VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P588/2018  Permit Application no. TPA/47337 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Policy; Building height; Amenity; Car parking. | |

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| APPLICANT | BC Mount Waverley Project Pty Ltd |
| responsible authority | Monash City Council |
| Referral Authorities | VicRoads, Public Transport Victoria |
| RESPONDENT | Bedelis Investments Pty Ltd |
| SUBJECT LAND | 445-467 Blackburn Road, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Presiding Member  Michael Deidun, Member |
| HEARING TYPE | Hearing |
| DATEs OF HEARING | 20, 21, 22 and 23 August, 2018 |
| DATE OF ORDER | 8 October, 2018 |
| CITATION | BC Mount Waverley Project Pty Ltd v Monash CC [2018] VCAT 1538 |

# Order

1. Pursuant to section 127 and 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:

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| * Prepared by: | Rothe Lowman |
| * Drawing numbers: | TP1.04, TP2.00 to TP2.07, TP2.09, TP2.10, TP2.12, TP3.01 to TP3.04, TP4.01 to TP4.05, TP5.01 to TP5.03, TP6.01 to TP6.07, TP7.01 to TP7.06, TP8.01 |
| * Dated: | 9 July 2018 |
| * Prepared by: | Xurban |
| * Drawing numbers: | LS01 to LS06 |
| * Dated: | 30 July 2018 |

1. In application P588/2018 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/47337 no permit is granted.

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| Bill Sibonis  **Presiding Member** |  | Michael Deidun  **Member** |

# Appearances

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| For BC Mount Waverley Project Pty Ltd | Mr N Tweedie SC and Ms J Sharp of Counsel, instructed by Norton Rose Fulbright Australia. Evidence was called from:   * Ms C Heggen, Town Planner of Message Consultants Australia Pty Ltd * Mr S Hunt, Traffic Engineer of ratio:consultants pty ltd * Mr A Wyatt, Landscape Architect of XURBAN * Mr M O’Dwyer, Architect of H2o Architects Pty Ltd * Ms C Wells, consultant, O’Hara Wells Aged Care Industry Consultants   The evidence of Mr C Goss, Architect of Orbit Solutions Pty Ltd was tendered. Mr Goss was not called to give oral evidence. |
| For Monash City Council | Ms M Marshall and Ms T Nguyen, Solicitors of Maddocks Lawyers. Evidence was called from:   * Mr A Campbell, Urban Designer of Hansen Partnership Pty Ltd |
| For Bedelis Investments Pty Ltd | Mr J Bedelis |

# Information

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| Description of proposal | The construction of a building of up to 10 storeys (plus basements) accommodating dwellings, retirement village, child care centre, hotel (with ancillary restaurant, conference and wellbeing centre) and associated car parking. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone 2 – Monash Residential Areas (GRZ2)  Vegetation Protection Overlay 1 – Tree Protection Area (VPO1) |
| Permit requirements | Cl. 71.03-2 and Cl. 32.08-2 to use land within the GRZ2 for a Residential hotel, Retirement village and a Child care centre  Cl. 32.08-6 to construct two or more dwellings on a lot, on land within the GRZ2  Cl. 32.08-8 to construct a building and construct or carry out works associated with a Section 2 use, on land within the GRZ2  Cl. 52.06-3 to reduce the car parking requirements |
| Key scheme policies and provisions | Clauses 9, 10, 11, 15, 16, 17, 18, 21, 22.01, 22.04, 22.09, 22.13, 32.08, 52.06, 65 and 71.02. |
| Land description | The land is an irregular-shaped allotment with an abuttal to the Blackburn Road off-ramp from the Monash Freeway of 70.47 metres, a frontage to Blackburn Road of 79.53 metres, and a sideage to Lemont Avenue of 91.7 metres. The land presently supports a one and two-storey motel, in a range of buildings across the site, with landscaping and open at-grade car parking. |
|  | To the west is a residential area comprising principally of single dwellings, with some examples of medium density housing, including the immediately adjoining site. To the north are residential properties, a high voltage transmission line easement and the Pinewood Activity Centre. To the south is the Monash Freeway, beyond which is the Monash Technology Precinct, that forms part of the Monash National Employment and Innovation Cluster (NEIC). On the opposite side of Blackburn Road are further dwellings and a nursery. |
| Tribunal inspection | The Tribunal inspected the site and surrounding area on 29 August 2018. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. BC Mount Waverley Project Pty Ltd (the ‘applicant’) has sought a review of the decision of Monash City Council (the ‘Council’) to refuse to grant a permit for a mixed-use development within a 10 storey building, plus basements, on land at 445-467 Blackburn Road, Mount Waverley (the ‘review site’). The proposed mix of land uses comprises dwellings, a retirement village, a child care centre and a residential hotel including an ancillary restaurant, conference facilities and a wellbeing centre.
2. The Council opposes the grant of a permit, raising concern primarily in relation to the proposed scale of the built form, the extent of landscaping proposed, and the provision of car parking. The owner of land in the adjacent activity centre has also raised concerns relating to the impacts on car parking and traffic movements.
3. Having regard to the submissions, the key issues or questions for determination are:
   * Is the proposed built form an appropriate response to the context?
   * Is the proposed mix of uses appropriate?
   * Will the proposal result in any unacceptable amenity outcomes?
   * Does the proposal provide sufficient car parking, and will the traffic movements be acceptable?
4. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions and evidence presented with regard to the applicable policies and provisions of the Monash Planning Scheme (the ‘Planning Scheme’), assisted by our inspection, we have determined to affirm the Council’s decision and refuse a permit. Our reasons follow.

