VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P1383/2020  Permit Application no. TPA/51361 |
| CATCHWORDS | |
| Remnant farmhouse; large site; six additional dwellings; heritage conservation; heritage context; neighbourhood character; tree retention. | |

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| **Applicants** | Tony Zone Pty Ltd, Suren Zone Pty Ltd, C J Zone Pty Ltd, Aruna Zone Pty Ltd, Viren Zone Pty Ltd |

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| **Responsible Authority** | Monash City Council |
| **Respondent** | Daniel Bennett |

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| SUBJECT LAND | 276 Lawrence Road  MOUNT WAVERLEY VIC 3168 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 24 May 2021 |
| DATE OF ORDER | 2 June 2021 |
| CITATION | Tony Zone Pty Ltd v Monash CC [2021] VCAT 577 |

# Order

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

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| * Prepared by: | Chew Architecture |
| * Drawing numbers: | TP01-TP12 (inclusive) Revision Q |
| * Dated: | 30 March 2021 |

1. In application P1383/2020 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51361 a permit is granted and directed to be issued for the land at 276 Lawrence Road, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of two or more dwellings on a lot;
* To demolish or externally alter a building or to construct or carry out works.



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| Michael Nelthorpe  **Member** |  |  |

# Appearances

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| For applicants | Ms Mimi Marcus, solicitor of Marcus Lane Group. She called the following witnesses:  Mr Rob Milner, town planner of Kinetica;  Mr John Patrick, landscape architect of John Patrick Landscape Architects; and  Mr Bryce Raworth, Conservation Consultant and Architectural Historian of Bryce Raworth Pty Ltd.  Mr John Kiriakides, traffic engineer of GTA Consultants Pty Ltd, now Stantec, prepared a Transport Evidence Statement but was not called to present his evidence. |
| For responsible authority | Mr Peter English, town planner of Peter English and Associates. He called the following witness:  Mr David Wixted, heritage architect of Heritage Alliance, heritage consultants. |

# Information

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| Description of proposal | To retain and refurbish the heritage farmhouse and construct six dwellings. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 3  Heritage Overlay Schedule 48 |
| Permit requirements | Clause 32.08-6: to construct two or more dwellings on a lot;  Clause 43.01-1: to demolish or externally alter a building or to construct or carry out works. |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.04, 22.01, 22.05, 22.07, 32.08, 43.03, 52.06, 55, 65 & 71.02 |
| Land description | This rectangular lot is on the east side of Lawrence Road in a residential area of Mount Waverley. It has a 36.9 metre frontage, a 78.6 metre depth and an area of 2,908 square metres. A Federation-era farmhouse and associated sheds in an established native garden occupies the site. |
| Tribunal inspection | 22 May 2021 |

# Reasons[[1]](#footnote-2)

## What is this proceeding about?

1. Tony Zone Pty Ltd, Suren Zone Pty Ltd, C J Zone Pty Ltd, Aruna Zone Pty Ltd, Viren Zone Pty Ltd (**‘the Applicants’**) seek planning permission to refurbish a heritage-listed farmhouse (**‘the farmhouse’**) and construct several two-storey dwellings at 276 Lawrence Road, Mount Waverley.
2. Monash City Council (**‘the Council’**) refused to grant a permit for an iteration of the proposal with eight new dwellings. The Applicant seeks a review of that decision.
3. Mr Bennett lives nearby. He attended on the first morning of the hearing but chose not to make a submission. He relies on his Statement of Grounds. Yong Quin Zhou also lives nearby and relies on his Statement of Grounds.
4. The Applicant relies on amended plans with six new dwellings and a different refurbishment of the farmhouse. They also rely on the expert opinion in the fields of town planning, heritage, landscape architecture and traffic engineering. The Applicant says that these experts collaborated in revising the plans, with an emphasis on an appropriate treatment of, and setting for, the farmhouse.
5. The Council relies on expert opinion in heritage regarding the treatment of, and setting for, the farmhouse. It has revised its grounds of refusal as follows:

1. The proposed demolition, alterations and additions to the existing heritage place and the proposed additional dwellings are contrary to Clause 22.07 and Clause 43.01.

