VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment division

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| planning and environment LIST | vcat reference No. P1577/2019  Permit Application no. TPA 50256 |
| CATCHWORDS | |
| Section 79 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone, inconsistency with neighbourhood character; building scale; visual dominance in the streetscape; space for landscaping; visual bulk. | |

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| APPLICANT | Dawei Zhang |
| responsible authority | Monash City Council |
| SUBJECT LAND | 14-16 Oak Hill Road  MOUNT WAVERLEY VIC 3149 |
| WHERE HELD | Melbourne |
| BEFORE | Frank Dawson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 20 February 2020 |
| DATE OF ORDER | 20 April 2020 |
| CITATION | Zhang v Monash CC [2020] VCAT 485 |

# Order

1. Pursuant to Section 127 and Schedule 1 clause 64(2) of the *Victorian Civil and Administrative Tribunal Act 1998* the permit application is amended to substitute for the permit application plans the following plans filed with the Tribunal:

Plans prepared by McLauchlan Building Designers

Project 5337, Issue P2, Drawings TP00 to TP12 inclusive.

All dated 9/12/2019.

1. The following persons are **not** joined as parties to the proceeding because pursuant to clause 56(5) of schedule 1 of the *Victorian Civil and Administrative Tribunal Act* 1998 their statement of grounds indicates that they do not intend to participate in the hearing of the proceeding. I have considered their statement of grounds in my determination of this proceeding.

Fiona Nicholson Stoker and Franz Stocker,

Leanne McPhee.



### No permit granted

1. In application P1577/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TPA 50256 no permit is granted.

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| **Frank Dawson**  **Member** |  |  |

# Appearances

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| For applicant | Mr Nick Crawford, solicitor of TP Legal.  He called expert evidence from:  Mr Daniel Soussan, town planner of Tract.  Ms Mika Lee, landscape architect of John Patrick Landscape Architects Pty Ltd. |
| For responsible authority | Mr James Turner, town planner. |

# Information

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| Description of proposal | Construction of four detached double storey dwellings above individual basements at 14-16 Oak Hill Road, Mount Waverley.  At the ground floor, each dwelling contains a bedroom, a living, dining and kitchen area and a study. The first floor contains three bedrooms and a retreat. Dwellings 2-4 each have a west-facing open central courtyard.  The basement for dwelling 1 contains a gym, bar and wine cellar. The basements for dwellings 2-4 contain a garage for two cars and a store. Dwelling 1 has a ground floor double garage. Dwellings 2-4 have elevators serving all floors. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-2) |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone – Schedule 3 (GRZ3).  Vegetation Protection Overlay – Schedule 1 (VPO1). |
| Permit requirements | Clause 32.08-6 (a permit is required to construct two or more dwellings on a lot). |
| Land description | The land is located on the south-west corner of a 900 bend in Oak Hill Road, Mount Waverley, approximately 265 metres from Highbury Road via Prospect Street. The land is irregular in shape, with a northern frontage to Oak Hill Road of 53.04 metres and an eastern frontage of 19.5 metres, plus a splay of 4.31 metres at the north-eastern corner of the land. The maximum north-south depth is 30.38 metres and the total area of the land is 1,481m2.  A 1.83 metres wide sewer easement runs along the southern boundary from the western side boundary for 23.77 metres and then traverses north through the centre of the land to the Oak Hill Road frontage.  The land slopes up from Oak Hill Road, north to south with a rise of generally 2-3 metres. |
| Tribunal inspection | The Tribunal inspected the subject land and the surrounding area. |

# Reasons[[2]](#footnote-3)

## What is this proceeding about?

1. On 7 August 2019, the Tribunal received a request from the permit applicant seeking a determination of planning application number TPA 50256 due to the failure of the responsible authority to grant a permit within the prescribed time. The proposal is for four double storey dwellings at 14-16 Oak Hill Road, Mount Waverley.
2. Following the above request, the Tribunal was informed that a notice of decision to refuse the grant of a permit was issued by the Council on the 19 August 2019.
3. The Tribunal also received statements of grounds from three objectors to the proposal. Two objectors reside diagonally opposite the subject land in Oak Hill Road and one resides on abutting land to the south in Ralph Court. The objectors are not parties to this proceeding as they did not attend the hearing, however, their submissions have been considered.
4. At the commencement of the hearing, the permit applicant sought to substitute amended plans for the permit application plans. The amended plans were circulation to all of the parties prior to the hearing in accordance with the Tribunal’s *Practice Note* *PNPE9 – Amendment of Plans and Applications* and there were no objections to the requested substitution. I formally substituted the plans in accordance with Section 127 of the *Victorian Civil and Administrative Tribunal Act 1998*. My decision in this proceeding is based on the amended plans, all dated 9/12/2019.
5. Council’s reasons for refusing the proposed development include:

