

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P211/2022
PERMIT APPLICATION NO.TPA/53063

APPLICANT	Al Jawhara Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	1 Elwood Street, NOTTING HILL Vic 3168
HEARING TYPE	Hearing
DATE OF HEARING	8 & 9 August 2022
DATE OF ORDER	15 August 2022
CITATION	Al Jawhara Pty Ltd v Monash CC 2022 [VCAT] 911

ORDER

Amend permit application

1 Pursuant to 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: Archtistic
- Drawing numbers: Sheets 1 of 13 to 13 of 13
- Revision: Amendment D – VCAT Issue
- Dated: 17 June 2022

and

- Prepared by: John Patrick Landscape Architects Pty Ltd
- Drawing numbers: L-VCAT01
- Revision: A
- Dated: 20 June 2022

No permit granted

2 In application P211/2022 the decision of the responsible authority is affirmed.



3 In planning permit application TPA/53063 no permit is granted.

Sarah McDonald
Member

APPEARANCES

For applicant

Robbie McKenzie, Ratio

He called the following witness:

- John Patrick, John Patrick Architects Pty Ltd

For responsible authority

David deGiovanni, DeGiovanni Town Planning



INFORMATION

Description of proposal	Construction of five, three storey dwellings.
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 6 (GRZ6).
Permit requirements	Clause 32.08-6 – Construct two or more dwellings on a lot in the GRZ6.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 21.01, 21.04, 21.08, 22.01, 22.04, 22.05, 22.13, 32.08, 52.06, 65, and 71.
Land description	The review site is located on the western side of Elwood Street, one property to the south of its intersection with Ferntree Gully Road. It is rectangular with frontage of 16.76 metres and side boundary length of 54.86 metres, and area of 920 square metres.
Tribunal inspection	A viewing of the review site and surrounding area was undertaken prior to the hearing.



REASONS¹

- 1 Oral reasons for this decision were given at the conclusion of the hearing. The following are the oral reasons in written form, with minor editing.

WHAT IS THIS PROCEEDING ABOUT?

- 2 Al Jawhara Pty Ltd (**applicant**) is seeking a permit to construct five dwellings (**proposal**) on the land at 1 Elwood Street, Notting Hill (the **review site**).
- 3 The Monash City Council (**Council**) refused to grant a permit for the proposal.
- 4 The Council's grounds of refusal relate to, in summary:
 - the building design outcome and neighbourhood character;
 - objectives and standards at clause 55 of the Monash Planning Scheme (**Scheme**);
 - vehicle access to the car parking spaces;
 - landscaping;
 - loss of a street tree;
 - impacts on the streetscape and adjoining properties;
 - internal amenity;
 - overdevelopment of the site.
- 5 The applicant sought this review of the Council's decision.
- 6 My decision is based on the amended plans comprising:
 - Architectural plans prepared by Archtistic, Amendment D – VCAT Issue, dated 17 June 2022, Sheets 1 of 13 to 13 of 13; and
 - Landscape plan – prepared by John Patrick 'Landscape plan for VCAT', Revision A, dated 20 June 2022;which have been substituted for the permit application plans.
- 7 The amended proposal comprises, in summary:
 - i the five dwellings arranged in two separate modules down the length of the land; with townhouses 1-3 at the front and townhouses 4-5 at the rear;
 - ii a central break of 4.35 metres width located between townhouses 3 and 4;

¹ 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 this material will be cited or referred to in these reasons.



- iii pedestrian and vehicle access to all five dwellings via a common driveway abutting the southern boundary.
- 8 Despite the amendments to the plans the Council maintains its grounds of refusal of the application.

Submissions of the parties

- 9 The applicant submits that:
 - i The proposal has appropriate regard to the urban context and satisfies the neighbourhood character objectives relating to the Monash National Employment Cluster.
 - ii The development seeks to contribute towards the supply and diversification of housing in this highly accessible and strategic location.
 - iii The general nature of this development proposal is in keeping with the strategic intent of the zoning and preferred character statement.
 - iv The provision of new garden space and canopy tree plantings is viable and represents a high quality landscape outcome.
 - v The proposal has suitably limited off-site amenity impacts and will offer acceptable on-site amenity for future occupants.
- 10 In relation to landscaping, the applicant relies on the landscape plan and evidence of John Patrick.
- 11 The Council's submissions relate to:
 - i The transitional context of the site opposite a General Residential Zone – Schedule 3 (**GRZ3**), and policy directives that require a tempered response in this setting.
 - ii The sheer three storey wall to Elwood Street.
 - iii The poor streetscape presentation arising from the decision to locate the garage and tandem space of dwelling 1 facing the street.
 - iv The extent of encroachment into
 - the side setback requirement of Standard B17, and
 - intensive built form presentation to the north.
 - v The unimaginative box-like architecture that fails to achieve the 'high quality design and finish' contemplated in the neighbourhood character objectives.
 - vi The compromised internal amenity afforded to a number of the dwellings.
- 12 The Council submits that despite the strategic support for change in this location the development layout is too intense and has failed to have



appropriate regard to the neighbourhood character objectives and decision guidelines of the General Residential Zone – Schedule 6 (**GRZ6**) that applies to the land.

