VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

Planning and Environment DIVISION

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| planning and environment LIST | | vcat reference No. P297/2019  Permit Application no. tpa/49751 |
| CATCHWORDS | | |
| Application under section 79 of the *Planning and Environment Act 1987*. Monash Planning Scheme. General Residential Zone, Schedule 2. Special Building Overlay. Use and development for a retirement village and café. Intensity. Built form. Landscaping. Flooding. Amenity. Repeat appeal. | | |
| APPLICANT | Pace Development Group Pty Ltd | |
| responsible authority | Monash City Council | |
| Referral Authorities | Melbourne Water, Vic Roads, Transport for Victoria | |
| Respondents | Craig Larkin, Andrew Morris | |
| SUBJECT LAND | 554-558 High Street, Mount Waverley | |
| WHERE HELD | Melbourne | |
| BEFORE | Cindy Wilson, Presiding Member Stephen Axford, Member | |
| HEARING TYPE | Hearing | |
| DATE OF HEARING | 22, 23, 24 and 25 July 2019 | |
| DATE OF ORDER | 16 September 2019 | |
| CITATION | Pace Development Group Pty Ltd v Monash CC [2019] VCAT 1416 | |

# Order

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the application for permit is amended by substituting the following plans for the application plans:

* Prepared by Cera Stribley Architects
* Drawings numbers: A-TP-101 to A-TP-111; A-TP-200 to A-TP-205; A-TP-300 to A-TP-302; A-TP-304; A-TP-400 to A-TP-402; A-TP-500 & A-TP-501
* All drawings marked as Revision D dated 18 June 2019 VCAT Final Hearing

1. In application P297/2019 the decision of the Responsible Authority is set aside.
2. In planning permit application TPA/49751 a permit is granted and directed to be issued for the land at 554-558 High Street Road, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* use of the land as a ‘retirement village’ under clause 32.08-2 of the General Residential Zone;
* use of the land as a ‘food and drink premises (café) under clause 32.08-2 of the General Residential Zone;
* construction of a building or construction or carrying out of works for a section 2 use under clause 32.08-9 of the General Residential Zone;
* construction of a building or construction or carrying out of works under clause 44.05-2 of the Special Building Overlay; and
* creation or altering of access to a road in a Road Zone, Category 1.

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| **Cindy Wilson**  **Presiding Member** |  | **Stephen Axford**  **Member** |

# Appearances

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| For Applicant | Mr Philip Bisset, Solicitor of Minter Ellison Lawyers  He called the following witnesses:   * Ms Catherine Wells, aged care industry consultant of O’Hara Wells Pty Ltd * Mr Stuart McGurn, town planner of Urbis Pty Ltd * Mr Brodie Blades, urban designer and town planner of SJB Urban Pty Ltd   The evidence (photomontages) of Mr Edmund Ng, architect of four-D studio Pty Ltd was tendered. Mr Ng was not called to give evidence. |
| For Monash City Council | Ms Adeline Lane, solicitor of Maddocks.  She called the following witness:   * Mr James Reid, town planner of Ethos Urban Pty Ltd |
| For Melbourne Water | Ms Indi Prathapasinghe, town planner on days 1 and 2 and Mr Kamal Hasanoff on day 1 |
| For VicRoads and Transport for Victoria | No appearances |
| For Andrew Morris | Mr Andrew Morris |
| For Craig Larkin | Mr Craig Larkin and Ms Nicole Pensa |

# Information

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| Description of proposal | Construction of a three to seven storey building to be used as a retirement village with a food and drink premises (café) at ground level. Two levels of basement car parking are proposed. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit within the prescribed time. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone, Schedule 2  Special Building Overlay (applies to part of land) |
| Permit requirements | Clause 32.08-2 A permit is required to use the land for a food and drinks premises and retirement village in the General Residential Zone, Schedule 2.  Clause 32.08-9 A permit is required to construct a building or construct or carry out works associated with a use in section 2 of clause 32.08-2.  Clause 44.05-2 A permit is required to construct a building or to construct or carry out works in a Special Building Overlay.  Clause 52.29 A permit is required to alter access to a road in a Road Zone, Category 1. |
| Land description | The review site is located on the south side of High Street Road, Mount Waverley, between Blackburn Road to the east and Lee Avenue to the west. The lot is irregular in shape with a frontage of 61.55 metres to High Street Road and a site area of 2619 square metres.  The land slopes down from the frontage to the rear of the site, falling approximately 5 metres. Previously occupied by buildings used for commercial purposes with parking in the front setback, the land is now vacant. |
| Tribunal inspection | We undertook an accompanied inspection of the site and surrounds on 25 July 2019, including a view from 546-552 High Street Road. |
| Previous Case | *Pace Development Group Pty Ltd v Monash CC* [2017] VCAT 1812 |

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

## What is this proceeding about?

1. Monash City Council opposes a proposal for a retirement village and café in a three to seven storey building at 554-558 High Street Road, Mount Waverley. Council’s concerns relate to the height and scale of the development, architectural detail, rear setbacks and limited opportunity for canopy tree planting to contribute to garden character.
2. Respondents and statements of grounds support Council’s position and raise additional concerns about visual bulk, overshadowing, privacy, flooding, car parking and traffic impacts.
3. Melbourne Water, VicRoads and Transport for Victoria do not oppose the grant of a permit, subject to the imposition of specified permit conditions.
4. The applicant submits the proposal represents an acceptable planning outcome with a design that responds appropriately to interfaces, provides for adequate setbacks and landscaping opportunities, avoids unreasonable impacts on amenity, deals appropriately with flooding, amenity, car parking and traffic and responds to the concerns raised in the previous Tribunal decision.
5. A previous proposal for a mixed use development with a height of four to seven storeys and containing a café, convenience store, medical centre and 80 dwellings over a basement car park was rejected by the Tribunal in *Pace Development Group Pty Ltd v Monash CC.[[2]](#footnote-2)*. We follow the widely accepted principle that this Tribunal, while not bound by precedent and being required to consider the application on its individual merits, should nevertheless have regard to the findings, both positive and negative, about the previous proposal. It follows that where the earlier decision is relevant, we should not depart from its findings unless there are significant reasons to do so, such as a change in the application itself, the circumstance of the site and surrounds, context or policy.
6. The Tribunal must decide whether a permit should be granted and if so, what conditions should be applied. Having regard to the findings of the Tribunal in *Pace Development Group Pty Ltd,* the submissions, the evidence, the provisions of the Planning Scheme and the site characteristics and context, we have decided that a permit should be granted subject to an increased setback from the west for the upper two levels.
7. We reach this view based on our findings about the following key questions:

* Is the site suitable for an increased intensity of development?
* Is the retirement village use supported by the Planning Scheme?
* Is the built form and layout an acceptable response to context and does it respond to concerns raised in the previous Tribunal decision?
* Will the proposal result in unreasonable amenity impacts?
* Is the internal amenity provided for future residents acceptable?
* Are there car parking or traffic reasons to reject the proposal?
* Will the proposal result in adverse impacts on flooding?