2. The proposal does not respond appropriately to the preferred character of the area in accordance with Clause 21.04, Clause 22.01, Clause 22.05 and Standard B13 of Clause 55.03-8 as it does not retain existing significant trees on the site or allow for sufficient landscape opportunities throughout the site allowing for the development to respect the landscape character of the neighbourhood.

3. The proposal is an overdevelopment of the site.

4. The dwellings will result in poor internal amenity with a failure to satisfy Clause 55.03-5 (Energy Efficiency), Clause 55.03-7 (Safety), (and) Clause 55.05-4 (Private Open Space).

5. The proposal does not provide for the efficient movement of vehicles within the site.

6. The proposal will result in a poor quality outcome due to the use of poor quality materials.

1. Mr Bennett objects to the removal of a 14-metre-high Mahogany Gum near the rear boundary, given its contribution to the neighbourhood’s landscape character. Separately, he contends that the new dwellings along the site’s northern boundary do not optimise this orientation, and that the tightness of vehicle turning areas on site will result in residents parking on the street.

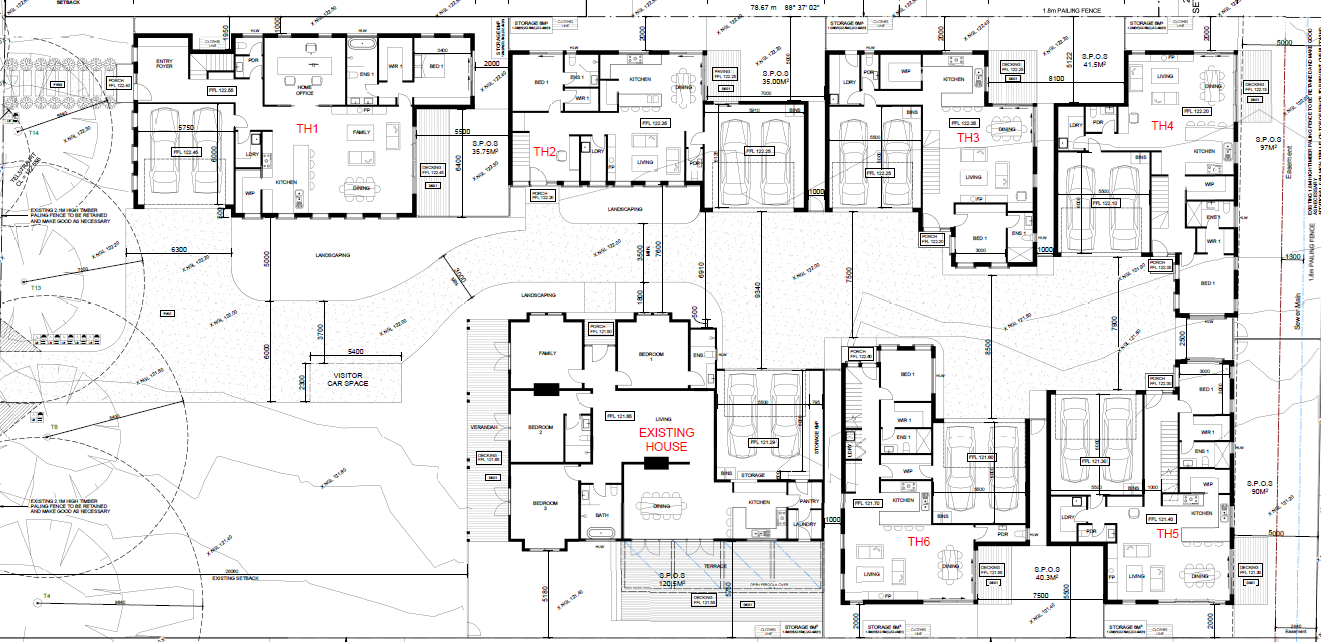
## Key questions

1. The key questions that I must determine are:

* Is the proposal an acceptable heritage response?
* Is the proposal an acceptable response to the neighbourhood’s character?
* Do the dwellings have an acceptable level of internal amenity?
* Is the proposal an overdevelopment of the site?

