VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P2062/2019  Permit Application no. TPA/50355 |
| CATCHWORDS | |
| Monash Planning Scheme; built form assessment on land within a higher order activity centre and a Residential Growth Zone; transition of built form at the interface between a Residential Growth Zone and a General Residential Zone; visual bulk impacts from a four storey apartment building. | |

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| APPLICANTs | Lois Maynard, Marie Bateman, & Choong Chow |
| responsible authority | Monash City Council |
| RESPONDENT | Radar Projects Pty Ltd |
| SUBJECT LAND | 1 Railway Parade North & 16 O’Sullivan Road, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Michael Deidun, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 14 September, 2020 |
| DATE OF ORDER | 17 September, 2020 |
| CITATION | Maynard v Monash CC [2020] VCAT 1045 |

# Order

1. In application P2062/2019 the decision of the responsible authority is varied.
2. In planning permit application TPA/50355 a permit is granted and directed to be issued for the land at 1 Railway Parade North & 16 O’Sullivan Road, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* To construct two or more dwellings on a lot

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| **Michael Deidun** |  |  |
| **Member** |  |  |

# Appearances

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| For applicants | Tom Pikusa, Barrister by direct brief |
| For responsible authority | Alexandra Wade, Principal Planner – Major Projects of Monash City Council |
| For respondent | John Cicero, Solicitor of Best Hooper  He called the following witness:   * Damian Iles (town planer) of Hansen Partnership |

# Information

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| Description of proposal | The construction of a four storey apartment building above a basement car park |
| Nature of proceeding | Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Residential Growth Zone 4 |
| Permit requirements | Clause 32.07-5 to construct two or more dwellings on a lot on land within the Residential Growth Zone |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21, 22.01, 22.14, 32.07, 52.06, 55, 65 and 71.02. |
| Land description | The land is an irregular shaped parcel created by the combination of two corner lots with frontages to different streets, but a common sideage to one street. The land has abuttals to O’Sullivan Road of 14.02 metres, to Railway Parade North (where it runs roughly north-south) of 51.83 metres, and Railway Parade North (where it runs roughly east-west) of 22.86 metres. The land has an overall area of 1435 square metres, and presently contains two detached dwellings, one single storey in height, and the other double storey in height. |

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

## What is this proceeding about?

1. Three nearby residents (the ‘Applicants’) seek to review the decision of the Monash City Council (the ‘Council’) to grant a permit for the proposed development of 23 dwellings in a four storey apartment building on land at 1 Railway Parade North & 16 O’Sullivan Road, Glen Waverley (the ‘review site’).
2. The Applicants’ concerns relate to the visual bulk that will present to the surrounding properties, the height of the proposed development, the potential for overlooking, and the lack of landscaping opportunities. The Council and the permit applicant both rely on grounds that essentially seek to refute the Applicant’s grounds.
3. The issues or questions for determination are:
   1. Is the proposal an appropriate response to the surrounding neighbourhood character?
   2. Will there be an unreasonable amenity impact on the surrounding properties?
   3. Is an appropriate level of internal amenity achieved?
   4. Does the proposal appropriately provide for car parking and traffic movements?
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, I have decided to vary the Council’s decision, and direct the grant of a planning permit subject to conditions. My reasons follow.

## Is the proposal an appropriate response to the surrounding neighbourhood character?

1. The review site is located within the identified boundaries of the Glen Waverley Major Activity Centre,[[2]](#footnote-2) and within walking distance of all the services and facilities that this higher order activity centre has to offer. As such, it is subject to policy at a State level that encourages the development of higher density housing, including the policy statements set out below.

Planning is to facilitate sustainable development that takes full advantage of existing settlement patterns and investment in transport, utility, social, community and commercial infrastructure and services.[[3]](#footnote-3)

Develop a network of activity centres linked by transport; consisting of Metropolitan Activity Centres supported by a network of vibrant major and neighbourhood activity centres of varying size, role and function.

Create mixed-use neighbourhoods at varying densities, including through the development of urban-renewal precincts, that offer more choice in housing, create jobs and opportunities for local businesses and deliver better access to services and facilities.[[4]](#footnote-4)

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.

Encourage a diversity of housing types at higher densities in and around activity centres.[[5]](#footnote-5)

Encourage higher density housing development on sites that are well located in relation to jobs, services and public transport.[[6]](#footnote-6)

Identify areas that offer opportunities for more medium and high density housing near employment and transport in Metropolitan Melbourne.

Manage the supply of new housing to meet population growth and create a sustainable city by developing housing and mixed use development opportunities in locations that are:

* …
* Metropolitan activity centres and major activity centres.
* …

Facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.[[7]](#footnote-7)

1. At a local level, the policies found in the Monash Planning Scheme support the development of higher density housing on the review site. Clause 21.04 of the Monash Planning Scheme contains the Council’s policies relating to Residential Development. It places the review site and surrounding neighbourhood within Category 1: Activity and neighbourhood centres. It also creates the following policies that apply to the review site:

**Objectives**

* To locate residential growth within neighbourhood and activity centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princes Highway) to increase proximity to employment, public transport, shops and services. This will assist to preserve and enhance garden city character and special character in the balance of the municipality.
* To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
* To recognise and provide for housing needs of an ageing population in proximity to neighbourhood and activity centres.

