

**10.6 Planning Application 569/2013/P - 290 Nepean Highway, Seaford - To construct a four (4) storey apartment building containing twenty two (22) apartments and alter access to a Road Zone Category 1**

*(MP Community Development)*

**Recommendation (Director Community Development)**

That Council resolves to issue a Notice of Decision to Grant a Planning Permit in respect to Planning Permit Application number 569/2013/P to construct a four (4) storey apartment building at 290 Nepean Highway, Seaford subject to the following conditions:

**Plans**

1. Before the use and/or development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the plans submitted with the application (or some other specified plan) but modified to show:
  - (a) A landscape break (adjacent to the outbuilding located on the common boundary) with a setback of 4.5 metres from the north boundary and a length of 4 metres to accommodate a canopy tree.
  - (b) Proposed building reduced by 500mm width on all levels to achieve commensurate increase in setback to the north boundary.
  - (b) North facing windows to living areas for Apartments 1, 11 and 14.
  - (c) Apartments 11 and 18 balconies with minimum 1.6m width for the full 8sqm of Secluded Private Open Space.
  - (d) Apartment 5 and 6 balconies extended to the eastern elevation of each apartment.
  - (e) Windows to north and south elevations minimising overlooking and the use of screening through the angling of windows, protruding elements with side windows facing west and east, or other means.
  - (f) The west (Nepean Highway) elevation modified to create two distinctive facades to distinguish the different sections of the building, including:
    - i. Second floor roofs featuring different designs, with one half capped concrete and the other angled.
    - ii. A feature canopy over the front wall and entrance.
    - iii. The 'fin' wall between the buildings reduced in width and height so that it does not protrude beyond the balcony of the first floor and is no higher than the parapet of the first floor.
  - (g) On the north and south elevations:
    - i. Further detailing on the west end of the south elevation and the east and west ends of the north elevation, to break up the blank sections of wall on the ground and first floor levels. The west ends on both elevations must feature vertical element(s) consistent with those on the Nepean Highway (west) elevation.
    - ii. Use of awnings and/or louvres above windows and wrapping elements around the corners of the building, or other such details to provide additional articulation and interest.
  - (h) Pedestrian access to the rear communal open space from ground level, from side and/or rear exits to the building. The access must meet accessibility requirements.

- (i) Pedestrian paths along side setbacks to provide access to the rear communal open space.
- (j) Carpark rearranged to provide visitor spaces and space for manoeuvring outside the security grille.
- (k) 'No Stopping Zone' in accordance with VicRoads requirements (Condition 39).
- (l) Screening of air conditioning units.
- (m) Printed schedule of cladding colours and materials.
- (m) All trees growing on the site and on the adjoining properties within 3m of the site boundaries clearly illustrated on all relevant plans to demonstrate canopy width, trunk location and clearly labelled with botanical name and whether the tree is to be retained or removed.
- (n) The Vegetation Protection Zone and protection fence location illustrated on all relevant plans.
- (o) Vegetation protection conditions noted in accordance with Condition 5.
- (p) A Bushfire Landscape Management Plan in accordance with Conditions 3, 35 and 41.
- (q) A Construction Environmental Management Plan in accordance with Conditions 7 and 31.
- (r) Drainage Plan in accordance with Condition 13.
- (s) Carpark Management Plan in accordance with Condition 16.
- (t) Site Management Plan in accordance with Condition 33.

### No Alterations

2. The use and/or development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

### Landscaping

3. Before the commencement of buildings and works, a landscape plan prepared by a suitably qualified person must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must show:
  - (a) survey (*including botanical names*) of all existing vegetation to be retained and/or removed;
  - (b) buildings and trees (*including botanical names*) on neighbouring properties within three metres of the boundary;
  - (c) details of surface finishes of pathways and driveways, retaining walls and areas of cut and fill;
  - (d) The removal of all existing environmental weed species from the site;
  - (e) All pathways provided must be permeable;
  - (f) A planting schedule of all proposed trees, shrubs and ground covers, including botanical names, common names, pot sizes, size at maturity and quantities of each plant;
  - (g) The location of each species to be planted and the location of all areas to be covered by grass, lawn or other surface material;
  - (h) The proposed planting must be provided at adequate planting densities e.g. plants with a mature width of 1.0 metre must be planted at 1.0 metre intervals;
  - (i) All plants are to be provided within defined mulched garden bed areas;
  - (j) A planting theme of a 100% locally indigenous species;
  - (k) A layered landscape screen to the rear of the proposed building;
  - (l) Trees and large shrubs (of 5-7m height at maturity) in the front and side setbacks;

