VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P586/2019Permit Application no. TPA/49519 |

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| APPLICANT | AusUrban Equity Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 115 Coleman ParadeGLEN WAVERLEY VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | Peter Gaschk, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 9 October 2019 |
| date of interim orderDATE OF ORDER | 18 November 201911 February 2020 |
| CITATION | AusUrban Equity Pty Ltd v Monash CC [2020] VCAT 151 |

# Order

1. In application P586/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/49519 no permit is granted.

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| **Peter Gaschk****Member** |  |  |

# Appearances

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| For applicant | Mr Kyle O’Brien, Town Planner from David Lock & Associates |
| For responsible authority | Mr James Turner, Town Planner |

# Information

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| Description of proposal | Construction of four triple storey dwellings. |
| 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 (the Scheme). |
| Zone and overlays | General Residential Zone, Schedule 7, (GRZ7) Housing Diversity Area – Glen Waverley Major Activity CentreNo Overlays apply. |
| Permit requirements | Clause 32.08-6: To construct two or more dwellings on a lot. |
| Relevant scheme policies and provisions | Clauses 11, 11.03-1S, 15.01-4S, 15.01-4R, 15.02-1S, 16.01-2S, 16.01-1R, 21.04, 21.06, 22.01, 22.14, 32.08, 52.06, 55, 65 and 71.02. |
| Land description | The review site is located on the south side of Coleman Parade, approximately 70m east of Caramar Avenue. It is rectangular in shape with a 16.7m frontage, 42.6m depth and area of approximately 715sqm. The land is vacant with no significant vegetation. It has a fall of approximately 3.0m from north west to south east. An existing crossover is located along the eastern boundary with a 1.8m wide drainage and sewerage easement along the rear.Adjoining the eastern boundary (117 Coleman Parade) is a single storey detached dwelling set back 9.1m from the front with private open space (POS) and brick garage to the rear. Adjoining the western boundary (113 Coleman Parade) is a single storey detached dwelling set back 7.4m from the front with POS and garage at the rear. To the south (rear boundary) is a detached double storey dwelling fronting Grace Street. To the north is a railway reserve with angled parking and street tree planting associated with the Glen Waverley Railway Station. The neighbourhood contains scattered mature trees, generally located within front and rear landscaped setbacks of private properties and along public open space areas, including rail and road reserves. Surrounding residential development includes a mix of older and contemporary single and double storey detached housing. This includes emerging medium density housing, including aged care and retirement developments. A large retirement complex including three to four storey apartment styled buildings located east of the corner of Carramar Avenue and Coleman Parade (Australian Unity Campbell Place Retirement Community). The area is well serviced by a range of retail, offices and community facilities associated with the Glen Waverley Major Activity Centre (GWMAC) 550m to the east, with train and bus services running along Coleman Parade. |
| Tribunal inspection | Undertaken 28 October 2019. |

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

## What is this proceeding about?

1. This is an application by AusUrban Equity Pty Ltd (the applicant) under s77 of the *Planning and Environment Act 1987,* to review the Monash City Council’s (the council) decision to refuse an application for the construction of four triple storey dwellings at 115 Coleman Parade, Glen Waverley (the review site).
2. Substituted plans[[2]](#footnote-2) propose four attached dwellings with double car garages accessed by an existing crossover and driveway along the eastern boundary. At ground level each dwelling has a master bedroom and ensuite situated on the western boundary with laundry and stairwell. At first floor the development cantilevers over the ground floor envelope along the east and west side boundaries. Each dwelling includes a second master bedroom/ensuite, kitchen/living/dining areas and private balconies facing the western boundary. The second floor also cantilevers over the ground floor along the eastern boundary, with each dwelling including two additional bedrooms, bathroom and retreat areas.
3. Dwellings are attached at all levels and set in a tandem arrangement down the site. The proposed development uses contemporary styling with modern architectural features, including a variation of render and external cladding, glazed windows, private balconies along the western boundary, with flat roof form and overall height of 9.3m.
4. Site coverage is proposed at 58%, permeable area 35% and a minimum garden area of 35%. The development is set back 5.0m from the frontage and 4.9m from the rear boundary. A range of side setbacks are proposed. Service yards are provided at ground level facing the western boundary of each dwelling, ranging in size from 13.1sqm up to 14.8sqm. Balconies also face the western boundary at first floor, ranging in area from 8.4sqm up to 10.4sqm.
5. The council’s grounds of refusal include concerns around neighbourhood character, overdevelopment, excessive building bulk, lack of landscaping, clause 55 compliance, poor carparking access, surveillance and amenity impacts.
6. The applicant submits the proposal is consistent with State and Local Planning Policy, located within the highest order activity centre within Monash, appropriately manages site amenity impacts and integrates relevant planning considerations in service of net community benefit.