- 13 The Tribunal must decide whether a permit should be granted, and if so, what conditions should be applied.

What are the key issues?

- 14 Based on the submissions and relevant policies and provisions of the Scheme, I consider the key issues to be determined relate to:
- the strategic context and preferred neighbourhood character;
 - landscaping;
 - internal amenity for residents of the proposed dwellings; and
 - vehicle access to the car parking spaces.

What are the relevant facts of the case?

- 15 I have been provided with a detailed description of the review site and its environs, the proposal, and the relevant Scheme policies and provisions. It is not necessary for me to repeat that material other than to record the following.

Site and planning context

- 16 The review site is located on the western side of Elwood Street, one property to the south of its intersection with Ferntree Gully Road. It is rectangular with frontage of 16.76 metres and side boundary length of 54.86 metres, and area of 920 square metres.
- 17 Contextually, the site is located within an established residential and mixed use area, approximately 70 metres from the intersection of Blackburn and Ferntree Gully Roads.
- 18 While some older housing stock is still present in Elwood Street and surrounding streets to the south and east, the neighbourhood character is not homogenous and is undergoing significant change as there are newer, contemporary developments emerging throughout the area.
- 19 The review site is well located in terms of proximity to a range of commercial, community, transport, and recreational services.

Zone provisions

- 20 The review site and other properties on the western side of Elwood Street are zoned GRZ6. The GRZ6 relates to the Monash National Employment and Innovation Cluster and Clayton Activity Centre.

21 The purpose of the GRZ includes, as relevant:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

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

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

22 The GRZ6 schedule includes the following ‘neighbourhood character objectives’:

To facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish.

To provide an interface between the Clayton Activity Centre, the Monash Employment and Innovation Cluster, the housing growth area and the lower scale surrounding garden city suburban areas.

To encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.

23 The GRZ6 schedule includes local variations to the following standards at clause 55 of the Scheme:

- B6 – Minimum street setback;
- B13 – Landscaping;
- B17 – Side and rear setbacks;
- B28 – Private open space;
- B32 – Front fence height.

The proposal complies with the local variations to these standards with the exception of standard B17 in relation to the setbacks of the third storey along the northern side boundary.

24 The GRZ6 schedule also specifies a maximum building height of 11.5 metres and three storeys for a dwelling or residential building. The proposal complies with this requirement.

- 25 The decision guidelines under the GRZ6 schedule require consideration of, among other things:
- Whether the development provides an appropriate transition to built form on adjoining sites.
 - The robustness of proposed materials and finishes.
 - The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
 - The impact of the development on nature strips and street trees.
 - The location, quantity and species of vegetation provided.
- 26 The land on the opposite side of Elwood Street is in the GRZ3. It has different neighbourhood character objectives, and local variations to clause 55 standards. The Council submits that the GRZ3 has a greater emphasis on achieving character outcomes.

Planning policies

- 27 Planning policies relevant to the key issues in dispute include:

- Clause 15 – Built environment and heritage;
- Clause 16 – Housing;
- The Municipal Strategic Statement–
 - Clause 21.01 – Introduction,
 - Clause 21.04 – Residential Development,
 - Clause 21.08 – Transport and traffic;
- The local planning policies–
 - Clause 22.01 – Residential Development and Character Policy,
 - Clause 22.05 – Tree Conservation policy.

Particular and other provisions

- 28 Particular Provisions of the Scheme of relevance to the key issues in dispute are:
- Clause 52.06 – Car parking, which sets out car parking requirements, including design standards for accessways and car parking spaces.
 - Clause 55 – Two or more dwellings on a lot and residential buildings, which include provisions (comprising objectives, standards, and decision guidelines) to:
 - implement the Municipal Planning Strategy and the Planning Policy Framework,



- achieve residential development that respects the existing neighbourhood character, or which contributes to a preferred neighbourhood character,
- encourage residential development that provides reasonable standards of amenity for existing and new residents,
- encourage residential development that is responsive to the site and the neighbourhood.

Objections

29 There were three objectors to the application from residents of the apartment building on the adjoining property to the north. Grounds of objection related to loss of light, insufficient car parking, traffic congestion and devaluation of property values. The objectors are not parties to this proceeding.

Site inspection

30 I undertook a viewing of the review site and surrounding area prior to the hearing.

31 I have also been provided with a range of photographs, aerial photographs, plans and perspectives that enable me to arrive at a decision about the matters in dispute.

