

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL
ADMINISTRATIVE DIVISION**

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1198/2014
PERMIT APPLICATION NO. MPS/2014/87

CATCHWORDS

Section 82 Planning and Environment Act 1987 – Brunswick Terminal Station Incorporated Document 2012 – retaining walls abutting Merri Creek – vegetation removal – visual impact.

APPLICANTS	Merri Creek Residents Group Inc
RESPONSIBLE AUTHORITY	Moreland City Council
RESPONDENT	AusNet Transmission Group Pty Ltd trading as AusNet Services
SUBJECT LAND	46 King Street, Brunswick East
WHERE HELD	Melbourne
BEFORE	Jeanette G Rickards, Senior Member
HEARING TYPE	Hearing
DATE OF HEARING	22 August 2014
DATE OF ORDER	4 September 2014
CITATION	

ORDER

- 1 The decision of the Responsible Authority is varied.
- 2 In permit application MPS/2014/87 a permit is granted in relation to land at 46 King Street, Brunswick East. The permit will allow:
 - removal of vegetation,
 - construction of fences,
 - excavation works at depths greater than 1 metre,
 - 2 lot subdivision, and
 - minor alterations for the development of the land not generally in accordance with the Brunswick Terminal Station, Incorporated Document 2012

in accordance with the endorsed plans and subject to the conditions contained in the Notice of Decision to Grant a Permit issued by the responsible authority on the 17 June 2014 but modified as follows:

- a New conditions are included as follows:
- 17 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Melbourne Water's drains or watercourses.
 - 18 Any new buildings must be constructed with floor levels a minimum of 600mm above the applicable flood level.
 - 19 Prior to commencement of works, a landscaping plan must be submitted to Melbourne Water for review and approval detailing any proposed planting on land abutting Merri Creek.
 - 20 Prior to the commencement of works, a Site Environment Management Plan (SEMP) must be submitted to Melbourne Water for approval. The SEMP must include a site map detailing the location and design of all measures including the following: sediment control devices, access tracks, spoil stock piles, trenching locations, vehicle/machinery/plant locations, flow diversions, and fuel/chemical storage areas. Given the proximity of the proposed works to the waterway, it is important that controls are able to ensure no sediment laden run off occurs downstream of the site during construction.
 - 21 Prior to the commencement of works a separate application, direct to Melbourne Water's Asset Services team, must be made for any new or modified storm water connection to a Melbourne Water asset.
 - 22 The layout of the site and size, design and location of buildings and works as shown on the submitted plans must not be altered without the prior written consent from Melbourne Water.
 - 23 Pollution and sediment laden runoff shall not be discharged directly or indirectly into Melbourne Water's drains or waterways.

**Jeanette G Rickards,
Senior Member**

APPEARANCES

For Applicants	Mr N Tweedie SC and Mr A Walker of Counsel They called as witnesses: Mr David Redfearn OAM Ms Luisa MacMillan
For Responsible Authority	Mr D Camilleri, Town Planner
For Respondent	Mr M Quigley QC instructed by Herbert Smith Freehills She called as witnesses: Mr Peter Haack, Landscape Architect Mr Allan Wyatt, Landscape Architect

INFORMATION

Description of Proposal	Removal of vegetation, construction of fences, excavation works at depths greater than 1 metres, 2 lot subdivision and minor alterations for the development of land not generally in accordance with the Brunswick Terminal Station Incorporated Document 2012
Nature of Proceeding	Application under Section 82 of the <i>Planning and Environment Act</i> 1987.
Zone and Overlays	Special Use Zone 3 Environmental Significance Overlay Land Subject to Inundation Overlay Special Building Overlay
Permit Requirements	Clause 42.01-1 – buildings and works (foundation works greater than 1 metre below ground level), remove, destroy or lop vegetation Clause 42.01-2 - subdivision Clause 44.04-1 – construct a building or to construct or carry out works, Clause 44.04-2 - subdivision Clause 44.05-1 - construct a building or to construct or

carry out works

Clause 37.01-3 - subdivision

Relevant Scheme policies and provisions.