## Amendment C125 part 2 to the monash planning scheme

1. Following the hearing Amendment C125 Part 2 (the amendment) was formally approved and gazetted into the Scheme on 14 November 2019. I provided an opportunity for the parties to make further written submissions should they wish, on the impacts of the amendment on the proposal.
2. The council emailed its written submission dated 3 December 2019. It noted no zoning or overlay changes resulted from the amendment[[3]](#footnote-3). However, it submitted clause 22.01 was amended by deleting existing neighbourhood character statements and combining similar preferred character statements. The review site was now identified in the Monash Residual Residential Area. The council noted the amended clause did not provide a ‘preferred future character statement’ for this Area.
3. The council submits the zone and schedule requirements of GRZ7, together with the Monash Housing Strategy 2014 (the Housing Strategy) and clause 22.14 (Glen Waverley Major Activity Centre Structure Plan)[[4]](#footnote-4) continue to provide appropriate guidance on desired future character outcomes sought for the review site and surrounds. It says it has assessed the proposed development against the preferred character statement found in the Housing Strategy and clause 22.14 provisions and concluded the proposal did not satisfy the preferred character outcomes sought for the site and surrounds.
4. The council also says amendments to sub clause 22.01-3 further supports its decision to refuse a permit for the proposed development. It submits changes to built form, development scale, side and rear setbacks, private open space (POS) and landscaping provisions have not been appropriately addressed.
5. The applicant provided its written submission on 16 December 2019. It agreed with the council that site zoning remained unchanged. However, it submitted the council had ignored the strategic context of the site set out in revised clause 21.04. The applicant says the amendment strengthens the merits of the development by reinforcing the site in an area with the ‘*highest development potential in the municipality.’* It also agreed with the council that the site remained within the GWMAC, submitting clause 21.04 now better reflected and focused *‘the aspirations for change which were already present within the Scheme.’*
6. The applicant did not agree with the council, submitting that it was not appropriate to apply the *‘most onerous’* interpretation of *‘character compliance’* set out in amended clause 22.01-3. It says this part of the clause should also be balanced against the application of the Decision Guidelines at clause 22.01-5 and policy guidance provided by Member Deidun in *Makhmalbaf v Monash CC* [2018] (Red Dot) VCAT 1641.
7. The applicant says amendment implications include:
* The sites’ strategic context as being appropriate for more higher density development has been reinforced by the changes made to clause 21.04;
* Character guidance should continue to be drawn from the Monash Housing Strategy 2014, and policy specific to the Glen Waverley Activity Centre at clause 22.14;
* Clause 22.01 has been further weakened by C125 Part 2 as it relates to the subject site (if it relates to it at all) and now no longer provides a preferred character outcome for the subject site.
1. I note the first Objective at clause 21.04-3 seeks:
* 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….