**Strategies**

* Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within Clause 22.01.
* Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.
* Encourage vegetation retention and provision on development sites.
* Ensure that new residential development provides a high level of amenity including internal amenity, privacy for occupants and neighbours, access to sunlight, high quality private and public open space, canopy tree cover, and effective traffic management and parking.
* Direct more intensive, higher scale development to neighbourhood and activity centres that are well serviced by public transport, commercial, recreational, community and educational facilities.
* Provide an appropriate built form transition between activity centres and residential areas through innovative and high quality architectural design, appropriate setbacks and landscaping.
* Promote a variety of dwelling sizes and types to promote greater affordability of housing and choice in medium and large urban developments.

1. Clause 21.06 of the Monash Planning Scheme contains the policies relating to Major activity and neighbourhood centres. The Overview at Clause 21.06-1 includes the following.

Glen Waverley has experienced major renewal and redevelopment in the past few years that has revitalised the Centre. It is anticipated that the Centre will continue to grow and change into the following years. Council wishes to see Glen Waverley continue to develop as a major entertainment and retail centre for the eastern metropolitan region. This centre is also the appropriate location for the development of high rise residential development.

1. The following policies are then created at Clause 21.06-3.

**Objectives**

* To promote high rise residential development within the Glen Waverley and Oakleigh Major Activity Centres, to support ongoing economic prosperity, social advancement and environmental protection.

**Glen Waverley Major Activity Centre**

* Encourage medium to high rise development in appropriate locations, and with excellence in architectural quality and design.

1. The Council’s Residential development and character policy is contained at Clause 22.01. The Policy basis at Clause 22.01-1 includes the following.

Residential growth should be directed to activity and neighbourhood centres that are well serviced by public transport, commercial, recreational, community and educational facilities to make optimum use of the services available.

1. The policy statements at Clause 22.01-3 include the following.

Development outside of the activity and neighbourhood centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princes Highway) will generally be low rise.

1. The policy at Clause 22.01-4 provides a series of preferred future character statements for different precincts. The review site and surrounding neighbourhood is included in the Monash Residual Residential Area, which is not provided with a preferred future character statement.
2. Perhaps this area does not have a preferred future character statement, as the Glen Waverley Major Activity Centre Structure Plan policy at Clause 22.14-1 contains the following vision for the activity centre.

The Glen Waverley Activity Centre will transform into a vibrant, more intensive and active urban centre, building on its distinctive cultural mix. The urban form will be clearly different from its surrounding residential and light industrial areas, which will maintain a more traditional suburban scale of development.

Shops and services will increase in range and diversity and the quality of activities and experiences will improve to meet the needs both of a growing number of local residents and workers, and visitors.

Glen Waverley will be recognised as a Centre that caters for people of all ages and mobility needs. There will be improved safety, security and accessibility measures in place, including more direct and attractive pedestrian and cycling routes through the Centre and improvements to the public transport infrastructure. The needs of motorists will be catered for by ensuring good access routes to businesses and improved parking facilities, however separated from the main routes for pedestrian, cyclists and public transport users.

High quality and diverse housing options will be available for a greater number of residents with a range of housing needs. Improved and additional open space and plazas, along with community and physical services will be in place for the local residents, workers and those who visit the centre. Although distinctly urban, the centre will be notable for its greenery and its sustainability measures.

1. The policy at Clause 22.14-4 provides the following guidance for Precinct 7 – Surrounding residential, which includes the review site.

**Precinct 7 – Surrounding Residential**

The surrounding residential precinct provides a key role in supporting the growth of the centre by delivering a diverse range of housing that is located in close proximity to shops and services, public transport and open space. A number of streets will be enhanced as key walking and cycling routes connecting into the town centre.

It is policy to:

* Encourage the intensification of housing in identified areas on High Street Road, Snedden Drive, Coleman Parade, Myrtle Street, Bogong Avenue and Springvale Road.
* Improve pedestrian and cycle links between the precinct and GWAC commercial area.

1. One of the reference documents to Clause 22.14 is the *Glen Waverley Activity Centre Structure Plan* (Prepared by Tract Consultants for the City of Monash, September 2014), updated 2016. This Structure Plan places the review site within a built form precinct, where the following guidance is provided.

* Opportunity for 3-4 storeys.
* Front setbacks of at least 5m and side and rear setbacks in accordance with ResCode

1. This policy and strategic framework is supported by the application of the Residential Growth Zone to the review site. This zone has a number of purposes, that relevantly include the following.

To provide housing at increased densities in buildings up to and including four storey buildings.

To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.

To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.

To ensure residential development achieves design objectives specified in a schedule to this zone.

1. The land is located within Schedule 4 to the Residential Growth Zone (RGZ4), which includes the following design objective and decision guidelines.

