

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P413/2022
PERMIT APPLICATION NO.TPA/52962

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* to review the refusal to grant a permit; Monash Planning Scheme; General Residential Zone; four triple storey dwellings; Mount Waverley Activity Centre; Garden City and neighbourhood character; amenity and landscaping

APPLICANT	Tanner Land Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENTS	Sarah Dowe Julie Johnson, Sylvia Williams, Jack Kirszenblat, Edward Sullivan and Anastasios (Tom) Pragastis executor/trustee for Demetria Pragastis's estate
SUBJECT LAND	18 Holskamp Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	14 October 2022
DATE OF ORDER	17 November 2022
CITATION	Tanner Land Pty Ltd v Monash CC [2022] VCAT 1316

ORDER

- 1 In application P413/2022 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52962 a permit is granted and directed to be issued for the land at 18 Holskamp Street Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of four (4) triple storey dwellings

Christopher Harty
Member



APPEARANCES

For Tanner Land Pty Ltd

Mr How Ng, Town Planner from Melbourne Planning Pty Ltd. He called the following witness:

- Mr Peter Doyle, Landscape Architect from Peter Boyle Urban Design and Landscape Architecture

For Monash City Council

Mr Peter English, Town Planner from Peter English and Associates Pty Ltd

For Sarah Dowe

Ms Melanie Ellis, Town Planner from Change of Plan Town Planning Services

For Julie Johnson, Sylvia Williams, Jack Kirszenblat, Edward Sullivan and Anastasios (Tom) Pragastis executor/trustee for Demetria Pragastis's estate

Ms Julia Frecker, Town Planner from Urban Edge Consultants Pty Ltd



INFORMATION

Description of proposal	Construction of four triple storey dwellings.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 2 – <i>Monash Residential Areas (GRZ2)</i> No overlays
Permit requirements	Clause 32.08-6 to construct two or more dwellings on a lot
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.04, 22.05, 22.13, 32.08, 52.06, 55, 65 and 71.02
Land description	<p>The subject land is located on the southern side of Holskamp Street, a short distance to the west of Stephensons Road. It is rectangular in shape with a frontage width of 18.29 metres, a depth of 45.38 metres and an overall area of 822 square metres. The subject land is relatively flat with a fall of approximately 1.6 metres from the south-eastern corner to the north-western corner. There is a drainage easement 2.4 metres wide along the southern boundary. The subject land contains a single storey detached brick dwelling and brick garage accessed by a crossover along the western side boundary. It contains several mature trees scattered over the land and a street tree in the front nature strip.</p> <p>To the east is the car park and accessway to the Mount Waverley Community Centre while the centre itself is located behind the site to the south. To the west is an abutting single storey dwelling. To the north, across the road is residential development comprising a mix of single storey dwellings and some more recently constructed two storey townhouses.</p>
Tribunal inspection	28 October 2022 unaccompanied



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Tanner Land Pty Ltd (**applicant**) seeks to construct four (4) triple storey dwellings (refer to Figures 1 to 4) at 18 Holskamp Street, Mount Waverley (**site**). Monash City Council (**Council**) determined on 28 February 2022 to refuse to grant a permit. The applicant has lodged a review of Council's decision.



Figure 1: Streetscape view looking south



Figure 2: View looking west from the community centre car park

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



Figure 3: View south-west from the corner of Holskamp Street and community centre car park entry



Figure 4: View south-east from boundary with adjoining land

- 2 Council's grounds for refusing the permit were generally that:
- The proposed development is inconsistent with the residential development policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme (**planning scheme**) as it fails to respect the garden city and neighbourhood character and is an overdevelopment.
 - The proposal fails to satisfy Clause 55 provisions of the planning scheme relating to neighbourhood character, integration with the street, site layout and building massing, building entries, open space provision, internal amenity, landscaping, and detailed design.
 - The proposed development is a poor design response for the site.

