

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P139/2023
PERMIT APPLICATION NO.TPA/54203

CATCHWORDS

Monash Planning Scheme; Application pursuant to Section 77 of the *Planning and Environment Act 1987* (Vic); General Residential Zone 2 (GRZ2); Three double storey dwellings; Monash Housing Strategy; Accessible Area; Garden City Suburbs Northern Area; Expectation of change; Boundary-to-boundary development at the rear of the site; Clause 55; Neighbourhood character; Landscaping; Amenity impacts.

APPLICANT	GNL Holdings Five Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	31 Electra Avenue ASHWOOD VIC 3147
HEARING TYPE	Hearing
DATE OF HEARING	31 May 2023
DATE OF ORDER	5 June 2023
CITATION	GNL Holdings Five Pty Ltd v Monash CC [2023] VCAT 611

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Bello Design Group
 - Drawing numbers: Drawing Numbers TP01 to TP10, TP13 and TP13a (identified as No A, VCAT, dated 19/04/2023).
- 2 In application P139/2023 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/54203 a permit is granted and directed to be issued for the land at 31 Electra Avenue, Ashwood in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of three (3) double storey dwellings in the General Residential Zone Schedule 2.

J A Bennett
Senior Member



APPEARANCES

For GNL Holdings Five Pty Ltd	Tom Buchan, Town Planner of Song Bowden Planning Pty Ltd.
For Monash City	Peter English, Town Planner of Peter English & Associates Pty Ltd.

INFORMATION

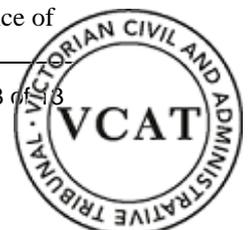
Description of proposal	Construct three double dwellings.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone - Schedule 2 (GRZ2).
Permit requirements	Clause 32.08-5 (construct two or more dwellings on a lot in GRZ2).
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	The site is located on the north western corner of Electra Avenue and Huntingdale Road. It is an irregularly shaped ‘triangular’ lot with a frontage of 33.17 metres, side boundaries of 48.39 and 44.32 metres, a rear boundary of 7.64 metres and an overall area of 949 square metres. It contains a single storey brick rendered dwelling with a pitched tiled roof. A crossover and driveway provide vehicle access near the northern boundary.
Tribunal inspection	An unaccompanied inspection took place on the morning of 31 May 2023 before the hearing.



ORAL DECISION AND REASONS GIVEN¹

- 1 The application proposes to construct three double storey dwellings on a corner lot in Ashwood. The City of Monash (**council**) has refused the application on seven grounds.
- 2 After having heard from parties and taken an adjournment, I gave an oral decision to set aside Council's decision to refuse to grant a permit. What follows is a summary of the reasons given orally.
- 3 There can be no dispute that the site enjoys strategic support for more intensive development than existed in the past given its inclusion in a GRZ2 and an accessible area based around the Jordanville train station.
- 4 Although the land is also identified in clause 21.04 as being within a Garden City Suburbs Northern Area, some caution needs to be exercised in applying these precincts or areas given the convoluted planning scheme amendment process that has been occurring to give effect to these designations.
- 5 However the boundaries are drawn or interpreted, there can be no dispute that the site has easy access to Jordanville train station, something I experienced when catching the train to undertake my inspection. There is also a bus route along Huntingdale Road and a bus stop immediately outside the subject land.
- 6 Planning policies at state, regional and local levels are clear that the focus for additional and more intensive forms of housing is to be provided in such locations. This is in preference to areas included in the Neighbourhood Residential Zone, in areas with heritage or neighbourhood character overlays or in areas well removed from activity centres, public transport and centres of employment.
- 7 This section of Monash is at the eastern edge of the extensive area of post war public housing, which was once known, amongst other names, as the Jordanville Housing Commission Estate. The original dwellings in the estate, such as the one on the subject land, are modest in size and often in a condition which supports demolition and redevelopment. As evidenced by aerial photos submitted at the hearing and an on-ground inspection, that redevelopment can involve a second dwelling behind the original dwelling on a lot, new single dwellings and medium density developments of various numbers and intensity of built form.
- 8 I therefore support the intention to remove the existing dwelling and replace it with more modern accommodation better suited to the needs of residents living in the first quarter of the 21st century.