## Is the site suitable for increased intensity of development?

1. Council does not dispute the suitability of the site to accommodate some form of higher density development but submits there are physical and strategic constraints that temper the appropriate extent of development. Council says the seven storey height together with the setbacks and landscaping has not struck the right balance between urban consolidation imperatives and a positive urban design standard that responds to local context.
2. It is Mr Reid’s evidence that the site is suitable for a higher density, mixed use development due to its physical size, good access to services and public transport and location with within the ‘Accessible Area’ identified in the Monash Housing Strategy. He accepts the site is located within the Syndal Neighbourhood Activity Centre (Syndal NAC) and this also supports redevelopment. However, he also says the strategic context and the General Residential Zone (GRZ) create a clear expectation that such redevelopment must be sensitively designed, considering its local context.
3. We address the design response in our assessment of the built form and layout later in this decision but at a strategic level, we find considerable support for higher density development on the review site. This support derives from:

* State, regional and local policy that directs intensification, increased housing diversity and urban consolidation in locations in and around activity centres.[[3]](#footnote-3)
* The purpose of the GRZ that supports a diversity of housing types and housing growth, particularly in locations with good access to services and transport.
* Site characteristics that include a large size, main road frontage, limited sensitive interfaces, previous commercial use and proximity to an activity centre with access to public transport and commercial uses.
* The retirement village use, as distinct from dwellings or apartments, which means the mandatory maximum building height, the minimum garden area requirements and the objectives and standards for dwellings and apartments do not apply. This changes the potential for intensity of development.
* The Monash Housing Strategy (MHS)[[4]](#footnote-4) that includes the review site in Category 2: Accessible Areas. These are areas recognised as having locational attributes that support increased density of development on land surrounding activity centres and where moderate housing change can serve as a transition between commercial and residential areas. Concurrently the MHS includes the site in a ‘Garden City Suburb’ where modest housing growth and diversification is sought but with larger lots in suitable locations identified as suitable for lower to medium scale apartment development.

1. Amendment C125 to the Monash Planning Scheme, proposing changes to local policy and residential zones to implement the MHS, has been exhibited, considered by a Panel and adopted by Council. Part 1 of this Amendment has been gazetted[[5]](#footnote-5) and, amongst other things, includes the MHS as a reference document in the Planning Scheme.
2. Although located in an ‘Accessible Area’ designated for housing change in the MHS, Amendment C125, as exhibited, proposed the review site to be included in a ‘creek abuttal area’ and to be rezoned Neighbourhood Residential Zone (NRZ) where redevelopment is to be limited.
3. The Panel on Amendment C125 did not support the NRZ or the creek abuttal designation but rather said that the site has potential for more intensive development. The Panel said:

While the precise boundaries of the Syndal Activity Centre are not yet defined, due to its location and the nature of its development and use, the site could be considered to form part of the Activity Centre. The site has the potential to be redeveloped for more intensive development that supports the development and enhancement of the Syndal Activity Centre, Subject to further strategic work to be undertaken as part to the subsequent stages of implementation of the Housing Strategy, the site may be suitable to be zoned RGZ, MUZ or C1Z. Retaining the existing GRZ2 in the interim is appropriate.[[6]](#footnote-6)

1. Proposed changes to the zoning that affect the review site proposed under Amendment C125 have not been approved.
2. In February 2019 Council resolved to request the Minister for Planning to progress the remaining part 2 of Amendment C125 excluding the rezoning of Accessible Areas (and Boulevards). Council says these are to be the subject of further strategic assessment and to form part of a separate planning scheme amendment.
3. It is our view that, whilst there is some uncertainty about the future zoning of the review site, there is no strategic imperative to suggest the site is unsuitable for increased intensity of development.
4. The applicant asked us to make a finding that the review site is within the Syndal NAC. We acknowledge there is support for reaching that view having regard to the inclusion of the site in the office/commercial precinct of the Syndal Structure Plan of 1996; the commercial nature of the previous uses on the land; the findings of the Panel on Amendment C125 that the site could be considered to form part of the activity centre; the findings of the Tribunal in *Pace Developments Pty Ltd*[[7]](#footnote-7) that ‘on the ground’ the site reads as part of the commercial area; the evidence of Mr Reid that the site is within the activity centre; and the practice of defining activity centres to include more than commercially zoned land. However, we decline to make a formal finding. We consider the definition of the activity centre is a matter for Council through comprehensive strategic planning. Ultimately, we agree with the finding of the previous Tribunal[[8]](#footnote-8) that nothing really turns on whether the land is in or adjacent to the activity centre. In either circumstance, we find there is clear policy support for increased intensity of development on the land given it is a site in proximity to services and public transport where increased amount and diversity of housing is encouraged.

## Is the retirement village use supported by the Planning Scheme?

1. The applicant submits that there is policy support and a demonstrated need for retirement housing and the proposal will deliver a net community benefit in providing accommodation for the aged.
2. It is the evidence of Ms Wells that:

* There is a shortfall of independent living dwellings in retirement villages in the inner catchment area (comprising the immediate Mount Waverley and neighbouring Glen Waverley) and in the wider Monash municipality. This results in a capacity for approximately 5% of the 65 plus population to reside in independent living units in the City of Monash area.
* The site is well located in the Mount Waverley catchment where there is a large ageing population evidenced by a 65 plus population of 32,580 persons projected to increase by 7091 persons to 2039; and a 75 plus population of 16,900 projected to increase by 3,784 persons by 2039.
* In addition to addressing a shortfall in supply of retirement village housing, the proposal would meet a need for increased choice. It would provide a modern retirement living option with communal amenities allowing seniors to age in place, remaining close to social and support networks, having access to communal amenity and the services provided by an activity centre location.