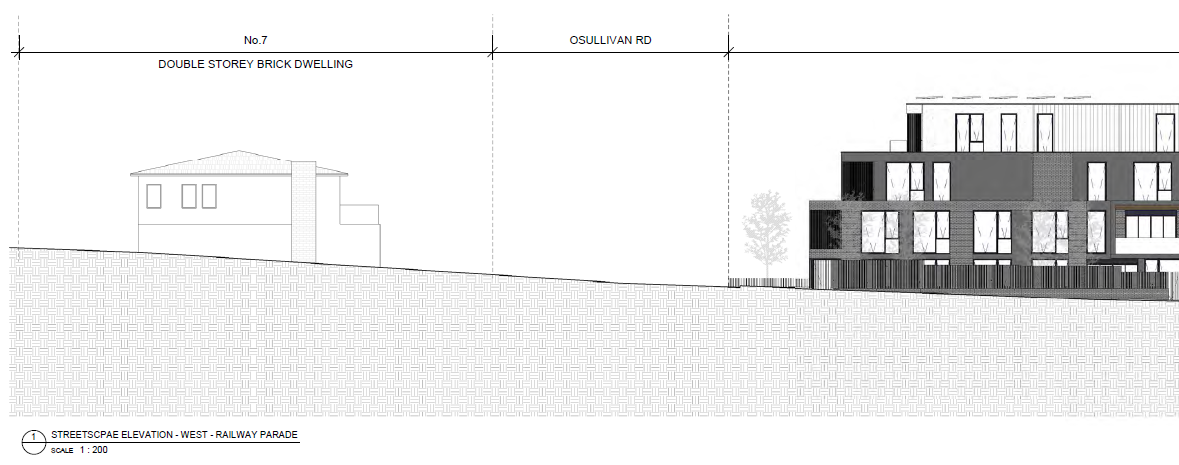
**Design objectives**

To provide for diverse housing development with appropriate setbacks to allow for landscaping and canopy trees.

**Decision guidelines**

* Whether an application allows for the intensification of housing and provides for a diversity of housing types within the Glen Waverley Major Activity Centre.
* Whether development contributes to the ‘buildings-in-landscape’ character of the existing residential areas surrounding the Glen Waverley Major Activity Centre commercial area.
* Whether the development minimises the impact to neighbouring properties, through suitable setbacks from adjacent secluded private open space to enable the provision of screening trees, and scaling down of building form to the adjoining properties in the General Residential Zone.

1. The messaging from this policy framework is clear. The review site is considered to be part of a higher order activity centre, that is to provide higher density housing, amongst other roles. This land in particular is earmarked to provide for additional housing, that is diverse in its range of housing options. Due to the application of the RGZ4 to the review site, and as confirmed by the relevant Structure Plan, the anticipation is for development of up to four storeys in height, that allows for intensification of housing and provides for a diversity of housing types.
2. The Applicants submit that the proposal will present an unreasonable level of visual bulk to the surrounding neighbourhood, by virtue of the overall height and scale proposed, the nature of the surrounding context, and the likelihood that surrounding land may not be further developed for some time. The Applicants also submit that the proposal does not present a reasonable transition in scale to land within the General Residential Zone. They make this submission on the basis that the proposed four storey scale on the review site, is double the emerging two storey scale in the General Residential Zone. They say that O’Sullivan Road is a narrow road at 15 metres wide, and is not sufficient to provide for a reasonable transition of scale. Finally, the Applicants submit that the landscaping opportunities on the review site are unreasonably limited.
3. I am not persuaded by these submissions, and instead find that the proposed development is an appropriate response to the context of the review site, and the guidance provided by the Monash Planning Scheme. I make this finding for the following reasons.
4. The guidance provided by the Monash Planning Scheme is clear that the proposed development is not expected to have a built form scale that respects the existing neighbourhood character. That is evident through:
   1. the application of the Residential Growth Zone to the review site and surrounding land;
   2. the policy encouragement for medium and high rise development on land within the boundaries of the Glen Waverley Major Activity Centre, which manifests as a four storey height limit on the review site through the application of the Residential Growth Zone, and guidance provided by the relevant Structure Plan;
   3. the decision guidelines in RGZ4 which seek an intensification of housing and a diversity of housing types; and,
   4. the use of the Schedule to the zone to vary the front setback standard to 5.0 metres.
5. The review site presents an appropriate opportunity to realise the built form expectations created by the policy and strategic framework, and the RGZ4. It is a relatively large site, at 1435 square metres, that is created through the consolidation of two existing allotments. Further, as the two existing allotments are both corner lots, the consolidated review site enjoys three street frontages, and only one direct abuttal to residential properties to the east. While this sensitive interface to the east currently supports traditional housing at single storey in scale, it is likewise subject to the Residential Growth Zone 4, and will therefore likely contain a significant level of redevelopment at some time in the future.
6. While Mr Pikusa sought to downplay the development potential of the land at 18 O’Sullivan Road, I agree with the evidence of Mr Iles that this adjoining property has the potential to be developed with a three to four storey building in the future, either as an individual site, or as part of a larger consolidated site with land to the south. However, the appropriateness of the proposed extent of built form on the review site does not rely on the redevelopment of this adjoining property to the east occurring in the short term. The Council has adopted a long term vision for this activity centre, and land values will dictate that, over time when the properties change hands, the highest and best use for surrounding land within RGZ4 will be for a substantial form of development.
7. The same can be said for the land on the opposite (western) side of Railway Parade. While some of these lots have in the past been developed with two dwellings on a lot, it is likely that the long term vision expressed by the Monash Planning Scheme for this land to be more intensely developed, will prevail. In the case of the existing dwellings at 14 O’Sullivan Road, I do not regard the presence of these two dwellings as being a ‘roadblock’ to the future development of this land with a three to four storey apartment building.
8. In response to the existing physical context, the proposed development has appropriately mitigated its scale and bulk impacts on the sensitive interface to the east by a series of setbacks that largely comply with Standard B17, and through an engaging and articulated built form that encompasses a range of materials and finishes. Where the review site abuts a primary area of secluded private open space at 3 Railway Parade North, a more generous series of setbacks to the upper levels is employed, including a setback of 6.15 metres to the third storey, and 9.16 metres to the top floor. Alternatively, where the review site abuts a less sensitive side yard to the property at 18 O’Sullivan Road, a series of setbacks closer to the B17 standard are applied. In this way the proposed development of the review site displays an appropriate built form response to its context. The extent of landscaping that is proposed on the review site along this eastern interface, complements the range of setbacks proposed and the overall sensitive approach to this interface. As a result, the proposed development will not result in an unreasonable level of visual bulk to the adjoining properties to the east of the review site.
9. The review site’s context being surrounded by roads to three sides provides an opportunity for a building of some scale to be achieved on the review site, with that scale being able to be absorbed by the surrounding public realm. This is the case, even accounting for the 15 metre width of the surrounding roads. That is, the space around the building created by the public roads to three sides, creates an opportunity for the scale of this proposed building to be read at a greater distance, and in a more open environment, than would be the case if the review site were surrounded by narrow areas of secluded private open space. I find that the proposed elevations to the public realm are appropriately articulated and of a good design quality, and provide a high level of surveillance and activation to the public realm. The scale of the elevations to these surrounding streets also vary, to recognise that the southern end of the review site is closer to the robust activity centre and railway environment, with the northern end facing a consistent residential context.
10. The Applicants submit that the proposed development does not provide an appropriate transition in height to land in the General Residential Zone on the northern side of O’Sullivan Road. To the contrary, I find that the proposed development has employed some design techniques, to successfully achieve an appropriate transition in scale. The first technique employed is a continuous floor level across the site, which has the effect of making the ground floor of the proposed building sit below the natural ground level at its northern end by about 700 to 800 mm. This has the effect of reducing the overall scale of the proposed development as it presents to the O’Sullivan Road streetscape.
11. The topography continues to rise to the north, and the manner in which the housing on the northern side of O’Sullivan Road sits well above street level, means that a comfortable transition is achieved even with the existing level of development on the northern side of O’Sullivan Road. This is demonstrated by the streetscape elevation that is set out below, which is taken from Drawing TP-03. The further development of this land to the north is encouraged by its inclusion within the boundaries of the Glen Waverley Major Activity Centre, and the resultant application of a similar policy framework as applies to the review site.