Clauses 21.04-2 and 65.

Land Description

The Brunswick Terminal Station is located on the north eastern corner of the intersection of Alister Street and King Street, Brunswick East and accommodates above and below ground infrastructure which supplies energy to Melbourne CBD and surrounding suburbs. The site is approximately 4.06ha in area and irregular in shape due to its abuttal to Merri Creek.

Directly south of the site on Alister Street and directly west of the site on King Street are a variety of well established single and double storey dwellings. Sumner Park abuts the site to the east. The park consists of a large recreation reserve formalised to cater for a soccer field and club house.

The Merri Creek environs abut the site to its north east. The Merri Creek environs not only includes the actual creek and its immediately surrounding native vegetation the space also includes a shared path for bikes and pedestrians with direct access to the Merri Creek bridge¹.

¹ Extract from Urbis Pty Ltd supporting material for application to Moreland City Council

REASONS²

What is this proceeding about?

- 1 The Merri Creek Residents Group Inc (the Residents Group) seek review of the decision of Moreland City Council (the Council) to issue on 17 June 2014 a Notice of Decision to Grant a Permit for the removal of vegetation, construction of fences, excavation works at depths greater than 1 metres, 2 lot subdivision and minor alterations for the development of land not generally in accordance with the Brunswick Terminal Station Incorporated Document 2012 on the land known as 46 King Street, Brunswick East.
- 2 The works proposed require a permit as they fall outside works approved under the Brunswick Terminal Station Incorporated Document 2012 as well as falling under the provisions of the relevant overlays that apply to the land.
- 3 The Residents Group object to the issuing of the Notice of Decision and submit the purpose of the Special Use Zone 3 which covers the Brunswick Terminal Station is *'to promote the use and development of land consistent with the Brunswick Terminal Station Incorporated Document 2012'* and there is no good reason why there should be a departure from the incorporated document.
- 4 The Residents Group in particular oppose the addition of two long and high retaining walls which necessitate the removal of a number of trees in the location of two proposed retaining walls. The northern retaining wall has a length of 34.8m and abuts the Merri Creek Trail pathway. The southern retaining wall has a length of 120.9m and abuts Sumner Park. Both retaining walls vary in height with the highest point of the southern wall being 3.28m and the highest point of the northern wall being 2.25m above the existing ground level. Above the retaining walls is a 3m high security fence. The landscape plan attached to the Incorporated Document and described as 'Draft Landscape Concept Environmental Interface' (LC02) does not identify retaining walls along the southern and northern boundary areas.
- 5 The respondent, AusNet Services formerly known as SP AusNet submits the retaining walls are an appropriate design response that strike a balance between meeting the safety and functional requirements of the Terminal Station and the amenity and landscape character of Merri Creek and Sumner Park.
- 6 They submit treatment options were governed by a number of site constraints, as well as the location of infrastructure shown in the Incorporated Document including the location of buildings maximising the offset from residences in King and Alister Streets; the requirements of

² I/we have considered all submissions presented by the parties although I/we do not recite all of the contents in these reasons.

Melbourne Water in relation to the buildings; the need to avoid disturbance to underground or above ground assets located at the perimeter of the Terminal Station; the internal road network; and the design ensuring there is no encroachment into the Land Subject to Inundation Overlay as required by Melbourne Water.

- 7 The Council submitted the *'preferable scenario, from a visual character perspective would be no retaining walls or security fence'* but having viewed plans showing proposed infrastructure within the site, which for security reasons were not provided, it is satisfied that the proposed retaining walls and security fences are acceptable on the basis that existing vegetation will screen portions of the walls and fence; proposed new vegetation will further screen the walls and fence; and the wall will be improved by a softened treatment incorporated into the Notice of Decision to Grant a Permit which requires:
- 1(d) A softened retaining wall treatment comprising a mixture of colour tinted Reckli concrete panels generally in accordance with the 'typical elevation retaining wall relief treatment' plan prepared by Urbis dated 26.05.2014.