- 3 The respondents (**objectors**) support Council's position and consider the proposal is not appropriate and is not responsive to the policy framework and the site context. They are also concerned the proposal will impose unreasonable amenity impacts on adjacent and nearby dwellings.
- 4 The applicant submits the proposal is a design response that satisfies the purposes of the General Residential Zone Schedule 2 – *Monash Residential Areas (GRZ2)* that affects the site and the provisions and policies of the planning scheme. The applicant considers the proposal constitutes an attached townhouse typology that is a contemporary design response to neighbourhood character. It provides respectful and well managed housing change given the location of the site within the area of the Mount Waverley Major Activity Centre (**MWMAC**). It also benefits from the site's corner location, direct abuttal to the accessway and car park of the Mount Waverley Community Centre and limited direct interface with sensitive residential development which is only to the west.

WHAT ARE THE KEY ISSUES?

- 5 The issues raised within the context of this review relate generally to the proposal's design responsiveness to the policy and physical contexts of the area, neighbourhood character considerations and landscaping response. Having heard the submissions and evidence and inspected the site and locality, the key issues arising from this proposal are:
 - Does the proposal appropriately respond to the physical and policy contexts of the area?
 - Will the proposal cause unreasonable amenity or landscape impacts?
- 6 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02-3 - *Integrated Decision Making* of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 7 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
- 8 Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the planning scheme and from my inspection, I find the proposal achieves an acceptable outcome.
- 9 The proposal presents as a satisfactory design response to both the physical and policy contexts of the area and is not what I consider an overdevelopment. I consider the proposal achieves a net community benefit and I have decided to set aside the decision of Council and direct that a



permit is granted subject to conditions outlined in Appendix A. My reasons follow.

DOES THE PROPOSAL APPROPRIATELY RESPOND TO THE PHYSICAL AND POLICY CONTEXTS OF THE AREA?

- 10 The site is in the GRZ2 and is not affected by any overlays. The GRZ2 includes the purposes of encouraging a diversity of housing types and housing growth particularly in locations offering good access to services and transport while also encouraging development that respects the neighbourhood character of the area. Given this mix of purposes under the GRZ2, Council says the extent of change associated with the proposal to replace one single storey detached dwelling with four triple storey attached dwellings is not unfettered and is tempered by various aspects of the zone and policy.
- 11 The site is located within the MWMAC. Council has recently adopted in March 2021 the *Mount Waverley Activity Centre Structure Plan (MWMAC Structure Plan)* which shows the site located within the MWMAC.
- 12 The site is also shown in *Map 3 – Residential development framework map* under Clause 21.04 – *Residential Development* to fall within three overlapping categories of housing types that includes *Category 1: Activity and neighbourhood centres*, *Category 2: Accessible areas* and underlaid by *Category 8: Garden city suburbs*.
- 13 Council says given the location of the site within the MWMAC, the objectives relevant to Categories 1 and 2 with respect to housing form would be the most relevant.
- 14 I also note that in *Map 1: Residential character types* under Clause 22.01 – *Residential Development and Character Policy*, the site is also within the *Garden City Suburbs Northern Areas*.
- 15 These policy settings broadly establish a conflicting framework regarding how they are to be applied and considered in assessing the proposal.

What is proposed?

- 16 Generally, the proposal includes:
 - Demolition of the existing dwelling and outbuildings.
 - Construction of four triple storey dwellings with an overall height around 9.290 metres.
 - Each dwelling containing four bedrooms.
 - Each of the dwellings incorporating the main entrance, a double garage, and a study or bedroom at the ground level.
 - At the first level, each dwelling containing kitchen and living areas and a bedroom.

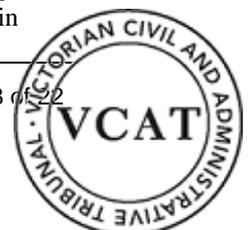


- At the upper (second) level, each dwelling provided with two bedrooms.
- Vehicle access provided via the existing crossing adjacent to the western boundary.
- Private open space provided in the form of west facing balconies adjacent to the internal living areas.
- Pedestrian access for Dwelling 1 directly from the street, while the rear dwellings are provided with access via the common driveway.
- Materials incorporating a variety of contemporary finishes including cladding, render of varying colours and face brick.