1. My findings and reasons follow.

## Is the proposal an acceptable heritage response?



*The ground floor layout of the proposal*

1. The acceptability of a response is always a matter of integrating planning policy objectives and balancing conflicting objectives in favour of net community benefit and a sustainable development outcome.[[2]](#footnote-3)
2. Planning policy encourages increased housing densities in established areas that have good access to services and facilities.[[3]](#footnote-4) This is a large site that can achieve this objective by accommodating extra dwellings.
3. Planning policy also seeks to conserve and enhance sites of heritage significance.[[4]](#footnote-5) The planning objectives for heritage sites can be summarised as maintaining the significance of the heritage place and ensuring that new development responds appropriately to the heritage context.
4. I heard conflicting evidence on whether the proposal properly integrates these policies. I prefer Mr Raworth’s evidence over Mr Wixted’s.
5. My impression is that Mr Wixted believes that the farmhouse as it stands today, and its immediate surrounds should be retained. He says the proposed works are *‘clearly not for the purpose of conservation or restoration’* and *‘diminish the intactness of the house’.* He objects to the alterations, saying that the evidentiary base for changes is unsubstantiated or that they are for purposes other than conservation or restoration.
6. He believes that the new development *‘destroys the character of the site by appearance, height and number’* and that *‘a lower number of units made of more appropriate materials such as timber and galvanised metals in a single storey layout may be possible.’* [[5]](#footnote-6)
7. On the other hand, Mr Raworth believes that the farmhouse has altered substantially over its long life. He notes the citation relates to its historical, rather than architectural significance, and considers the heritage goals are to return it to a semblance of its hey-day before World War 2, and to ensure it is ‘living heritage’ by making it viable for modern life. He says that ensuring that the farmhouse is restored and set in an open, landscape setting that is visible from the street retains its historical significance.
8. He believes that great effort has been taken in ensuring these goals. Alterations to the farmhouse are informed by an independent firm of architects and conservation consultants, the farmhouse’s 29 metre front setback is retained, a single new dwelling occupies the remaining frontage, a single driveway from the original farm gates serves all dwellings, and landscaping that is substantial for a medium-density development sits opposite the restored northern façade.
9. In this context, he believes the new development behind the front facades (the north and west) is a backdrop that does not adversely affect the site’s significance.
10. I find Mr Raworth’s opinion demonstrates the integration of policy objectives sought by the Planning Scheme. Policies supporting the site’s heritage significance are integrated with competing policies supporting new housing in established areas. Appropriate measures are taken to reveal the farmhouse while acknowledging its original purpose is long gone.
11. I find that Mr Wixted’s opinion does not give sufficient weight to those competing policies. His opinion leans too heavily towards a museum quality outcome for the farmhouse and site as a remnant of the past. I find this is an unbalanced outcome.

### Findings on the front door, a chimney and a Bangalow Palm

1. Debate over the farmhouse’s front door, a chimney on its western wall, and a Bangalow Palm in its rear courtyard occupied considerable time in the hearing. My findings and reasons on these details are expressed below.
2. The starting point is that there are no historical photographs or records of the farmhouse apart from a 1945 aerial photograph. Thus, the opinions of both heritage experts are deductive rather than evidentiary.

#### The front door

1. I find Mr Raworth’s opinion that the front door of the farmhouse was originally on the northern elevation is compelling.
2. The 1945 aerial photograph shows that farmhouse was originally accessed from the north-west. Mr Raworth says that dwellings typically face their frontage and he suggests that the decorated northern façade confirms this. He says that the back doors of farmhouses are generally used more often than the front door. He says that houses of this era do not locate the front door next to the kitchen and dining room. He says that the decorative frieze in the hallway suggests the front door was originally in the northern elevation. I agree with him.
3. Mr Wixted says the front door was in the south elevation so that it faced the orchard that was to the south and east of the dwelling. He relies on the lack of a pathway to the north elevation in 1945, and the roof’s design, with its high front section on the south side. I find these explanations less plausible given the decorative northern elevation and the location of the kitchen.
4. The heritage expert’s conflicting explanations of Mr Ward’s 1999 citation heavily influences my finding. His description of the site includes the following:

A substantial Federation period house with hipped corrugated iron clad main roof and roughcast walls. There is a pair of half timbered and bracketed gable ends surmounting double hung bay windows to the north, either side of a central doorway with a fretted valence forming an arch. On the west side is a skillion roofed verandah enclosed by glazing over weatherboard cladding and a central gable end over paired glass side entry doors. There are tall red brick chimneys with straightforward enrichment and corbelled upper courses.