1. Council did not dispute the need for additional retirement living accommodation.
2. We set out the relevant provisions of the Planning Scheme and MHS as follows.
3. State policy seeks to ensure an appropriate quantity, quality and type of housing is provided including aged care facilities and other housing suitable for older people and that such housing is integrated with infrastructure and services.[[9]](#footnote-9) A range of housing types is sought to meet diverse needs and provide choice.[[10]](#footnote-10)
4. The Municipal Strategic Statement (MSS) states:

…Monash’s population is noticeably ageing and there is a clear preference for older people to remain in familiar environments within the municipality. This changing demographic requires strategies to ensure there is appropriate accommodation, such as small, single storey units and purpose built housing available now and into the future.[[11]](#footnote-11)

1. Objectives in the MSS include recognising and providing for the housing needs of an ageing population and encourages a variety of housing sizes and styles.[[12]](#footnote-12)
2. The MHS identifies that housing in Monash is fairly homogenous and fails to accommodate the diverse needs of residents in terms of age and income. It also recognises the projected increase in the ageing population results in an accompanying need to ensure availability of more aged care services and suitable housing and that such housing should be within walking distance of services and public transport.[[13]](#footnote-13) Objectives and strategies include recognising and providing for the housing needs of an ageing population with encouragement for purpose built housing.[[14]](#footnote-14)
3. It is clear to us that the Planning Scheme provisions and the MHS identify an ageing population, a need to increase housing options for older people and provide support for housing that allows for ageing in place with access to services and public transport. Taken together with the evidence of Ms Wells that the proposal would address the shortfall of retirement village accommodation in the municipality and offer a unique and innovative boutique retirement living option with services onsite and nearby, we find considerable support for the retirement village use. In these circumstances, the delivery of purpose built accommodation for the aged weighs in favour of the proposal, a factor not present in the previous appeal, and is relevant to our decision.

## IS THE BUILT FORM AND LAYOUT AN ACCEPTABLE RESPONSE TO CONTEXT AND DOES IT RESPOND TO CONCERNS RAISED IN THE PREVIOUS TRIBUNAL DECISION?

1. The built form response is a key matter of contention in this proceeding.
2. In terms of response to physical context, we consider an assessment against neighbourhood character, as sought in clause 22.01 of the Planning Scheme which places the site within a Residential Character Area type C, is of limited assistance. We agree with the finding of the previous Tribunal that:

We find that given the site’s context, it would not be appropriate to apply the preferred character outcome in Clause 22.01. This is particularly so given that Council’s more recent Neighbourhood Character Review specifically excludes the review site.[[15]](#footnote-15)

1. There is however, considerable emphasis in the Planning Scheme on new development responding to context and in particular to the garden city aspirations for the municipality. This emphasis is not disputed by any party.
2. The concerns of the previous Tribunal in relation to the built form were firstly, that the proposed setbacks were inadequate to provide for meaningful landscaping that will contribute to the reserve interface and garden city character; and secondly, the inappropriate tower height that fails to respond to topography or to provide an acceptable transition to the residential hinterland to the south and south-west; and the use of inappropriate materials and finishes that do not respond to the local urban character.

### Are the proposed building setbacks and landscape treatment an acceptable response to the garden city character?

1. The previous Tribunal found that, although the review site is effectively within the activity centre, development should nevertheless contribute towards the ‘garden city character’ described in policy. It was notable that the proposal before it did not include a landscape plan and the Tribunal was not satisfied that the matter could be dealt with by condition. This was a determinative issue in their ultimate finding.
2. The proposal before us includes a detailed landscape plan as well as changes to the overall building layout to facilitate landscaping.
3. We consider the proposal, compared to the one considered previously by the Tribunal, provides additional space for landscaping and changes to the layout that allows landscaping on structure to contribute to an improved interface to the residential areas to the south and south-west. This is achieved through a number of design features.
4. Firstly, the building is set back from the boundary with the drainage reserve by an additional 1 metre, to provide a total of 3 metres (of which 2 metres is required by Melbourne Water to provide for overland water flow).
5. The landscape plan shows a dense layering of trees and tall shrubs in this space, with the trees expected to reach a mature height of 11 metres, sufficient to screen most of the podium at this point. The setback from the reserve also improves the potential to retain an existing tree located in the reserve but close to the boundary of the review site. This tree has been identified as a box elder, likely to be a variant known as a “ghost maple”.
6. Melbourne Water confirmed at the hearing that the proposed tree planting, as shown in the landscape plans, is acceptable as the stems will not significantly impede overland flows; while the shrubs are located outside the 2 metre wide drainage setback and are also acceptable.
7. Secondly, the building has been moved back from the corner junction of the site with the reserve and Council car park, described in the hearing as the “knuckle” because of its triangular projecting shape. This allows a small area of more intensive planting and the retention of an existing tree.
8. Thirdly, the proposed building is pulled back from the southern boundary shared with the Council car park. This allows a significant space for trees and shrubbery that will soften the impact of the car park and contribute appropriately towards a physical separation of at least 9 metres should the car park be redeveloped with similar setbacks in the future.
9. Fourthly, the communal garden on the top of the podium has been relocated to the edge of the podium. This removes a storey of development in this location and adds a further green element behind the buffer planting adjacent to the drainage reserve. We find that this planting on structure would add a layer of greenery that will be visible from the sensitive residential area to the south-west.
10. Finally, planters have been provided on both the northern and southern facades that we consider will soften the built form image and contribute towards a “garden city” character.
11. The Council acknowledges the additional planting proposed is a positive contribution but submits it is not sufficient to provide a true garden setting. Mr Reid is of the view that a setback from the reserve of 6 metres, double that proposed, would be required to achieve an acceptable garden setting.
12. We do not agree that such a deep setback is required to achieve an acceptable response to policy. We find that the proposed layering of planting as described above, together with the planting on the structure, will provide an acceptable response. We observe that the site is clearly not like a suburban lot, which might be expected to have large garden setbacks. Instead, it “reads” as part of the Syndal NAC. We note that there are other existing large commercial/retail developments in the Syndal NAC that also have extensive site coverage with minimal or no garden areas at grade, such as 203-205 Blackburn Road that also addresses the drainage reserve.
13. As such, we think it is appropriate that the response to garden city character is different from what might be expected in the nearby residential area. We find the proposed setbacks to the drainage reserve and the Council car park, together with the “layered” approach to planting and the landscape on structure, will provide an acceptably “green” character to the building that will contribute towards the overall garden character of the area.
14. For these reasons, we are satisfied that the proposal provides an acceptable landscape response that reflects the garden city character sought by policy.