## Is the proposed built form an appropriate response to the context?

1. The review site is located within the GRZ2, adjacent to the Pinewood Activity Centre, and to the Principal Public Transport Network that occurs in the form of bus routes along Blackburn Road. It has an interesting physical context, reflected in the policy framework which provides guidance in respect of desired outcomes.
2. At State level, the review site draws benefit from a range of policies. Firstly, these include the following policies that encourage urban consolidation on land proximate to activity centres and the Principal Public Transport Network.

Build up activity centres as a focus for high-quality development, activity and living by developing a network of activity centres that:

* Comprises a range of centres that differ in size and function.
* Is a focus for business, shopping, working, leisure and community facilities.
* Provides different types of housing, including forms of higher density housing.
* Is connected by transport.
* Maximises choices in services, employment and social interaction.

Support the role and function of each centre in the context of its classification, the policies for housing intensification, and development of the public transport network.

Undertake strategic planning for the use and development of land in and around activity centres.

Give clear direction on preferred locations for investment.

Encourage a diversity of housing types at higher densities in and around activity centres.

Reduce the number of private motorised trips by concentrating activities that generate high numbers of (non-freight) trips in highly accessible activity centres.

Improve access by walking, cycling and public transport to services and facilities.

Support the continued growth and diversification of activity centres to give communities access to a wide range of goods and services, provide local employment and support local economies.

Encourage economic activity and business synergies.

Improve the social, economic and environmental performance and amenity of activity centres.[[2]](#footnote-2)

Locate new small scale education, health and community facilities that meet local needs in or around Neighbourhood Activity Centres.[[3]](#footnote-3)

Increase the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.

Ensure that an appropriate quantity, quality and type of housing is provided, including aged care facilities and other housing suitable for older people, supported accommodation for people with disability, rooming houses, student accommodation and social housing.[[4]](#footnote-4)

Increase the proportion of new housing in designated locations within established urban areas and reduce the share of new dwellings in greenfield and dispersed development areas.

Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.[[5]](#footnote-5)

1. Secondly, the relevant State policies also include those that seek to guide built form outcomes:

Require a comprehensive site analysis as the starting point of the design process.

Ensure the site analysis provides the basis for the consideration of height, scale and massing of new development.

Ensure development responds and contributes to the strategic and cultural context of its location.

Minimise the detrimental impact of development on neighbouring properties, the public realm and the natural environment.

Ensure the form, scale, and appearance of development enhances the function and amenity of the public realm.

Ensure buildings and their interface with the public realm support personal safety, perceptions of safety and property security.

Ensure development is designed to protect and enhance valued landmarks, views and vistas.

Ensure development provides safe access and egress for pedestrians, cyclists and vehicles.

Ensure development provides landscaping that responds to its site context, enhances the built form and creates safe and attractive spaces.[[6]](#footnote-6)

Ensure development responds to cultural identity and contributes to existing or preferred neighbourhood character.

