

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P955/2022  
PERMIT APPLICATION NO.TPA/53411

### CATCHWORDS

Five two-storey townhouses; repeat appeal; neighbourhood character; landscaping; amenity impacts.

<b>APPLICANT</b>	Oorja Developers Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENTS</b>	Brian Menzies Jenny Menzies Kwok Hong Yip Les McNamara Lily McNamara Melinda Tuz Miklos Tuz Ying Li Elizabeth Tuz
<b>SUBJECT LAND</b>	3 Wesley Court WHEELERS HILL VIC 3150
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	23 March 2023
<b>DATE OF ORDER</b>	4 April 2023
<b>CITATION</b>	Oorja Developers Pty Ltd v Monash CC [2023] VCAT 360

### ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: R Architecture
- Drawing numbers: VCAT Issue
- Dated: 31 January 2023



- 2 In application P955/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53411 a permit is granted and directed to be issued for the land at 3 Wesley Court Wheelers Hill VIC 3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - The construction of five dwellings in the Neighbourhood Residential Zone Schedule 4; and
  - The removal of six trees in the Vegetation Protection Overlay Schedule 1.

Michael Nelthorpe  
**Member**

#### **APPEARANCES**

For applicant	Mr Andrew Clarke, town planner of Clarke Planning. He called Mr Tony Aravidis, landscape architect of Species Landscape Architecture as an expert witness.
For responsible authority	Mr Gareth Gale, town planner of Gareth Gale Consulting Pty Ltd.
For the respondents	Ms Melinda Tuz and Ms Elizabeth Tuz.



## INFORMATION

Description of proposal	Five two-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	Neighbourhood Residential Zone Schedule 4 (Dandenong Valley Escarpment Areas) Vegetation Protection Overlay Schedule 1
Permit requirements	Clause 32.09-6: to construct two or more dwellings on a lot; and Clause 42.02-2: to remove or destroy any vegetation that has a trunk circumference greater than 500mm at 1200mm above ground level, and is higher than 10m.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.04, 22.01, 32.09, 42.02, 52.06, 55, 65 & 71.02.
Land description	This irregularly shaped lot is on the north side of Wesley Court. It has a 19.8m frontage, a 60m depth (on the lot's western side) and an area of 1,874m <sup>2</sup> . A single-storey dwelling occupies the site.
Tribunal inspection	11 March 2023



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Oorja Developers Pty Ltd ('the applicant') seeks permission to construct five two-storey townhouses at 3 Wesley Court, Wheelers Hill. Monash City Council ('the Council') refused to grant a permit. The applicant seeks a review of this decision. Several nearby residents have joined this review.
- 2 This is the second proposal for the site. In September 2021, the Tribunal refused to grant a permit for a similar development.<sup>2</sup> The Tribunal's summary of findings was as follows:

[5] I have decided to refuse to grant a planning permit for this proposal as whilst planning policy supports the development of townhouses on the site the design fails to respond to the preferred neighbourhood character and will not enable the planting of canopy trees as desired by the Neighbourhood Residential Zone Schedule 4.
- 3 The applicant and the Council say that this is a correcting appeal and that I should place great weight on the previous Tribunal's decision. The dispute between these parties is over the interpretation of the previous Tribunal's comments on the provision of canopy trees.
- 4 The Council says that the revised landscape plan provides enough canopy trees, but the proposal does not provide the spaciousness sought by the Zone and the statement of preferred neighbourhood character. It says that a concern with the spaciousness of the proposal is implicit in the previous Tribunal's findings.
- 5 The applicant disputes this. It says that the previous Tribunal made no findings on spaciousness. It takes this silence as consent. It relies on Mr Aravidis' evidence that the proposed canopy trees are suitable for the spaces provided. On this basis, they say that no additional spaciousness is required.
- 6 The respondents are opposed to the size of the proposal. They say there are too many townhouses and that they are all too large. They say that their small court cannot manage the traffic, parking and waste management issues caused by the proposal. Apart from this, they say that the size and number of the townhouses and their proximity to the shared boundaries causes unreasonable visual bulk, overshadowing and adverse wind effects. They say that it is inappropriate in the Zone.

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits 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.

<sup>2</sup> *Tuz v Monash CC* [2021] VCAT 1057.