### Does the proposed building height and architectural design respond appropriately to the topography and context, and provide an acceptable transition to the residential hinterland?

1. With respect to height, the previous Tribunal indicated it was satisfied that with the setbacks proposed, the building would “read” as a three storey building with a further three storeys set back progressively, for a total height of six storeys as it addresses High Street Road. The Tribunal found this scale was acceptable given the location close to the activity centre.
2. However, partly because of the way the topography falls away to the south, the Tribunal noted that the building would read as seven storeys from the south and south-west where the character is low scale residential. This was a key issue in the Tribunal’s decision to refuse the application, however it commented that this could be addressed by reducing the height of the building or by introducing further setbacks.
3. In summary, the applicant has taken the route of increasing the setbacks from the south (and for the podium from the west) and at the same time extending the built form further to the west.
4. With respect to the height of the proposed building, Council is concerned that compared to the proposal before the previous Tribunal, the tower now extends further along High Street Road so that its proportions are more rectangular. The previous proposal had a floorplan that was effectively square, which Council submits provided a more elegant form.
5. Council says the extended form creates additional mass and will contribute to excessive visual bulk when viewed from the existing houses to the west and south-west. They say the apparent bulk from these viewpoints is accentuated because of a level difference, with St Clair Crescent being lower than High Street Road. In addition, Council says the tower now extends past Larch Crescent to the north, so that part of the upper levels of the building would be opposite low scale residential development.
6. It is the evidence of Mr Reid that the proposal represents an excessively tall and massive built form when viewed from the residential precinct to the south and, when compared to the proposal considered by the previous Tribunal, has failed to reduce height or improve responsiveness to topography. It is his evidence that the overall size, intensity and site coverage of the development are out of context with the Syndal NAC and the development fails to provide an appropriate interface with the adjoining residential area to the south.
7. Council acknowledged that the change of materials from the previous scheme is an improvement and has answered their concerns regarding external finishes.
8. Respondents and statements of grounds raise concern about the visual impact of the development in the Syndal NAC and from nearby residential properties with a lower building height supported.
9. The applicant submits that the increased setbacks from the south and other design changes addresses the concerns of the previous Tribunal.
10. It is the evidence of Mr Blades that the southern setback of the western part of the upper levels of the building (so the “tower” is effectively L shaped), means that the building would not read with excessive visual bulk. He says the photomontage is a little misleading as it suggests the two parts of the upper levels are on the same plane, whereas he is confident that, in life, the western part would read as distinctly behind the tower that projects to the south. He says that as the viewer moves position, the fact that the western leg is recessed would become clear.
11. The Tribunal asked Mr Blades whether a change to the layout to reduce the extent of the upper two levels could be accommodated without compromising the overall design, if we had concerns about visual impact. It is the opinion of Mr Blades that the upper levels do not need to be further set back from the west. However, he suggested that adding some vertical bands of colour to the façade would help to differentiate the recessed part of the “L”. He said if the Tribunal was concerned about the horizontal form of the north elevation’s upper levels, the same technique of vertical bands of a different material or finish could also be applied.
12. While adopting Mr Blades’ evidence, the applicant says a setback of the two upper levels from the west could be accommodated with a re-design of these two floor plates and would not be fatal to the development.
13. The Tribunal finds that the proposed setbacks to the south have reduced the apparent height of the building when viewed from the south and south-west compared to the proposal before the Tribunal in *Pace Development Group Pty Ltd*. We find this an acceptable outcome that responds to the second remedy suggested by the Tribunal (the use of further setbacks) and as a consequence we do not find it is necessary to eliminate a floor of the building.
14. To the north, the previous Tribunal found that the proposed height was acceptable, taking into account the context within the sphere of influence of the Syndal NAC, which already has several buildings of substantial bulk. We agree.
15. The present proposal differs from that which was before the previous Tribunal in two significant ways. These are the change in architectural presentation through a different arrangement of materials and finishes to each face, and the additional “leg” of the upper levels to the west. These were not matters before the previous Tribunal and we assess them against the context and relevant planning scheme provisions.
16. With regard to the architectural presentation, we agree with Council that the changes proposed in the present application are appropriate to the context. They provide a contemporary image with a well articulated base, and differentiation between base and upper levels so that the base will read strongly in both the street and from more distant views.
17. We find that this presentation is appropriate to the context and also addresses the concerns of the previous Tribunal about the use of metallic surfaces in the base. Further, we consider this design responds well to the guidance provided in the Urban Design Guidelines of Victoria (UDGV).[[16]](#footnote-16)
18. With regard to the new “leg” to the west (so that the tower is now effectively “L” shaped), the Tribunal is concerned that this would cause an unacceptable level of visual bulk in two areas.
19. Firstly, we agree with Council that High Street Road has a distinct change in character west of Larch Crescent, where the existing building stock is largely single storey housing. We are also mindful that the present zone is GRZ, and there is an expectation in policy that the scale of the development should provide a suitable transition to the lower scale residential context.
20. We do not say it is necessary to align precisely with the building line west of Larch Crescent, however we find the two upper levels should be set back further from the west to provide a meaningful gesture to the residential context.
21. We are equally concerned that the proposed development would appear particularly bulky from the south and south-west. This area appeared to us to be an area with relatively recent development of one and two storey housing that is unlikely to significantly change in the short term. The new “leg” has changed the appearance of the building from a three to four storey base with a distinct tower-like form biased towards the Syndal NAC, to now a more horizontal mass that we are concerned will create visual bulk when viewed from the south and south west.
22. We are not persuaded that the proposed layout that steps back from the south of the western “leg” or the introduction of materials or colours to emphasise this step back is sufficient. On the other hand, we do not think it necessary to completely remove the western “leg” but rather to provide an additional set back from the west so that there is a meaningful gesture towards transitioning the development to the low scale context.
23. It is our view that an additional setback of approximately 6 metres from the west, for the upper two levels of the building would address our concerns about visual bulk and this can be achieved by permit condition. This will require a re-design of the floorplan of these upper levels which could involve deleting some units and amalgamating others.
24. We think this greater setback will also address Council and respondent concerns about the visual bulk of the upper levels as they address High Street Road.
25. While we do not see it as a critical factor, we observe that this will limit the visual impact of the upper levels of the proposed development when viewed from the private deck of Mr Larkin’s house to the east.
26. We are confident the architects can achieve a workable floorplan with a small loss of accommodation, and consequential changes to details such as the façade details and parking allocations, under the guidance of the Responsible Authority.
27. We find the street wall to High Street Road, the ‘stepping’ and modulation of the building and the activation to the public realm are features that respond well to the guidance provided in the UDGV.[[17]](#footnote-17)
28. In conclusion on the design response, we are satisfied that, subject to the changes we have set out above, the proposed built form and provision for landscaping responds to the criticisms in *Pace Development Group Pty Ltd* and will achieve an acceptable built form that responds to the Planning Scheme and the physical context.