The north side of the property and the north-east corner (rear) consists of open lawn areas with shrubs along the side of the house and dotted through the lawn. The character is predominantly exotic. The south side and south-east corner have been highly modified to include a concrete driveway and several sheds. (My emphasis)

1. Mr Wixted disputes the reference to the *‘central doorway’* in the north elevation. He says it is unlikely that Mr Ward entered the site and that he simply presumed there was a northern doorway. Mr Raworth says this does not withstand scrutiny given Mr Ward’s references to *‘the north-east corner (rear)’* and the *‘south-east corner’*. These corners are not visible from the street.
2. I agree with Mr Raworth’s opinion. It is most likely that Mr Ward entered the site and walked around the farmhouse. I cannot accept that Mr Ward speculated about the central door in the north elevation, and the condition of the farmhouse’s rear corners. This would be implausible.
3. Finally, the experts disagree about the Existing Condition Assessment undertaken by rba Architects and Conservation Consultants. Mr Raworth accepts its analysis, which identifies substantial alterations to the north and south facades, including in the centre of the north façade. Mr Wixted says it is based on Mr Ward’s *‘unsubstantiated observation’* about the northern doorway and its discussion of the alterations to the north and south facades is a *‘conclusion looking for evidence’*.[[6]](#footnote-7)
4. I have not accepted that Mr Ward’s observation is unsubstantiated. Consequently, I do not accept that it is a conclusion looking for evidence.I accept there is no photographic evidence of this doorway but find Mr Raworth’s deductions far more plausible than those of Mr Wixted.

#### The chimney on the farmhouse’s western wall

1. The status of the chimney on the northern wall is not as clear. Mr Raworth relies on the rba assessment, which concludes it is not original. It describes many changes to the fabric of the room served by this chimney and notes that the chimney is on the outer wall of the farmhouse. It speculates that the painting of all the farmhouse’s chimneys may have been to disguise the different coloured brick of this chimney. In response to questions, Mr Raworth suggested that the chimney on the northern wall may have been added in the 1920s.
2. Mr Wixted states that the chimney is original. He notes that it is identical in height and design to other chimneys in the farmhouse.
3. I favour the rba assessment because it is more forensic. It is a very thorough report that identifies a seemingly endless sequence of alterations to this farmhouse. Many of these are unable to be dated but they all suggest a reworking of the farmhouse to suit the needs of the occupants at that time.
4. In this context, it is possible that the chimney on the farmhouse’s western wall was added sometime after the farmhouse was constructed. Based on the rba assessment, it is likely that the ‘sitting room’ it serves was upgraded by adding a bay window and relining its ceiling. This chimney may have been added at that time. As such, I find it can be removed.
5. My finding is influenced by two other factors. The Statement of Significance identifies the farmhouse’s historical, rather than architectural, significance. Thus, greater leeway is available for changes to the farmhouse’s fabric.
6. Apart from this, I acknowledge Mr Raworth’s opinion regarding ‘living heritage’. I consider that the room served by the chimney will benefit from the replacement of this chimney with doors opening to the verandah. I am not persuaded by Mr Wixted’s argument that the proposed doors can be beside the retained chimney. The size of the room limits the number of features it can viably contain.

#### The Bangalow Palm

1. Mr Wixted says that the Bangalow Palm must be retained due to its association with the past use of the farmhouse. He accepts it is most likely to have been planted after World War 2. Mr Patrick agrees with the date of planting, as his evidence is that Chilean Wine Palms or the like, rather than Bangalow Palms, were fashionable in the early 20th century.
2. I find there is no imperative to retain the Bangalow Palm given its time of planting. The Statement of Significance does not list the garden as significant and it is not an original planting.