1. The second technique employed is a substantial setting back of the upper levels of the proposed development from the O’Sullivan Road street frontage. The proposed development on the review site adopts the following setbacks to O’Sullivan Road.
   1. Ground floor – 5.0 metres
   2. First floor – 7.0 metres
   3. Second floor – 9.0 metres
   4. Third floor – 12.0 metres
2. The effect of these setbacks is that the upper level will have only a minor visual presence in the O’Sullivan Road streetscape, and the building will primarily be read as a three storey form, from land to the north. This is demonstrated on the image below.



1. Returning to the streetscape elevation on the previous page, this depicts how the more prominent three storey façade of the proposed building on the review site, is similar in scale to the elevated two storey existing form on the northern side of O’Sullivan Road, which exemplifies the emerging two storey scale of development on land within the General Residential Zone, as referred to by the Applicants. From this streetscape diagram it is evident that the combination of techniques described above will achieve an appropriate transition in scale to the land to the north, even in the absence of the higher level of development that is encouraged to occur in this area to the north.
2. Mr Pikusa spent some effort in making submissions that the existing one to two storey character of the existing housing on the northern side of O’Sullivan Road is unlikely to change significantly into the future. He referred the Tribunal to the recent construction of detached two storey dwellings in Lisbon Street as an indicator that greater housing change is unlikely to occur in that area. In my view these factors only raise the importance of the review site, and others like it within the Residential Growth Zone, to play its intended role of providing for additional and more diverse housing forms in this part of the activity centre. For the reasons set out above, I am not persuaded that a higher level of development must be considered likely in the land to the north within the General Residential Zone, for a successful built form transition to be achieved between it and the proposed development on the review site. It is my view that this is achieved with the existing built form context, and the design techniques which I have described above.
3. For these reasons I find that the proposed development of the review site achieves the following decision guideline from RGZ4.

Whether the development minimises the impact to neighbouring properties, through suitable setbacks from adjacent secluded private open space to enable the provision of screening trees, and scaling down of building form to the adjoining properties in the General Residential Zone.

1. Mr Pikusa also submits that the western elevation of the proposed building on the review site will possibly read as five storeys of development, with no transition to the land to the west. Firstly, I do not see how the western elevation could be said to read at a five storey scale. A comparison of the floor levels to the natural ground levels do not support such a statement, and the lift overrun along this elevation is marginal in height, and narrow in proportions. The Monash Planning Scheme does not advocate for a transition in scale between land on opposite sides of a road, which is all within the Residential Growth Zone. Further, as expressed earlier in these reasons, I do not see any unusual physical circumstances which would make the land on the western side of Railway Parade unable to be developed in line with the expectations for land within the Residential Growth Zone. Therefore, I see no reason to require the proposed development on the review site to provide a built form transition along its western elevation.
2. Finally, the Applicants also raise a concern regarding the extent of landscaping opportunities created on the review site. The Schedule to the RGZ that applies to the review site provides some clear guidance as to the extent of landscaping expected in this locality. Firstly, it does this through the variation to the front setback standard of 5.0 metres. This establishes the expectation that a 5.0 metre front setback, and 3.0 metres to side streets, can achieve the landscaping outcomes expected in this part of the activity centre. This is particularly the case as the Schedule to the RGZ has a sole purpose that is landscape focussed, and it also provides for a varied front setback standard that presumably leads to the achievement of the design objective, and thus an appropriate landscape outcome.
3. Secondly, it varies the Landscaping Standard B13 to the following.