* Failure to meet a number of strategic objectives contained in the *Planning Policy Framework* and *Local Planning Policy Framework*, specifically:
  + *Clause 15 – Built Environment and Heritage.*
  + *Clause 21.04 – Residential Development and Character Policy.*
* Failure to meet the design guideline objectives at Clause 55, specifically:
  + *Clause 55.02-1 Neighbourhood character.*
  + *Clause 55.02-2 Residential policy.*
  + *Clause 55.06-1 Design detail.*
* Adverse impact on the streetscape, neighbouring properties and neighbourhood character.
* The proposal is an inappropriate design response for the site.

1. As a result of Council’s consideration of the amended plans, concerns regarding *Clause 55.04-2 Walls on boundaries* and the design standards relating to vehicle access and movement at *Clause 52.06 Car parking* are no longer contested.
2. Given the Council position concerning car parking, Mr Crawford for the permit applicant put to me that calling traffic evidence is not necessary. I acknowledge vehicle access and vehicle movement are not contested matters in this proceeding. Having read the traffic evidence prepared by Mr James Dear of One Mile Grid prior to the hearing and noting the concurrence of the parties, I allowed Mr Crawford’s request not to call traffic evidence.
3. The objectors to this proposal cite a number of concerns that I summarise as; congestion in the street due to an increase in the number of vehicles garaged on the site, noise from the additional dwellings and neighbourhood character. The specific neighbourhood character concern is the contrast in size and style between the proposed development and the character of the existing streetscape.
4. The particular concern of one objector is the potential for overlooking to the south from the upper level of proposed dwellings 3 and 4 toward the private open space of the adjoining dwelling.
5. In his submission for the permit applicant, Mr Crawford explains the amended plans;

.. have altered driveway gradients, increased the size of the garage to Dwelling 4, reduced the ground floor size of Dwellings 2-4 (and thus increased POS), reduced the first floor footprints for Dwellings 2- 4, altered elevations, reduced site coverage, increased permeability and garden area and illustrated the approved development at 12 Oak Hill Road. These changes have been designed to address the Scheme, some of Council's concerns identified in its (later issued) grounds of refusal, and the objector statement of grounds.

1. In support of the proposal, Mr Crawford concludes:

The proposal will present an appropriate built form and significantly improved landscape response to the land, thereby implementing and achieving Council's garden character objectives.

The proposal provides compliant site coverage, does not unreasonably overshadow its neighbours, and provides appropriate private open space directly accessible from habitable rooms of the proposed dwellings. There is also ample room for landscaping. The proposal is an appropriate response to both the strategic and physical context of the land.

## What are the key issues?

1. I consider the key questions to be answered in my determination of this matter are:

* Does planning policy support increased housing at the location of the subject land?
* Will the proposed development meet the purpose and decision guidelines of the General Residential Zone, and in particular, Schedule 3 to the zone?
* Does the proposed design provide an acceptable response to the applicable design guidelines at Clause 55 (ResCode)?

1. 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 find the scale, repetitive style and the use of sheer walls for all four dwellings fails to respect the character of this part of Mount Waverley. In terms of housing policy, I consider the dwellings also fail to contribute to the strategic objective for greater housing diversity. I have therefore decided to affirm the Council decision and refuse a permit. My reasons follow.

