

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P949/2023
PERMIT APPLICATION NO.TPA/54502

APPLICANT	HJF Developments Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	5 Kay Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	8 November 2023
DATE OF ORDER	8 November 2023

ORDER

Conditions changed

- 1 In application for review P949/2023, the decision of the responsible authority is varied.
- 2 The Tribunal directs that planning permit TPA/54502 must contain the conditions set out in planning permit issued by the responsible authority on 31 May 2023 with the following modifications:
 - (a) Condition 1(a) is amended to read:
 - 1(a) The overall height of Dwelling 1 is to be lowered by at least 300mm through a reduction in floor to ceiling heights at either the first floor level or dispersed across both the ground and first floor levels.
 - (b) Condition 1(e) is deleted.
 - (c) Condition 4(a) is deleted.
 - (d) Conditions in the planning permit are renumbered accordingly following the modifications described above.
- 3 The responsible authority is directed to issue a modified planning permit in accordance with this order.

Mary-Anne Taranto
Member



APPEARANCES

For applicant

Mr Mark Waldon, town planner of St-Wise
Pty Ltd

For responsible authority

Ms Dianne Stanley, town planner



INFORMATION

Description of proposal	Two double storey dwellings
Nature of proceeding	Application under section 80 of the <i>Planning and Environment Act 1987</i> – to review the conditions contained in the permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	Neighbourhood Residential Zone – Schedule 3 (NRZ3) Vegetation Protection Overlay – Schedule 1 (VPO1)
Permit requirements	Clause 32.09-6 – Construction of two or more dwellings on a lot in NRZ3 Clause 42.02-2 – Vegetation removal
Key scheme policies and provisions	Clauses 22.01 and 55 A future character statement is expressed in clause 22.01 for the site which is located in a ‘Creek Abuttal and Creek Environs’ area.
Land description	Irregular shaped site of 1039sqm located on the west side of Kay Street Mount Waverley. The site is elevated above street level and has a cross-fall from the north-west corner down to the south-east of about 4.6m.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

Background facts

- 1 This is a review of permit conditions on planning permit TPA/54502.
- 2 The disputed conditions are:
 - Condition 1(a);
 - Condition 1(b); and
 - Condition 1(e).
- 3 Related to the above conditions under review, the applicant foreshadows possible consequential modifications to condition 4 which refers to the provision of a landscape plan.
- 4 Condition 1(a) states:
 - a) The garage, lounge room & porch of Dwelling 1 shall be dropped by 500mm so that the height of the dwelling is reduced at the front.
- 5 Condition 1(b) states:
 - b) The parapet feature in front of the master bedroom and ensuite at first floor level of Dwelling 2 shall be removed so that the roof is more prominent and the parapet above the balcony that belongs to the master bedroom of Dwelling 2 shall be removed and replaced with a pitched roof.
- 6 Condition 1(e) states:
 - e) The secluded private open space area of both dwellings shall be terraced rather than one large cut.

The hearing

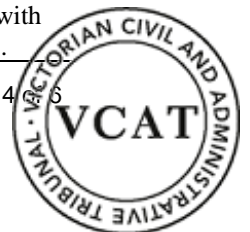
- 7 At the conclusion of the hearing and after a brief adjournment, I gave an oral decision. The written reasons that follow have been prepared based on the oral reasons given with some minor changes for clarification, correction and conversion from oral to written format.

TRIBUNAL'S REASONS

Condition 1(a)

- 8 This condition requires Dwelling 1's garage, lounge and front entry to be lowered by half a metre.

¹ The submissions 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.



- 9 The council asserts that this condition is necessary and appropriate to limit the overall visual bulk and mass of Dwelling 1 in the streetscape having regard to its height, siting and visual relationship with Dwelling 2, elevated siting relative to the footpath level and potential overshadowing of north facing windows of Dwelling 2.
- 10 The applicant relies on the proposed dwelling's setbacks, existing and proposed trees in front of the site and the scale and character of other 2-storey dwellings nearby.
- 11 The proposed driveway alignment, existing and proposed trees in front of Dwelling 1 and its front setback will assist in mediating its scale from the east. I also note the existing development pattern where dwellings nearby are typically set at ground level rather than being cut in at their frontage in this part of Kay Street on its west side.
- 12 Dwelling 1 will however rise above Dwelling 2 from the south. It will have a visually dominant presence in the streetscape when viewed in oblique views from the south above the height of Dwelling 2 and from the north. I find that this response runs counter to the preferred character for this location.
- 13 I otherwise find that there is insufficient information for me to make conclusive findings about any nexus between council's proposed condition 1(a) and amenity for the occupants of Dwelling 2 in terms of shadowing of north facing windows.
- 14 To conclude, I find that condition 1(a) should be amended so that the overall height of Dwelling 1 is lowered by at least 300mm through a reduction in floor to ceiling heights at either the upper level or dispersed across both ground and first floor.
- 15 I will therefore require changes to condition 1(a) to reflect these findings.

Condition 1(b) – Dwelling 2's 2-storey portico element.

- 16 The applicant refers to the presence of other single dwellings nearby which have adopted a similar form of architecture including 2-storey portico forms. While that is so, I note that those dwellings are all on wider lots and in the case of those in Tarella Drive, in a different zone and character area.
- 17 Most importantly, I find that the 2-storey portico element of Dwelling 2 would have a disproportionate vertical emphasis relative to its horizontal proportions. In its present design, this element would accentuate the height and bulk of Dwelling 2's front façade in a way that runs counter to the preferred character expressed for this location. I find that this element of Dwelling 2 would not meet the design detail objective at clause 55.06-1.
- 18 I conclude that condition 1(b) is not to be modified or deleted.

Condition 1(e) – terracing of retaining walls at rear of both dwellings.

- 19 In-principle, I accept the council’s submissions that the provision of terracing of retaining walls over two steps instead of one has the potential to reduce the visual impact of high retaining walls thereby improving the outlook from inside the proposed dwellings.
- 20 However, there remains some uncertainty about the implications of the modifications sought having regard to the presence of the easement, neighbouring site conditions, amenity benefits for future residents and potential amenity disbenefits for neighbours. The condition is somewhat vague and the implications of its implementation too uncertain. I am unable to conclude that condition 1(e) is necessary or appropriate on the basis that without this condition, landscaping or amenity outcomes at the rear of both proposed dwellings would otherwise be unacceptable.
- 21 I will therefore require deletion of condition 1(e). Condition 4(a) is consequentially deleted.

Mary-Anne Taranto
Member