Retention or provision of at least three canopy trees (two located within the front setback) with a minimum mature height equal to the height of the roof of the proposed building or 10 metres, whichever is greater.

1. The review site being a consolidated parcel of two allotments, would be able to satisfy this varied Standard B13 through the retention or provision of six canopy trees of a certain height. The landscape plan that has been prepared for the proposed development depicts the planting of 40 canopy trees through the review site. Twenty-seven of these trees are noted with a height at maturity of 10 metres or taller, and 11 are noted as being 15 metres or taller at maturity, and thus taller than the proposed building on the review site. Further, the layout of the building, with the complete absence of any walls on boundary, and with a continuous minimum 4.0 metre ground floor setback to the adjoining residential properties to the east, provides an opportunity for the proposed development of the review site to be entirely circled with substantial vegetation. I find this to be a generous landscaping response to the context of the review site, the existing landscape character of this locality, and the guidance provided by the Monash Planning Scheme.
2. For these reasons I find that the proposed development of the review site achieves the following design objective and decision guidelines from RGZ4.

To provide for diverse housing development with appropriate setbacks to allow for landscaping and canopy trees.

* Whether development contributes to the ‘buildings-in-landscape’ character of the existing residential areas surrounding the Glen Waverley Major Activity Centre commercial area.

1. Given this level of proposed landscaping, the proposal does not rely on street tree planting within the road reserves that surround the review site on three sides. Mr Pikusa was critical of the width of the nature strips in these streets, and thus the opportunities for landscaping within the public realm. I do not regard the presence or absence of landscaping opportunities within the public realm as a factor which should limit the review site from realising the built form outcomes supported by the Monash Planning Scheme. For the reasons set out above I find that an appropriate landscape outcome is achieved within the boundaries of the review site. Further, it is the role of landscaping in this context to provide a setting for the proposed building, not to screen it from any view. In this context where all views to the proposed building will be from land located within the boundaries of this higher order activity centre, views to well articulated built form at four storeys in height is a more than reasonable outcome.
2. For these reasons I find that the proposed development of the review site is an appropriate response in character and built form terms.

## Will there be an unreasonable amenity impact on the surrounding properties?

1. Off-site amenity impacts are generally measured in terms of overlooking, overshadowing and visual bulk. In the assessment above, I have found that the proposed development will not result in unreasonable levels of visual bulk to the only abutting residential properties, being those to the east of the review site. The other interfaces are to surrounding streets, and thus other nearby properties are separated by the width of the public realm. As a result of the range of design elements identified in the analysis above, I also find that the no unreasonable levels of visual bulk will occur to any of the other properties that surround the review site.
2. Overlooking is appropriately addressed to the interface to the east, through the use of screening devices where appropriate. The Applicants argue that the proposed development will create the potential for overlooking into the front yards and private spaces on their land. The siting of the proposed building on the review site is separated from the Applicants’ land by around 18-20 metres, with this distance comprising a combination of road reserve, and the proposed street setbacks on the review site. There is nothing in the Monash Planning Scheme that seeks to restrict overlooking at this distance. Indeed, to the contrary, the various urban design and safety policies found in the Monash Planning Scheme seek to reasonably maximise the extent to which a development of this kind will overlook the public realm, and by extension the surrounding context. As such, I do not regard the extent to which this proposal will overlook properties on the opposite sides of roads to the review site to be a relevant criticism.
3. Overshadowing from the proposed development will only occur to the adjoining residential properties from about 2:00pm onwards at the equinox. As such, the Overshadowing open space standard[[8]](#footnote-8) will be achieved, with there being negligible amounts of overshadowing to areas of secluded private open space for the five hours between 9:00am and 2:00pm at the equinox. Further, there are no north facing habitable room windows close to the review site, that need to be protected from overshadowing in accordance with Standard B20.[[9]](#footnote-9) As such, the proposed development will not unreasonably overshadow surrounding properties.
4. For these reasons I find that the proposed development will not cause unreasonable amenity impacts to the surrounding properties.

## Is an appropriate level of internal amenity achieved?

1. The Applicant did not raise any concerns regarding the level of internal amenity to be enjoyed by future occupants of the proposed development on the review site. The following internal amenity analysis is extracted from the evidence of Mr Iles.