8 The issue for consideration by the Tribunal is:

- Whether the retaining walls as proposed are acceptable;

9 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Moreland Planning Scheme, I have decided to vary the decision. The variation includes conditions provided by Melbourne Water that were not incorporated into the Notice of Decision to Grant a Permit. My reasons follow.

Are the retaining walls as proposed acceptable?

- 10 The Merri Creek is recognised within the Moreland Planning Scheme as an environmentally sensitive area to be protected and conserved³. Of particular relevance are two reference documents the *Development Guidelines for the Merri Creek 2004* and the *Merri Creek and Environs Strategy 2009-2014*. The 1999 version of both documents are a decision guideline within the Environmental Significance Overlay Schedule 1. The latter documents have identical themes to the earlier versions.
- 11 The documents support open space being created along the creek in public ownership and the protection of the natural and visual character of the corridor from development. Under the proposed two lot subdivision, which forms part of the permit application, the shared pedestrian/bicycle path which currently runs through the land owned by AusNet Services and

³ Clause 12.04-1 Moreland Planning Scheme

leased to the Council will be transferred into Council ownership, allowing for this area to be rezoned to Public Park and Recreation.

- 12 The Residents Group submit the proposed retaining walls are not an appropriate response to the natural and visual character of the creek environs area. They submit they will present as significant structures reflecting the industrial character of the Terminal Station rather than the creek environs.
- 13 Ms MacMillan, the Manager of the Merri Creek Management Committee Incorporated indicated the primary purpose of the Committee is:
 - ...to ensure the preservation of natural and cultural heritage, and the ecological sensitive restoration, development and maintenance of the Merri Creek and tributaries, their corridors and associated ecological communities.
- 14 Both Mr Redfearn, a former Director of the Committee and Ms MacMillan provided background information of the works undertaken over a considerable period of time by the Residents Group to enhance the creek environment, such work being carried out by the community and government working in partnership. These works include regular planting and the clearing of litter and have contributed to the current natural environs of the creek.
- 15 Both expressed concern that the proposed retaining walls will have an unacceptable visual impact on the Merri Creek Trail and its environs, particularly given the work undertaken to improve the visual amenity of the creek corridor.
- 16 The Residents Group was critical of the landscape treatment as a solution to the proposed design of the retaining walls. They submit the construction of the retaining walls will result in significant topographical disturbance and the removal of a number of mature trees. There will therefore need to be a strong commitment to maintenance of any proposed landscaping that will take a significant period of time to fulfil the suggested screening effects.
- 17 AusNet Services submitted '*during the early stages of the detailed design process, a number of treatment options were considered including engineering batters and a combination of batters and retaining walls. A variety of types of retaining walls were explored, as well as various architectural finishes*'.
- 18 Mr Haack indicated '*the design approach to the wall as included within the NOD, was to provide an interface between the more urban architecture of the Terminal Station buildings and the Merri Creek, by combining finer built form textures with more geological textures, as well as earthy colours that provide a better visual relationship with the Merri Creek*'. This is to be in the form of Reckli concrete panels in rough cast and textured patterns.