## Will the proposal result in unreasonable amenity impacts?

1. At the hearing Mr Larkin and Ms Pence tabled detailed diagrams they had prepared that illustrated the possible extent of shadowing at the winter solstice to the west at 546-552 High Street Road, occupied by a plant nursery. They are concerned about the extent of overshadowing that would be caused to the nursery.
2. They submit that the shadow diagrams show that in mid-winter the shadow from the development would extend across the eastern third of their site until approximately mid-morning. Part of this area is used as a car park; however, part is used for seed beds and they are concerned that the loss of several hours of sunshine in mid-winter would reduce their effectiveness so that they would have to relocate them. Mr Larkin is also concerned about overlooking to a raised deck to the dwelling located on his site.
3. Statements of grounds raise concern about overshadowing, overlooking and visual bulk impacts to nearby residential properties.
4. The Tribunal finds that the extent of shadow analysed by Ms Pence at the winter solstice is an unreasonable test in this context. We note that in mid-winter, the altitude of the sun is so low that even modest structures would cast long shadows until the sun has gained enough altitude.
5. A retirement village does not require assessment against the provisions of clause 55 of the Planning Scheme, but even if the standards of that clause were to apply, the test would be the shadow cast on secluded private open space between the 9am and 3pm at the equinox. The proposal casts no shadow to residential properties during those hours at the equinox. The shadow cast to the east will not extend beyond the car park of the nursery during those hours at the equinox. We find this an acceptable response to the amenity of nearby properties.
6. While the 9 metre separation standard to limit overlooking that applies to dwellings does not apply to a retirement village, we think it is a reasonable guide as to what constitutes unreasonable overlooking. The windows and balconies of the proposal are setback in excess of 9 metres from any residential interface which we consider will acceptably limit views to nearby dwellings.
7. We are satisfied the setbacks of balconies and habitable room windows to boundaries provide appropriately for equitable development opportunities for adjoining sites with setbacks of level 1 and above being a minimum of 4.5 metres. We agree with Mr McGurn that if the adjoining properties were developed, these setbacks provide equitable development opportunities for an adjoining development to match these setbacks and avoid the need for screening.
8. The Tribunal accepts that the development will impact visually to the nearby properties. We have considered this in our assessment of built form.

## Is the internal amenity provided for future residents acceptable?

1. Council raised concerns about the size of some balconies but suggest this could be addressed by a permit condition that requires an additional area of 1.5 square metres for some balconies and mechanical plant appropriately screened.
2. The internal amenity standards that apply to dwellings and apartments are not applicable to a retirement village. Nevertheless, there are policies[[18]](#footnote-18) that seek to ensure a high level of amenity for occupants and provide a high standard of liveability through design that incorporates environmentally sustainable principles.
3. We are satisfied that the proposal achieves a very high standard of amenity for future residents having regard to the following features:

* All dwellings have functional layouts with room sizes that reflect standards applicable to apartment developments.
* Corridors are 1.6 metres wide with access to a least one openable window, providing natural light and ventilation.
* Storage is provided in each unit and in the basement.
* Each dwelling has been designed to meet accessibility requirements thereby meeting the needs of persons with limited mobility.
* The entry to the residential component of the building from High Street Road is wide, glazed, leads to a well-proportioned lobby and will provide an identifiable entry with shelter and transitional space.
* Communal areas are generous and varied including gym, pool, yoga room, library and large shared open space area on level 1 comprising an area of 341 square metres.

1. Although there are south facing units, we think this is difficult to avoid given the orientation of the site and the need to consider equitable development opportunities of adjoining sites. Importantly all habitable room windows and balconies have access to daylight and unscreened outlook.
2. Balconies vary in size from a minimum of 8 square metres to 56 square metres. Access to each balcony is via the living room and balcony width is at least 2 metres. We do not share Council’s concerns about the balcony design. We find the design, size and location will provide adequately for future residents.