- (m) Revegetation along the frontage to Kananook Creek in accordance with Melbourne Water requirements;
- (n) Canopy trees that have a minimum mature height of five metres provided in suitable locations across the site, including at least three within the front setback, one within the northern landscape break, and others in the rear setback. The trees are to be provided at the advanced height of two (2) metres at the time of planting (unless otherwise agreed in writing by the Responsible Authority).

Trees are not to be sited over easements. All species selected must be to the satisfaction of the Responsible Authority.

### Prior to Occupation

4. The landscaping as shown on the endorsed landscape plan must be carried out and completed to the satisfaction of the Responsible Authority before the occupation of the development and/or commencement of the use or at such later date as is approved by the Responsible Authority in writing.
5. Tree protection must be carried out in accordance with the Australian Standard AS 4970-2009 *Protection of trees on development sites* to the satisfaction of the Responsible Authority. Prior to the commencement of the development, a Vegetation Protection Fence defined by a 1.8 metre high (minimum) temporary fence constructed using steel or timber posts fixed in the ground or to a concrete pad, with the fence's panels to be constructed of cyclone mesh wire or similar strong metal mesh or netting with a high visibility plastic hazard tape, must be installed west of the underground sewer main extending from the south property boundary line to the north property boundary line to the satisfaction of the Responsible Authority. A fixed sign is to be provided on all visible sides of the Vegetation Preservation Fencing, stating "Vegetation Preservation Zone – No entry without permission from Frankston City Council". The requirements below must be observed within this area -
  - a) No vehicular or pedestrian access.
  - b) The existing soil level must not be altered either by fill or excavation.
  - c) The soil must not be compacted or the soil's drainage changed.
  - d) No fuels, oils, chemicals, poisons, rubbish or other materials harmful to trees are to be disposed of or stored.
  - e) No storage of equipment, machinery or material is to occur.
  - f) Nothing whatsoever including temporary services wires, nails, screws or any other fixing device is to be attached to any tree.
  - g) No building or any other structure is to be erected.
  - h) Tree roots must not be severed or injured.
  - i) Machinery must not be used to remove any existing concrete, bricks or other materials.
6. Prior to the commencement of buildings and works a Construction and Environment Management Plan must be submitted to and approved by the Responsible Authority. When approved the plan will be endorsed to form part of the permit. Any plans submitted must be consistent with all other documents approved as part of this permit. The information must be drawn to scale with dimensions and three (3) copies must be provided. The Plan is to include details of the following:
  - a) Contact Numbers of responsible owner/contractor including emergency/24 hour mobile contact details.
  - b) Identification of possible environmental risks associated with development works.

- c) Response measures and monitoring systems to minimise identified environmental risks, including but not limited to acid sulphate soils, vegetation protection, fauna protection, runoff, erosion, dust, litter, noise and light.
- d) Protection measures for the brick shed within the adjoining property (288-289 Nepean Highway) adjacent to the common boundary with the subject land.
- e) Location and specifications of sediment control devices on/off site.
- f) Location and specifications of surface water drainage controls.
- g) Location and specifications of fencing for the protection of trees and/or vegetation as required by the permit.
- h) Proposed drainage lines and flow control measures.
- i) Location of all stockpiles and storage of building materials.
- j) Location of parking for site workers and any temporary buildings or facilities.
- k) Details to demonstrate compliance with relevant EPA guidelines, including for coastal acid sulphate soils.
- l) Hours during which construction activity will take place.

The Construction Management Plan must be guided by the Urban Stormwater Best Practice Management Guidelines (CSIRO 1999).