Ensure development responds to its context and reinforces a sense of place and the valued features and characteristics of the local environment and place by emphasising the:

* Pattern of local urban structure and subdivision.
* Underlying natural landscape character and significant vegetation.
* Heritage values and built form that reflect community identity[[7]](#footnote-7)

Encourage the development of well-designed medium-density housing that:

* Respects the neighbourhood character.
* Improves housing choice.
* Makes better use of existing infrastructure.
* Improves energy efficiency of housing.[[8]](#footnote-8)

1. Thirdly, there are those policies that encourage more diverse and affordable housing.

Ensure housing stock matches changing demand by widening housing choice. Facilitate diverse housing that offers choice and meets changing household needs through:

* A mix of housing types.
* Adaptable internal dwelling design.
* Universal design.[[9]](#footnote-9)

Improve housing affordability by:

* Increasing choice in housing type, tenure and cost to meet the needs of households as they move through life cycle changes and to support diverse communities.[[10]](#footnote-10)

1. At a local level, the adjacent Pinewood Activity Centre is identified as a Neighbourhood Activity Centre. Clause 21.06-3 details the following strategic directions for this activity centre:

* Encourage a variety of service based facilities to meet local needs.
* Promote the attractiveness of the Centre for local needs.
* Encourage the broadening of the community activities base within the Centre.
* Encourage development within the Centre that is of a moderately higher scale than surrounding residential areas.
* Promote upgrading of uses and facilities within the Centre.
* Encourage walking, cycling and local public transport use.
* Ensure parking is provided to meet the needs of the Centre.
* Ensure ongoing development does not impact on the adjacent residential areas.

1. For land such as the review site, if it is considered to be outside of the Pinewood Activity Centre, the following guidance is provided:

In other areas new residential development will generally be low rise. The exceptions will be where there is an approved Structure Plan or other planning mechanism in place or where individual circumstances support an alternate height.[[11]](#footnote-11)

Residential development outside of the Principal, Major and Neighbourhood Activity Centres will generally be low rise except where an adopted Structure Plan, or some other mechanism, has defined an appropriate height limit or where individual circumstances support an alternative height.[[12]](#footnote-12)

1. A final key aspect, and one of no less importance, of the local planning policy context is the desire to achieve a Garden City Character throughout the municipality.[[13]](#footnote-13)
2. The applicant submits that the proposal will result in a significant net benefit for the community, having regard to the following:
   * the mix of uses, which are entirely appropriate for the site and meet identified needs in the local context;
   * the dwelling component complies with the height limit in the GRZ2;
   * local policy encourages the development of unique sites in a unique way;
   * the proposal is an appropriate response to the policy expectation that it respect neighbourhood character;
   * the building is of a very high architectural quality;
   * the impact of additional traffic on the surrounding road network will be acceptable, as determined by the Council and VicRoads;
   * there are no unacceptable external amenity impacts;
   * the level of internal amenity to be achieved is very high;
   * the proposal provides an innovative approach to the provision of specialised accommodation for aged people.
3. Ms Heggen’s evidence is that the proposed building will assist in way-finding along the Monash Freeway, where there is currently unremarkable low-rise development. In her opinion, the proposed height recognises opportunities to connect with the activity centre to the north, and the Monash Technology Precinct to the south, while managing the required transition in heights from east to west. Her view is that the approval of a 10 storey building on the review site won’t undermine or disrupt the range of heights already approved elsewhere in the municipality, including within the Glen Waverley Activity Centre.
4. Mr O’Dwyer considers that the review site is an exciting opportunity to achieve a tall landmark building that will mark the exit from the Monash Freeway to the NEIC. It is his evidence that the proposed building will be one of a number of tall buildings that can be found in clusters in the nearby Glen Waverley Activity Centre, at Nexus Court, Mulgrave and in other locations throughout the municipality. In his written evidence he states:

A substantial building is preferred instead of lower scale built forms, as that approach would not generate sufficient built form or presence to fulfil the opportunities to deal with the visual and physical dominance of the traffic volumes and fabric of the Monash Freeway or Blackburn Road.[[14]](#footnote-14)