## Is the proposal an acceptable response to the neighbourhood’s character?

1. The Council accepts that the General Residential Zone encourages change, but says that change on this site must be tempered by neighbourhood character policy seeking unit development that is sensitive to its heritage setting, and with well vegetated front and rear gardens and large canopy trees.
2. It contests the compatibility of the proposed two-storey dwellings with the heritage farmhouse. I find the height, materials and siting of these dwellings is comparable to other new medium density development nearby and is broadly comparable with its neighbours. I share Mr Milner’s opinion that the proposal merely brings suburbia one step closer to the farmhouse.
3. I find this acceptable in principle as the existing and proposed relationships are the same. The farmhouse will remain an anomaly in this suburban setting. Its distinctiveness among suburban dwellings will assist in alerting future residents of this neighbourhood to its historical significance.
4. I am not persuaded that the size of the site contributes greatly to the heritage significance of the farmhouse. It appears that an arbitrary decision was made to retain a site of this size when the land was subdivided. Any relationship to the orchard was lost at that time. The farmhouse became a residence in a native garden rather than a working farm dwelling. As such, I find against Mr Wixted’s recommendation to surround the farmhouse with one-storey dwellings of timber and galvanised metals. I consider that this places too much emphasis on this rather arbitrary site.
5. The question is whether the space between the old and the new is acceptable. Earlier, I described the careful siting of new development beside the farmhouse when viewed from the public realm. This is not typical siting of conventional medium density development. Rather, it is respectful of the farmhouse and its history.
6. I am not persuaded that the new dwellings are tightly packed throughout the site or are overly vertical. The front half of the development is lightly spaced around the farmhouse, and Townhouse 2 is only ‘vertical’ because landscaping in its frontage diminishes the area of the ground floor.
7. I acknowledge that Townhouse 6 is only one metre away from the rear of the farmhouse. I find this is acceptable because the farmhouse’s historical significance will be viewed from the street. Marginally increasing this setback would make little difference to views from the street given it is over 40 metres away. On a separate matter, measures may be required to avoid unreasonable overlooking between the living room of Townhouse 6 and the new southern deck of the farmhouse. This can be addressed by a condition on the permit.
8. I accept that the four townhouses in the rear half of the site sit close to one another. I agree with the Council that the lack of landscaping near the driveway and the tight vehicle turning circles indicates this. Yet, these townhouses either meet or only marginally fall short of the varied ResCode standards that apply. These standards are designed to achieve the preferred character in the context of the more intensive development sought by policy and the General Residential Zone.
9. Given that the physical context of the rear half of the site demonstrates a significant degree of medium density development, there is no basis to require these townhouses to exceed the standards set for this area.
10. The Council did not agitate its ground of refusal relating to the quality of materials. Rather, it made submissions regarding the compatibility of the materials with the farmhouse. I find that they are acceptable because they retain the current context of a farmhouse in suburbia.
11. I acknowledge the extent of tree removal over most of the site. Yet this is a garden of mature native trees planted over 60 years ago. The consulting arborist says that most cannot reasonably be retained in a more intensive development due to their age, structure and defects. Those that could be retained are regarded as having low to moderate retention value.
12. This is not an endorsement. Rather, it raises the question of whether their retention is required to positively contribute to the preferred character across the neighbourhood. I am not convinced that the extent of old trees in the neighbourhood demands protection of these trees. My impression is, at best, that canopy vegetation is regenerating in more recent development. The preferred character will emerge once these new trees grow. In this context, Mr Patrick’s landscape plan shows there is adequate space for his new trees to grow. Further to this, the species selected are appropriate for these spaces and, in time, will soften and enhance the new dwellings.
13. These findings relate to the tree described by Mr Bennett. I accept Mr Patrick’s analysis that this tree is not well suited for new development under its canopy. I also agree that the newly constructed dwelling on the property to the east encroaches heavily on its root zone, and that all of its root area on the subject site would need to be retained to ensure its on-going survival. This is not a reasonable expectation given the amount of land already set aside to enhance the farmhouse.