## Are there car parking or traffic reasons to reject the proposal?

1. Mr Larkin raises concerns about increased traffic entering and exiting the review site in close proximity to the car park entry to the plant nursery at 546-552 High Street Road, other crossings in this section of High Street Road and adjacent to where there is significant congestion near the Blackburn Road intersection. He says the difficulties entering and exiting the site will impact the plant nursery business, will increase delays and congestion and potentially result in accidents.
2. Mr Morris and Mr Larkin refer to existing difficulties with car parking in nearby streets that they say will be exacerbated by the development. They say that residents of, and visitors to, the development will choose to park onstreet or in Council carparks contributing to congestion, creating difficulties in accessing driveways and limiting parking opportunities for existing residents and customers.
3. Statement of grounds referred to the additional traffic congestion that would occur as a result of the development and the negative impacts this would have on existing residents. Concern about inadequate car parking provision is also raised together with additional demand placed on public parking areas.
4. Council raised no concerns about car parking or traffic.
5. The proposal includes two levels of basement car parking providing a total of 89 car spaces, of which six are allocated to the café and 83 to the retirement village. Vehicle access is via a double crossover to High Street Road providing access to a two way ramp to the basement.
6. In relation to car parking, we find as follows.
7. The Planning Scheme specifies six spaces for the café (based on 3.5 spaces per 100 square metres of leasable floor area) and 79 spaces for the dwellings (based on 1 car space per one and two bedroom dwellings in a retirement village). Applying these rates results in a requirement to provide 85 car spaces. The proposal provides 89 car spaces.
8. No residential visitor car parking is proposed. This accords with the provisions of the Planning Scheme that specify no visitor parking is required due to the location of the site within the Principal Public Transport Network Area.[[19]](#footnote-19)
9. The full compliance with the requirements of the Planning Scheme in relation to car parking (with a surplus of four spaces for residents) means there is no car parking basis to refuse the application.
10. There will be visitor parking generated by the development that will utilise onstreet and publicly available car parking nearby but the Planning Scheme says this is acceptable in this location.
11. In a location in or proximate to an activity centre demand for onstreet parking is not unexpected. It is a matter that can be addressed by Council through parking restrictions, if considered necessary in the longer term.
12. In regard to vehicle access and traffic generation, we make the following findings.
13. The location of the two way ramp to High Street Road for all vehicle access is supported. It replaces four single width crossovers that provided access to previous uses on the land. It is located relatively centrally on the site avoiding close proximity to accessways to adjoining properties. Importantly there is no objection to the location of the crossing raised by Council or VicRoads.
14. There will be additional traffic generated by the proposal. The traffic report that was submitted to the Tribunal[[20]](#footnote-20) estimates an anticipated traffic generation to be up to 46 vehicle movements per hour during the commuter peak hour.
15. We are satisfied that the level of traffic likely to be generated by the proposal can be accommodated in the nearby road network, noting this traffic replaces that generated by the previous commercial uses of the site. The same view is reached in the traffic report[[21]](#footnote-21) and the internal referral comments of the Council’s transport engineering section that states:

The predicted traffic generation is low and is expected to have a negligible impact on the local traffic network.[[22]](#footnote-22)

1. We accept that traffic along High Street Road can be congested, especially at peak times. We agree with the observation made in the traffic report that the traffic signals at the nearby High Street Road/Blackburn Road intersection will result in regular gaps in westbound traffic that will facilitate the ability for vehicles to enter and exit the review site, even during peak times.
2. The traffic report recommended the minimum headroom above the ramp be increased to enable access for ambulance vehicles. This is appropriate and can be achieved by permit condition.

## Will the proposal result in adverse impacts on flooding?

1. Concerns about flooding is a key issue for respondents with flash flooding in the area experienced at various times. Mr Morris advises he has lived nearby for 68 years and estimated that he had seen flooding approximately every 15 years. Mr Larkin advises he has occupied the adjoining site since 1990 and seen a number of flood events, some of which had resulted in damage to his property. It was put to the Tribunal that it would be irresponsible for this development to be approved without the flooding issue resolved.
2. Flooding was a concern in the previous Tribunal decision where is was found the design response to the constraint of flooding was unresolved.
3. Melbourne Water advise as follows:

* Melbourne Water is the floodplain management authority.
* Melbourne Water undertake regular flood modelling and the current Special Building Overlay in this area does not match the most recent flood modelling updated in 2015. This information has been passed to Council.
* An objection was lodged to the previous proposal due to design features, building entries and floor levels that were lower than the 1 in a 100 year flood level.

1. It is Melbourne Water’s submission that this proposal addresses flooding concerns through:

* Levels of basement and ground floor entries that are not subject to flooding from a 1 in 100 year flood event. An apex above the basement ramp is sought via permit condition for additional protection from flooding.
* Removal of an existing solid wall along the western site boundary associated with previous development on the site together with a 2 metres wide overland flow path along this western boundary will improve overland flow path.
* Provision of a 3 metre wide landscaped setback adjacent to the 19 metre wide drainage reserve will provide for additional overland flow.
* Landscaping proposed along the southern side of the site is acceptable as it comprises trees with stems with a height of 3-4 metres at maturity that will not impede flows.
* Provision of permeable fencing along the southern, south-western and western boundaries.

1. Council is satisfied that the plans address issues associated with flooding.
2. Given the authority responsible for flood management is satisfied from a technical expertise level that the issue of flooding is appropriately dealt with, we find no reason relating to flooding that would lead to rejection of the proposal. We consider the proposal will not increase flooding and will contribute to an incremental improvement to the flooding issues in the area.

## conditions

1. Draft permit conditions circulated by Council were discussed at the hearing. We have adopted those conditions with changes that have regard to those discussions and implement our findings.

## Conclusion

1. For the reasons set out above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

|  |  |  |
| --- | --- | --- |
| **Cindy Wilson**  **Presiding Member** |  | **Stephen Axford**  **Member** |

# APPENDIX A

|  |  |
| --- | --- |
| **PERMIT APPLICATION NO:** | TPA/49751 |
| **LAND:** | 554-558 High Street Road, Mount Waverley |
| **WHAT THE PERMIT ALLOWS:** | |
| This permit allows the:   * use of the land as a ‘retirement village’ under clause 32.08-2 of the General Residential Zone; * use of the land as a ‘food and drink premises (café) under clause 32.08-2 of the General Residential Zone; * construction of a building or construction or carrying out of works for a section 2 use under clause 32.08-9 of the General Residential Zone; * construction of a building or construction or carrying out of works under clause 44.05-2 of the Special Building Overlay; and * creation or altering of access to a road in a Road Zone, Category 1. | |

**Conditions**

1. Before the development commences, except demolition, site levelling and excavation works, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of this permit. The plans must be drawn to scale with dimensions. The plans must be generally in accordance with the plans prepared by Cera Stribley Architects, Revision D dated 18.06.19 - VCAT – Final hearing but modified to show:
   1. The western wall of levels 4 and 5 (affecting units 502, 503, 602 & 603only) setback an additional 6 metres (approximately) from the western boundary and associated modification to unit layout;
   2. Designation of glazing to High Street Road at ground level as clear;
   3. The location of any required fire services, electricity supply, gas and water meters, discreetly integrated into the development;
   4. Accessible parking spaces to be relocated to the Lower Ground level close to the lift to enable ease of use by visitors to the commercial activities on site;
   5. Parking spaces assigned to commercial and residential visitor uses with spaces signed and line-marked accordingly;
   6. The location of the intercom system to be at least 4.5 metres from the site boundary to allow a vehicle to prop within the site;
   7. The minimum headroom clearance above the entrance ramp increased from 2.84 metres to a minimum of 2.94 metres;
   8. Provision of 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;
   9. The location of air conditioning/heating units in basement, on roof or within balconies of individual units where the balcony size exceeds 10 square metres. On balconies or on the roof, the air conditioning/heating units must be screened from public view;
   10. Any changes, recommendations or requirements of the Sustainable Management Plan prepared and submitted to and approved by the Responsible Authority in accordance with condition 8;
   11. The changes required by VicRoads; and
   12. The changes required by Melbourne Water,

all to the satisfaction of the responsible authority.