1. We agree with the evidence of Ms Heggen and the submissions made on behalf of the applicant that there are a number of considerations that weigh in favour of the construction of a substantial built form on the review site. Notably, the review site is very large in its context, located on the edge of an activity centre, adjacent to a main road, and on a site with three road abuttals.
2. We also observe that the review site is proximate to the Monash Technology Precinct, and the NEIC identified in Plan Melbourne.[[15]](#footnote-15) There is an opportunity for synergies to be created between the proposed land uses on the review site, notably the residential hotel, and the employment precinct to the south. The adjacency of the review site to this precinct again provides an impetus to optimise the use of the review site with the potential development of a large built form.
3. We also agree that the policy statements at Clause 22.01 which we have quoted above recognise that sites with unique qualities such as this, can have different built form outcomes to the remainder of the areas within the municipality that are outside of the activity centres. Finally, we agree and accept that the mix of land uses on the review site has a certain synergy and attractiveness to it that might encourage a larger than usual building.
4. However, we are not persuaded that the proposed development has achieved the right balance on the review site, and instead proposes a built form and landscape outcome that is not supported by planning policy, and that could not be reasonably anticipated in this residential neighbourhood. The outcome is not acceptable. We make this finding for the following reasons.
5. Firstly, we find that the proposed development fails to suitably capture and respond to the policy intent for a Garden City Character to be established throughout the municipality. That policy intent is best identified in the following extract from Clause 21.01-2:

Garden city character is a key influence in planning decisions and Council is committed to its preservation. Monash 2021 outlines a vision of a ‘green and naturally rich city that keeps its green leafy character and values open spaces’.

…

Monash’s policy of large front setbacks facilitates the retention and enhancement of canopy tree cover which acts to soften the built form and provide shelter and shade. The presence of “greenery” and vegetation within developed areas is visually appealing and results in benefits to the environment in terms of air quality and water balance.

The garden city character has been identified as an important factor in attracting residential, commercial and industrial investment in the city. Many large firms have designated this element as a key determinant in influencing their choice of location.

Erosion of the garden city character through loss of significant vegetation and tree canopy and inappropriate redevelopment of residential, commercial and industrial areas is a key concern of Council and the community. Council has addressed this through the planting of street trees along arterial roads and consistently applying a decision making process to planning decisions where garden city character is a key consideration. This significant investment will ensure the garden city character continues to dominate the landscape.

As Monash grows the maintenance and enhancement of tree canopy and the “green, open space” feel is a key goal of the community and Council. Planning provisions and policies have been developed to ensure that new development provides suitable setbacks, appropriate site coverage and site permeability and sufficient open space areas to allow for tree retention and new planting to support garden city character.

1. The effect of this policy intent, which has been entrenched in the Monash Planning Scheme for around two decades, is now evident in the built form and landscape outcomes that are being established in various parts of the municipality. Notably, that is the case in relation to the establishment of larger stand-alone buildings and new mixed-use or commercial buildings, as observed in the adjacent Monash Technology Precinct. Here one can observe substantial landscape setbacks being created to the larger built forms, which accommodate the provision of significant canopy trees in a garden setting.
2. In comparison, the proposed development presents a 3.2 metre setback to Blackburn Road, within which it is proposed to plant a row of *Ficus hillii* (Hills Fig), growing to a height of between 6-10 metres. It is our observation that the resultant planting regime proposed between the building and Blackburn Road will appear as a narrow green ‘skirt’ to the ground and first floors of the building. This extent of landscaping will pale in comparison to that which has been achieved adjacent to multi-level buildings in the surrounding context. It will also fail to contribute in a meaningful way to the Garden City Character that is so clearly sought by planning policy.
3. The applicant’s witnesses sought to rely both on the substantial landscaping in the form of canopy trees that exists in the median to Blackburn Road, and the sparse landscaping in the adjacent Pinewood Activity Centre, to support the proposed landscaping outcomes on the review site. We do not consider that the median planting provides a basis on which the policy desire for landscaping on the review site should be reduced. The policy intent is that meaningful landscaping be established on the review site to contribute to the overall vision of the Garden City Character.
4. Further, we do not consider the scarcity of landscaping currently within the Pinewood Activity Centre to be a relevant consideration. The Garden City Character policies seek to impart change to the landscaping character of the municipality. As such, we do not consider that the extent of landscaping within the adjacent activity centre should set the standard for what is to be achieved on the review site, but rather we should turn to the clear and repeated policy guidance.
5. Secondly, we find that while a transition in heights is sought to be achieved throughout the site, the proposed built form will present unacceptable levels of scale and bulk to the adjacent residential area. The review site is located within the GRZ2, as is the adjacent residential land to the north and west of the review site. Significantly, the review site is not located within a commercial zone, or another zone that might have created a reasonable expectation of a substantial built form.
6. The proposed 10 storey building, while physically separated from the closest residential properties, will create a significant built form presence when viewed from those on the opposite side of Lemont Avenue, and those located further west. In particular, we consider this is best encapsulated in Photomontage 1.2 below.[[16]](#footnote-16)