How responsive is the proposal?

- 17 According to the MWMAC Structure Plan, the site is not on the fringe of the MWMAC area but in a central location immediately north of the Mount Waverley Community Centre and Mount Waverley Train Station and railway corridor. The site also has pedestrian access past the community centre to the commercial area of the activity centre on the south side of the railway corridor. The site enjoys good accessibility to services and transport. This supports State policies such as Clause 11.03-1S relating to *Activity centres* by encouraging the concentration of residential development into activity centres including provision for different types and diversity of housing and including higher density housing and Clause 15.01-4R relating to *Healthy neighbourhoods – Metropolitan Melbourne* by facilitating 20-minute neighbourhoods that give people the ability to meet most of their everyday needs.
- 18 Similarly, activity centres are recognised under Clause 21.06 as important locations for residential development where a range of housing types is sought to satisfy future housing needs. This is further addressed in Clause 21.04 where residential growth is directed to activity centres that are well serviced by public transport, retailing, community facilities and employment opportunities.
- 19 The MWMAC Structure Plan² in *Direction 2 – Support Diverse Housing Options* encourages the delivery of townhouses, villa units and low scale apartment building development within the residential areas of the MWMAC.
- 20 The site falls within Categories 1 and 2 which are identified in Clause 21.04 for future development potential and in Category 8 for incremental change. There is support in the planning scheme for more intense housing change to occur in residential areas within an activity centre such as the MWMAC.

² The MWMAC Structure Plan, although adopted by Council does not form part of the planning scheme and hence, I have given it the level of weight associated with a document that assists in understanding future directions for the MWMAC.



Garden city and neighbourhood character

- 21 Policy under Clause 15.01-5S relating to *Neighbourhood character* looks to recognise, support, and protect neighbourhood character and sense of place. This is about supporting development that respects existing neighbourhood character or contributes to a preferred neighbourhood character. Similarly, policy under Clause 21.04 encourages a high standard of architectural design in buildings and landscaping associated with residential development that considers environmentally sustainable development.
- 22 Permeating throughout the planning scheme is policy concerning garden city suburbs. Clause 21.01-1 recognises how the City of Monash is known for its garden city character, which consists of leafy low-rise suburbs with well vegetated private gardens and street trees. Policy under Clause 21.04 seeks to ensure that garden city and neighbourhood character is enhanced by new development. This includes vegetation retention and planting of canopy trees.
- 23 Council says the proposal is at odds with the preferred character statement for Garden City Suburbs Northern Areas outlined in Clause 22.01 which states:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.



Buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

- 24 Council and the objectors say that, although the intensity of the proposal is somewhat anticipated due to the location of the site in the MWMAC, four dwellings of the size, height and form proposed will produce an outcome that attempts to squeeze too much built form on the site, with consequential impacts in relation to neighbourhood character, visual bulk to neighbouring properties and lack of landscaping.
- 25 Broadly, Council and the objectors say it is the extent of built form coupled with the triple storey height across and into the site in an unbroken form with an upper level that has almost as large a footprint as the first-floor level with minimal setbacks particularly along the eastern boundary that makes the proposal an overly large and inappropriate fit in its location.
- 26 The objectors say development of the scale proposed should not come at the expense of respecting neighbourhood character. The site is within an established residential area, adjacent to an area in the Public Use Zone Schedule 6 - *Local Government (PUZ6)*, utilised for the community centre, library, and car parking area. Despite having non-residential uses adjacent, the area is characterised by low scale development and a leafy aspect and has a predominantly residential feel. Existing developments in the immediate area are single storey, though double storey built form is common in the wider area. Brick dwellings with pitched tiled roofs are common. Dwellings are generally setback uniformly 7 metres to 9 metres from the street. Front yards typically have moderate to high levels of planting, with glimpses of shrubs and trees around and between buildings. They say the proposal fails to respect these character attributes.
- 27 Council says the dominance of the built form from oblique views along the proposed driveway will be exacerbated by the unbroken mass of the building as it extends into the site and contributed to by cantilevered elements at the first-floor level which extend over the driveway. The contemporary design with cubic forms, vertical facades, cantilevered elements, and flat roof design cumulatively form a design which is the antithesis of neighbouring development.
- 28 Council and the objectors consider these failings with respect to neighbourhood character are reinforced by the lack of meaningful