However, this Objective also expresses the need to manage residential growth:

* ……. to preserve and enhance garden city character and special character in the balance of the municipality.
1. I accept the applicant’s second position that character guidance can and should continue to be drawn from clause 22.14 (Glen Waverley Major Activity Centre Structure Plan) and the Housing Strategy. The review site remains within the GWMAC. This clause is therefore a relevant consideration and assessment tool. I would also add local policy at clause 21.06 (Major Activity and Neighbourhood Centres) as a relevant consideration.
2. However, I do not accept the applicant’s third position that clause 22.01 has been ‘*further weakened’* and is now superseded by the amendment as it no longer provides a *‘preferred character outcome’* for the subject site. I do not consider the council has deliberately chosen to highlight only the *‘most onerous’* provisions in this clause to support its position. In my view, the council has simply sought to state the relevant clause provisions that it says supports its submission. I find this clause is a relevant consideration and assessment tool for this proposal.
3. I acknowledge a specific ‘preferred character statement’ within the amended clause for the newly designated Monash Residual Residential Area would have been useful. The council’s submission did not shed any further light on this matter. Nevertheless, I consider the amended provisions of clause 22.01, including those matters at 22.01-3 as expressed by the council, are relevant in my assessment of this proposal. I say this on the basis the review site is residentially zoned (GRZ7) and this clause *‘applies to all residential land’* within the Monash municipality.
4. In the same manner, I consider clauses 21.04 (as amended), 21.06, 22.14, the Monash Housing Strategy (2014) and the Schedule provisions and Decision Guidelines of GRZ7 are all relevant matters in my assessment of this proposal. I find there is sufficient guidance in these local policies and the zone provisions to enable me to assess the proposal against preferred character outcomes, urban design and amenity impacts.

## What are the key issues?

1. I consider the key issues within this review are focused on strategic planning policy, neighbourhood character and amenity.
2. The key issues can be expressed as:
* Is the proposal acceptable in its strategic and physical context?
* Is the proposal respectful of neighbourhood character?
* Will the proposal result in reasonable amenity impacts?
1. As I have outlined above, I must decide whether the proposal will produce an acceptable and reasonable planning outcome, having regard to the relevant Scheme policies, objectives and provisions that now apply to the site and surrounds.
2. Strategic policy objectives and strategies seek to ensure new development contributes to the ‘buildings-in-landscape’ and ‘garden city character’ associated with the residential zoned areas surrounding the GWMAC. I find the design response has not achieved key built form and landscaping outcomes sought under zoning and local policy. More particularly, the use of cantilever form at upper levels of the proposal and ‘on-boundary’ master bedrooms to each dwelling at ground level, has resulted in excessive built form alongside boundaries and has reduced the opportunity for this overall building envelope to sit within a landscape and garden setting sought under policy.
3. I consider these are determinative matters that require redesign and affirm the Council’s decision and direct that no permit is granted.

## Is the proposal acceptable in its strategic and physical context?

### Physical Setting

1. The review site is well located to existing services, community facilities, major activity centre and public transport. This physical setting supports the opportunity for an increase in residential development on the review site. The GRZ7 purposes encourage housing growth and diversity in locations on the periphery of a major activity centre such as GWMAC.
2. I find the review site is a suitable candidate for medium density housing. I note the opportunity to increase residential density on the site is not a matter in dispute between the parties. The crux of this dispute therefore centres on whether the design response has produced an acceptable development outcome on the site in terms of character, urban design and amenity.

### Zoning and Schedule Variations

1. Relevant zone purposes within the GRZ7 encourages a diversity of housing types and housing growth in locations offering good access to services and transport. In addition, the zone purposes require new development to respect the character of the area. I find the zone provisions enable and support an application for increased residential density on the site.
2. Schedule 7 to the GRZ7 varies the following clause 55 provisions:
* Front setback – reduced to 5.0m
* Front fence height not to exceed 1.2m
* Retention or provision of at least two canopy trees with a minimum mature height of 10.0m
1. I note the proposal complies with the front setback variation, front fence provision, minimum garden area requirements and height requirements sought under the zone and schedule variations.
2. Decision Guidelines at s6.0 within the Schedule to GRZ7 detail matters for consideration and address amongst other matters, housing diversity, preferred character statement, garden city character, buildings to retain ‘human scale’ and minimizing amenity impacts to neighbouring properties. I deal with these matters in more detail under Key Issues.