1. The extent of built form proposed will change the character of this adjacent residential area from one which is currently consistently low rise to one which is framed by a substantial, and in some ways unexpected, built form.
2. As we have identified above, we agree with the applicant that there are a number of influences on the review site which encourage the establishment of a tall built form. However, it must be remembered that the site forms part of a residential neighbourhood, is contained within the GRZ2, and therefore must also produce acceptable character and built form outcomes for the adjacent residential context. It is our finding that the proposed development fails to achieve this outcome as it will present a built form that will overwhelm the adjacent residential properties and neighbourhood. It will present a built form that is not only foreign to this location, but also could not have reasonably been anticipated, given the zoning and policy framework that applies.
3. We also consider that the building is too tall in the broader context, as viewed along Blackburn Road. We acknowledge the composition of the building and its separation into three parts, being a ‘base’, ‘middle’ and ‘top, and consider that the building represents high-quality architecture. As an entity in its own right, it is an attractive, modern and well-designed structure. When considered within the context of the site and its surrounds, however, the development will not represent an acceptable outcome.
4. The urban structure of the area is one comprised of relatively low-profile buildings, with the tallest being a four-storey office development within the activity centre, set back approximately 90 metres from Blackburn Road. Although the high voltage transmission towers are of some height, their lattice composition gives them a transparency and a lightweight appearance, which is markedly different to the mass that will be presented by the proposed building.
5. Due to its height and its narrow setbacks, the structure will sit as a discordant and intrusive built form that will dominate its surrounds. It will have a jarring presence and will not assimilate successfully into its environs. This is due to the low-scale nature of the surrounding development, and also to the open nature of the area arising from the open car parks and the wide easement associated with the transmission towers. Further, to the south, beyond the freeway, the multi-level buildings do not approach the height of the proposal and are sited behind landscaped setbacks which moderate their appearance. Aside from the physical context, the policy framework outlined earlier does not explicitly contemplate a development of the height proposed in this location.
6. For these reasons we find that the proposed development fails to achieve an appropriate built form and landscaping outcome for this context, having regard to the guidance provided by the Planning Scheme. We are not persuaded by submissions of the applicant that the benefits associated with the proposal are of sufficient weight to balance out our landscaping and built form concerns. As such, in its present arrangement, we find that the proposed development will fail to achieve a net community benefit.
7. We are persuaded instead by the evidence of Mr Campbell that the review site is capable of accommodating a built form in the order of five to six storeys in height, subject to achieving appropriate landscape outcomes, and built form transition to the residential interface. We consider that a development along these parameters will be a better fit for the physical and policy context that prevails.