## Does planning policy support increased housing at the location of the subject land?

1. The Planning Policy Framework at Clause 15.01 contains design strategies for urban areas that focus on new development responding to the context of the surroundings in terms of “character, cultural identity, natural features, surrounding landscape and climate”. For buildings, the emphasis is on site analysis, taking into consideration the strategic and cultural context of a site when considering “height, scale and massing of new development”.
2. The neighbourhood character strategy at Clause 15.01-5S refers to the contribution new development makes to the existing or preferred neighbourhood character. Of particular importance is the strategy to:

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

1. Oak Hill Road in Mount Waverley is in the northern part of the Monash municipality, with good access to commercial, education and health facilities and convenient access to public transport. The site at number 14-16 has an area of 1,481m2 that could accommodate a range of housing options. Being in the General Residential Zone, there is the opportunity for a diversity of housing types, albeit constrained within Schedule 3 by the objective to “minimise building mass and visual bulk within the streetscape”.
2. This is a site well positioned to meet the 20 minute neighbourhood concept described at Clause 15.01-4R to;

.. give people the ability to meet most of their everyday needs within a 20 minute walk, cycle or local public transport trip from their home.

1. I find that planning policy in the Monash Planning Scheme supports the location and size of subject land for increased housing, backed by a policy preference at Clause 21.04-2 for more diverse forms of housing to contribute to the forecast housing growth in Monash of approximately 12,000 dwellings to reach a total of 82,000 dwellings by 2031.

## Will the proposed development meet the purpose and decision guidelines of the General Residential Zone, and in particular, Schedule 3 to the zone?

1. The purpose of the General Residential Zone is encapsulated in two key statements:

To encourage development that respects the neighbourhood character of the area.

To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

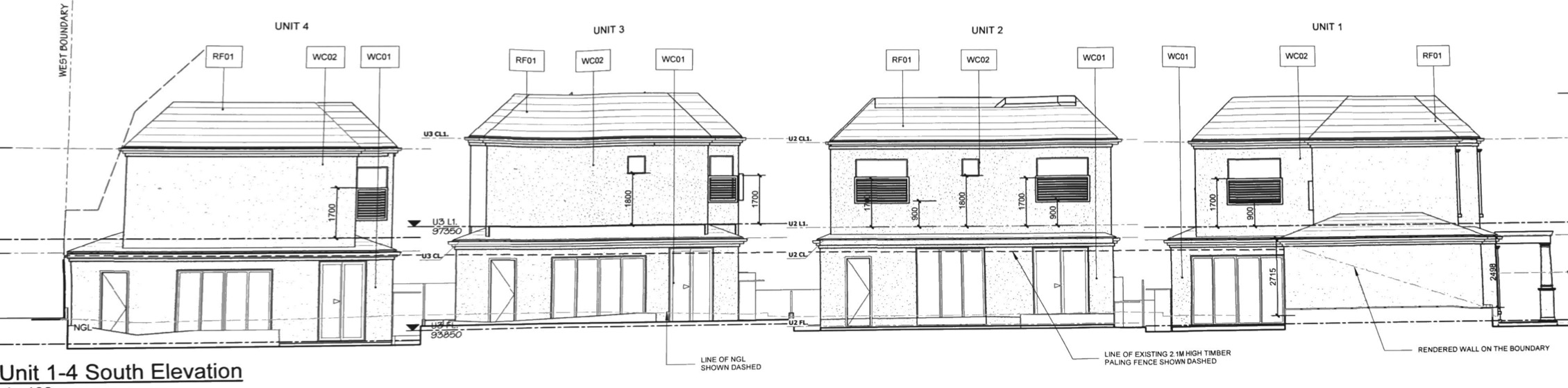
1. The first statement concerns respect for neighbourhood character, which in this case, refers to an area where post WW2 single storey detached dwellings remain the prevailing character influence, however, the original dwellings are interspersed with a noticeable occurrence of large contemporary double storey single dwellings in various forms. There is also the presence of some double storey contemporary duplex development, but few multi-dwelling unit sites.
2. The impression gained from viewing Oak Hill Road and the surrounding streets is the relatively low density of development due to the predominance of traditional detached single storey dwellings and individual double storey dwellings on the redeveloped sites.
3. The General Residential Zone makes provision for the inclusion of neighbourhood character objectives in the schedules to the zone. In this case, the subject land is in Schedule 3, described as the *Garden City Suburbs*. The relevant character objective is:

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

1. The proposed development consists of four dwellings, all facing Oak Hill Road. Dwelling 1 faces east and the remaining three dwellings face north. The difference in orientation is due to Oak Hill Road changing direction, effectively creating a corner site.
2. The illustrations below are extracted from the amended plans and depict the northern and southern elevations of the proposed development. The diagram also shows the different orientation of dwelling 1 due to the corner location.