### Planning Policy Framework (PPF)

1. Clauses 11, 11.03-1S, 16.01-2S and 16.01-1R support higher density housing within locations that are well serviced by public transport, service infrastructure and community facilities and provide for employment opportunities.
2. Clause 15.01-5S acknowledges and supports the protection of neighbourhood character, cultural identity and sense of place for new residential development; while clause 15.02-1S encourages development that is focused on energy and resource efficiency.

### Local Policy and Planning Strategies

1. I consider the following local policy provisions are relevant to this matter:

**Clause 21.04 (Residential Development)**

* This clause has now been updated to give effect to the Housing Strategy and the residential development framework set out within it. I note the residential development framework has effectively been translated from the content of the Housing Strategy. Under this clause the review site is now formally identified in an area that is designated as having future development potential (Category I: Activity and Neighbourhood Centres).

**Clause 21.06 (Major Activity and Neighbourhood Centres)**

* This clause identifies the GWMAC as an appropriate and preferred location for the development of high-rise residential development.
* The clause also seeks to:
* Require new residential development to provide useable recreational areas, including private, communal and secluded open space areas that are well designed, integrated, functional, safe, solar oriented, well ventilated and meet the needs of future residents.
* Ensure new residential development achieves high quality architectural and urban design outcomes that positively contribute to neighbourhood character.

**Clause 22.01 (Residential Development and Character Policy)**

* This clause applies to all residential land within the municipality. Under changes introduced by Amendment C125 Part 2, the review site is now identified in the Monash Residual Residential Area. Decision Guidelines at clause 22.01-4 state:

It is policy that before deciding on an application, the responsible authority will consider, as appropriate:

* The applicable preferred future character statement.
* Whether the development will have an adverse impact on neighbourhood character.
* Whether the development will have an adverse impact on the amenity of adjoining properties.
* Whether the development will have an adverse impact on the environment.
* Whether the proposed development will be adversely affected by any adjacent industrial, commercial or trade activity.
* The clause also highlights new development is to *‘respect existing residential environments, with minimal streetscape or amenity impact, designed to achieve outcomes that enhance the garden city character of each area.’*

**Clause 22.14 (Glen Waverley Major Activity Centre Structure Plan)**

* Under this clause the review site is located within Precinct 7 – ‘Surrounding Residential’ of the GWMAC. Objectives of the clause of relevance to this proposal include:
* To encourage the development of a range of housing types within the GWAC to cater to all ages and circumstances, and meet expected population growth.
* To promote excellence in architectural quality and design across the major activity centre defining a contemporary and exciting identity for Glen Waverley.
* Relevant policy within this clause also seeks to:
* Encourage a broader range of housing choices to be developed throughout the centre, including higher density housing on key development sites in the commercial area, residential uses above retail and lower scale housing in the surrounding areas.
* Encourage excellence in building design within both commercial and residential areas so that development responds to the characteristics of the site and its context.
* Encourage excellence in building design within both commercial and residential areas so that development responds to the characteristics of the site and its context.
* Avoid large high massing buildings that dominate streetscapes and open spaces.
* Design buildings to address the future amenity of the occupants, visitors and those using public streets by maximising accessibility, passive surveillance and internal amenity.
* Ensure that developments contribute to the ‘buildings-in-landscape’ character of the existing residential areas surrounding the GWAC commercial centre.
1. I take from these State and Local policy settings that the residential areas surrounding the GWMAC are expected to accommodate some change in density and character. However, new development is to achieve excellence in built form and architectural quality, create human scaled places, avoid large high massing buildings that dominate streetscapes and open spaces, ensure developments contribute to the ‘buildings-in-landscape’ character and achieve an appropriate design balance and amenity outcome.