## is the proposed mix of uses appropriate?

1. The applicant’s submissions and the supporting evidence emphasised the benefits arising from the mix of land uses which form part of this proposal. It was described as a multi-age precinct, as it includes dwellings, child care centre and retirement village uses. To a large extent, the land use composition is uncontroversial. It is not criticised by the Council.
2. The provision of dwellings is consistent with policies in the Planning Policy Framework and the Local Planning Policy Framework outlined earlier which support the provision of higher residential densities, and dwelling diversity, in well-serviced locations. This includes in and around activity centres.
3. The evidence and submissions demonstrate that there is a need for aged persons’ accommodation, including retirement villages and residential aged care facilities. We will not repeat those here, other than to say that we find them persuasive and are a factor that lends support to the application. The proposal would make a contribution toward meeting that need in a development which provides complementary facilities and in a location which provides convenient access to a range of services in the adjacent activity centre. Residents would also benefit from the public transport in the form of bus routes along Blackburn Road. We have had regard to the need for such accommodation within the municipality, given the population’s ageing profile, and the desirability of residents being able to relocate to suitable accommodation within their local community. It is a factor which carries weight in the overall balancing exercise in determining whether the proposal will deliver a net community benefit.
4. No concerns were expressed regarding the provision of a child care centre within the development. What was articulated in the evidence of Ms Wells were the benefits associated with inter-generational contact that is made possible by this integrated development. This is in the context of children being able to visit grandparents and the like who reside in the independent living units. Again, this is a factor which lends support to the proposal.
5. The provision of a residential hotel would complement the NEIC and the Monash Technology Precinct. It would provide temporary accommodation for visitors and for transient employees who attend for discrete periods of time. At present, the nearest hotel is located in the Glen Waverley Activity Centre, some distance to the north-east. The proposal would be conveniently located to this State-significant employment and innovation precinct. It was further put in evidence that the hotel could be utilised by family members who visit residents of the retirement village (independent living units) allowing for longer stays, particularly if travelling long distances to visit.
6. We are persuaded that the proposed land use mix is acceptable. The multi-age precinct is a relatively new concept and, having the benefit of submissions and evidence, we consider that it represents an acceptable planning outcome in the context of the review site. We say this having regard to the policy matrix that was set out in detail in the submissions of the Council and applicant, and in the evidence of Ms Heggen.[[17]](#footnote-17)

## will the proposal result in any unacceptable amenity impacts?

1. The review site has abuttal to one residential property, this being to the west at 102 Lemont Avenue. That land has recently been developed in the form of two, two-storey dwellings. The layout of the dwellings is such that they effectively ‘turn their back’ on the review site. The dwellings have their orientation to the west. For the greater part, this includes their secluded private open space areas.[[18]](#footnote-18) As a consequence, the proposal does not manifest any unacceptable impacts on the amenity of this land.
2. Any overshadowing of the secluded private open space areas arises from the dwellings themselves and occurs during the morning period. The shadow diagrams demonstrate that no additional shadows will be cast on these areas by the development. The outcome is acceptable.
3. The evidence is that the development complies with standard B22 at clause 55.04-6. This appears to be the case in respect to the first-floor windows of the front dwelling at 1/102 Lemont Avenue, as the two east-facing windows are more than 9.0 metres from the west-facing windows of the proposed dwellings. There is a lesser separation between the proposed dwellings and the southern portion of the secluded private open space area of 2/102 Lemont Avenue, and it appears that compliance with the 9.0 metre distance specified in standard B22 may not be achieved. This, however, will not affect the principal secluded private open space area of the dwelling, which is located to the west. In any event, the provision of screening would address this issue.
4. The private open space areas of the proposed ground floor-dwellings are elevated. At the hearing, there was some discussion regarding opportunities for views into the ground floor windows of the neighbouring dwellings. The evidence is that the proximity of the windows to the boundary and the height of the boundary fence, in combination will prevent views into these windows. There is insufficient information on the plans in respect of the proposed boundary fence treatment to enable us to reach a conclusion. Suffice to say, a fence (or fence and screen) of an appropriate height would address this issue.
5. There are no visual bulk impacts on the immediately adjoining dwellings due to their orientation, as mentioned above. The proposed building is to be set back from the common boundary a distance that exceeds the requirement of standard B17 at clause 55.04-1, and will not interface with secluded private open space areas. Outlook from the neighbouring windows will be to the intervening fence and a building form sited a minimum of between 5.9 metres and 8.4 metres from the boundary. This separation, together with the proposed landscaping will ensure that the interface is acceptable.
6. The visual impact on the residential neighbourhood has been addressed in an earlier section of these reasons. From that perspective, the consideration is one of the development’s effect on the character and urban structure of the locality. In addition, however, the prominence of the built form has an impact on the amenity of the area, which we consider to be unacceptable for reasons already explained.
7. There is the potential for noise impacts arising from the operation of the child care centre, particularly the elevated outdoor play area. The cessation of the use at 6.00pm and its confinement to weekday operation will assist in mitigating any effect noise may have on the amenity of neighbouring residential properties. Importantly, the outdoor area is orientated to the north and north-west, rather than to the residential properties to the west. This will further assist in managing the noise impacts. As noted in the evidence, the locality experiences a level of ambient noise arising from its adjacency to the freeway and Blackburn Road. This context will have the effect of making noise from the child care centre less acute than would be the case in a quieter residential area.