I find that the proposal provides good on-site amenity for future residents. In support of this position I rely on the following:

* Each dwelling would be provided with access from a common entrance entry which is clearly identifiable. This arrangement satisfies the objective of Standard B26.
* Habitable room windows within each dwelling would be provided with adequate daylight in accordance with Standard B27.
* Each dwelling is provided with secluded private open space in accordance with the requirements of Standard B28, as applicable, and well-integrated with internal living areas.
* The secluded private open space of each dwelling would be provided with good solar access, in accordance with Standard B29.
* The provision of 23 apartments does not require the provision of a communal open space area of 250m2 as specified at Standard B36. Further the solar access provisions at Standard B37 are not applicable in this case.
* The extent of basement will allow up to 15% of deep soil area available for landscaping. Based on the 1,435m2 site area, Standard B38 only requires 7.5% (with minimum dimension of 3 metres). This equates to 107.62m2. By my calculation the proposal allows for at least 108.16m2 of deep soil area (with minimum dimension of 3 metres). Additional areas exist that are less than 3.0 metres in depth.
* In response to Standard B39, I expect stormwater associated with the development can be managed appropriately. A 28,000L rainwater storage tank for toilets and irrigation is shown on the plans.
* Although proximate to the railway line, I do not anticipate any particular noise related issues which would result in a failure to meet the objective of Standard B40. Acoustic treatment could be required by permit conditions if considered necessary.
* Each dwelling above ground level would be provided with an area of secluded private open space in accordance with Standard B43, with the exception of the balcony of Apartment 3.02, which has a width of 1.8 metres rather than 2.4 metres, as required under this standard. I have therefore recommended that the width of this balcony be increased to comply with Standard B43 and note that this can be readily accommodated by extending the balcony to the north.
* Additional storage facilities can be provided for each dwelling, in accordance with Standard B30 by minor amendment. I note Council has recommended a Condition to ensure additional storage is designed in accordance with Standard B44 (within the basement car park).
* Waste and recycling facilities are provided in accordance with Standard B45, within an area at ground level adjacent to the entry foyer.
* Room sizes within each dwelling meet the objectives of Standard B46, with the exception of several bedrooms which are slightly smaller than the required dimensions. I have recommended that compliance with this standard be achieved for all bedrooms.
* In accordance with Standard B47, no single aspect habitable rooms exceed a depth of 2.5m times the ceiling height or 9 metres.

1. I am persuaded by this evidence, and find that the proposed development will provide for an appropriate level of internal amenity, for the reasons set out in Mr Iles evidence statement. Mr Iles has recommended some relatively minor changes to the layout to improve internal amenity. While I do not consider that these changes are necessary to achieve an appropriate level of internal amenity, they have been accepted by all parties, and form part of an amended set of permit conditions that are not opposed by any party, should I decide to direct the grant a permit. As the changes advanced by Mr Iles seek to improve the levels of internal amenity to be enjoyed by some residents, without reducing the level of achievement of other policy outcomes, I will support those changes.

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

1. The following analysis is contained in the Council’s delegate report to the Council Meeting of 24 September 2019.

Car Parking

The proposal includes a total of 23 apartments. The car parking requirement is set out in the table below:

|  |  |  |  |
| --- | --- | --- | --- |
| Use | Number of apartments | Car spaces required (Clause 52.06) | Car spaces provided |
| One and two bedroom apartment | 21 | 21 spaces | 21 spaces |
| Three bedroom apartment | 2 | 4 spaces | 4 spaces |
| Visitors | 23 | 0 spaces | 0 spaces |
| Total | 23 | 25 spaces | 25 spaces |

It is noted that there is no visitor parking requirement for the proposal as the site is located within the Principal Public Transport Network (PPTN).

All car spaces and accessways within the basement have been designed in accordance with the design requirements providing easy ingress / egress and movement within the basement and allow vehicles to exit the site in a forwards direction.

The remaining two existing crossovers to the site located on Railway Parade North are to be reinstated with kerb and channel which will in turn increase on-street parking availability.

Waste collection is proposed within the basement, with the waste truck propping within the basement and undertaking collection. Swept path diagrams have been prepared which show that the waste vehicle (6.345 metres in length) can turn around within the basement and exit the site in a forwards direction. The waste vehicle has a height of 2.1 metres with clearance required for 2.5 metres as identified in the Waste Management Report submitted with the application. The plans show that the minimum height clearance for the basement is 2.2 metres, with a clearance of 2.7m within the waste collection area.

Council's Traffic Department are satisfied that the road network can accommodate the additional generation of vehicles. They have noted that the predicted traffic generation is relatively low, residential in nature and is expected to have a negligible impact on the local traffic network in terms of the overall traffic in the area.

Bicycle Parking

Clause 52.34 of the Planning Scheme specifies bicycle parking requirements for the development as follows:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Use | No of apartments | Statutory bicycle parking requirement | No of spaces required | No of spaces provided |
| Dwellings | 23 apartments | 1 space per five dwellings | 5 resident spaces | 6 resident spaces (located within basement) |
| Dwellings (visitor) | 23 apartments | 1 space per ten dwellings | 2 visitor spaces | 4 visitor spaces (located at ground floor) |

The proposal therefore provides for surplus bicycle parking spaces. The bicycle spaces are appropriately located for visitors at the ground floor adjacent to the entrance, and within the basement for residents.

1. I agree with this analysis by Council that the proposal provides the level of car parking required under Clause 52.06 of the Monash Planning Scheme, and therefore no permit is required to waive any component of the car parking requirement. It is also evident that the access and basement car park have been appropriately designed to provide for safe vehicle movements, including for vehicles to enter and exit the site in a forward motion.
2. I am persuaded by the independent assessment by Council’s traffic engineers, and by the traffic report provided by the Applicant, that the traffic associated with the proposed development can be safety accommodated on the surrounding road network.
3. For these reasons I find that the proposal will appropriately provide for car parking and traffic movements.