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

### Waste Management Plan

1. Before the development commences, except demolition, site levelling and excavation works, a waste management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the waste management plan will be endorsed and will form part of this permit. The waste management plan must provide for:
   1. the method of private garbage collection and recyclables;
   2. appropriate areas of bin storage on site and areas for bin storage on collection days;
   3. measures to minimise the impact upon local amenity and on the operation, management and maintenance of car parking areas; and
   4. measures for litter management.
2. The provisions, recommendations and requirements of the endorsed waste management plan must be implemented and complied with to the satisfaction of the Responsible Authority.
3. Adequate provision must be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority.

### Construction Management Plan

1. Before the development commences, a construction management plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plan will be endorsed and will form part of this permit. The plan must include:
   1. a traffic management plan, including the management of traffic during the excavation and construction periods of the development to and from the site, general traffic management and any closing or altered access to the rear laneways including pre-consultation measures with all owners and occupiers of land who have a legal right of access to these laneways;
   2. measures to control noise, dust and water runoff;
   3. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
   4. the storage location of building materials during construction;
   5. site security;
   6. maintenance of safe movements of vehicles to and from the site during the construction phase;
   7. storage of plant, equipment or materials not to be permitted on the easement;
   8. on-site parking of vehicles associated with construction of the development;
   9. wash down areas for trucks and vehicles associated with construction activities;
   10. cleaning and maintaining surrounding road surfaces;
   11. 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. This does not include excavation or the use of heavy machinery.)
2. The construction works associated with the permitted use/development and/or subdivision must only be carried out during the following hours:
   1. Monday to Friday (inclusive) – 7:00am to 6pm;
   2. Saturday – 9am to 1pm;
   3. Saturday – 1pm to 5pm (only activities associated with the erection of buildings);

Unless otherwise approved in writing by the Responsible Authority.

### Sustainable Management Plan

1. Before the development commences, except demolition, site levelling and excavation works, a sustainable management plan (**SMP**) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended sustainable management plan will be endorsed and will form part of this permit. The report must include, but is not limited to, the following:
   1. Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of clause 21.13 and clause 22.13 of the Monash Planning Scheme.
   2. Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
   3. Document the means by which the appropriate target or performance is to be achieved.
   4. Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
   5. Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.
2. All works must be undertaken in accordance with the endorsed Sustainability Management Plan to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Management Plan may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.
3. Before the development is occupied, a report from the author of the sustainable management plan, approved under this permit, or similarly qualified person or company, must be submitted to and approved by the Responsible Authority. When approved, the report will be endorsed and will form part of this permit. The report must be to the satisfaction of the Responsible Authority and must confirm all measures specified in the sustainable management plan have been implemented in accordance with the approved sustainable management plan.

### Landscape Plan

1. Before the development commences, except demolition, site levelling and excavation works, a landscape plan showing the landscaping and urban design streetscape treatment of the site and public realm, drawn to scale and dimensioned to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the landscape concept plan prepared by Urbis dated 4 July 2019, Rev C LCC001 & LC002 but modified to show:
   1. the proposed urban design treatment of the site and public areas to High Street Road which immediately interface with the site;
   2. details of all proposed hard surface materials/paving;
   3. street furniture, including public signage, bins, seats, bicycle facilities, gates, fences and the like;
   4. the location of all existing trees and other vegetation to be retained on site;
   5. proposed vegetation including provision of street trees;
   6. a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names;
   7. disabled access features;
   8. the extent of any cut, fill, embankments or retaining walls; and
   9. any other feature deemed appropriate

to the satisfaction of the Responsible Authority.

1. Before the development commences, except demolition, site levelling and excavation works, a written submission accompanying the landscape plan must setting out the responsibility for the payment and implementation of these works to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority.
2. When approved the landscape plan and submission will be endorsed and will form part of the permit.
3. Before the development is occupied, landscaping and urban design 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.

### Parking, Access, Loading and Unloading

1. Before the development permitted is completed, 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 or other durable surface treatment to the satisfaction of the Responsible Authority;
   4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority; and
   5. line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
2. Parking areas and access lanes must be kept available for these purposes at all times.
3. The loading and unloading of goods from vehicles must only be carried out on the land.
4. A sign to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3 square metres.
5. 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 (telephone 9518 3555).
6. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:
   1. Driveway to provide at least 2.1m headroom beneath overhead obstructions.
   2. Ramp grades (except within 5 metres of the frontage) to be designed as follows:
      1. Maximum grade of 1 in 4.
      2. Provision of minimum 2.0 metre grade transitions between different section of ramp or floor for changes in grade in excess of 12.5% (summit grade change) or 15% (sag grade change).
   3. A passing area at least 5m wide and 7m long provided at the entrance of the property.
   4. Minimum requirements for car park dimensions to be in accordance with Table 2.
   5. Clearance to car parking spaces to be in accordance with Diagram 1 in relation to the placement of a wall, fence, column, tree, tree guard or any other structure that abuts a car space.
7. The driveway and parking area (apart from parking space dimensions) must be designed in accordance with the Australian Standard for Off - Street Car Parking, AS/NZS 2890.1.
8. Redundant crossings are to be removed and reinstated with kerb and channel to the satisfaction of the Responsible Authority.
9. All new crossings, unless otherwise agreed by the relevant service authority, 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. The relocation of any affected power pole must be within the development frontage or to the satisfaction of Responsible Authority.
10. On-site staff and customer parking spaces are required to be clearly marked to the satisfaction of the Responsible Authority.
11. The accessible parking spaces should be designed in accordance with the Australian Standard for Off-Street Parking for people with disabilities, AS/NZS 2890.6. The vehicle path to and from each accessible space shall have a minimum headroom of 2200mm. The headroom above each dedicated space and adjacent shared area shall be a minimum of 2500mm. The accessible spaces are to be relocated on the Lower Ground level close to the lift.