¹ The submissions, 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.



- 9 However, the positive strategic attributes of the site must also be assessed having regard to the design response to the site context.
- 10 It is a large, unusually shaped corner site sharing a frontage to Huntingdale Road. Unusually, it is separated from Huntingdale Road by a triangular shaped piece of publicly owned land which includes canopy trees and other vegetation to provide a landscaped setting for any development on the subject land. That vegetation, plus the downward slope on the subject land, both serve to ameliorate any sense of height or bulk of the proposed development. I contrast this to the developments on the other side of Electra Avenue which are on the high side of the street and more prominent in the streetscape.
- 11 Subject to a satisfactory design response, the concept of constructing three double storey dwellings on a lot of nearly 1000 square metres in area should be relatively straightforward. In this case the unusual shape and tapering of the lot towards the rear has created a significant but not insurmountable constraint in how a third dwelling is provided behind the front two dwellings.
- 12 Despite council having reservations about the positioning and design of the front two attached dwellings, I consider they are an appropriate fit when viewed from both Electra Avenue and Huntingdale Road. They achieve a ground floor setback of 7.6 metres facing Huntingdale Road, with a greater street setback to the single storey garage facing Electra Avenue. The upper level is setback an additional 1.2 metres, with articulation provided by balconies and framing elements. The garage for dwelling 1 abuts the boundary with No 29 Electra Avenue for 6.13 metres. The wall is setback behind a landscape strip along the driveway. On the side adjacent No 225 Huntingdale Road, the setback is 4 metres, and the driveway largely replicates the existing driveway.
- 13 I note that as part of the RFI process, council suggested that the driveway should be relocated to the Electra Drive side of the site. Given the need to protect the root system of the large tree in the front yard at No 225 Huntingdale Road, I would not support such a suggestion.
- 14 It is instructive that two sites on the opposite corner of Electra Avenue have a similar lot configuration to the review site, although both lots are a little smaller in size than the subject land. The lot closest to Huntingdale Road (No 229 Huntingdale Road) has been developed with two attached double storey dwellings, built boundary-to-boundary. The second lot at No 48 Electra Avenue is orientated towards Electra Avenue. It also contains two attached double storey dwellings, built to one side boundary and set off the other by approximately one metre. Both were approved by council.
- 15 It is the proposed third dwelling at the rear of the site which is potentially most problematic. It is built boundary-to-boundary at ground floor but at the upper level is recessed well back from the ground floor by a minimum



of two metres at a 'pinch point'. In considering whether this is acceptable, it is necessary to examine what occurs on adjoining lots. Perhaps somewhat unusually, all are developed for some form of medium density development with built form relatively close to boundaries. There is some secluded open space in the property at No 1a Condah Court and there are some habitable room windows facing the subject land at No 2/29 Electra Avenue. I note that there is a large shed on the subject land and at present little or no landscaping along most of the boundaries with adjoining properties at the rear of the site.