landscaping, particularly for canopy trees most evident along the narrow setbacks provided to the east at 1.52 metres and south at 2.9 metres to 3.4 metres.

- 29 I accept that the proposed design is different to what exists in the immediate and broader neighbourhood of the area. However, I consider the site is almost an island in that it is bordered by roads to the north, east and south, with the community centre further to the south and its car park to the east. Both these interfaces to the site are well landscaped including canopy trees. I note that Council and the objectors feels this landscaping is taken advantage of by the proposal which includes limited space for its own landscaping along these interfaces. In this respect, I agree, and consider more landscaping with canopy trees is required along these frontages on the site.
- 30 The interfaces to non-residential development and public areas provide scope for a more robust design response. They are a less sensitive interface which allows for a contemporary design and for a more intensive built form to be contemplated. This locational context, coupled with the site close to the community facilities and transport and well within (not at the fringe) of the MWMAC provides scope for a design such as proposed.
- 31 I also acknowledge that the site is in a location that the planning scheme identifies for future development potential and at a minimum for incremental change. The site is not identified in an area for minimal change.
- 32 The design of the proposal follows a central spine down the length of the site with no walls on boundaries and separation to all boundaries. It retains the location of the existing crossover and proposes a driveway along the western side boundary which provides separation from the only direct sensitive abuttal to the west at 16 Holskamp Street. This boundary currently has some screening by existing vegetation which is proposed to be retained and protected by the proposal.
- 33 I would usually agree with arguments of Council and the objectors concerning unbroken built form, particularly over three storeys in height extending down the length of a site with blank walls. However, in this case, I find there are no blank continuous walls extending down the length of the site over three levels. The proposal includes an architectural design approach that is articulated through a combination of protruding and receding built form elements including cantilevering over the driveway, projecting boxed window frames, recessed window framing and variety in the use of materials and finishes with brick, render and timber cladding with variation in muted toned colours. Such a design creates shadow effects and a variety of form that lessens the overwhelming bulk and mass of what could have been a problematic built form outcome.
- 34 Table 1 outlines the variety of boundary setbacks over the three floor levels

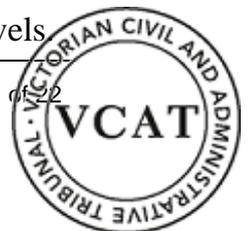


Table 1: Boundary setbacks in metres

Floor levels	Elevations			
	North	South	East	West
Ground Floor	7.551 to 7.679	2.906 to 3.446	1.520	5.750 to 6.5
First Floor	7.46 to 7.729	2.94 to 3.502	2.618 to 3.67	5.4 to 5.9
Second Floor	8.101 to 8.229	3.037 to 3.281	4.17 to 4.67	6.64 to 7.63

- 35 The proposal includes a variety of setbacks to all boundaries at all floor levels except for the ground floor eastern boundary. These variations in boundary setbacks add complexity to the design, which when combined with the contemporary architectural design provides a reasonable level of articulation that retains a human scale and is respectful, given the change anticipated for the location. The extent of recess of upper floor levels may be subtle, yet the outcome is a design that will add interest in the area. I find the proposal appropriately reflects the change to housing that the preferred character statement acknowledges.
- 36 In my view, the site acts as a book end for the eastern end of the southern side of Holskamp Street, by demarcating the community centre car park and providing scope for a more intense residential built form that demonstrates an appropriate change in an area that is identified in the planning scheme for such change.