## WHAT ARE THE KEY ISSUES?

- 7 The key issues in this proceeding are:
- What weight should I give to the previous decision?
  - Is the proposal an acceptable planning outcome?
  - Are the impacts on the amenity of adjoining properties acceptable?
- 8 Having heard submissions, I find that I should give great weight to the previous decision. Regarding this decision, I agree with the applicant that the previous Tribunal did not call for more spaciousness.
- 9 Separately, I find that the proposal is an acceptable planning outcome and that the impacts on the amenity of adjoining properties is acceptable. I provide my reasons for these findings after describing the site and surrounds, the relevant planning controls and policies, and the proposal.

## THE SITE AND SURROUNDS

- 10 The site is in a residential area to the north-west of the intersection of Jells and Wellington Roads in Wheelers Hill.<sup>3</sup> I understand that it was subdivided and developed in the late 1970s.<sup>4</sup> Most dwellings were built in the 1980s, and they are predominantly single storey with a scattering of two storey dwellings. There is a minor extent of infill which is primarily two storeys, and there is a small number of rebuilds, where large two-storey houses replace what was previously on the land.



Figure 1: Aerial photograph – 18 December 2022<sup>5</sup>

- 11 The site is in a court that provides access to five properties. It is unusually shaped and uncommonly large for this neighbourhood. This is best shown in the image below:

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<sup>3</sup> To assist in orientation, I note that the redevelopment of the AFL/VFL's former headquarters at Waverley Park is on the south-east side of this intersection.

<sup>4</sup> Ms Elizabeth Tuz said that she and her husband chose their property and built their house around that time.

<sup>5</sup> Submission on behalf of the Responsible Authority. P.4.

- 12 I am advised that the site comprises the original wedge-shaped lot on Wesley Court plus a rectangle excised from the site to the east (an Early Learning Centre with access to Jells Road).
- 13 The other distinctive characteristic of the site are two patches of tall trees – one immediately behind the dwelling and the second at the rear boundary. Prior to the previous hearing, an arborist assessed all trees on the site and found that 25 of the 31 trees could be removed for reasons relating to their health and/or structure.
- 14 The trees to be removed include a Smooth-bark Apple Myrtle (23m high with a 15m spread), a Red Ironbark (18m high with a 20m spread) and a Spotted Gum (12m high with an 18m spread). Those to be retained include two Victorian Blue Gums (one that is 22m high with a 20m spread and another that is 14m high with a 15m spread).

### **THE RELEVANT PLANNING CONTROLS AND POLICIES**

- 15 The site is in the Neighbourhood Residential Zone Schedule 4 ‘Dandenong Valley Escarpment Areas’ (‘NRZ4’). The Neighbourhood Character objectives of this Schedule are:
  - To ensure new development maintains the important view lines to the Dandenong Ranges, along the streets and between buildings.
  - To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.
  - To encourage open gardens to the street, and the planting and retention of significant trees.
- 16 NRZ4 varies several standards of Clause 55 including site coverage (50%), permeability (30%), varied landscaping provisions, rear setbacks (5m minimum) and private open space (35sqm with a minimum dimension of 5m).
- 17 The Vegetation Protection Overlay Schedule 1 requires a permit to remove vegetation that:
  - Has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level; and
  - Is higher than 10 metres.
- 18 The Residential Framework Plan at Clause 21.04 identifies the site as near the boundary of the Garden City Suburbs Area (an area suitable for incremental change) and the Dandenong Creek Escarpment Area (an area with limited development potential).
- 19 The Residential Character Types Map at Clause 22.01 clarifies the site’s location as being within the Dandenong Creek Escarpment Area. The statement of preferred neighbourhood character is that:



The neighbourhood character of this area will evolve within a landscape that has a large number of native trees spread throughout both the public and private realm. This provides an overhead canopy which unifies the diverse built-form of some neighbourhoods and provides a strong relationship with the semi-natural landscape of the Dandenong Valley. An important characteristic of the area is the view lines to the Dandenong Ranges, along streets and between buildings. New dwellings, or additions to dwellings, will seek to maintain these views.

Building scale, height and bulk will continue to enhance and reinforce the existing landscape and built form character and will generally be similar within neighbourhoods. Large scale contrasts between buildings will be discouraged except where existing trees and shrubs soften the junction between buildings or where there is a graduated change in scale.

Garages will be incorporated into the dwelling design so as not to dominate the facade of the building. New developments will typically be sited to address the street, be well designed, energy efficient and sustainable.