#### **General Vegetation Conditions**

7. The site must be left in a clean and tidy condition after completion of works to the satisfaction of the Responsible Authority.
8. All machinery brought on site must be weed and pathogen free.
9. Before the development starts, all persons undertaking the works on site must be advised of all relevant conditions of this permit.

#### **Tree Pruning**

10. All tree pruning is to be carried out by a qualified and experienced Arborist who has a thorough knowledge of tree physiology and pruning methods. Pruning must be carried out in accordance with Australian Standard AS4373-2007 *Pruning of Amenity Trees*. If pruning works are to be undertaken then these works should be carried out prior to any construction works beginning on site. Any pruning of trees located on a neighbouring property should be undertaken in consultation with the property owner.

#### **Drainage and Parking**

11. Water Sensitive Urban Design principles (WSUD) are to be incorporated into the drainage design, which may include but not be limited to the following components or a combination thereof:
  - On-site stormwater detention and rainwater tanks.
  - Soil percolation
  - Stormwater harvesting and Re-use of stormwater for garden watering, toilet flushing, etc
  - On-site 'bio-treatment' to reduce dissolved contaminants and suspended solids.

12. Stormwater runoff must achieve the following objectives for environmental quality, as set out in the Urban Stormwater Best Practice Environmental Guidelines (CSIRO) 1999.

80% retention of the typical annual load of suspended solids;

45% retention of typical annual load of total phosphorous; and

45% retention of typical annual load of total nitrogen

Water Quality works within the development must achieve compliance with the above best practice standards to the satisfaction of the Responsible Authority.

13. Prior to commencement of development construction detailed design plans and drainage computations of the internal stormwater drainage system including the method of connection to the existing Council drainage infrastructure are to be submitted and approved to the satisfaction of the Responsible Authority.
14. The vehicle crossing must be constructed to Frankston City Council's standards and specifications to the satisfaction of the Responsible Authority.
15. All disused vehicle crossings must be removed and the area reinstated to kerb and channel and landscaped to the satisfaction of the Responsible Authority.
16. Prior to the commencement of the development a Carparking Management Plan must be submitted to and approved by the Responsible Authority.
17. Prior to occupation of the dwellings hereby permitted by this permit starts, areas set aside for parking vehicles, loading bays, access lanes and paths as shown on the endorsed plans must be :-
- (a) Constructed to the satisfaction of the Responsible Authority;
  - (b) Properly formed to such levels that they can be used in accordance with the plans;
  - (c) Surfaced with an all-weather sealcoat; and
  - (d) Drained and maintained to the satisfaction of the Responsible Authority.

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

18. Where the development involves work on or access to Council controlled land including roads, reserves and right of way, the owner, operator and their agents under this permit must at all times take adequate precautions to maintain works to the highest public safety standards, to the satisfaction of the Responsible Authority.

Precautions must include, appropriate signage to AS 1743 Road Works Signing Code of Practice, the provision of adequate barricading of works, including trenches of Service Authorities and any other road openings, sufficient to ensure public safety.

All relevant permits must be obtained from Council for works within the existing road reserves, in addition to the planning permit.

### Urban Design

19. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manner to the satisfaction of the Responsible Authority.
20. Mailboxes shall be provided to the proposed dwelling/s to the satisfaction of the Responsible Authority and Australia Post.

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21. All plumbing work, sewer pipes etc. (except for spouting and stormwater pipes) associated with the new dwelling shall be concealed from general view.
22. Outdoor lighting must be provided, designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on neighbouring land.

#### **Waste Management**

23. Waste must be collected from the site in accordance with the Waste Management Plan by Coomes Consulting which will be endorsed to form part of this permit.

#### **CASS and Site contamination**

24. The buildings and works must be carried out in accordance with the recommendations of the Site Contamination Assessment by Diomides and Associates Pty Ltd (3 October 2013).