### Monash Housing Strategy (2014)

1. This strategy document is a Reference Document within the Scheme[[5]](#footnote-5). It provides guidance in relation to development within higher order activity centres and surrounding residential areas and includes future character statements for areas identified within a Residential Development Framework Map. The review site is identified as a Category 1: Activity and Neighbourhood Centres Area. Future Character and Residential Outcomes in this Category are stated in the following terms:

**Future Character:**

Development within these areas will support housing growth and diversification; be of high quality, contemporary design, support pedestrian comfort, accessibility and safety, and incorporate environmentally sustainable and water sensitive design features.

**Residential Outcomes**

Mixed use and apartment development at a density appropriate to the context of the Activity Centre.

Higher density mixed use and apartment developments where identified by structure plans or location specific development controls.

I note the Residential Development Framework Map at Figure 6A in the Housing Strategy is effectively carried forward into the amended clause 21.04 at Map 3.

## Is the proposal respectful of neighbourhood character?

1. As I have highlighted above, I find that preserving and enhancing ‘garden city character’ and landscape setting across the municipality is a consistent and fundamental policy objective in the Scheme. For example, I note the following Objectives and Strategies at sub clause 21.04-3:

**Objectives**

* 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 the need to conserve treed environments and revegetate new residential developments to maintain and enhance the garden city character of the municipality.
* To encourage a high standard of architectural design in buildings and landscaping associated with residential development that takes into account environmentally sustainable development.

**Strategies**

* 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.
* 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.
* Provide an appropriate built form transition between activity centres and residential areas through innovative and high-quality architectural design, appropriate setbacks and landscaping.

(Tribunal emphasis added)

1. The applicant submits that the proposed development is consistent with the character expectations expressed under local policy, noting that *‘mixed use and apartments are to be expected.’* It submits the GRZ7 makes provision for dwellings up to 3 storeys of 11.0m in height with a varied minimum front setback of 5.0m and says the proposed development satisfies the height and front setback variations. The applicant says the area already contains numerous contemporary, large, single dwellings that are now prevalent and form part of the urban fabric of the area. It also notes the materiality chosen for the development ‘*is reflective of render elements seen throughout new developments along Coleman Parade, as well within the aged care apartment development which provides a strong thematic puncture within the streetscape.’*
2. I accept the applicant’s observations that the area contains various large, single and double storey developments. This includes contemporary styled buildings, including apartment styled buildings nearby the review site. However, I find the design response on the review site has resulted in a scale and massing to the front and sides of the building that is not characteristic of the built form and landscape settings I observed during my inspection. This includes the larger format, apartment style aged care complex fronting Coleman Parade, east of the review site. This complex is set within a landscape and ‘open style’ setting that helps filter the views of the buildings from the public realm and provides ‘blue sky’ views between the respective buildings on the site.
3. The design response chosen for the review site creates a continuous built form that extends over half of the frontage (approximately 10.7m of built form) commencing with built form placed on the western boundary. This built form is then added to by the upper level cantilever forms at first and second levels, that extends out towards the eastern boundary of the site to a minimum setback of 2.0m (first floor). This is not characteristic of the built form scale and landscape setting I observed in the area. Nor is it characteristic of the ‘building in landscape’ form sought under local policy.
4. I accept the zone provides for a minimum 5.0m front setback and the proposed development has provided this. However, I consider the extent of built form proposed across the site to the street, effectively negates the application of the minimum setback. It reduces the opportunity to place larger canopy trees within the front setback that would help screen this triple storey-built form.
5. In addition, the opportunity for side boundary landscaping treatment is also reduced, largely due to the combined use of on-boundary built form along the western boundary and cantilevered built form at first and second levels extending towards the eastern boundary. This design treatment significantly reduces the opportunity for meaningful landscaping along these side boundaries.
6. The design response also results in continuous built form extending down the site along the east elevation with no visual break or ‘blue sky’ opportunity between the respective dwellings at upper levels along this boundary. The design includes separations between the upper levels of Dwellings 1 and 2 and Dwellings 2 and 3 along its western elevation. However, this separation is less than 1.0m in width. From a visual perspective, I do not consider this will achieve any significant visual relief of the triple storey form when viewed along this side boundary or from the public realm.
7. I find the design approach does not achieve an important policy setting that seeks to place new built form within a landscape and garden setting environment. I consider the visual bulk of the proposal to the streetscape and site’s residential interfaces along the east and western boundary is unacceptable and inconsistent with landscape character and garden city policy settings I have outlined above.