Front setbacks will be generous to enable the development and maintenance of significant native tree canopy and understorey vegetation. There may be variation at a neighbourhood level but there will be consistency within individual streets.

Dwellings will be designed to sympathetically integrate with any existing native trees and shrubs on or adjacent to the development site and to the topography. Facades will be articulated with recesses, openings and balconies. Robust and low maintenance materials and finishes that blend with the surrounding natural environment will be used. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas.

Existing trees will be retained where possible and landscaping will reduce the dominance of buildings and provide filtered views of the architecture. Most gardens will be open to the street with no walls or fences, allowing the soft naturalistic qualities of neighbourhoods to be retained. Large walls and fences will be discouraged except where they are already a visually dominant streetscape element. Gardens will be predominantly planted with native vegetation to contribute to the existing natural setting.

The soft quality of the street will be maintained by ensuring that there is only one single crossover per lot frontage.

## THE PROPOSAL

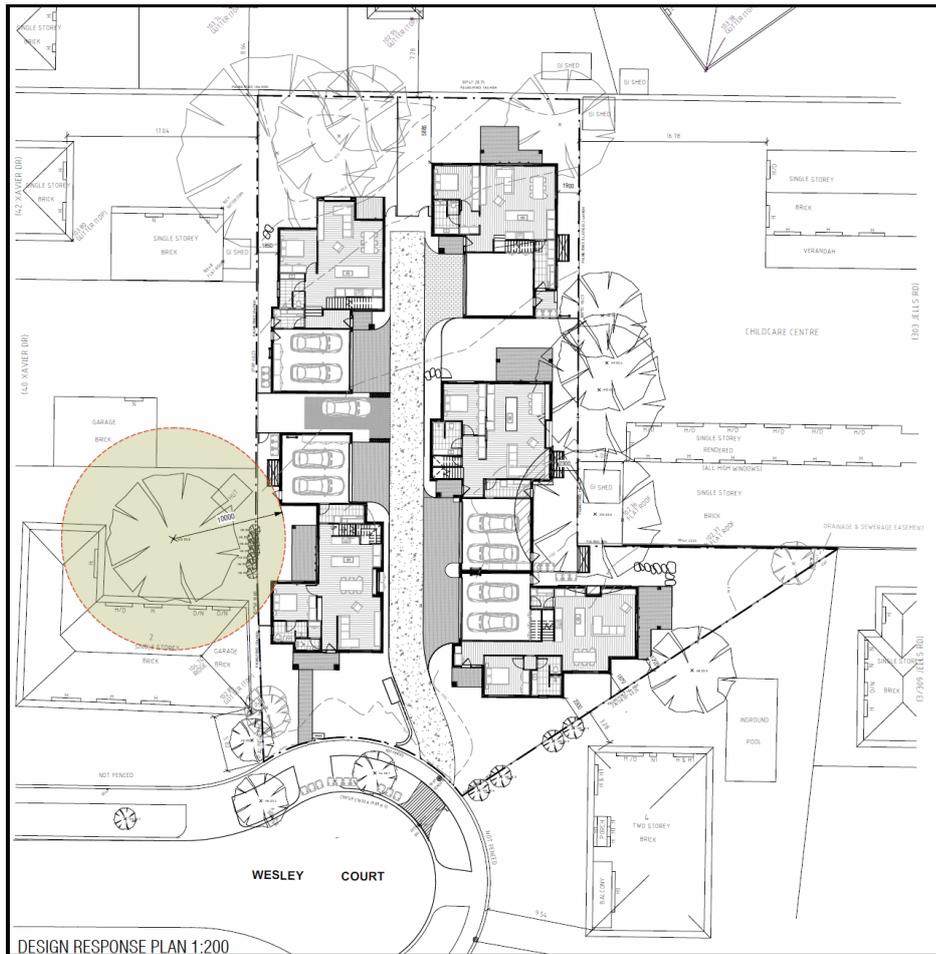


Figure 2: Proposed building footprint<sup>6</sup>

- 20 Five two-storey dwellings are proposed. Each contains four bedrooms. Each dwelling has a two-car garage, and a visitor parking space is provided. Vehicle access is via a single driveway.
- 21 Site coverage is 41.3% and garden area totals 42.5%. The quantitative standards of Clause 55 are met or exceeded except that the private open space area of Dwelling 2 does not have a consistent 5m width. Rather, this space of 125m<sup>2</sup> is triangular.