Northern elevation



Southern elevation

1. In assessing the response to the *Garden City* character objective, I consider the key planning task is to assess the proposed development in the context of the existing streetscape. That is, whether the form, scale and style of the development is an acceptable response to neighbourhood character. As Mr Soussan observes in his evidence, the extent of the *Garden City Suburbs* precinct approximates 50% of the municipality and there are considerable variations within the precinct, both in terms of built form and topography. However, it is clear the preferred future character is for development to;

.. take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

1. The proposed development presents four double storey dwellings on rising terrain that will have the effect of accentuating their presence in the street. Taking into consideration the repetitive style and form of the proposed dwellings and their likely streetscape prominence, I find it difficult to interpret the proposal before me as a ‘comfortable fit’.
2. I acknowledge that when there is no identified heritage or design context, dwelling styles are open to broad interpretation and style preferences can vary to the point that it is difficult to identify a consistent neighbourhood character (other than eclecticism). For example, a double storey ‘period style’ dwelling standing alone is not an unusual occurrence in suburban Melbourne and I observed a number of recent examples in the streets surrounding this proposal. However, the repetitive grouping of four almost identical buildings demonstrates there is no meaningful attempt to *minimise building mass and visual bulk* in this proposal. On the contrary, it seems the intent is to be prominent in the streetscape.
3. Repeating the same style across all four dwellings does tend to accentuate the visual impact of the development, but it is not the style of the dwellings that is the concern here. For example, varying the style or materiality of the dwellings is unlikely to result in a more acceptable outcome. The issue is the consistent visual bulk accentuated by the slope of the land and the serried effect of the double storey form. Accordingly, I find the proposed development does not respect the neighbourhood character of this area.

## Does the proposed design provide an acceptable response to the applicable design guidelines at Clause 55 (ResCode)?

1. In his assessment of neighbourhood character in response to the objectives and standards at Clause 55.02-1, Mr Soussan provides a useful description of the extent and character of development in the Oak Hill Road area;

The site is located within an established residential area featuring a range of varying dwelling typologies and architectural styles, which reflect the high degree of recent development along Oak Hill Road and the surrounding streets (particularly toward Highbury Road to the north of the Site). Nearby residential dwellings range from two or more dwellings on a lot comprised of brick and render with pitched roofs, to contemporary designs, to neo-Georgian architecture.

The neo-Georgian style is an architectural response which is becoming more prominent in the area. These dwellings are typically built close to the frontage, employ no or limited upper level setbacks, and feature prominent and sometimes ornate windows and balconies.

1. Mr Soussan submits the proposed development is “entirely consistent with the character of the area” for the reasons that I summarise as:

* The use of light-coloured external materials.
* A building height consistent with the “emerging character of the area”.
* A positive response to topography.
* Articulated buildings in the form of a recessed upper storey and “appropriate fenestration detail”.
* Pitched roof forms.
* Landscaped front and rear gardens.

1. In broad terms, I consider Mr Soussan’s reasons are essentially accurate, although I struggle with the contention that the buildings “respond positively to the topography”. Having stood in the street and reviewed the proposed northern elevation plan in the context of the rising terrain, I cannot conclude that the sheer side wall elements of the proposed “neo-Georgian” form will sit comfortably in this streetscape. The collective visual effect of the four proposed dwellings compounds their prominence and I find the outcome is not “consistent with the emerging character of the area” nor does it “respond positively to the topography of the site.”
2. The dominance within the streetscape is also influenced by the orientation of the subject land to the east. It is convenient (and acceptable) to select the east facing boundary as the frontage. Accordingly, proposed dwelling 1 is set back 7.6 metres from the eastern front boundary in accordance with the GRZ3 variation of standard B6 (street setback) at Clause 55.03-1. This means that the longer northern ‘side’ boundary facing Oak Hill Road, which extends for approximately 53 metres (excluding the corner splay), contains four buildings with setbacks stepping back from east to west, commencing with the side of dwelling 1 at 3 metres, the front of dwelling 2 at 4.5 metres and dwellings 3 and 4 at 5.5 metres. The adjacent development to the west at 12 Oak Hill Road is currently being developed with two side by side dwellings set back 7.6 metres from the frontage.
3. As a consequence of the above arrangement of dwellings, the longest street boundary has the more dominant building form, brought closer to the street by treating the northern aspect as a side boundary. I find the decision to create four large double storey dwellings in relatively close proximity to the longest street boundary is unacceptable. If the intent is to create four separate dwellings, a more respectful response may have elected to provide greater recession of the front and side setbacks, particularly at the upper level, or perhaps frontages that set one part of the front façade further back to provide greater articulation and garden space.
4. Notwithstanding the above design failure, the proposed development can demonstrate technical compliance with many of the design standards of Clause 55, notably the design guidelines for access, open space, building setbacks, walls on boundaries, access to natural light, overshadowing and overlooking. Although I acknowledge the above compliance, I must part ways with the applicant in relation to the response to the design guidelines concerning integration with the street, neighbourhood character and detailed design. For reasons set out earlier, I find these aspects of the design response are not acceptable.
5. I accept that standard B29 concerning solar access to open space can be met although bare compliance does not assist the internal amenity for future residents, given that all four of the secluded private open space areas are on the south side of double storey buildings, with only minor upper level recession. The design ameliorates this problem by creating west facing internal light courts, however, the fact remains that a significant proportion of the rear outdoor garden spaces remain in shadow at the equinox. This may have been addressed by less dominant upper level building form or perhaps a different building configuration that allows a higher proportion of northern sunlight to penetrate rear open spaces.