WILL THE PROPOSAL CAUSE UNREASONABLE AMENITY OR LANDSCAPE IMPACTS?

Landscaping

- 37 I have accepted the built form response with respect to the strategic locational aspects of the site and with respect to neighbourhood character. However, I have reservations concerning the design response to garden city character and the proposed landscaping design approach.
- 38 The applicant relies on the landscape evidence of Mr Boyle, and I have had regard to his evidence.
- 39 Mr Boyle’s evidence was that the landscape design responds to the planning scheme by proposing landscaping with 18 native trees, four exotic trees and 159 shrubs, ground covers and climbing plants within the shared and private spaces of the proposal (refer to Figure 5). He considered the proposed planting responds to the surrounding pleasant leafy context by planting new canopy trees that will soften views of the built form and



provide attractive, amenable shared and private open spaces within the development.

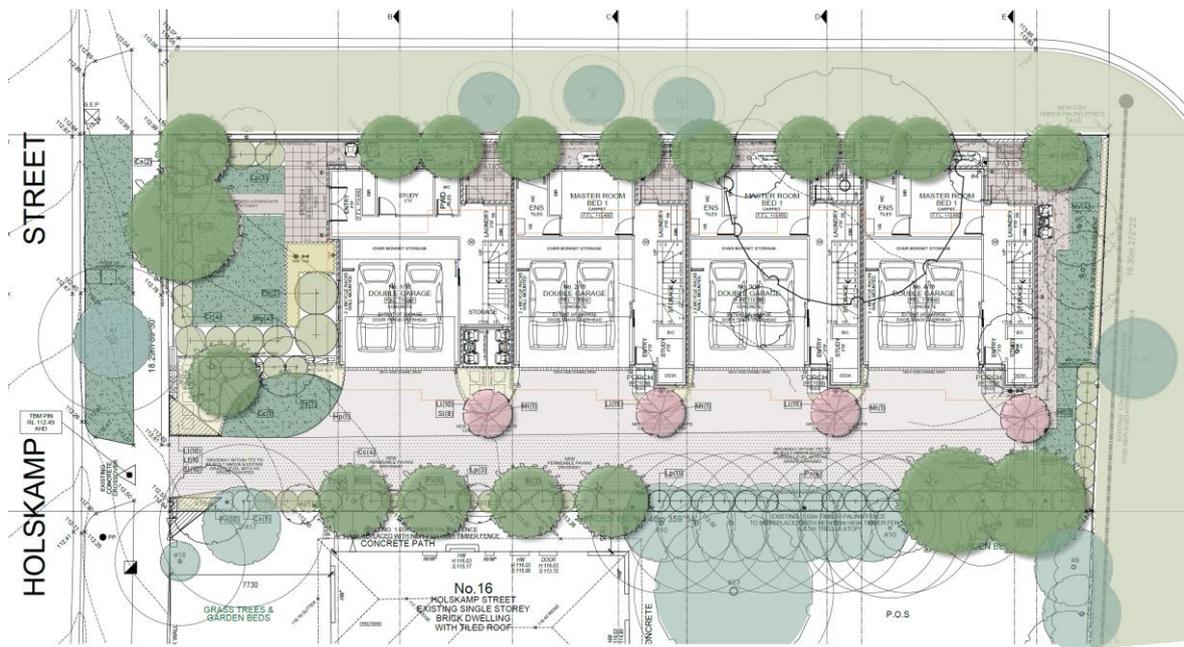


Figure 5: Landscape plan evidence

- 40 Regarding landscaping, policy under Clause 22.01-3 refers to preserving and enhancing the treed character. The neighbourhood exhibits a leafy character contributed to by a combination of canopy trees in public areas to the east and south of the site and found within both front and rear yards of residential properties in the neighbourhood.
- 41 The same policy refers to providing sufficient and well located private open space, primarily unencumbered by easements, to provide for vegetation and large trees to be retained or planted within front, side, and rear setbacks and to provide side and rear setbacks capable of supporting canopy trees.
- 42 The site contains several trees, most of which are exotic species (9 out of 12) which are proposed to be removed to accommodate the construction works of the proposal. Council was critical the proposal makes little effort to incorporate any of the existing trees into the design.
- 43 The arborist report accompanying the permit application identifies most of the trees as having medium retention value. I noted during my inspection that Tree 5, a native species located 1.1 metres from the southern rear boundary of the site and with a height of 9 metres and canopy spread of 10 metres appears to be a specimen that could be retained with a greater rear setback. However, the arborist report's assessment was that this tree was of low retention value. This was because its foliage has lerp and consists of epicormic growth from an old stump and is a high risk of structural failure

that cannot be remedied with arboricultural treatment and is a threat to life and property.

- 44 Council and the objectors say that, although the quantum of proposed planting may appear to be an appropriate landscaping response, they have doubts regarding the overall likely outcome due to:
- Excessive reliance on existing landscaping within the adjoining public areas to the east and south and from the abutting dwelling to the west to contribute to meaningful softening of the built form and provision of a sense of separation to the adjoining dwelling.