- 19 Whilst Mr Haack referred to other options in his statement he gave clear evidence as to the reasons why these other options were not viable, including the creation of a higher wall with limited landscaping opportunities for a terraced option, the impact on safety standards if a batter slope was incorporated to the north, and the encroachment into the Land Subject to Inundation Overlay.
- 20 Mr Haack acknowledged landscaping is to be used to ameliorate the design response and in this respect he submitted *‘from a visual sensitivity perspective, the users of field based sporting facilities are generally regarded as having a low level of viewer sensitivity ...due to the primary focus of the activity on the playing of the game rather than appreciation of the setting’*. This is compared to the *‘recreational users of the Merri Creek Trail’* which he considers *‘will have a higher level of sensitivity than sporting users as, for many, the enjoyment of the setting is the focus of the activity’*.
- 21 It was Mr Haack’s view that regardless of the design and surface treatment the retaining wall at the height proposed is likely to have a low level of visual impact. Views of the southern wall from near the Merri Creek Trail at Sumner Park will be minimal, as it is generally perpendicular to the line of movement and is well screened by existing vegetation. Whilst views of the northern wall particularly from the Merri Creek Trail boardwalk will be assisted by the proposed landscaping.
- 22 As noted by Mr Wyatt the use of retaining walls is preferable to replacing the walls with steeper embankments which would necessitate the bringing in of fill within the tree protection zone of many of the trees to be retained. Whilst he highlighted the use of gabion and natural rock walls in areas along the creek where retaining walls are necessary he considered the proposed retaining walls to be acceptable.
- 23 The *Development Guidelines for the Merri Creek* recommend that slopes facing the creek should not be filled. Under Standard MC 18 it is recommended that *‘the Merri Creek and its tributaries should be revegetated with local native plant species matched to the plant communities characteristic of the site, and original landscape character’*. Mr Wyatt referred to the two likely EVCs for the subject land and the Merri Creek, EVC55_61 ‘Plains Grassy Woodland’ and EVC55_851 ‘Stream Bank Shrubland’ of the Victorian Volcanic Plain bioregion. He indicated the ‘Moreland Landscape Guidelines and Technical Notes’ which contains a Recommended Plant List of ‘Regionally Local Native Plants’ includes not only the species referred to in the EVCs but additional native plant species. He recommended that species that originally grew on the site and along the creek should form the basis of revegetation. He however noted that along the perimeter of the Terminal Station some types of plants could have an impact on underground or above ground assets and taking a selection from the wider recommended list would be appropriate.

- 24 I acknowledge the proposed retaining walls will be visible to a certain extent for an initial period of time after their construction. This is no different to upgrading works that have been undertaken in other locations along the Merri Creek corridor, as shown in photographs presented by Mr Wyatt. Along the southern portion abutting Sumner Park the existing vegetation will contribute initially to some screening of the retaining wall with the proposed landscaping overtime making a strong contribution to the screening of this wall. The ‘goat track’ along the edge of the park is to be upgraded and this will also contribute to the enhancement of this edge of the park.
- 25 Whilst the northern retaining wall will not have the benefit of initial screening by extensive existing vegetation, over time the proposed landscaping will ultimately screen the wall, particularly from the Merri Creek Trail. At present along this section the infrastructure on the Terminal Station is very visible, but with the reduction in visible infrastructure on the subject land, along with the proposed landscaping works this will lead over time, and as envisaged in the Merri Creek Guidelines to a visual landscaped improvement of this area.
- 26 The treatment of the retaining walls as proposed in condition 1(d) of the Notice of Decision will assist along with the proposed landscaping in allowing the structures to blend within the landscape as seen in other locations along the Merri Creek corridor. I find the proposed retaining walls are acceptable.

Do any other matters warrant rejection of the proposal?

- 27 The Residents Group submit the proposed retaining walls depart from what is shown in the concept landscape plan forming part of the Incorporated Document and therefore unless there is a good reason why there should be no departure from what is shown in the Incorporated Document.
- 28 I accept the Council has considered this issue and determined it appropriate to issue a Notice of Decision based on a viewing of plans of infrastructure and underground assets within the Terminal Station that need protection. I also accept AusNet Services statement that the proposed retaining walls meet the safety and functional requirements of the Terminal Station.
- 29 I do not view what are identified in the Incorporated Document as ‘Draft Concept Landscape Plans’ as indicating this has been assessed to a point where no further changes should be permitted. A concept plan is just that and whilst it may outline in general terms what could be expected it does not suggest to me that a final detailed design assessment had been undertaken at the time of the approval of the Incorporated Document.
- 30 Not only do the proposed retaining walls differ from the Incorporated Document but there are other parts to the permit application including changes to the buildings, lighting, materials and finishes and variations to

the location and alignment of the internal roadway and oil containment tank as well as changes to the landscape plan not raised as issues by the Residents Group. The ability to apply for a permit to vary various parts of the Incorporated Document allow for an assessment to be made as to whether the changes are appropriate.

Conclusion

- 31 The decision of the responsible authority will be varied to include the conditions required by Melbourne Water in their letter to the Council dated 21 August 2014.

**Jeanette G Rickards,
Senior Member**