## Do the dwellings have an acceptable level of internal amenity?

1. This question turns on the quantum of private open space to Townhouses 2, 3 and 6. The Council contends that these townhouses do not have the 75 square metres of total open space required by the varied ResCode standard. The Applicant disputes this.
2. I find it is a debate around the margins. The areas of secluded private open space all meet the varied standards and these townhouses have balconies or sizeable front yards or both. I find that the objective for private open space is met, in that these open spaces will provide for the reasonable recreation and service needs of future residents.
3. I disagree with Mr Bennett’s contends that the proposal should fail because townhouses to the north of the site have not optimised their solar orientation. Regard must also be had for the site’s context, and these townhouses all face toward private open space areas on adjoining properties. Screening of windows and balconies to avoid unreasonable overlooking is required on this northern elevation, thus solar orientation cannot be optimised. I find that these townhouses strike a reasonable balance by orienting the secluded private open space areas of Townhouses 2, 3 and 4 to the north. The secluded private open space of Townhouse 1 does not have this orientation, but its design is affected by other factors – notably the heritage goal of opening views to the farmhouse.
4. Mr Bennett also contests the tightness of the car parking arrangements. I made a finding at the hearing that some corrective manoeuvres are acceptable in a residential setting. Future residents will become familiar with the most convenient way to access their garages. Due to the depth of the site, I expect that residents will find that parking in their garages will be more convenient than parking on the street.

## Is the proposal an overdevelopment of the site?

1. The Council contends that the proposal is an overdevelopment due to its perceived failings on heritage, neighbourhood character, tree retention and internal amenity. I have found against the Council on these issues, thus I cannot conclude that the proposal is an overdevelopment.

## What conditions are appropriate?

1. We discussed the draft conditions circulated by the Council. I have limited the plans for endorsement in Condition 1 to those plans showing the proposed buildings, works and tree retention, and have added a series of minor corrections to these plans.
2. I have deleted draft condition 3, which relates to boundary fencing, as the fencing and its treatment is shown on the plans for endorsement.
3. I have altered draft condition 4, which requires a Landscape Plan, to refer to the plans that formed part of Mr Patrick’s evidence and have included his recommendation to extend climbing plants along the walls defining the pathway between TH2 and TH3. I have also included his recommendation to add a Chilean Wine Palm or similar to the west of the deck on the south side of the existing dwelling. In doing so, I have removed several of the draft requirements because they are shown on Mr Patrick’s plans.
4. I have expanded draft condition 5, which relates to Tree Protection, to require timber rumble-strips within the Tree Protection Zones of Trees 8 and 13 during construction and have added a condition requiring the pruning of these trees in accordance with the relevant Australian Standard.
5. I have replaced draft condition 8, which relates to demolition, with a requirement that all conservation works are undertaken with reference to the report prepared by rba Architects and Conservation Consultants that informed this project. I am not persuaded that the report on demolition required by draft condition 8 is necessary given that only non-original fabric is to be demolished. Demolition of this fabric will not affect the structural integrity of the farmhouse.
6. I have deleted draft Conditions 15, 16, 17 and 18, which relate to Vehicle Crossings, corner splays and the visitor parking space respectively. Vehicle crossings are regulated by other means, and the corner splays and the visitor parking space are shown on the plans for endorsement.

## Conclusion

1. For the reasons outlined above, the Council’s decision is set aside. A permit will issue subject to the conditions in Appendix A.

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| Michael Nelthorpe  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/51361 |
| Land: | 276 Lawrence Road  MOUNT WAVERLEY VIC 3168 |

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| What the permit allows |
| In accordance with the endorsed plans:   * Construction of two or more dwellings on a lot; * To demolish or externally alter a building or to construct or carry out works. |

## Conditions:

### Amended Plans

1. Before the use and development starts, amended plans must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The plans must be generally in accordance with Drawing Nos.TP04, TP05, TP06, TP07, TP08, revision Q prepared by Chew Architecture and dated 20 March 2021, but modified to show:
   * + - 1. The location and design (including elevations) of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council’s “Guide to Electricity Supply Meter Boxes in Monash”;
         2. References to existing front fence to be changed from ‘timber paling’ to ‘timber picket’ and to be accurately plotted onto the plans;
         3. Privacy screen PS01 shown on the north side of the rear balcony of TH1, and on the north side of the balconies on TH4 and TH5;
         4. Privacy screen PS01 removed from the south side of the balcony of TH6;
         5. The screening of the east side of the south-facing deck proposed for the existing dwelling to avoid unreasonable overlooking into habitable rooms of Townhouse 6 in accordance with Standard B22 of Clause 55 of the Monash Planning Scheme;
         6. The south-west chimney removed from the roof plan of the existing house on TP05, and the chimney between the living and dining rooms of the existing house shown on the roof plan on TP05;
         7. The ‘West Elevation’ renamed as ‘East Elevation’ on TP08;
         8. A Landscape Plan in accordance with condition 3 of this Permit;
         9. A Waste Management Plan in accordance with condition 11 of the Permit;
         10. Any changes recommended in the Sustainable Design Assessment (SDA) report required by Condition 8 of this permit; and
         11. Any changes shown in the Landscape Plan in accordance with Condition 3.