## Does the proposal appropriately provide for car parking and traffic movements?

1. Both the Council and Mr Bedelis submit that the proposal should comply with the car parking requirements of Clause 52.06 of the Planning Scheme. Mr Bedelis noted the potential impact on car parking availability in the adjacent activity centre, should the proposal fail to provide a sufficient supply of car parking on site.
2. As a result of Amendment VC148, as the review site is within 400 metres of the Principal Public Transport Network the applicable car parking rates are those specified in Column B of Clause 52.06-5.
3. Traffic and car parking evidence was provided by Mr Hunt. It is his evidence that the car parking requirements under Clause 52.06, and the proposed car parking provision on site, occurs as per the table below.

|  |  |  |  |
| --- | --- | --- | --- |
| **Use** | **Requirement** | **Provision** | **Surplus/Shortfall** |
| Dwellings | 22 spaces | 22 spaces | N/A |
| Retirement village | 119 spaces | 108 spaces | -11 spaces |
| Residential Hotel (including serviced apartments) | 102 spaces | 51 spaces | -51 spaces |
| Child Care Centre | 17 spaces | 17 spaces | N/A |
| Restaurant | 5 spaces | A total of 48 spaces are provided | +31 spaces |
| Conference Room | 12 spaces |
| Visitors to various uses | 0 space |
| Total | 269 spaces | 246 spaces | -31 spaces |

1. His evidence is that while there is a shortfall of 31 car parking spaces from the statutory requirement, as the proposal seeks to allocate spaces in surplus to some of the proposed land uses, the actual shortfall in practice is 62 spaces. This comprises a shortfall of 11 spaces for the retirement village, and 51 spaces for the residential hotel.
2. In our review of the evidence, we consider that there is an error in this analysis by Mr Hunt. Where his evidence refers to the proposal comprising 94 hotel rooms and 8 serviced apartments as part of the residential hotel, in fact the plans depict a combined total of 94 hotel rooms and serviced apartments. As such, the statutory requirement for the residential hotel is 94 spaces, and the shortfall is 43 spaces. This results in an actual shortfall across the entire proposal of 23 spaces, and a technical shortfall of 54 spaces.
3. Mr Hunt’s evidence is that the amount of car parking to be provided on site is appropriate, having regard to two parts of his analysis. The first part relates to an empirical analysis of the two land uses for which a reduction in car parking is sought. The shortfall for the retirement village relates to the provision of only one car parking space to each of the 22 proposed three-bedroom units. His evidence is that three-bedroom independent living units as part of a retirement village do not generate the same level of car parking as ‘conventional’ dwellings, and that car ownership rates for independent living units as a whole have been surveyed to generally sit between 0.24 and 0.62 vehicle per unit. The highest rate of car parking surveyed was for a facility in Kew which generated 1.04 car spaces per unit. On this basis Mr Hunt considers that the provision of one car space per unit in the proposed retirement village will provide a sufficient level of car parking for this use.
4. In relation to the residential hotel, Mr Hunt relies on a survey of the car parking demand created by a nearby hotel in Glen Waverley, which he says showed a peak parking demand of 0.51 space per occupied room, including staff. If one takes the conservative approach of applying the car parking rate per occupied room to the total number of rooms proposed here, and thereby presume 100% occupancy, that will generate a requirement of 48 car parking spaces, where we understand that 51 spaces are to be provided. We consider it appropriate to apply the surveyed rate from the Glen Waverley hotel to the context of the review site. Both locations are likely to rely heavily on private vehicles for access. Further, while the hotel in Glen Waverley now charges for on-site car parking, which could have the effect of artificially reducing the car parking rate, we are informed by Mr Hunt that such a charge did not apply at the time of the survey. As such, we find that the provision of 51 car parking spaces for the combined total of 94 hotel rooms and serviced apartments would adequately cater for the empirical demand for this part of the land use.
5. The second part of Mr Hunt’s analysis addressed the temporal demand for car parking. This assessment took into account that, notwithstanding the application of Column B rates to the site means that no visitor car parking is required, in fact the site is likely to generate such a demand. It is further noted that of the two basement car parking levels proposed, the lower level basement will be secure parking for residents and staff, and the upper basement level will be open for visitor car parking. The temporal demand analysis undertaken by Mr Hunt is set out in the table below.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Use** | **Peak parking demand** | **Business hours** | | **Evenings/Weekends** | |
| **Occupancy** | **Spaces** | **Occupancy** | **Spaces** |
| Restaurant | 26 | 50% | 13 | 100% | 26 |
| Conference | 24 | 100% | 24 | 100% | 24 |
| Visitors | 15 | 75% | 11 | 100% | 15 |
| Childcare | 18 | 100% | 18 | 0% | 0 |
| Demand |  |  | 65 |  | 65 |

