

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11582/2021
PERMIT APPLICATION NO.TPA/52147

CATCHWORDS

Three-storey dwellings; Residential Growth Zone; Activity Centre setting; underdevelopment; visual bulk.

APPLICANT	George Zoraya
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	14 Blair Road GLEN WAVERLEY VIC 3150
HEARING TYPE	Hearing
DATE OF HEARING	5 April 2022
DATE OF ORDER	19 April 2022
CITATION	Zoraya v Monash CC [2022] VCAT 417

ORDER

- 1 Pursuant to section 127 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:
 - Prepared by: Residential Building Design
 - Drawing numbers: TP02-TP04 Rev. C, TP05 Rev. B, TP06-TP08 Rev. C
 - Dated: Revision C undated
- 2 In application P11582/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52147 a permit is granted and directed to be issued for the land at 14 Blair Road GLEN WAVERLEY VIC 3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of three (3) triple storey dwellings.

Michael Nelthorpe
Member



APPEARANCES

For applicant	Mr Chris Mackenzie, town planner of Planning Appeals.
For responsible authority	Ms Sally Moser, principal planner/appeals advisor.

INFORMATION

Description of proposal	Three triple 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	Residential Growth Zone Schedule 4
Permit requirements	Clause 32.07-5: to construct two or more dwellings on a lot.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 21.04, 21.06, 22.01, 22.14, 32.07, 52.06, 55, 65 & 71.02.
Land description	This rectangular site is at the end of Blair Street on the eastern side. It has a 17.8m frontage, a 50m depth and an area of 890m ² . A single dwelling occupies the site. The playing fields of Glen Waverley Secondary College are adjacent to the south and The Glen Shopping Centre is on the opposite side of Snedden Drive (immediately east of the site).
Tribunal inspection	1 April 2022.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 George Zoraya ('the Applicant') proposes to construct 3 three-storey townhouses at 14 Blair Road, Glen Waverley. Monash City Council ('the Council') refused to grant a permit on grounds relating to under-development of the site and/or the development's intensity given its low density. The Applicant seeks a review of this decision.
- 2 Essentially, the Council says that many sites in the municipality can accommodate three dwellings whereas this site's strategic location demands a higher yield.
- 3 The Applicant disagrees with the Council. They say that the Glen Waverley Structure Plan ('the Structure Plan') and associated planning policy supports a range of dwelling densities depending on a site's location in the area covered by the Structure Plan. They rely on an earlier Tribunal decision where the circumstances and context were the same and the Council's decision was set aside.²

WHAT ARE THE KEY ISSUES?

- 4 The key issues are:
 - Is the proposal an underdevelopment of the site?
 - Is the proposal too intensive given the proposed density?
- 5 Having heard submissions and having inspected the site, I am persuaded that the proposal is not an underdevelopment of the site.
- 6 Regarding the development's intensity, I find it is appropriate given the site's location and the expectations of policy.
- 7 I give my reasons for these findings after briefly describing the site and surrounds, the policy framework and zone controls, and the proposal.

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.

² *New Bee Pty Ltd v Monash CC* [2019] VCAT 1971.



THE SITE AND SURROUNDS



The green pin identifies the site.

- 8 The site is located immediately to the west of The Glen Shopping Centre and Snedden Drive (the ‘ring road’) at its rear. It is part of a small network of residential streets bounded by High Street Road to the north, Wesley College to the east and the Glen Waverley railway line to the south. Glen Waverley Secondary College and its sports fields and running track are immediately south of the site.

THE POLICY FRAMEWORK

- 9 Clause 22.14 applies to the Glen Waverley Major Activity Centre (‘GWAC’). This clause is consistent with State policy at clauses 11 and 16. It identifies the Centre as:

A regionally significant centre that is located within close proximity to the Monash National Employment and Innovation Cluster and major public transport and road infrastructure.

- 10 Land use policy in clause 22.14 seeks to:

Locate and combine land uses within the GWAC in accordance with Map 1 – Land Use Plan.

- 11 Amongst other things, it:

Encourage[s] a broader range of housing choices to be developed throughout the centre, including higher density housing on key development sites in the commercial area, residential uses above retail and lower scale housing in the surrounding areas.

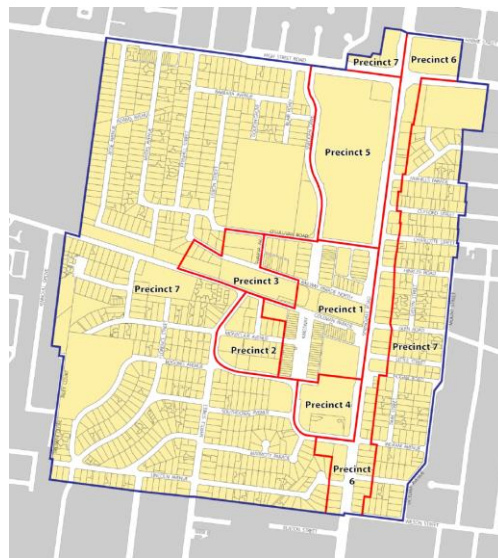


12 Regarding built form, clause 22.14 relevantly seeks to:

Encourage excellence in building design within both commercial and residential areas so that development responds to the characteristics of the site and its context.