 - The setback of 1.52 metres from the eastern side boundary to the ground floor allows for narrow service yards and small patios with little space for meaningful landscaping including the planting of canopy trees. The proposal to plant Native Frangipani (*Hymenosporum flavum*) within this narrow setback area that will reach a mature height of 6 metres and canopy spread of 3 metres will potentially lead to canopy growth form issues due to conflict with the balconies on the first floor level and resulting in no canopy trees reaching beyond the overall height of 9.290 metres of the built form. This results in the built form remaining the dominant element.
 - Similarly, the proposal to plant Upright Crab Apples (*Malus tschonoskii*) with a height of 6 metres and canopy spread of 3 metres along the eastern side of the driveway adjacent to the dwellings will give rise to potential conflict with growth form due to restrictions on available airspace associated with the cantilevered first floor level above.
 - The limited planting of canopy trees along the rear boundary and the loss of two trees that currently contribute to the leafy feel of the rear area of the site is a matter that is also of concern.
- 45 Mr Boyle's evidence included a landscape plan (refer to Figure 5) which significantly embellished the landscaping that was proposed in the permit application. I note that under questioning, Mr Boyle acknowledged that he prepared the landscape plan based on the existing proposal and that he was not instructed to revise the design or to consider existing vegetation. This puts into context that the landscaping design has worked around the constraints offered by the design of the proposal.
- 46 I accept the landscaping that is proposed in the evidence with respect to the front setback and along the proposed driveway. I consider what is proposed will achieve an acceptable outcome. It is notoriously difficult to avoid gun-barrel driveways with tandem medium density residential development. The proposed landscaping response in Mr Boyle's evidence provides plantings along both sides of the driveway which will assist with dwelling

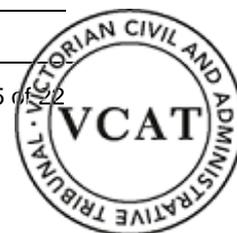
entry identification, improve the appearance of the driveway, and moderate the visual presence of the built form.

- 47 Regarding boundary planting, I am generally satisfied except for the setbacks for the eastern side boundary and the southern rear boundary, which are insufficient. I acknowledge that the existing canopy trees are to be removed including Trees 5 and 6 on the rear boundary. However, I consider it appropriate to require increased setbacks to allow for additional canopy tree planting to be provided that better responds to policy and the leafy garden city character the site and neighbourhood exhibits.
- 48 I agree with Council and the objectors that there is too much reliance on landscaping outside the site. The proposal needs to respond in a more positive manner.
- 49 I find the space for landscaping along the eastern and southern boundaries of the site should be increased and I will include conditions requiring the rear setback to be increased to 5 metres and for the eastern setback to be increased to 3 metres. Both will allow for canopy trees to be planted that will achieve a height that matches the built form height of the proposal.