### WHAT WEIGHT SHOULD I GIVE TO THE PREVIOUS DECISION

- 22 The applicant and the Council say that I should give great weight to the previous decision, and that I should follow the conventions for ‘repeat appeals.’<sup>7</sup> I agree, given that the relevant planning controls and policies and the immediate context has not changed.

<sup>6</sup> From Sheet TP02. Amended Plans Revision D dated 31 January 2023 by R Architecture.

<sup>7</sup> As described in *Reichert v Banyule CC* [1996] VICCAT 44 and *Sprut v Stonnington CC* [2012] VCAT 1675.

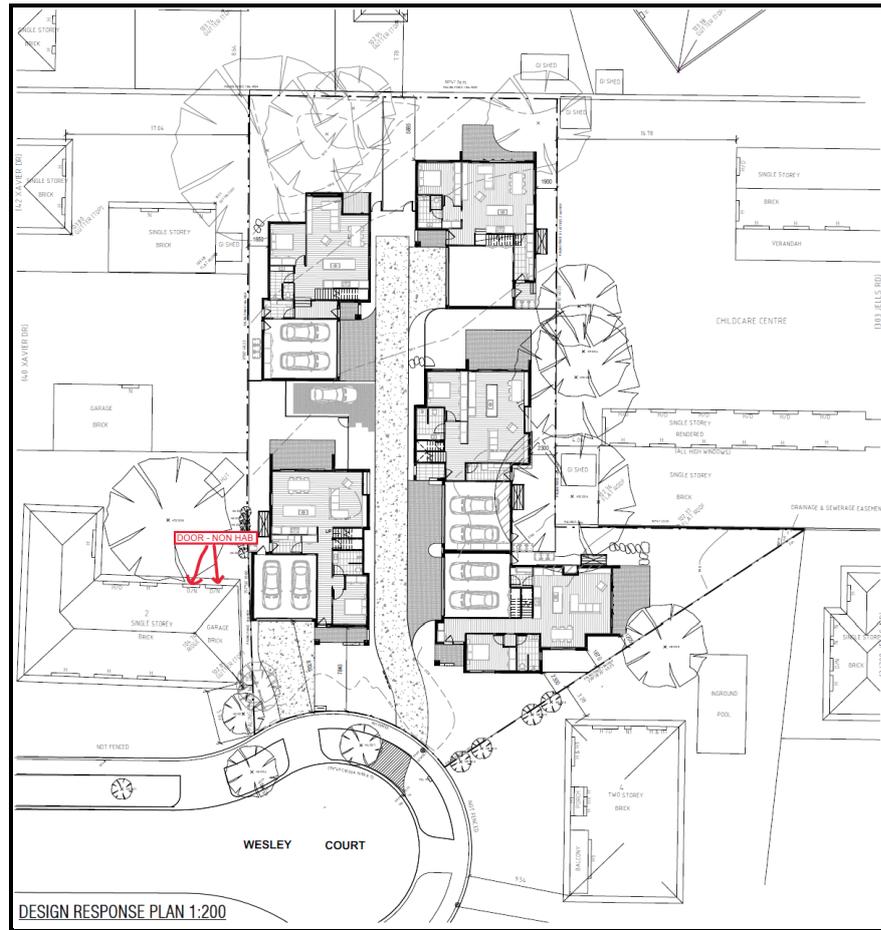


Figure 3: Proposed building footprint.<sup>8</sup>

- 23 Noticeably, the building footprint is much the same. Four of the five townhouses are identical in their size and siting and the visitor car space is identical. One driveway has been removed, with consequential changes to the townhouse previously served by that driveway. Otherwise, the changes in footprint are limited to minor revisions to outdoor decks near existing trees.
- 24 The dispute is over the interpretation of the previous decision. The Council say that the previous Tribunal required more space around the townhouses. The applicant says that this is not the case.
- 25 I agree with the applicant. I regard the previous Tribunal as being dissatisfied with the previous landscaping proposal rather than with the spaciousness of the development.
- 26 The following paragraphs of the previous Tribunal decision are central to this dispute:
- 18 The landscape plan indicates that the proposed layout will enable the planting of seven canopy trees on the site, as well as the retention of tree 42, which is a four metre flowering gum

<sup>8</sup> From Sheet TP02 Revision C Plans dated 22.05.20. by R Architecture.

shown on the architectural plans as to be removed and replaced. The trees to be planted include a 12 metre Black wattle, 8 metre Light wattles and 5 metre red leaved willow myrtles.