- 16 I consider that the insertion of a ground floor as now proposed, along with new landscaping around the edges of the secluded open space for dwelling 3 will be an improvement over the existing condition. I accept that the boundary-to-boundary development does not allow landscaping along the whole length of the side boundaries but that does not reflect what occurs throughout this neighbourhood. To suggest otherwise is fanciful and is contrary to the sorts of outcomes council is approving, as evidenced by the two developments on the opposite side of Electra Avenue.
- 17 I agree with Mr Buchan that the upper floor of dwelling 3 is sufficiently setback or out of direct view line from the secluded open space areas at No 2/29 Electra Avenue and No 1a Condah Court that it will not appear visually overwhelming or discordant given the backyard character in this immediate context. From a wider or more distant viewing perspective I do not find an upper level in the rear yard to be peculiar or disrespectful of neighbourhood character where double storey built form is becoming commonplace.
- 18 For completeness, I record that the proposal complies with all the numeric standards in clause 55, save for the wall height as it affects three habitable room windows at No 2/29 Electra Avenue. As discussed at the hearing, compliance can be relatively easily achieved by lowering the height of the wall below 3 metres. Mr Buchan advises this can be done. I have included a condition requiring this change.
- 19 Although the neighbour at No 2/29 Electra Avenue has raised concerns about loss of privacy and overshadowing. I do not share those concerns. Subject to the change referred to the previous paragraph, overshadowing achieves the relevant standard in clause 55 and there are no unreasonable opportunities for overlooking. Nor am I persuaded that the additional vehicles from a net increase in two dwellings will result in unacceptable impacts on the road network at the Huntingdale Road/Electra Avenue intersection. Council's traffic engineer did not object to the application.
- 20 I also note that the proposal meets the mandatory garden area requirement and provides parking at the rate specified in clause 52.06. A three dwelling development is not required to provide visitor parking but I record that the

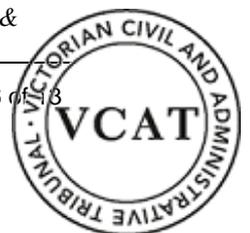


site is within a Principal Public Transport Network accessible area so no visitor parking would be required in any event.

- 21 I acknowledge that proposed landscaping will not result in a highly vegetated site. But that appears to be consistent with newer development in this area. The landscape plan depicts the planting of five eucalyptus trees reaching a mature height of at least 4-7 metres. There is also a permit requirement to provide an additional canopy tree in front of the store for dwelling 1. In addition, the landscape plan includes numerous shrubs and ground covers.
- 22 I have referenced the landscape plan (TP10) in condition 9 and record that the landscape plan requires vetting by council officers, and that further additions/changes can be made at that time if desired.
- 23 Having balanced relevant planning provisions and the site context, I consider that the proposed development is an acceptable outcome. A development does not have to be ideal as found by the Supreme Court of Victoria in *Rozen and Tulcan Pty Ltd.*²
- 24 I consider that it does meet the community benefit test in clause 71.02-3 and I will therefore set aside council's decision and direct that a permit be granted. Conditions are based on those circulated by council, together with changes discussed at the hearing or in my reasons.

J A Bennett
Senior Member

² *Rozen v Macedon Ranges SC & Anor* [2010] VSC 583; *Knox City Council v Tulcan Pty Ltd & Ors* [2004] VSC 375.



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54203
LAND	31 Electra Avenue ASHWOOD VIC 3147

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of three (3) double storey dwellings in the General Residential Zone Schedule 2.

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 plans prepared by Bello Design Group dated 19 April 2023, but modified to show:
 - (a) The boundary wall adjacent to No 2/29 Electra Avenue reduced in height so it is less than three (3) metres in height.
 - (b) The grade of driveway parking space of Dwelling 1 (the maximum grade within a parking module measured parallel to the angle of parking is 1 in 20. Measured in any other direction is 1 in 16).
 - (c) Delete the note on plan that the existing pram crossing between the proposed crossover to Dwelling 1 and Tree 3 is to be removed.
 - (d) The Tree Protection and Structural Root Zones of Trees 1 – 7 on abutting land.
 - (e) Water meters in unobtrusive locations (the large water meter facility forward of Dwelling 2 removed and relocated to an unobtrusive location).
 - (f) Letter boxes no greater than 900mm in height convenient to the dwellings.
 - (g) The bicycle parking areas forward of Dwellings 1 and 2 in the front setback area removed.
 - (h) The common driveway and existing crossover are to align with a 3 metre width in accordance with Council requirements.