## What conditions are appropriate?

1. Prior to the hearing the Applicant circulated a suggested revised set of permit conditions. At the conclusion of the hearing Ms Wade and Mr Pikusa suggested additional wording be added to Conditions 1(r), 1 (s) and 1(v), in order to ensure the changes recommended by Mr Iles achieved certain outcomes. These changes were not opposed by Mr Cicero. I have edited these permit conditions accordingly, and otherwise adopted the conditions as circulated by the Applicant and not opposed by the other parties.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

|  |  |  |
| --- | --- | --- |
| **Michael Deidun** |  |  |
| **Member** |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/50355 |
| Land | 1 Railway Parade North & 16 O’Sullivan Road, Glen Waverley |

|  |
| --- |
| What the permit allowS |
| In accordance with the endorsed plans:   * To construct two or more dwellings on a lot |

## Conditions

1. Before the development starts, an amended plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The plans must be generally in accordance with the decision plans prepared by Alta Architecture Pty Ltd, dated 27 June 2019 but modified to show:
   1. Timber look material (which is easily maintained) within the soffits of the first floor balconies and entry framing element to Railway Parade North (to both the southern and western elevations of the building).
   2. Incorporation of additional storage per basement plan TP-5 (Revision C), supported by memorandum from traffic engineer in respect of clearance requirements and acceptability of swept paths;
   3. Details of existing and/or proposed boundary fencing at the rear (southern boundary) of 18 O’Sullivan Road. Fencing must be a minimum of 2 metres in height to prevent unreasonable overlooking from ground floor windows.
   4. Section details at a scale of at least 1:20 illustrating the building’s external walls, including materials and construction details.
   5. The location of any tree protection fencing in accordance with the report prepared by Tree Logic dated 22 March 2019.
   6. A notation that a tap and floor waste will be provided to each balcony / terrace area in accordance with the SMP prepared by Ark Resources.
   7. Location of waste collection vehicle designated standing area during collection (aiming to minimise impact on resident car spaces).
   8. Location of retaining walls clearly identified on the ground floor plan, corresponding with sectional and elevation plans.
   9. The landscaping areas adjacent to the ground floor lobby area to be consistent with the updated Landscape Plan prepared by Urbis (dated 05.08.2020 Rev A).
   10. The area of secluded private open space associated with Apartment G.07 reduced by 3sqm by moving the boundary fence on the southern side of the open space, northward by 1 metre therefore increasing landscaping areas adjacent to the secondary entry point of the building. Front fencing adjacent to this space is to be adjusted accordingly.
   11. The area of secluded private open space associated with Apartment G.08 reduced by 3sqm by moving the boundary fence on the northern side of the open space southward by 1 metre to increase communal planting space adjacent to the secondary entrance of the building. Front fencing and the pedestrian gate are to be adjusted accordingly.
   12. A planter box located on the western side of the staircase at the ground floor adjacent to the secondary building access point to reduce hard paving in this area and increase opportunities for landscaping.
   13. All fire services, electricity supply, gas and water meter boxes to be shown and to be discreetly located and / or screened to compliment the development. Materials of the proposed service cabinet are to be provided on elevation plans and is to be appropriately integrated into the front fencing proposed.
   14. Provision of new canopy street tree on Railway Parade North in place of the two crossovers to be reinstated adjacent to Apartment 8 / Secondary Pedestrian Access point. The tree must be planted to the satisfaction of the Responsible Authority in accordance with Condition 6 of this Permit.
   15. A Landscape Plan in accordance with Condition 7 of this Permit.
   16. A Waste Management Plan in accordance with Condition 15 of this Permit.
   17. Provision of acoustic treatments recommended within the Acoustic Report prepared in accordance with Condition 20.
   18. The reconfiguration of the ground floor level to locate the lobby adjacent to the central stair/lift core. The reconfiguration must include the relocation of Apartment G.08 to the south of the building envelope and associated changes to Apartment BG.01b, the communal corridor, bicycle spaces and southern garden area in the south-western corner of the site. No additional space within the southern setback of the review site to Railway Parade is to be dedicated to secluded private open space as part of these changes.
   19. The reduction of hard stand/paving areas within the northern setback of Apartments G.05 and G.06 down to 1.2 metres beyond the approved building envelope and removal of the internal division, in order to achieve additional areas for landscaping within this setback.
   20. Modification to Apartments G.03, G.04. G.08, 1.01, 1.03, 1.07 and 3.02 to ensure all bedroom sizes comply with Standard B47 of Clause 55.07-12.
   21. Modification to the balcony of Apartment 3.02 to achieve compliance with Standard B43 of Clause 55.07-9.
   22. Modification to Apartments 3.01 and 3.02 to achieve compliance with Standard B17 of Clause 55.04-1, to be achieved by raking some of the western external walls of these apartments.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. 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 Concept Plan dated 3 July 2019, Prepared by Urbis, except that the plan must show:
   1. Detail of the proposed ‘feature paving’ and proposed concrete driveway.
   2. Location of external lighting;
   3. The location of Tree Protection Zones of Trees 1, 2, and 4 and Tree Protection Fencing required as outlined within the Arborist Report prepared by Tree Logic dated 22 March 2019;
   4. Planter box provided to the edge of the balcony associated with Apartment G.01 facing Railway Parade North in accordance with the development plan;
   5. The visitor bicycle spaces proposed to be positioned within a landscaped setting. Hard paving associated with the bicycle spaces to be amended to be a grass or grasscrete finish;
   6. 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) from the edge of the exit lane of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road;
   7. Location of retaining walls; and
   8. Any changes as required by Condition 1 of this Permit.
4. 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.
5. All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.
6. Prior to the occupation of the site, a contribution payment will be required for the provision of an additional street tree located on Railway Parade North (including 2 year establishment). Please contact Council’s Horticulture Department to arrange payment. Council will be responsible for the planting, supply and establishment of the street tree.
7. An in-ground, automatic watering system linked to rainwater tanks on the land must be installed to the main garden areas to the satisfaction of the Responsible Authority.
8. All trees specified in the endorsed arborist report prepared by Tree Logic dated 22 March 2019 are to be protected and maintained in accordance with the recommendations set out in the report, to the satisfaction of the Responsible Authority.
9. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed arborist report and are advised of any obligations in relation to the protection of those trees.
10. All buildings and works within the Tree Protection Zone and Critical Root Zone as specified in the endorsed arborist report must be supervised by a suitably qualified and experienced arborist, to the satisfaction of the Responsible Authority.
11. No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the construction period of the development hereby permitted without the prior written consent of the Responsible Authority.
12. Concurrent with the endorsement of plans, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must be substantially in accordance with the Waste Management Plan prepared by Leigh Design, dated 26 June 2019 however revised to reflect any changes required by Condition 1 of this Planning Permit. The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
13. Collection of waste must be conducted so as not to cause any unreasonable disturbance to nearby residential properties and may only take place during the following times:
    1. Monday to Saturday: 7:00am to 6:00pm
    2. Public Holidays: 9:00am to 6:00pm
    3. Sunday: No collection allowed