#### **Melbourne Water Requirements**

25. Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways.
26. Finished ground floor levels of proposed building must be constructed with finished floor levels at a minimum of 2.4 metres to Australian Height Datum (AHD).
27. The entry / exit driveway of the basement car park must incorporate a flood proof apex of a minimum of 2.4 metres to AHD.
28. All doors, windows, staircases, drainage outlets, vents and openings to the basement car park must be a minimum of 2.4 metres to AHD.
29. No buildings or works, including basements, private vehicular parking, fencing, private open space or balconies, is permitted within 10 metres from the top of bank or on land with existing surface levels below the 1.55 metre contour, whichever is greater.
30. Any earthworks within the site must not adversely affect flooding on upstream or downstream properties.
31. Prior to the commencement of works an environment management plan must be prepared to the satisfaction of the EPA and Council.
32. All proposed excavation works must be undertaken in accordance with the approved environment management plan.
33. Prior to commencement of works, a Site Management Plan detailing pollution and sediment control measures, must be submitted to Melbourne Water.
34. Upon completion of any proposed earthworks and development, appropriate revegetation along the creek side must be undertaken to Melbourne Water's satisfaction.
35. Prior to the commencement of works, a detailed landscape plan must be submitted to Melbourne Water for approval. Plans must show the location, density and species to be used. Only local native plants should be used and shown on the landscape plans.
36. Any new development must be designed to ensure that any buildings and walls are largely screened from the creek by shrubs and ground covers and the skyline is largely formed by tree canopies.

37. Any works or development (including vegetation removal) on the banks of the Kananook Creek requires separate approval from Melbourne Water.
38. Prior to the commencement of works, a separate application direct to Melbourne Water must be made for any new or modified storm water connection to Melbourne Water's drains or watercourses.

#### **VicRoads Requirements**

39. Prior to the occupation of the dwellings a 'No Stopping' zone shall be established for a distance of 10 metres northwards from the northern extremity of the proposed driveway on Nepean Highway, at no cost to VicRoads.
40. Vehicles must enter and exit the site in a forward direction at all times.

#### **CFA Requirements**

41. Before the developments starts, a Bushfire Landscape Management Plan to the satisfaction of the Country Fire Authority (CFA) and Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The plan must:
  - Be titled Bushfire Landscape Management Plan and must be dated.
  - Show the layout and dimensions of the development.
  - Show a defendable space envelope which must comprise a single inner zone applying to all of the land.
  - Show the BAL for the proposed dwelling which must comply with the requirements of this permit.
  - Show a nominal location for the provision of a static water supply on each lot which must comply with the requirements of this permit.
  - Omit any detail which is not required to depict the above information.
  - Use labelling techniques that enable the plan to be reproduced and interpreted in black and white.
  - Include a planting schedule detailing the proposed planting at the site.
  - The plan must show any future planting that is required to be conducted. All plants on the plan must be shown at their mature size and must not conflict with the requirements of the defendable space requirements under this permit.
  - Show any existing vegetation to be retained at the site.
42. The Bushfire Landscape Management Plan endorsed under this permit must not be altered unless with the written consent of the CFA and the Responsible Authority.

#### **Defendable Space**

43. Before the occupation of the building starts, and at all times thereafter, vegetation on the land must be maintained to at least the following standard:

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**Inner Zone – extending from the dwelling to all property boundaries**

- Within 10 metres of a building, flammable objects such as plants, mulches and fences must not be located close to vulnerable parts of the building such as windows, decks and eaves.
- Trees must not overhang the roofline of the building, touch walls or other elements of the building.
- Grass must be no more than 5 centimetres in height and all leaves and vegetation debris are to be removed at regular intervals.
- Shrubs must not be planted under trees and separated by at least 1.5 times their mature height.
- Plants greater than 10 centimetres in height at maturity must not be placed directly in front of a window or other glass feature.
- Tree canopy separation of 2 metres and the overall canopy cover of no more than 15 per cent at maturity.
- Tree branches below 2 metres from ground level must be removed.

**Construction**

44. A site assessment for the purpose of determining the bushfire attack level for the site has been considered as part of the application for the planning permit. The construction of the building must be to a bushfire attack level of BAL-12.5 in accordance with the relevant sections to AS3959-2009.

