

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P846/2022  
PERMIT APPLICATION NO.TPA/53412

<b>APPLICANT</b>	Chew Arch Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>REFERRAL AUTHORITY</b>	Head, Transport for Victoria
<b>SUBJECT LAND</b>	229 Huntingdale Road & 48 Henry Street OAKLEIGH Vic 3166
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 November 2022
<b>DATE OF ORDER</b>	21 November 2022
<b>CITATION</b>	Chew Arch Pty Ltd v Monash CC [2022] VCAT 1330

### ORDER

- 1 Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act 1998* the application is amended by changing the name of the applicant to:  
Wang Family Trust
- 2 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
  - Prepared by: Chew Architecture
  - Plans: Rev B  
TP001, TP002, TP104, TP104, TP200,  
TP201, TP300, TP400, TP401
  - Dated: 30/09/2022

### Permit granted

- 3 In application P846/2022 the decision of the responsible authority is set aside.
- 4 In planning permit application TPA/53412 a permit is granted and directed to be issued for the land at 229 Huntingdale Road & 48 Henry Street Oakleigh Vic 3166 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:



- Development and use of two (2) x two (2) storey rooming houses with the existing two storey rooming house retained, and alteration to road access in road in a Transport Zone 2.

Tracey Bilston-McGillen  
**Member**

#### **APPEARANCES**

For applicant	Michael Dunn, town planning consultant.
For responsible authority	Anne Maree Roberts, town planner.
For referral authority	No appearance.



## INFORMATION

Description of proposal	Amended proposal - Development and use of two x two storey rooming houses with the existing two storey rooming house retained, and alteration to road access in road in a Transport Zone 2.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme.
Zone and overlays	General Residential Zone Schedule 2 ( <b>GRZ2</b> ).
Permit requirements	<p>Under Clause 32.08-2 of the Monash Planning Scheme ‘rooming house’ use requires a permit where the specific requirements for a Rooming House in Clause 52.23-2 are not met. The proposal does not meet several requirements as follows:</p> <ul style="list-style-type: none"><li>• The total floor area of all buildings on the land exceeds 300 square metres (measured from the outside of external walls) excluding outbuildings.</li><li>• More than 12 persons can be accommodated.</li><li>• More than 9 bedrooms are provided.</li></ul> <p>Under Clause 32.08-09 a permit is also required for buildings and works associated with the ‘rooming house use’ (Section 2 use) where the requirements for the buildings and works exemption in the above Clause 52.23-3 are not met.</p>

## Land description

The Council officer delegate report described the review site as:

‘The site comprises land at 229 Huntingdale Road and 48 Henry Street, Oakleigh. The overall site is ‘L’ shaped and has an area of 1,630.46 square metres.

The land is on one title and comprises of three lots. The land at 229 Huntingdale Road is located on the western side of Huntingdale Road, approximately 50 metres to the north of Edward Street and opposite a small local strip shopping centre.

The land is almost square in shape, with a frontage of 30.48 metres, a depth of 35.66 metres and an overall area of 1,086.92 square metres.

The land falls approximately 1.0 metre towards the rear and has been cleared of buildings and vegetation. There is a vehicle crossing towards the northern end of the frontage and there are two street trees within the Huntingdale Road naturestrip.

The adjoining land at 48 Henry Street, to the west (rear), is rectangular in shape with a frontage of 15.24 metres, a depth 35.66 metres and an area of 543.46 square metres. It is occupied by an existing double storey rooming house with nine (9) bedrooms and is on the same certificate of Title as 229 Huntingdale Road (noting that no Planning Permit was required for this development)’.

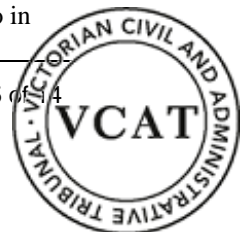
## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 The parties were advised orally of the reason for this decision to allow the review and order that a permit be issued subject to conditions. Following are the short reasons given.
- 2 A Notice of Decision to Refuse to Grant a Permit was issued by Monash City Council (**Council**). The stated grounds of Refusal relate to issues of intensity of use, overdevelopment of the site, neighbourhood character, site layout and building massing, car parking provision, internal amenity, private open space provision, landscaping and architectural detail.
- 3 A number of objections were received and whilst a statement of grounds was received to this proceeding, the only parties to the proceeding include Council, the applicant and Head, Transport for Victoria.
- 4 Amended plans were circulated by the applicant substantially reducing the development. The reduction modified the development from the ‘development and use of four (4) x three (3) storey rooming houses with the existing two storey rooming house retained’ to the ‘development and use of two (2) x two (2) storey rooming houses with the existing two storey rooming house retained’. This is a significant reduction.
- 5 Following the circulation of amended plans, Council advised that it was now in support of the application subject to agreed conditions. Council further stated that in the normal course of events as there are no other third parties to the appeal, a consent order could possibly be entered into with the permit applicant. However, given an objector provided a detailed submission and is requesting their submissions are considered, Council did not sign the consent order but rather, submitted to the Tribunal that it supported the granting of a planning permit.
- 6 Council provided an amended Council officer delegate report providing a full assessment of the proposal against the provisions of the planning scheme.
- 7 At the hearing, both parties addressed the Tribunal on the matters raised by the objectors.
- 8 In making this decision, the Tribunal has taken into account the provisions of the planning scheme, the submission of the Council including the original and amended Council officer delegate reports and the submission of the applicant. I agree with the parties that the amended proposal is