WHAT ARE THE TRIBUNAL'S FINDINGS?

32 In the determination of the proceeding, I have considered:

- the statements of grounds, submissions, and evidence of the parties;
- the supporting exhibits given at this hearing;
- the relevant policies and provisions of the Scheme; and
- taken into account all the relevant matters as directed under the *Planning and Environment Act 1987*.

33 In accordance with the practice of the Tribunal I do not cite or refer to all this material in my reasons.

34 I provided my reasons orally. I will now outline my findings on the key issues.

The strategic context and preferred neighbourhood character;

35 There is no dispute that there is strategic support for change in this location. The site is located within both the 'Activity and Neighbourhood Centres' (Category 1) and the 'Residential Land in the Monash Employment Cluster' (Category 3) under the Residential Development Framework at clause



21.04. These are the areas identified as having future development potential;² and where residential growth is to be located.³

36 There is also planning support for increasing housing diversity and choice by providing a variety of dwelling sizes and types.⁴

37 The neighbourhood character statement for the ‘Monash National Employment Cluster and Clayton Activity Centre – Housing Diversity Area’ anticipates:

- this general area will experience major redevelopment; and
- new housing will generally comprise multi dwelling developments such as units and, where appropriate, low rise apartments.⁵

38 I am satisfied that a proposal for five townhouses on the review site is generally consistent with the scale and diversity of housing development anticipated for this area.

39 I am also satisfied that the three storey building form and height is, in principle, consistent with the scale of development anticipated in the strategic context, and the provisions of the GRZ6.

40 I am also satisfied, in principle, that the three storey building form and height is acceptable at the interface with and provides an acceptable transition to the GRZ3 zoned properties on the opposite side of Elwood Street. This is because:

- i the GRZ3 similarly provides for building heights up to 11 metres and three storeys;
- ii the emerging building height on the opposite side of Elwood Street is two storeys; and
- iii the interface between the two zones is along the street, which provides a separation that assists in tempering the differences in building heights and form that might be expected under the different neighbourhood character objectives and provisions that apply.

41 Furthermore, there is already a substantial building form on the western side of Elwood Street in the apartment building on the adjoining property to the north, on the corner of Ferntree Gully Road, which presents a three storey frontage along Elwood Street, and rises to a small five storey element further to the west.

42 However, I am not persuaded that the detailed design of the proposal is consistent with the neighbourhood character objective ‘To facilitate housing

² Clause 21.04-1 (Overview).

³ Clause 21.04-3 (Objectives, strategies, and implementation).

⁴ Clause 21.04 (Residential development), clause 32.08 (General Residential Zone) and the GRZ6 schedule objectives.

⁵ Clause 22.01-4 (Preferred future character statements).



diversity in the form of units, townhouses and apartment developments of high quality design and finish’.

- 43 The issues in this regard concern the quality of the design and finish, and include:
- i The boxy, top heavy building form that result from:
 - the combination of sheer three storey wall planes and upper level elements cantilevering over lower levels across all interfaces with the public realm and adjoining properties;
 - the 4 metre minimum setback provided for under the variation to the minimum street setback standard B6 under the GRZ6 schedule being applied and maintained for the full height of the building;
 - the extent of encroachment into the side boundary setback required under standard B17 along the northern side interface to the adjacent apartments; and
 - the very modest extent and scale of windows in proportion to some of the wall planes.
 - ii The setback of the third floor level along the northern boundary interface with the apartments on the adjoining property, is opposite balconies and habitable room windows of seven apartments at ground and first floor level that only have an outlook to the review site. The amenity of these apartments is already compromised by the screening along the balconies and the windows being narrow horizontal slots. I agree with the Council that the outlook of these apartments will be upwards to the sky. I cannot be satisfied on the information before me that the extent of the encroachment of the proposed buildings on the review site into the side setback required under B17 will not adversely impact what little outlook these apartments have.
- 44 While Mr Patrick’s landscape plan makes the most of the space available for landscaping on the review site, there are limited opportunities along the northern boundary for landscaping to screen or filter the view of the proposed building from the adjacent apartments. Although there is landscaping on that adjoining property, along the boundary with the review site, I am not satisfied that it will satisfactorily soften the visual impact of the proposed buildings in views from the apartments for some time.
- 45 I am also concerned about the siting of the garage and tandem car parking space to Townhouse 1 across the frontage of the building and set back only 4 metres from the street. I am not satisfied that the detailed design will conceal or moderate the visual presence of the car parking in the street façade, particularly the tandem car parking space that will only be partially concealed. While Mr Patrick’s proposal for a creeping plant to be grown on

the garage wall is welcome, this will not resolve the issue of the visibility of the tandem car parking space.