### No Alteration or Changes

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

### Landscaping

1. Concurrent with the endorsement of any plans pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must be generally in accordance with the Landscape Plan (West) for VCAT and the Landscape Plan (East) for VCAT prepared by John Patrick Landscape Architects and show:
2. climbing plants extended along the walls defining the pathway between TH2 and TH3;
3. the addition of a Chilean Wine Palm or similar to the west of the deck on the south side of the existing dwelling;
   * + - 1. 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 and the location of all areas to be covered by grass, lawn, mulch or other surface material;
         2. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site; and
         3. details of all proposed hard surface materials including pathways, patio or decked areas.

When approved the plan will be endorsed and will then form part of the permit.

### Tree Protection

1. Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
2. Prior to the commencement of any works that are permitted by this permit, timber rumble-strips must be laid in those areas of the Tree Protection Zones of Trees 8 and 13 used for access during construction and must be verified by an authorised officer of the Responsible Authority.
3. Before the occupation of the buildings allowed by this permit, all retained trees must be pruned by a qualified arborist in accordance with Australian Standard AS 4373-2007 *Pruning of amenity trees* to the satisfaction of the Responsible Authority.
4. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted

### Landscaping Prior to Occupation

1. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

### Sustainable Design Assessment

1. Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Design Assessment (in accordance with Clause 22.13) to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. Upon approval the Sustainable Design Assessment will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the Sustainable Design Assessment to the satisfaction of the Responsible Authority.

### Schedule of Conservation Works

1. All Conservation Works should be undertaken under the supervision of a suitably qualified heritage architect/conservation consultant and be generally in accordance with Section 6 – Scope of Conservation Works of the report titled *Existing Condition Assessment and Recommendations* prepared by rba Architects and Conservation Consultants dated 30 March 2021 to the satisfaction of the Responsible Authority. These works must be undertaken before the development expiry date of this permit.

### Waste Management Plan

1. Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must provide details of a regular private / Council waste (including recyclables) collection service for the subject land and be prepared in accordance with the Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants. The plan must include the following:
2. The method of collection of all waste from the land;
   * + - 1. Waste volume calculation and total waste generated per waste stream;
         2. Frequency of Waste collection and permitted collection times;
         3. Plans showing the location of bin storage areas, required bin storage equipment and features, number of bins and location of temporary bin storage at collection point(s);
         4. Provision of bin cleaning equipment, washing facilities and sewer disposal within the waste storage area;
         5. Type / Size of private waste vehicles (if not Council collection);
         6. Details of who will be responsible for taking out and returning bins to kerb (if collection is proposed from street).

### Drainage

1. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve. The private on-site drainage system must prevent discharge from the driveway onto the footpath and into the road reserve. Such a system may include either:
2. a trench grate (150 mm minimum internal width) located within the property and not the back of the footpath; and/or
   * + - 1. shaping the driveway so that water is collected in grated pits within the property; and/or
         2. another Council approved equivalent.
3. 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.
4. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the naturestrip via a Council approved kerb adaptor to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
5. Engineering permits must be obtained for new or altered vehicle crossings and for the new connection to the kerb and channel and these works are to be inspected by Council’s Engineering department.

### Completion of Buildings and Works

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### Permit Expiry

1. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
2. The development has not started before two (2) years from the date of issue.
   * + - 1. The development is not completed before four (4) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires

**- End of conditions -**

1. The submissions and evidence of the parties, any supporting exhibits 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-2)
2. At clause 71.02 of the Planning Scheme. [↑](#footnote-ref-3)
3. At clauses 11 and 16. [↑](#footnote-ref-4)
4. At clause 15. [↑](#footnote-ref-5)
5. Both at page 8 of his Statement of Evidence. [↑](#footnote-ref-6)
6. At page 5 of 18 of Mr Wixted’s Witness Statement. [↑](#footnote-ref-7)