### Amenity

1. The amenity of the area must not be detrimentally affected by the use or development, through the:
   1. transport of materials, goods or commodities to or from the land; and
   2. appearance of any building, works or materials.
2. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land to the satisfaction of the Responsible Authority.

### Drainage

1. Before the development starts, except demolition, site levelling and excavation works, a drainage plan drawn to scale and dimensioned must be approved by the Responsible Authority showing a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.
2. The nominated point of discharge is the south-east corner of the property where the entire sites stormwater must be collected and free drained via a pipe to the Council pit in the easement of the Council reserve to be constructed to Council Standards. A new pit is to be constructed if a pit does not exist or is not a standard council pit). If the point of connection cannot be located then notify Council's Engineering Department immediately.
3. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties to the satisfaction of the Responsible Authority.
4. Stormwater discharge is to be detained on-site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
5. Any new drainage work within the road reserve requires the approval of the Council's Engineering Division prior to the works commencing.

### Vic Roads conditions

1. Prior to the commencement of use of the development hereby approved, a sealed access crossover and driveway as at least 6 metres wide, with the crossover flared at 60 degrees with 3.0 metre radial turnouts at the kerb, must be constructed to the satisfaction the Responsible Authority and at no cost to VicRoads.
2. Prior to the commencement of the use hereby approved all disused or redundant vehicle crossings must be removed and the area reinstated to the satisfaction of the Responsible Authority and at no cost to VicRoads.
3. Vehicles must enter and exit the land in a forward direction at all times.
4. The level of the footpaths must not be lowered or altered in any way to facilitate access to the site.

### Melbourne Water conditions

1. The ground floor of all habitable areas must be constructed with finished floor levels set no lower than 102.95 metres to Australian Height Datum, which is 300mm above the applicable flood level of 102.65 metres to Australian Height Datum
2. Any doors, windows, vents and openings to the basement car park must be a minimum of 102.95 metres to AHD which is 300mm above the applicable flood level of 102.65 metres to AHD.
3. The entry / exit driveway of the basement carpark must be constructed to incorporate a flood proof apex set no lower than 102.95 metres to AHD which is 300mm above the applicable flood level of 102.65 metres to AHD.
4. A building setback of two metres along the western and south-western boundaries is required to allow for the free flow of flood waters. This setback must be set at natural ground level and be free of any solid structures such as sheds, masonry fencing, water tanks or any raised landscaping to the satisfaction of Melbourne Water.
5. Unless otherwise approved by Melbourne Water, landscaping within the two metre setback referred to in condition 40 of this permit, must be as shown on the landscape concept plan prepared by Urbis dated 4 July 2019, Rev C LCC001 & LC002 or to the satisfaction of Melbourne Water.
6. Prior to the issue of an Occupancy Permit, a certified survey plan, showing finished floor levels (as constructed) reduced to the Australian Height Datum, must be submitted to Melbourne Water to demonstrate that the floor levels have been constructed in accordance with Melbourne Water's requirements.
7. Imported fill must be kept to a minimum on the property and only be used for the sub floor areas of the dwellings, garages and driveway ramps.
8. Any new fencing must be of an open style of construction (minimum 50% open) to allow for the passage of floodwaters/ overland flows to the satisfaction of Melbourne Water.

### Transport for Victoria condition

1. The permit holder must take all reasonable steps to ensure that disruption to bus operation along High Street Road is kept to a minimum during the construction of the development. Foreseen disruptions to bus operations and mitigation measures must be communicated to Public Transport Victoria eight (8) weeks prior by telephoning 1800 800 007 or emailing customerservice@ptv.vic.gov.au.

### General conditions

1. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
2. 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.
3. 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 cleared detailed on endorsed plans forming part of this permit.
4. Once the development and use has started it must be continued and completed to the satisfaction of the Responsible Authority.

### Expiry of permit

1. This permit will in accordance with section 68 of the *Planning and Environment Act 1987* expire if:
   1. the development does not start within 2 years of the date of this permit;
   2. the development is not completed within 4 years of the date of this permit; or
   3. the use does not start within 2 years after the completion of the development allowed under 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 period referred to in this condition.

**– End of conditions –**

1. The submissions and evidence of the parties and 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. [2017] VCAT 1812 [↑](#footnote-ref-2)
3. Including at clauses 11.01-1S, 11.01-1R, 11.03-1S, 16, 16.01-1S, 16.01-2S, 16.01-2R, 16.01-3S, 16.01-3R, 21.04-3 and 21.06-3. [↑](#footnote-ref-3)
4. Adopted by Council in 2014. [↑](#footnote-ref-4)
5. On 19 April 2016. [↑](#footnote-ref-5)
6. Panel report on Amendment C125 to the Monash Planning Scheme dated 6 December 2016 at page 93. [↑](#footnote-ref-6)
7. At paragraph 13. [↑](#footnote-ref-7)
8. At paragraph 14. [↑](#footnote-ref-8)
9. Clause 16.01-1S [↑](#footnote-ref-9)
10. At clauses 16.01-3S and 16.01-4S. [↑](#footnote-ref-10)
11. Clause 21.04-1. [↑](#footnote-ref-11)
12. Clause 21.04-3. [↑](#footnote-ref-12)
13. At pages 33, 44 and 55 of the Monash Housing Strategy, 2014, Final Report. [↑](#footnote-ref-13)
14. At pages 58 and 60. [↑](#footnote-ref-14)
15. At paragraph 34. [↑](#footnote-ref-15)
16. A reference document at clauses 11.03-1S, 15.01-1S and 15.01-2S. [↑](#footnote-ref-16)
17. Subject to a permit condition that clarifies the ground floor glazing to High Street Road is clear. [↑](#footnote-ref-17)
18. Including at clauses 21.04-3 and 22.13. [↑](#footnote-ref-18)
19. As shown on the Principal Public Transport Network Area Maps (State Government of Victoria, August 2018) and referred to in clause 52.06-5. [↑](#footnote-ref-19)
20. Prepared by Ratio Consultants dated June 2019 and submitted for information purposes. [↑](#footnote-ref-20)
21. At page 25. [↑](#footnote-ref-21)
22. Internal memo dated 9 May 2019 from Monash City Council Senior Sustainable Transport Engineer. [↑](#footnote-ref-22)