### Landscape

1. The landscape plan submitted by Ms Lee in her evidence provides a considered response to landscaping the available spaces within this proposal. The layout of the proposed dwellings allows for perimeter planting within the site to the north, east and south, with a small Benjamina Fig in each of the three west facing light courts. External to the site, there are four small street trees in the nature strip on the northern and eastern sides of the subject land. I note that none of the street trees make a meaningful landscape contribution to the streetscape at this time.
2. Within the eastern front setback to Oak Hill Road, three Illawarra Flame trees are proposed to reach a height of 12 metres. Along the northern (side) frontage to Oak Hill Road, three Crab Apples and three Tuckeroo trees are proposed to grow to 8 and 7 metres respectively. Proposed at the rear of dwelling 1 is a Tuckeroo, and at the rear of dwellings 2, 3 and 4 are three Red Maples, all to reach 12 metres.
3. I consider the proposed landscape plan makes good use of the available spaces, with an appropriate tree selection that softens the visual effect of the proposed buildings as they present to both aspects of the street.

### Amenity

1. The amenity impacts of potential significance arising from the design and form of the proposed dwellings are overlooking, overshadowing and visual bulk.
2. Overlooking is minimal toward the adjoining properties to the west and the south due to the use of high sill upper level windows and horizontal louvered screens to a height of 1.7 metres above the finished floor level.
3. Overshadowing of the open space areas in the adjoining properties to the south is minimal and compliant, due to the proposed upper level rear setbacks of 7 metres for dwelling 2 and 9 metres for dwellings 3 and 4. Some overshadowing will occur to the rear open space area for dwelling 1 currently under construction at 12 Oak Hill Road, however, the plans demonstrate that the degree of overshadowing is prior to 11 am at the equinox and compliant with standard B21 (overshadowing open space objective).
4. I consider the primary amenity impact for adjoining residents will be visual bulk, primarily the combined effect of the double storey form of dwellings 2, 3 and 4 on the occupants at 18 Oak Hill Road and 1 Ralph Court. The impact is not critical in my assessment, due to the extent of the rear setback of proposed dwellings, however, a more articulated and less dominant building form would reduce the ‘walled’ effect of the three dwellings.
5. It is disappointing that despite the degree of compliance with the design guidelines of ResCode at Clause 55, I find this proposal will create an unacceptable imposition on the streetscape due to the proximity and visual bulk of the repetitious building form.

## other matters

1. I acknowledge that the objectors, who are not parties to this proceeding, expressed concern regarding a perceived increase in traffic congestion as a result of the proposed development. I do not consider it necessary that I address this issue due to my decision to refuse the application for reasons that primarily concern neighbourhood character.

## Conclusion

1. The subject land at 14-16 Oak hill Road is a large site well suited to contribute to housing growth in Monash. Unfortunately, I find this proposal does not achieve the balance required between meeting the need for new housing in established areas and responding to the preferred future character.
2. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| **Frank Dawson**  **Member** |  |  |

1. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-2)
2. 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-3)