- 19 Mr Nickas submitted that the level of canopy tree planting shown on the plans was consistent with the requirements of the NRZ4, if the triangular portion of the land was excluded from the calculation of site width. I disagree with this assessment. This section of land is of sufficient area to accommodate a dwelling and clearly forms part of the site. As such I have calculated the site width based on the actual width of the site, which is 52 metres (using the figures provided on the plan). This equates to a requirement of a minimum canopy trees on the site, all capable of reaching a height of 8.4 metres, being the maximum building height of the built form. The failure of the proposal to provide this level of canopy tree planting is a key failing of the design and an indication that this proposal has failed to respond to the preferred character of the area, which places emphasis on retention and planting of canopy trees to reflect the character of the Dandenong Valley Escarpment.
- 27 These paragraphs say that the site's width was incorrectly measured, which led to fewer canopy trees than the varied standard requires. The Tribunal says that 'the failure of the proposal to provide this level of canopy tree planting is a key failure of the design'. I consider that this statement relates solely to canopy trees. There is no mention of spaciousness.
- 28 The Council says that the previous Tribunal could have issued a permit with a requirement for more such trees if the number of canopy trees was the sole issue. I am not persuaded by this argument. The Tribunal would have to be confident that there was adequate space to plant four additional canopy trees if it was to issue a permit with this condition.<sup>9</sup>
- 29 I consider that the previous Tribunal had insufficient information to make this assumption. No landscape evidence was called in the previous hearing, and there is no evidence that a landscape architect was engaged to provide advice on the trees shown on the previous plans.
- 30 The Council goes on to say that merely providing the required number of canopy trees does not ensure that the varied landscaping standard is met. It submits that a more nuanced assessment of the balance between built form and landscaping is required.
- 31 I agree. It is possible that the previous Tribunal did not undertake this assessment given that the previous proposal failed on a quantitative measure. In any circumstances, a new proposal that provided the required number of trees would change the balance between built form and

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<sup>9</sup> The applicant and the Council noted that paragraph 19 omitted the required number of canopy trees and advised that the varied standard of Clause 55 would require 11 canopy trees on a site that is 54m wide.



landscaping and would require a new assessment of this balance. Thus, it is up to me to assess if the balance between built form and landscaping is acceptable. This is different than assuming that the previous Tribunal wanted more space as well as more trees.

- 32 Yet, I must proceed cautiously on the Council's submission. The applicant fairly refers to the following observation in *Benc v City of Doncaster & Templestowe*:<sup>10</sup>

In the case of a different but similar application which has been prepared in accordance with the advice of the Board, equity or fairness demands that considerable weight be given to the fact that the applicant has endeavoured to accommodate suggestions as to what would be appropriate.

- 33 In this case, the applicant has accommodated the previous Tribunal's suggestion. They have engaged a qualified landscape architect to prepare a plan with the required number of trees and without changes to the building footprint. This is a matter of fact. As said in *Benc*, equity and fairness require me to give it great weight.
- 34 Apart from this, the Council questions the acceptability of some of the consequential changes caused by the removal of one of the driveways. It says that the quality of the secluded private open space of Townhouse 1 is diminished and that the space is now cramped. Also, it is critical of the replacement of one canopy tree along the driveway with Townhouse 1's driveway.
- 35 Many of the submissions of Ms Tuz are not based on the conventions relating to 'repeat appeals'. She raised issues of overshadowing, on-street parking, traffic and waste management, which were directly addressed and ultimately dismissed by the previous Tribunal. I will not revisit these issues for the reasons of equity and fairness referred to earlier. While I recognise that they are of great concern to her family and to other residents in Wesley Court, I consider it would be unfair to find against the applicant on these issues.
- 36 On a separate matter, I note that the previous Tribunal determined that local housing policy identifies this site as being in an 'incremental change' area. This is not correct. Local policy identifies the site as being in an area with 'limited development potential'.<sup>11</sup> I do not place great weight on this because the previous Tribunal relied on the Zone provisions and the statement of preferred neighbourhood character in making its assessment. Both limit a site's development potential.