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

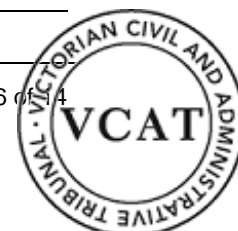


acceptable having regard to the provisions of the planning scheme and make the following comments. The proposal:

- Contributes to housing diversity and now does so on a domestic scale that is consistent with the intention of the Monash Planning Scheme policy framework.
  - Is more respectful of the existing and preferred neighbourhood character of the area having regard to building form and car parking issues have been resolved.
  - Has minimised the impact on adjoining properties.
  - Now adequately satisfies the objectives and standards of Clause 55 of the Monash Planning Scheme, particularly with respect to neighbourhood character, bulk and mass, amenity, landscaping, design details, and integration with the street.
  - It is noted that a landscape plan was prepared by *memLa*<sup>2</sup> detailing the provision of canopy trees and landscaping in the front setback as well as the rear open spaces. It is an improvement to the site.
- 9 The Tribunal will also provide some commentary against the matters raised by the objectors.
- 10 Car parking – The number of spaces provided was identified as a concern. I agree with the submission of both Council and the applicant that the proposed development satisfies (in fact exceeds) the rate of on-site car parking specified for a rooming house use (one space per four bedrooms) as set out in Clause 52.06 of the planning scheme. The proposal provides seven on-site carparking spaces for a total of 24 bedrooms across both buildings.
- 11 Traffic safety – Council’s Traffic Engineers and a submission of One Mile Grid on behalf of the applicant have considered the proposed development having regard to traffic issues. I further note that Head, Transport for Victoria have no objection to the amended proposed development subject to conditions. I am persuaded that the proposed development is acceptable having regard to matters of traffic.
- 12 Boundary realignment. There was concern raised that the proposal would create a shallower lot for the existing rooming house fronting Henry Street which is not acceptable. I understand that the minor reduction is to provide for improved bin enclosures and whilst there is a minor reduction in the depth of the open space associated with the room house at 48 Henry Street, this does not result in any adverse planning issues. I am persuaded by Council that the change is acceptable also having regard to matters of open

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<sup>2</sup> memLa Landscape Plan dated 14 September 2022.



space and garden area. I further note that the Tribunal was advised that there is no application to re-subdivide the land.

## **CONCLUSION**

- 13 In essence, there is no dispute before the Tribunal as both Council and the applicant have agreed on a plan and set of conditions. The Head, Transport for Victoria's conditions have also been included in the permit conditions. There are no other parties to this proceeding. Having said that, there is a review before the Tribunal. The Tribunal has reviewed the proposal in light of the submissions made by the parties and the provisions of the planning scheme. The Tribunal is persuaded by the parties that a permit should issue subject to the agreed conditions.

Tracey Bilston-McGillen  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/53412
<b>LAND</b>	229 Huntingdale Road & 48 Henry Street OAKLEIGH Vic 3166

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Development and use of two (2) x two (2) storey rooming houses with the existing two storey rooming house retained, and alteration to road access in road in a Transport Zone 2.

## CONDITIONS

### Amended Plans Required

- 1 Before the use and development starts, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed, they will then form part of the Permit. The plans must be generally in accordance with the decision plans prepared by Chew Architecture Revision B dated 30 September 2022 but modified to show:
  - (a) Unit 2 bedrooms 9, 10, 11 and 12 south facing windows screened with obscure glazing in accordance with Standard B22 of Clause 55.04-6.
  - (b) The vehicle crossing to provide a minimum width of 3.5 m and be designed with a curved flare.
  - (c) A notation on the site plan specifying no pedestrian access between 229 Huntingdale Road and 48 Henry Street.
  - (d) The fencing to the secluded open space areas at the rear of each building to be shown clearly on the development plans.
  - (e) A gate is to be required providing occupants access from the bicycle and car parking areas to the rear of the buildings,
  - (f) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is 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".
  - (g) A corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5





metres deep (within the property) on both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

- (h) A Rooming House Operation Plan in accordance with Condition 5 of this Permit.
- (i) A Waste Management Plan in accordance with Condition 9 of this Permit.
- (j) A Landscape Plan in accordance with Condition 12 of this Permit.
- (k) A Sustainable Design Assessment in accordance with Condition 16 of this permit.

All to the satisfaction of the Responsible Authority.