- (i) Details of the height and specific location of retaining walls. Retaining walls are to be of naturalistic materials with landscaping area forward of the walls for plantings including creepers.
- (j) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes and any associated infrastructure must be located at a distance from the street which is at or behind the setback alignment of buildings on the site. The height of any meter boxes is to be shown.
- (k) Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of the proposed vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- (l) A notation in bold capital letters advising ‘TREE MANAGEMENT AND TREE PROTECTION PLAN APPLIES’ with reference to the document including author name and date.
- (m) Details of the main tree protection measures required in the Tree Management and Tree Protection Plan in accordance with conditions 3 and 4.
- (n) A Landscape Plan in accordance with condition 9 of this Permit.
- (o) A Tree Management and Tree Protection Plan in accordance with conditions 3 and 4 of this Permit.
- (p) The Sustainable Design Assessment (SDA) prepared by Roger Rao dated 13 October 2022, as modified to take into consideration any changes arising to the plan.

No Alterations

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

Tree Protection

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 Nos. 1,2, 3, 4, 5, 6, and 7.
- 4 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 ensuring 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 on the site and abutting properties (with tree protection zones extending into the site) including the road reserve;
 - 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 Details on any specific construction requirements required within the affected Tree Protection Zone. This should refer to all works including landscaping within the affected TPZ area;
 - v 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;
 - vi A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones;
 - vii Details of how the root system of any tree to be retained/protected will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project Arborist;
 - viii Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
 - ix 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.

- 5 The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority. Photographic evidence is to be taken by the project arborist of compliance with the recommendations is to be retained and produced on request.

Contractors to be advised of trees to be protected

- 6 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 protected trees/large shrubs on abutting land and be advised of any obligations in relation to the protection of the trees.
- 7 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on-the site or adjoining land, including the nature strip, during the construction period of the development hereby permitted.

Protection of Council Street Trees

- 8 The Council street trees must be protected by temporary rectangular wire fencing as per Australian Standards AS 4970 to the edge of the Tree Protection Zone, erected prior to commencement of works until completion.

Landscaping

- 9 Concurrent with the endorsement of any plans requested pursuant to Condition 1 a landscaping plan generally in accordance with the landscape plan prepared by Bello Design Group (plan TP10 dated 19/04/2023) must be drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:
 - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development plan;
 - (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size (tube stock not acceptable), location, botanical names and quantities;
 - (c) A minimum of one canopy tree is required in the front setback area of each dwelling as well as a second tree in the landscape area forward of the Dwelling 1 store. The trees are to grow to a minimum height equal to that of the dwellings.
 - (d) The provision of canopy trees with spreading crowns located throughout the site including the private open space areas of the development.
 - (e) Medium height trees should be included in the wider landscaping area along the common driveway and on the south side of the Dwelling 1 driveway.



- (f) Extensive use of appropriate shrubs and other plants are to be used in the design to create a strong landscape appearance to the street and common driveway.
- (g) All retaining walls are to be of naturalistic material and be provided with space for landscaping forward of the walls including creepers and other plants that will remove the hard appearance of the walls.
- (h) The fencing enclosing the private secluded open space of Dwelling 2 is to utilise an alternative type of fencing to paling fencing.
- (i) The location and style of any other fencing;
- (j) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (k) Canopy trees / significant plantings on adjoining properties within 3 metres of the site;
- (l) The location of any retaining walls associated with the landscape treatment of the site;
- (m) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (n) The location of Tree Protection and Structure Root Zones and Tree Protection Fencing;
- (o) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (p) The location of external lighting (if any);
- (q) Evidence the project arborist has viewed the landscaping plan and agrees with any proposed works within the TPZ and SRZ areas; and
- (r) Planting required by any other condition of this permit.

When approved the plan will be endorsed and will then form part of the permit.

Landscaping Prior to Occupation

- 10 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

- 11 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.



- 12 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on www.monash.vic.gov.au.
- 13 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.
- 14 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.
- 15 The full cost of reinstatement of any Council assets affected by the 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.
- 16 Tree planting is to be kept clear of the easement.

Road Infrastructure

- 17 All new/modified crossings must be a minimum of 3.0 metres in width.
- 18 The existing redundant pram crossing is to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
- 19 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department and be to Council's approval.

Boundary Walls

- 20 Any walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Completion of Buildings and Works

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

Permit Expiry

- 22 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 –