**Static Water Supply**

45. Before the occupation of the development starts, a static water supply must be provided on the land and must meet all of the following requirements to the satisfaction of the Responsible Authority:
- The water supply must have a minimum capacity of 10,000 litres that is maintained solely for fire fighting purposes.
  - The water supply must be stored in an above ground water tank constructed of concrete, steel or corrugated iron.
  - All fixed above-ground water pipelines and fittings must be of non-corrodible and non-combustible materials.
  - The water supply outlet must incorporate a ball or gate valve to provide access to the water by the resident of the dwelling.

**Mandatory Condition – Maintenance of bushfire mitigation measures**

46. The bushfire mitigation measures forming part of this permit or shown on the endorsed plans, including those relating to construction standards, defendable space, water supply, and access, must be maintained to the satisfaction of the responsible authority and the relevant fire authority on a continuing basis. This condition continues to have force and effect after the development authorised by this permit has been completed.

**Satisfactorily Completed**

47. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

**Permit Expiry**

48. This permit will expire if one of the following circumstances applies:
- The development is not started within two years of the date of this permit.
  - The development is not completed within four years of the issued date of this permit.

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In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

### Notes

- A. Any request for an extension of time, or variation/amendment of this permit must be lodged with the relevant fee.
- B. Prior to the commencement of construction the operator of this planning permit must obtain a non-refundable Asset Protection Permit from Frankston City Council's Infrastructure Department.
- C. Any request for time extension of this Permit shall be lodged with the relevant administration fee at the time the request is made. Pursuant to Section 69 of the Planning and Environment Act 1987 the Responsible Authority may extend the periods referred to if a request is made in writing within the following prescribed timeframes:
  - a. Before or within 6 months after the permit expiry date, where the use or development allowed by the permit has not yet started;
  - b. Within 12 months after the permit expiry date, where the development allowed by the permit has lawfully started before the permit expires.

If a request is made out of time, the Responsible Authority cannot consider the request and the permit holder will not be able to apply to VCAT for a review of the matter.

- D. The applicable flood level for the property is 1.7 metres to Australian Height Datum (AHD).
- E. If further information is required in relation to Melbourne Water's permit conditions shown above, please contact Melbourne Water on telephone 9679 7517, quoting Melbourne Water's reference **135285**.
- F. Street Numbering

Local Government is the Authority responsible for property addressing. There is a requirement under Local Law No. 7 2.12 for the owner or occupier of each property to clearly display the street numbering allocated by Council.

Proposed Street Numbering can be provided by contacting Frankston City Council Rates department - Phone 9784 1853.

**It is the applicant's responsibility to ensure all owners are notified of the allocated street numbering.**

### Council Decision

**Moved: Councillor Aitken**

**Seconded: Councillor Dooley**

That a Refusal to Grant a Permit be issued pursuant to Section 65 of the Planning and Environment Act 1987:

### WHAT ARE THE REASONS FOR THE REFUSAL?

- 1. The proposed development is inconsistent with the objectives of the State and Local Policy Framework of the Frankston Planning Scheme, including:
  - a) Clause 11.02 – Urban Growth
  - b) Clause 15.01 – Urban Environment
  - c) Clause 16.01 – Residential Development

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- d) Clause 21.07 – Housing
2. The proposed development fails to comply with Clause 32.08 – General Residential Zone as it does not provide for residential development that respects the neighbourhood character.
  3. The proposal does not satisfy the objectives of Clause 55 of the Frankston Planning Scheme, in particular:
    - a) Clause 55.02-1 - Neighbourhood Character
    - b) Clause 55.03-8 – Landscaping
    - c) Clause 55.06-1 – Design Detail
  4. The proposal does not achieve the objectives of the Neighbourhood Character Policy (Clause 22.08 of the Frankston Planning Scheme), and the objectives of the specific Seaford Precinct 7 area.
  5. The proposed development does not achieve a high design standard as it lacks design detail and interest which creates visual bulk along its northern, southern and eastern elevation.
  6. The proposal is an overdevelopment of the site.
  7. The proposal fails to provide adequate visitor car parking in accordance with Council's Multi Dwelling Visitor Car Parking Guidelines.

**Carried Unanimously**