to the satisfaction of the Responsible Authority.

1. Prior to the commencement of any site works (including demolition and excavation), a Construction Management Plan must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the construction management plan will form part of the permit and must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
   1. Hours for construction activity in accordance with any other condition of this permit;
   2. Measures to control noise, dust and water and sediment laden runoff;
   3. Prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   4. Measures relating to removal of hazardous or dangerous material from the site, where applicable;
   5. A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site;
   6. Cleaning and maintaining surrounding road surfaces;
   7. A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
   8. Public Safety and site security;
   9. A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
   10. A Traffic Management Plan showing truck routes to and from the site;
   11. Swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
   12. Measures to ensure that sub-contractors/tradespersons operating on the site are aware of the contents of the Construction Management Plan;
   13. Contact details of key construction site staff;
   14. Any other relevant matters, including the requirements of VicRoads or Public Transport Victoria.
   15. A requirement that construction works must only be carried out during the following hours:
       1. Monday to Friday (inclusive) – 7.00am to 6.00pm;
       2. Saturday – 9.00am to 1.00pm;
       3. Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines).
2. The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
3. An Acoustic Report prepared by a suitably qualified professional which demonstrates that the development meets the following noise levels:
   1. Not greater than 35dB(A) for bedrooms, assessed as an LAeq,8h from 10pm to 6am.
   2. Not greater than 40dB(A) for living areas, assessed LAeq,16h from 6am to 10pm.
4. The provisions, recommendations and requirements of the endorsed Sustainable Design Assessment prepared by Ark Resources, dated 2 July 2019 must be implemented and complied with to the satisfaction of the Responsible Authority.
5. Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
   1. constructed to the satisfaction of the Responsible Authority;
   2. properly formed to such levels that they can be used in accordance with the plans;
   3. surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
   4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
   5. line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

1. Car parking spaces shown on the endorsed plans must not be used for any purpose other than the parking of vehicles, to the satisfaction of the Responsible Authority.
2. The existing redundant crossings are to be removed and replaced with kerb and channel. The footpath and naturestrip are to be reinstated to the satisfaction of Council.
3. All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
4. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.

All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.

1. The nominated point of stormwater connection for the site is to the east of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the easement to be constructed to Council Standards.
2. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.
3. Prior to the occupancy of the development, all fencing must be constructed in accordance with the endorsed plans and in a good condition to the satisfaction of the Responsible Authority.
4. In the event of excavation causing damage to an existing boundary fence, the owner of the development site must (at their own) cost repair or replace the affected fencing to the satisfaction of the Responsible Authority.
5. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
6. No air conditioning units are to be located on the balconies unless with the written consent of the Responsible Authority.
7. Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the Responsible Authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.
8. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
   1. The development is not started within two (2) years of the issue date of this permit.
   2. The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987,* an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**– End of conditions –**

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. As identified in Map 1 to Clause 22.14 of the Monash Planning Scheme. [↑](#footnote-ref-2)
3. Clause 11 of the Monash Planning Scheme [↑](#footnote-ref-3)
4. Clause 11.01-1R [↑](#footnote-ref-4)
5. Clause 11.03-1S [↑](#footnote-ref-5)
6. Clause 16.01-2S [↑](#footnote-ref-6)
7. Clause 16.01-2R [↑](#footnote-ref-7)
8. As found at Clause 55.04-5 of the Monash Planning Scheme [↑](#footnote-ref-8)
9. As found at Clause 55.04-4 of the Monash Planning Scheme [↑](#footnote-ref-9)