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<sup>10</sup> 1996/38819 unreported.

<sup>11</sup> At Clause 21.04.

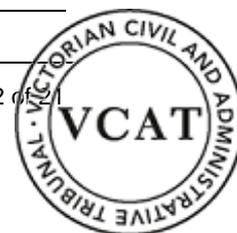


## IS THE PROPOSAL AN ACCEPTABLE PLANNING OUTCOME

- 37 The conventions of ‘repeat appeals’ include that I must find that the proposal is an acceptable planning outcome when assessed against the relevant planning policies, Zone objectives, permit requirements and decision guidelines. I must do this while giving the weight I determined appropriate to the previous decision.
- 38 I will begin by addressing the issue of spaciousness. This was raised by Ms Tuz in a different fashion in her objection to the number and size of the townhouses. I find that the combination of the size of the site and the dominance of built form in the existing neighbourhood allow the proposed number and size of the townhouses.
- 39 On any measure, this is a large site in this neighbourhood. Close to 1200m<sup>2</sup> of land was added to the original site by the consolidation of the excess land of the Early Learning Centre. As such, it is reasonable to expect a relatively large number of dwellings on this large site.
- 40 On my second finding, I regard the local neighbourhood – Wesley Court and Xavier Drive – as being dominated by built form. This is not a criticism, rather it is an observation of the balance of built form and landscaping in the immediate area.
- 41 On my site inspection, I observed a pattern of well-kept single and double-storey dwellings that occupy most of the width of the lots, and that have open front yards of lawn and some feature trees. The age of the area has meant that these trees have grown to maturity. These mature plantings soften the appearance of the dwellings, but they do not dominate them. As was noted at the hearing, the large native trees on the site are unusual in the area.
- 42 Apart from this, the proposal complies with the relevant quantitative standards of Clause 55, including the varied standards of the NRZ4. This is not the end of the assessment, but it is a good indication that the proposal is within the range of what is acceptable. It is particularly the case with the varied standards on matters like site coverage and landscaping. I agree with the following findings in *Guo v Monash CC*:<sup>12</sup>
21. The opportunity to vary Clause 55 standards is, in part, intended to provide applicants with increased certainty as to the built form outcomes considered acceptable by the Council. Where the varied standard is met, significant weight ought be given to that outcome.
- 43 In articulating what additional spaciousness was required, the Council highlighted the limited planting along the shared driveway, the cramped siting of the Blueberry Ash in the courtyard of Townhouse 1, and the shortage of canopy trees along the side boundaries.

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<sup>12</sup> [2019] VCAT 570.



- 44 I find that the extent of planting along the driveway is acceptable. The driveway kinks near the frontage and is largely screened from the street by the 900mm high letterbox structure. It is further softened by the Red Ironbark proposed in front of Townhouse 1, and by the Coastal Banksias at the end of the driveway.
- 45 I agree with the Council that a 9m high Blueberry Ash is not appropriate for the courtyard of Townhouse 1. A tree of 4-6m would provide better amenity given this courtyard's proportions. It would also be a better outcome for the neighbours at 2 Wesley Court. I make a similar finding for the Blueberry Ash to the south of the garage of Townhouse 4. I note that the 11 tall trees required by the varied standard are still provided despite these changes.
- 46 Regarding screening on side boundaries, I consider that the Council overstated the need for canopy trees in these locations. I note that the varied setbacks standard of the NRZ4 allows a minimum of 1m setback on side boundaries. This is part of the context of the decision guideline requiring 'vegetation' as the dominant element in views from adjoining properties. It suggests that landscaping other than canopy trees can occupy parts of the site's side boundaries.
- 47 I also find that only the western boundary (facing 2 Wesley Court and 40 Xavier Drive) and the interface with 4 Wesley Court are sensitive to new built form. The northern boundary has the benefit of the retained trees, while the interface with the Early Learning Centre is more sensitive to overlooking than to built form.
- 48 On the western boundary, I find that the combination of hedging on the fence lines, the two proposed canopy trees and the retained trees at the rear of the site will provide adequate landscaping when the new planting matures. I expect that a 4-6m high tree in the courtyard of Townhouse 1 will provide a benefit to 2 Wesley Court and that the Blueberry Ash behind the visitor car parking space can provide a similar benefit to the property at 40 Xavier Drive.
- 49 I accept that there are fewer landscaping opportunities at the interface with 4 Wesley Court due to existing vegetation along the shared boundary, yet I am satisfied that the staggered building setbacks of Townhouse 2 and its large open space area provide sufficient relief for that property.
- 50 For these reasons, I find that the balance between built form and landscaping is acceptable. In other words, no additional spaciousness is required.
- 51 On other issues, I do not agree with Ms Tuz that consistency in neighbourhood character under the NRZ4 necessarily limits the number of dwellings on a lot. The Zone allows for two or more dwellings to be built on a lot, and the reference to consistency in neighbourhood character refers