### **Layout not to be Altered**

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

### **Satisfactory Continuation**

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

### **Section 173 Agreement (Rooming House)**

- 4 Prior to the endorsement of plans referred to in Condition 1 the owner of the land must enter into an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987. In addition to the usual mechanical provisions, the agreement must provide for the following matters:
  - (a) That no person may reside in the building unless that person is a bona fide resident whether part time, full time, short term or resides there in a supervisory, management or caretaker capacity of the facility;
  - (b) Car parking spaces are only permitted to be used by the occupants of the units and their visitors;
  - (c) Car spaces must not be individually subdivided, on-sold, leased, rented or made available to any other person other than an owner, occupant or visitor of the premises;
  - (d) That residents of the units will be notified in writing as part of any lease or rental agreement that they will not be entitled to car parking permits for on street car parking.
  - (e) Clearly note and acknowledge that should the land cease to be used for a rooming house, a new planning permit may be required for an alternative use. It should be noted that any dispensation for on-site car parking given to the rooming house use is not transferable to any



proposed alternative use of the land. Any subsequent use will be assessed in accordance with the car parking requirements of the Monash Planning Scheme;

- (f) That the rooming house premises must be managed by a single entity with responsibility for all aspects of the use; and
- (g) An operational management plan prepared and implemented to the satisfaction of the Responsible Authority according with Condition 5 of this permit.

All costs of preparation, execution and registration of the agreement must be borne by the owner of the land, or the future Owners Corporation, including those costs incurred by the Responsible Authority.

### **Rooming House Operational Plan**

- 5 Prior to the commencement of the rooming house use, an Operational Management Plan for the use of the site must be submitted to and approved by the Responsible Authority. The Plan should detail but not limited to:
- (a) Rooming houses managed and under the control of a single operator responsible for the operation and maintenance of the entire premises for the life of the use as rooming houses;
  - (b) The 24 hour contact details for the management of the premises displayed in a manner and location that it is visible to any person entering the site. This information is to be updated as required immediately following any change to the nominated responsible management contact person;
  - (c) After hours contact details for management of the facility;
  - (d) Appropriate management of the car park including access arrangements; and
  - (e) Appropriate maintenance of buildings and grounds, including all landscaped areas.
  - (f) Permanent display of the Management Plan in a common area accessible to all residents of the rooming house.

When approved, the Operational Management Plan will be endorsed to form part of this permit and must be implemented to the satisfaction of the Responsible Authority.

### **Use of Land**

- 6 The development can only be used for the purpose of rooming house. Should the land cease to be used for rooming houses, a new planning permit may be required for any alternative use. The car parking requirements for any subsequent use will be assessed in accordance with the provisions of the Monash Planning Scheme.



## Occupancy

- 7 Not more than one person may reside in each bedroom shown on the endorsed plans at any one time.

## Common Areas

- 8 All common areas on the endorsed plan(s) must be made available and accessible to a resident on a shared basis at all times.

## Waste Management

- 9 Concurrent with the endorsement of any plans pursuant to Condition 1, an amended Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must be modified to show:
- (a) separate glass recycling is to be planned for in accordance with the upcoming recycling industry changes and the Recycling Victoria Policy;
  - (b) waste collection hours to be between 10:30am and 2:30pm
  - (c) revised bin storage areas with capacity to store and service separated glass recycling;
- to the satisfaction of the Responsible Authority.
- 10 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.
- 11 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.

## Landscape Plan

- 12 Concurrent with the endorsement of any plans pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by memLa, dated 14 September 2022, except that the plan must show:
- (a) The Tree Protection Zones for the street trees in the naturestrip.
  - (b) The location of rain water tanks.
  - (c) The location of the “rain gardens.”
  - (d) Provision for low level planting only along the driveway edges adjoining the buildings.

- 13 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.
- 14 An in-ground, automatic watering system connected to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority.

### **Tree protection during construction**

- 15 Before any development (including demolition) starts on the land, a tree protection fence must be erected around the Street Trees to be retained. The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.

### **Sustainable Design Assessment**

- 16 Concurrent with the endorsement of plans requested pursuant to Condition 1, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by “Passive Energy” and dated 16 February 2022 but modified to include or show:
  - (a) The revised development Chew Architecture Revision B dated 30 September 2022; and
  - (b) All the required changes under Condition 1

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.

### **Car Parking and Driveways to be Constructed**

- 17 Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
  - (a) constructed to the satisfaction of the Responsible Authority;
  - (b) properly formed to such levels that they can be used in accordance with the plans;
  - (c) surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
  - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;



- (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

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

### **Vehicle Crossovers**

- 18 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 19 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

### **Department of Transport Conditions (Ref: PPR38469/21-A)**

- 20 Prior to the occupation of the development, the crossover and driveway are to be constructed to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 21 Prior to the occupation of the development, all disused or redundant vehicle crossings must be removed, and the area reinstated to kerb, channel, and nature strip to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 22 Vehicles must enter and exit in a forward direction at all times.

### **Drainage & Stormwater**

- 23 The site must be drained to the satisfaction of the Responsible Authority.
- 24 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 25 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing.
- 26 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.

### **Privacy Measures**

- 27 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent

windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

### **Service Location**

- 28 Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the Responsible Authority. Any required services must be clearly detailed on endorsed plans forming part of this permit.

### **Completion of buildings and works**

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

### **Time for Starting and Completion**

- 30 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
- (a) The development is not started before 2 years from the date of issue.
  - (b) The development is not completed before 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

- i within six (6) months afterwards if the development has not commenced; or
- ii within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**– End of conditions –**