## Will the proposal result in unreasonable amenity impacts?

1. GRZ7 Decision Guidelines require amongst other matters, consideration of the following design outcomes:
* Whether the building retains human scale and, by the inclusion of significant breaks and recesses in building massing, is designed to avoid large block like structures dominating the streetscape.
* 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.

(Tribunal emphasis added)

1. An important design outcome achieved through front, side and rear setbacks is the opportunity to add landscaping treatment within these areas that helps soften built form. Particularly where this built form is quite large and presents directly to the public ream and to sensitive outdoor living areas of adjoining properties. The proposed service yards along the western boundary of the review site are in my view inadequate to accommodate the landscaping treatment and larger canopy trees necessary to screen and soften the appearance of the triple storey development along this elevation. I am also concerned with the design approach proposed along the eastern boundary that includes a cantilever-built form at first floor, located 2.0m from that particular boundary.
2. I find the resulting side setbacks are too narrow and restricted by either on-boundary and upper level-built form that will not enable any substantial or meaningful tree canopy planting along these boundaries. I consider this is a lost opportunity on the review site, particularly given the extent of triple storey form proposed down a large section of both these boundaries.
3. I find this built form will present unreasonable visual bulk to the neighbouring properties, to the detriment of their amenity and outlook. I find the design response does not represent a satisfactory response to these sensitive residential interfaces.
4. Clause 22.14 requires new residential development to:

…. address the future amenity of the occupants, visitors and those using public streets by maximising accessibility, passive surveillance and internal amenity.

1. I consider the ground floor level layout of the development does not achieve an appropriate level of amenity for future occupants of the development. I find the internal setting and layout of the site is overly dominated by double car garage doors and narrow entry doors into the dwellings from the vehicular driveway. There is little opportunity to provide for some meaningful ‘greening’ of this environment by landscape treatment due to the extent of built form and hard stand area.
2. I consider the entrances to Dwellings 2, 3 and 4 are visually obscured from casual views to and from the street by the proposed pergola form located over the driveway and the cantilever-built form at first and second floors. The physical entrances to Dwellings 2, 3 and 4 are located under the cantilever-built form and in my view are not easily legible to new visitors to the site. The design does not offer passive surveillance opportunities from these dwellings into the driveway and common areas of the development. I also note that direct access for future occupants of Dwelling 4 is not readily available from its living area to the rear outdoor open space. Though I accept these matters could be addressed by permit condition, they highlight important shortcomings with the current design response.
3. For the reasons outlined above I find the proposed development will result in unreasonable amenity impacts to adjoining properties and result in poor internal amenity outcomes for future occupants of the proposed dwellings.

## Conclusion

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

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| **Peter Gaschk****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. Amended plans prepared by West Urban, dated 21 August 2019 were substituted at the hearing (Interim Order dated 18 November 2019). [↑](#footnote-ref-2)
3. The council advised that zoning of the review site was amended to GRZ7 under Amendment C120 to the Scheme, gazetted 25 January 2018. [↑](#footnote-ref-3)
4. Amendment C125 Part 2 did not alter existing provisions of clause 22.14. The review site remains in Area 8: Housing Diversity (Map 1: Land Use Plan) and Precinct 7: Surrounding Residential (Map 2: The Glen Waverley Activity Centre Precinct Plan) [↑](#footnote-ref-4)
5. At clause 21.04. [↑](#footnote-ref-5)