to some siting matters, the appearance of the new dwellings and landscaping. I consider that the architecture has been toned down compared to the previous proposal and I note that the Council finds it to be satisfactory.

- 52 I also find that the removal of one of the driveways ‘corrects’ the flaw identified by the previous Tribunal and allows for a front setback treatment that is comparable to other dwellings in Wesley Court.

### **ARE THE IMPACTS ON THE AMENITY OF ADJOINING PROPERTIES ACCEPTABLE**

- 53 The respondents say that the proposal would result in overbearing building mass along shared boundaries, diminished light and privacy in neighbouring properties, increased traffic, parking demand and waste collection difficulties.
- 54 I find that the setbacks from the side boundaries are acceptable. The applicant has increased the upper floor setbacks to Townhouse 1 as required by the previous Tribunal. I am also satisfied that the 9m gaps between the first floors of Townhouses 1 and 5 and Townhouses 3 and 4 provide sufficient visual relief to the neighbouring properties.
- 55 I accept that there will be a loss of direct sunlight in the rear yard of 2 Wesley Court at some times during the day, however the previous Tribunal found that overshadowing of this space was within acceptable bounds. As such, I am not willing to require changes to the plans.
- 56 I am also satisfied that the privacy of neighbouring properties has been adequately addressed. Concerns were expressed about the proximity of the courtyard of Townhouse 1 to the rear yard of 2 Wesley Court. I regard this relationship as being within the scope of the NRZ4 and Clause 55.
- 57 Otherwise, I regard the careful placement and screening of upper floor windows as a benefit of the revised proposal. It addresses a flaw identified by the previous Tribunal and provides adequate privacy to adjoining properties. While this led to a concern about blank walls facing 4 Wesley Court viewing blank upper floor walls, I regard this as a design that ensures their privacy.

### **ARE THERE ANY OTHER ISSUES?**

- 58 Ms Tuz queried the adequacy of the arborist report. She also questioned whether alternative design solutions that retained additional trees had been considered.
- 59 I regard the applicant’s actions of seeking the advice of an arborist as part of the design process demonstrates that alternative design solutions were not disregarded. I agree with the applicant’s submissions that Tree 14, a Sweet Pittosporum should be removed given it is an invasive environmental weed. I will require this as a condition of the permit.



- 60 I am also satisfied that the Golden Elm in the rear yard of 2 Wesley Court is adequately protected. I am satisfied that there is sufficient distance between Townhouse 1 and the Golden Elm. I accept that the wind and sunlight patterns around the Golden Elm may change but I am not persuaded that this change is significant enough to require changes to the plans.

#### **WHAT CONDITIONS ARE APPROPRIATE?**

- 61 We discussed the draft conditions circulated by the Council. In essence, I generally agree with the applicant's comments as shown on their 'marked up' version. Consequently, I have made the following changes:
- a I have deleted draft condition 1c) because I have expanded the list of trees to be protected in draft condition 3 to include trees on other properties and the street trees.
  - b I have deleted draft condition 1e) as I am satisfied that the Waste Management Plan can be prepared separately from the amended plans for endorsement.
  - c I have deleted draft condition 1f) as I am satisfied that a Construction Management Plan as a condition of the planning permit is not required in this instance. All relevant matters can be addressed through other legislation.
  - d I have deleted draft conditions 1g) and 12 because there are no relevant changes to the plans.
  - e I have included some flexibility in draft condition 1h) as I agree with the Applicant that meeting the relevant Australian standard on on-site car parking is an acceptable response.
  - f I have deleted draft condition 1j) as I have not required a Waste Management Plan.
  - g I have deleted draft condition 8 because I accept the applicant's advice that the proposal does not encroach on the trees referred to in this condition.
  - h I have deleted draft condition 10 as I am satisfied that waste collection from this site does not need a dedicated plan. The Council says that it will require waste to be collected privately. This is a matter for the Council. I will require the plans to be amended to remove the bins shown on the nature strip.
  - i I have deleted draft conditions 18, 19 and 20 because these details are shown on the plans and are addressed by other legislation.
  - j I have deleted draft condition 21 because there are no walls on the boundaries.