- 46 I also take issue with the proposal to locate the bin enclosures in the landscaping strip along the southern side boundary. Notwithstanding Mr Patrick's evidence that he doesn't think they will be noticeable or intrusive, I am not satisfied that this design response reflects a high quality design outcome. Furthermore, they limit the extent of landscaping able to be planted along the southern side boundary, which is already compromised by the need to provide indentations to accommodate vehicle movements for vehicles exiting car parking spaces.

Internal amenity

- 47 The poor quality of the design extends to the poor amenity that will be provided to residents of the proposed development. My concerns in this regard include:
- i The poor integration of the ground floor level private open space areas of townhouses 1, 3, 4 and 5 with their internal living areas. The primary living areas of all dwellings are at first floor level, removed from the ground floor level open spaces. The ground level open spaces for townhouses 3, 4 and 5 will only be accessible from the multi-purpose rooms. While these rooms could be living rooms, they may also be used as home offices or bedrooms, which would limit the connectivity of these open spaces for all residents of the dwellings.
 - ii The proposal to provide the front setback area as an area of private open space associated with townhouse 1 is incoherent given it is not directly accessible from the dwelling.
 - iii The battle-axe shape of the ground level open space for townhouse 4, results in the functional area of this space having no direct relationship with the inside of the dwelling, even in a visual sense.
 - iv I am persuaded by the Council's submissions that the ground level open space for townhouse 5 is really an exercise in achieving the minimum Garden Area required under the zone provisions.
 - v The amenity of the ground level open spaces for townhouses 3 and 4 will be substantially diminished by these spaces being set between the sheer three storey walls of the respective townhouses. The wall heights will be more than double the width of the separation between the walls. Along their northern aspect these spaces have an outlook to the apartment building
 - vi I am not persuaded that these ground level open spaces are secondary spaces. Even though each dwelling has a balcony directly accessible from the living area, the ground level open spaces are generous spaces compared to the balconies and could provide useable open space areas

if they were readily accessible from the living areas. They are only 'secondary' spaces because the design response has not sought to integrate these spaces with the interior of the dwellings in an acceptable way.

- 48 For these reasons, I am not persuaded that the ground floor level private open space areas are consistent with the objective and decision guidelines of the Private open space objective at clause 55.05-4.
- 49 I am also concerned with the internal amenity of the ground level multi-purpose rooms to townhouses 1 and 2. The only windows to these rooms face the small service courtyards that are to accommodate storage sheds, water tanks and clotheslines. Other than a creeping plant proposed on the boundary fence under the clotheslines, there is no other opportunity for landscaping in these spaces. The outlook of these spaces will not provide an acceptable amenity for habitable room windows with a sole aspect.
- 50 The multi-purpose rooms to townhouses 3, 4 and 5 also have an outlook to their service yards, however they do have other windows providing outlooks to alternative open spaces.
- 51 I am also concerned that the design of townhouses 1 and 5 does not maximise opportunities for solar access to the north facing living room windows, due to the extent of the overhang of the levels above, and screening to the balcony and windows of townhouse 1.

Potential amendments to the plans

- 52 I have considered whether these various issues can be resolved by amendments to the plans. I have noted the applicant's suggestions that:
- i The setback of the third storey from the front boundary could be increased by 1 metre, to be set back from the front wall of the two levels below.
 - ii The northern wall of the third storey could be raked back to achieve compliance with standard B17, particularly in relation to townhouses 1 and 2 which will be most visible within the Elwood Street streetscape.
- 53 These amendments would go some way to addressing my concerns. However, I consider other amendments would also be required. These include:
- i Achieving compliance with standard B17 along the northern side where the walls are opposite balconies or clear glazed habitable room windows in the adjacent apartments.
 - ii Increasing the width of the separation between townhouses 3 and 4 and/or reducing the height of the walls either side of this space to provide an improved amenity of the open spaces to be created for

these townhouses The space could be increased if the rear boundary setback were correspondingly reduced.

- iii Improving the connectivity between the ground level open spaces of townhouses 1, 3, 4, and 5.
- iv Providing an alternative or improved outlook for the windows of the ground floor level multi-purpose rooms of townhouses 1 and 2.
- v Reducing the extent of overhang of the upper level above the north facing living room windows of townhouses 1 and 5 to increase solar access.
- vi Removing the tandem car parking space to townhouse 1 within the frontage of the building; this may be achieved by providing an alternative layout that relocates the car parking to the western side of the dwelling or otherwise by reducing the size of this dwelling to be two bedrooms to reduce the car parking requirement.
- vii Providing alternative locations for bin storage areas not in the landscape strip along the southern boundary.

54 I am not satisfied that all these matters can be addressed by permit conditions requiring amendments to the plans.

CONCLUSION

55 For the reasons I have given, the decision of the responsible authority is affirmed.

56 I direct that no permit is granted.

Sarah McDonald
Member