. Please feel free to call me at 0413 354 104 should you require additional information or clarification.

Thank you for your time and assistance.

Kind regards,

Tony  
Architect



*Your feedback is a gift. Your referral is the highest compliment.*

[www.refreshinghomes.com.au](http://www.refreshinghomes.com.au)

[information@refreshinghomes.com.au](mailto:information@refreshinghomes.com.au)

T: (03) 9013 3933

A: Suite 201 – OfficeOurs, 175b Stephen Street, Yarraville, VIC 3013



ASIC

Australian Securities & Investments Commission

CITY OF MARIBYRNONG  
RECEIVED  
10/12/2024  
URBAN PLANNING

# Current Company Extract

**Name:** ERITH NOMINEES PROPRIETARY LIMITED

**ACN:** 005 023 156

Date/Time: 06 December 2024 AEST 09:27:21 PM

This extract contains information derived from the Australian Securities and Investments Commission's (ASIC) database under section 1274A of the Corporations Act 2001.

Please advise ASIC of any error or omission which you may identify.

EXTRACT

Organisation Details	Document Number
<b>Current Organisation Details</b>	
Name: ERITH NOMINEES PROPRIETARY LIMITED	0502315A
ACN: 005 023 156	
Registered in: Victoria	
Registration date: 15/10/1973	
Next review date: 15/10/2025	
Name start date: 15/10/1973	
Previous state number: C0102176H	
Status: Registered	
Company type: Australian Proprietary Company	
Class: Limited By Shares	
Subclass: Proprietary Company	

Address Details	Document Number
<b>Current</b>	
Registered address: 435 Barkly Street, FOOTSCRAY VIC 3011	0502315A
Start date: 15/10/1973	
Principal Place Of Business address: 435 Barkly Street, FOOTSCRAY VIC 3011	010528323
Start date: 31/12/1995	

Contact Address
Section 146A of the Corporations Act 2001 states 'A contact address is the address to which communications and notices are sent from ASIC to the company'.
<b>Current</b>
Address: GPO BOX 78, MELBOURNE VIC 3001
Start date: 17/12/2020

Officeholders and Other Roles	Document Number
<b>Director</b>	
Name: ALAN PETER MANCE	00502315C
Address: 116 Raglan Street, SOUTH MELBOURNE VIC 3205	
Born: 30/12/1940, MELBOURNE, VIC	
Appointment date: 26/10/1973	
Name: LORRAINE FRANCES MANCE	0E7232591
Address: 116 Raglan Street, SOUTH MELBOURNE VIC 3205	
Born: 08/04/1943, MELBOURNE, VIC	
Appointment date: 26/10/1973	
<b>Secretary</b>	
Name: LORRAINE FRANCES MANCE	0E7232591
Address: 116 Raglan Street, SOUTH MELBOURNE VIC 3205	
Born: 08/04/1943, MELBOURNE, VIC	
Appointment date: 26/10/1973	
<b>Ultimate Holding Company</b>	

Name: CAMEN NOMINEES PTY. LIMITED  
ACN: 005 500 765

00502315C

**Share Information****Share Structure**

Class	Description	Number issued	Total amount paid	Total amount unpaid	Document number
ORD	ORDINARY SHARES	6	6.00	0.00	7E8156559

**Members**

Note: For each class of shares issued by a proprietary company, ASIC records the details of the top twenty members of the class (based on shareholdings). The details of any other members holding the same number of shares as the twentieth ranked member will also be recorded by ASIC on the database. Where available, historical records show that a member has ceased to be ranked amongst the top twenty members. This may, but does not necessarily mean, that they have ceased to be a member of the company.

Name: ALAN PETER MANCE  
Address: 116 Raglan Street, SOUTH MELBOURNE VIC 3205

Class	Number held	Beneficially held	Paid	Document number
ORD	3	yes	FULLY	7E8156466

Name: LORRAINE FRANCES MANCE  
Address: 116 Raglan Street, SOUTH MELBOURNE VIC 3205

Class	Number held	Beneficially held	Paid	Document number
ORD	3	yes	FULLY	7E8156559

\*\*\*End of Extract of 2 Pages\*\*\*