1. This temporal demand for car parking is satisfied with the provision of 65 car parking spaces for these land uses. Mr Hunt’s evidence is that the proposed uses will not generate a demand for off-site car parking.
2. We are persuaded by this evidence, and by the temporal analysis undertaken, which demonstrate that there will be sufficient parking on site for the various land uses.
3. With respect to traffic impacts, the proposal will generate an additional 113 vehicle movements in the AM peak, and 125 vehicle movements in the PM peak, compared to the current traffic levels associated with the existing use of the land. Mr Hunt has modelled this increase in traffic volumes against a SIDRA analysis of the intersection of Blackburn Road and Lemont Avenue. The analysis concluded that the intersection will continue to operate satisfactorily with minimal delays with the increased traffic movements from the proposed development.
4. At the planning permit application stage, VicRoads had raised concerns with the proposal. Following the amendment of plans, and the provision of further information from Mr Hunt, VicRoads now no longer objects to the proposed development, having regard to the resultant increased traffic levels and the effect on the surrounding arterial road network. We place weight on the independent analysis conducted by VicRoads, and its absence of an objection.
5. The proposed access point to the review site is from Lemont Avenue opposite the car park associated with the Pinewood Activity Centre on the northern side of the street. It is anticipated that all vehicle movements associated with the site will be in an easterly direction to and from Blackburn Road, given the circuitous route that is available through the residential neighbourhood to the west. As such, the increased traffic levels expected along Lemont Avenue will not pass any of the existing dwellings. For these reasons we find that the proposed increase in traffic volumes will not create an unacceptable amenity impact on the nearby residents.
6. Our conclusion is that the surrounding road network will accommodate the expected increase in traffic movements from the proposed development.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

|  |  |  |
| --- | --- | --- |
| Bill Sibonis  **Presiding Member** |  | Michael Deidun  **Member** |

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. [↑](#footnote-ref-1)
2. Clause 11.03-1S [↑](#footnote-ref-2)
3. Clause 11.03-1R [↑](#footnote-ref-3)
4. Clause 16.01-1S [↑](#footnote-ref-4)
5. Clause 16.01-2S [↑](#footnote-ref-5)
6. Clause 15.01-2S [↑](#footnote-ref-6)
7. Clause 15.01-5S [↑](#footnote-ref-7)
8. Clause 16.01-3S [↑](#footnote-ref-8)
9. Clause 16.01-3S [↑](#footnote-ref-9)
10. Clause 16.01-4S [↑](#footnote-ref-10)
11. Clause 22.01-2 [↑](#footnote-ref-11)
12. Clause 22.01-3 [↑](#footnote-ref-12)
13. Clause 21.04 [↑](#footnote-ref-13)
14. At paragraph 45 [↑](#footnote-ref-14)
15. *Plan Melbourne 2017-2050, Metropolitan Planning Strategy*, Department of Environment, Land Water and Planning, 2017 [↑](#footnote-ref-15)
16. Included in Mr Goss’ evidence. [↑](#footnote-ref-16)
17. For example, clauses 11.03, 15.01, 16.01, 21.04 and 21.05 [↑](#footnote-ref-17)
18. The secluded private open space area of the front dwelling is located to the west of the dwelling. For the rear dwelling, the secluded private open space area is located principally to the west of the dwelling, with a portion extending to the south to display a limited abuttal to the review site. [↑](#footnote-ref-18)