Amenity

- 50 Council and the objectors were concerned with the visual bulk of a triple storey attached built form impacting unreasonably on the amenity of residential properties immediately adjoining to the west and to the north across Holskamp Street.
- 51 I am generally not concerned with this issue. The proposal has good separation from the adjoining dwelling to the west by the proposed driveway of between 5.750 metres and 6.5 metres. This dwelling has its back turned to the site and there is good screen planting along the common boundary, which will be supplemented by the proposed landscaping.
- 52 For residential properties opposite the site, the tandem typology of the design means the view of the front of the proposal will primarily be of a single dwelling, albeit at three levels with setbacks of between 7.6 metres and 8.1 metres. I consider this reasonable given the context of the site within the MWMAC.
- 53 Oblique views will show a greater extent of the built form. However, they will be from a greater distance from across the road with impacts that should be reduced with landscaping.
- 54 Generally, I find there are few tell-tale signs of an overdevelopment by the absence of walls on boundaries and non-compliance with garden area, site coverage or site permeability requirements which are all satisfied.³
- 55 Overall, I find amenity impacts are not unreasonable.

³ Site coverage of 39.84%, site permeability of 31.89% and garden area of 35.02%.



OTHER MATTERS

- 56 Council and the objectors raised issues with dwelling entries and private open space.
- 57 They say the dwelling entries do not provide any sense of address due to the attached nature of the design and access being required for three dwellings along the driveway.
- 58 I note the design includes an entry porch to Dwellings 2, 3 and 4 from a protruding landscaped area in front of each of these dwellings. I consider this design element will allow for each dwelling to have a sense of address and for the entry to each dwelling being comfortably recognisable.
- 59 Private open space for each dwelling is proposed via first floor balconies. They are each a minimum of 8 square metres with a minimum width of 1.6 metres and with convenient access from a living room. Accordingly, they are compliant with the private open space variation in the GRZ2.
- 60 I am also comfortable that private open space can be further enhanced with the conditions I will impose regarding increased setbacks along the eastern and southern boundaries.

WHAT CONDITIONS ARE APPROPRIATE?

- 61 I have had the benefit of a 'without prejudice' discussion of draft permit conditions circulated by Council.
- 62 There is some discussion between parties as to what conditions should be imposed. I have discussed some of them within my reasons.
- 63 I have included conditions as I consider appropriate for the proposal and the issues regarding the proposed development. I would note that any increase in ground floor level setbacks will also require first and second floor level setbacks to be commensurately increased to maintain the extent of recession between floor levels that are evident in the proposed design.

CONCLUSION

- 64 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Christopher Harty
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52962
LAND	18 Holskamp Street MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of four (4) triple storey dwellings

CONDITIONS

Amended Plans Required

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the responsible authority. When approved, the plans will be endorsed and then form part of the permit. The plans must be generally in accordance with the plans prepared by Zai Pty Ltd. (Revision B dated 19 November 2021) but modified to show:
 - (a) A setback of a minimum of 3 metres from the eastern boundary, which is to be planted with a minimum of three canopy trees of an appropriate species that can reach a height at maturity that matches the height of the buildings. Setbacks at the first and second floor levels are to be commensurately increased to maintain recessed upper levels with no changes to other setbacks except for that specified in Condition 1(b);
 - (b) A setback of a minimum of 5 metres from the southern boundary which is to be planted with at least two canopy trees of an appropriate species suited to infrastructure easements and which can reach a height at maturity that matches the height of the buildings. Setbacks at the first and second floor levels are to be commensurately increased to maintain recessed upper levels with no changes to other setbacks except for that specified in Condition 1(a);
 - (c) Bin storage details in accordance with the Waste Management Plan;
 - (d) An amended Landscape Plan prepared in accordance with Condition 3;
 - (e) An amended Waste Management Plan prepared in accordance with Condition 4; and,
 - (f) A Sustainable Management Plan in accordance with Conditions 5.



All to the satisfaction of the Responsible Authority.