## **CONCLUSION**

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

Michael Nelthorpe  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/53411
<b>LAND</b>	3 Wesley Court WHEELERS HILL VIC 3150

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The construction of five dwellings in the Neighbourhood Residential Zone Schedule 4; and
- The removal of six trees in the Vegetation Protection Overlay Schedule 1.

### CONDITIONS

#### Amended plans

- 1 Before the development starts, plans drawn to scale and dimensioned 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 generally in accordance with the Amended Plans submitted to VCAT reference TP01-09 Revision D, 31 January 2023, prepared by R architecture, but modified to show:
  - (a) A Tree Management Plan in accordance with condition 3 of this Permit.
  - (b) A notation that all works carried out must accord with the approved Tree Management Plan.
  - (c) A Landscape Plan in accordance with condition 5 of this Permit.
  - (d) An updated Sustainable Design Assessment in accordance with condition 12 of this Permit.
  - (e) Driveway to have an internal radius of at least 4 metres at changes of direction or intersection or otherwise demonstrated via swept paths that turning movements are in accordance with the relevant Australian Standards to the satisfaction of the Responsible Authority.
  - (f) The on-site visitor parking spaces clearly marked.
  - (g) The removal of Tree 14.
  - (h) The removal of the bins shown on the nature strip.



### **Layout not to be Altered**

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

### **Tree Management Plan**

- 3 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of trees 1, 2, 3-6, 8, 11, 13, 14, 20, 24-26, 39 and 42 and the Golden Elm at 2 Wesley Court (as identified in the Arborist Report submitted with the application, prepared by Glen Waters Arboriculture Dated May 2020) and any tree to be retained on the development site. The TMP must be approved by the Responsible Authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - *Protection of Trees on Development Sites* and detail the following to the satisfaction of the Responsible Authority to ensure that the trees to be retained remain healthy and viable during construction:
  - (a) A Tree Protection Plan drawn to scale that shows:
    - i. Tree protection zones and structural root zones of all trees to be retained,
    - ii. All tree protection fenced off areas and areas where ground protection systems will be used;
    - iii. The type of footings within any tree protection zones;
    - iv. Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
    - v. A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
  - (b) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
  - (c) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and

- (d) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, *Pruning of Amenity Trees* and a detailed photographic diagram specifying what pruning will occur.

The recommendations and requirements contained in the approved TMP must be implemented to the satisfaction of the Responsible Authority.

#### **Documentation and Certification by Project Arborist**

- 4 Prior to the commencement of any site works, including demolition and excavation, the Responsible Authority must be provided with evidence that a Project Arborist has been engaged as part of the ongoing consultant team to oversee the design and construction, and to ensure the development does not have a detrimental impact on the ongoing health and stability of the trees to be protected. The Project Arborist must hold suitable qualifications and experience to the satisfaction of the Responsible Authority. Evidence of the appointment of the Project Arborist must be submitted to the satisfaction of the Responsible Authority not less than seven days before the commencement of buildings and/or works on the site.

#### **Landscaping**

- 5 Concurrent with the endorsement of any plans 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. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Plan (VCAT expert witness submission) dated March 2023, reference L1, Prepared Species landscape Architecture, except that the plan must show:
- (a) Replacement of the Blueberry Ash trees proposed for the courtyard of Townhouse 1 and the garden area to the south of the garage of Townhouse 4 replaced with Trees of a 4-6m mature height; and
  - (b) Deletion of the tree removal detail.

#### **Tree Protection**

- 6 Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
- 7 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on or on adjoining sites during the construction period of the development hereby permitted.



### **Landscaping Prior to Occupation**

- 8 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.

### **Drainage**

- 9 The site must be drained to the satisfaction of the Responsible Authority.

- 10 Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.

- 11 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 12 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 13 The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

### **Completion of Buildings and Works**

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

### **Permit Expiry**

- 15 This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
- The development has not started before two (2) years from the date of issue.
  - The development is not completed before four (4) years from the date of issue.

In accordance with 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 before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not



yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**– End of conditions –**