Layout not to be Altered

- 2 The development and use as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Landscape Plan

- 3 Concurrent with the endorsement of any plans required pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the responsible authority. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Peter Boyle dated 25 September 2022 except that the plan must show:

- (a) The changes required under Conditions 1(a) and 1(b);
- (b) A balance of planting along the eastern boundary between the canopy trees required under Condition 1(a) and a reduction in the number of Native Frangipanis to provide appropriate spacing;
- (c) Reduced paving within the ground level open space of each dwelling and replaced with lawn;
- (d) The extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site;
- (e) The detail of the proposed paving;
- (f) The location and operational detail of external lighting (if any); and
- (g) The provision of an in-ground, automatic watering system linked to rainwater tanks on the land servicing the main garden areas,

all to the satisfaction of the Responsible Authority.

Waste Management Plan

- 4 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be approved by the responsible authority. The plan must be substantially consistent with the Waste Management Plan prepared by Frater Consulting, Version 0 dated 25 October 2021 but revised to the satisfaction of the responsible authority:

- (a) Provide the Planning Application number to the introductory section;
- (b) Identify the service provider of the onsite private collection;
- (c) Provide details of in-dwelling waste and recycling receptables. A 5 to 7 litre food waste kitchen caddy should be provided to residents;

- (d) Provide a revised bin collection details including a revised internal temporary collection point, scale plans to indicate collection points, bin transfer routes and swept path diagram;
- (e) Provide details of hard waste and e-waste management;
- (f) Provide details of responsibility for the operation of the waste management system;
- (g) Outline of how the waste management system will be monitored and communication strategy for occupiers.

Sustainable Design Assessment

- 5 Concurrent with the endorsement of plans required pursuant to Condition 1, a Sustainable Design Assessment must be submitted to and approved by the responsible authority. The plan must be generally in accordance with the Sustainability Management Plan prepared by Frater Consulting (Version 0) dated 11 October 2021 but amended to reflect the amended development plan required under Condition 1.

Construction Management Plan

- 6 Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (CMP) must be submitted and approved by the responsible authority. No works are permitted to occur until the Plan has been endorsed by the responsible authority. Once endorsed, the CMP will form part of the permit and must be implemented to the satisfaction of the responsible authority. The CMP must address the following issues:
 - (a) Appropriate measures to control noise, dust and water and sediment laden runoff;
 - (b) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
 - (c) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
 - (d) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network;
 - (e) A program for the cleaning and maintaining surrounding road surfaces;
 - (f) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
 - (g) Measures to provide for public safety and site security;



- (h) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- (i) A Traffic Management Plan showing truck routes to and from the site;
- (j) A swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- (k) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (l) The provision of contact details of key construction site staff; and
- (m) Include a requirement that except with the prior written consent of the responsible authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;
 - Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
 - No works are permitted on Sundays or Public Holidays.

Car Parking

- 7 Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council's Engineering Department.
- 8 The proposed crossing is to be constructed in accordance with the City of Monash standards.

Drainage & Stormwater

- 9 The site must be drained to the satisfaction of the responsible authority.
- 10 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.

General Conditions

- 11 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction



of the responsible authority and then maintained to the satisfaction of the responsible authority.

- 12 All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the responsible authority.
- 13 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the responsible authority. Once installed the screening and other measures must be maintained to the satisfaction of the responsible authority. The use of obscure film fixed to transparent windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.
- 14 Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.
- 15 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Tree Protection

- 16 All existing vegetation (including trees on adjacent land and nature strips) shown on the endorsed plans must be suitably identified before any development starts on the site and that vegetation on the site to be removed and vegetation on adjacent land to be retained and protected must be clearly identified to the satisfaction of the responsible authority.
- 17 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land and nature strip). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the responsible authority.
- 18 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained (including trees on adjacent land and nature strip) as shown on the endorsed plans and are advised of their obligations in relation to the protection of those trees.
- 19 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the responsible authority.

Expiry of permit for development

- 20 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

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.

– End of conditions –