Ensure that developments contribute to the ‘buildings-in-landscape’ character of the existing residential areas surrounding the GWAC commercial centre.

13 Clause 22.14 includes specific policies for the precincts on Map 2 – Glen Waverley Activity Centre Precinct Plan.



14 The site is in Precinct 7 as described below:

Precinct 7 – Surrounding Residential

The surrounding residential precinct provides a key role in supporting the growth of the centre by delivering a diverse range of housing that is located in close proximity to shops and services, public transport and open space. A number of streets will be enhanced as key walking and cycling routes connecting into the town centre.



It is policy to:

- Encourage the intensification of housing in identified areas on High Street Road, Snedden Drive, Coleman Parade, Myrtle Street, Bogong Avenue and Springvale Road.
- Improve pedestrian and cycle links between the precinct and GWAC commercial area.

15 The application of the Residential Growth Zone Schedule 4 to the site and properties to the north indicates that the '*area identified on Snedden Drive*' is that part of the sleeve of properties west of Snedden Drive and south of High Street Road shown as 'Area 7' on Map 1 – Land Use Plan.

16 The purpose of the Residential Growth Zone includes to:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide housing at increased densities in buildings up to and including four storey buildings.
- To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.
- To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.
- To ensure residential development achieves design objectives specified in a schedule to this zone.

17 The design objective of Schedule 4 to the Zone is:

To provide for diverse housing development with appropriate setbacks to allow for landscaping and canopy trees.

18 Schedule 4 to the Zone varies the requirements of clause 55 by allowing front setbacks of 5m, and by requiring

Retention or provision of at least three canopy trees (two located within the front setback) with a minimum mature height equal to the height of the roof of the proposed building or 10 metres, whichever is greater.

19 The Application requirements of Schedule 4 to the Zone include the provision of a landscape plan that relevantly:

Responds to the 'buildings-in-landscape' character of the existing residential areas surrounding the Glen Waverley Major Activity Centre commercial area and contributes to the green enveloping edge along the future ring road.

Identifies, retains and protects significant vegetation on the site and significant vegetation on adjoining properties in proximity to the

development which contributes to the character of the area, including the identification of tree protection zones.

Proposes new canopy trees and other vegetation that will enhance the landscape character of the Glen Waverley Major Activity Centre particularly within the front, side and rear setbacks, along driveways and walkways, and within private open space areas.

- 20 The Schedule's decision guidelines require consideration of the above matters amongst other things. They also include the following:

Whether the development incorporates design measures to maximise accessibility, safety and amenity for the occupants and visitors, including those with limited mobility, as well as providing for the safety and amenity of those using the public streets.

Whether the development enables the consolidation and development of sites in a progressive manner that does not result in the creation of small, isolated holdings of land of limited development potential.

THE PROPOSAL

- 21 Three dwellings with total floorspace areas ranging from 327m² to 354m² are proposed for the site. Each has 4 bedrooms (some with studies and/or en suites), two living areas and associated facilities including a lift, and a two-car garage. The site coverage is 55.7% and landscaping is generally limited to the frontage, rear setback and the secluded private open space areas.



The side elevation showing the scale of the dwellings.

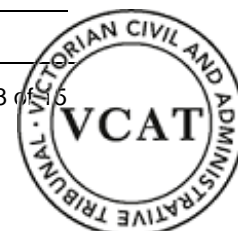
IS THE PROPOSAL AN UNDERDEVELOPMENT OF THE SITE?

- 22 The Council says that the area containing the site is set aside for different housing outcomes rather than larger houses. It contends that the proposal does not provide the housing diversity that the Structure Plan anticipates. It notes that the site could be consolidated with one or all four of the lots to

the north and, by doing so, provide a four-storey apartment building at a far higher density.

- 23 The Applicant acknowledges these arguments but contends that the Structure Plan envisages a range of development outcomes on a precinct-by-precinct basis. They note that many precincts in this centre seek 4 to 10 or more storey mixed-use developments with apartments on upper floors, whereas the sleeve containing the review site anticipates diverse housing development of three or four storeys.
- 24 They also note that the built form of other precincts is guided by a Design and Development Overlay whereas the sleeve containing the review site is not.
- 25 In their submission, this provides the context for the design objective of Schedule 4 and suggests that the '*diverse housing development*' sought by the Schedule's design objective allows for townhouses as well as apartment buildings.
- 26 They say that the decision guideline regarding consolidation of lots is not offended because the site is at the edge of the group of lots that could potentially be consolidated. Due to this edge location, the proposal will not cause small, isolated land holdings to be created. Rather, it retains the option of consolidation of the other three lots to the north.
- 27 They rely on the decision in *New Bee*, where a comparable development with the same policy framework was found not to be an underdevelopment.³ In that decision, the Tribunal concluded that:
 - 16 The proposal for the subject site meets the policy objectives of providing an intensification and diversity of dwellings within the Glen Waverley Activity Centre with four bedroom dwellings providing for potential future family accommodation, whereas the single and two bedroom dwellings within the apartment building provide for accommodation for potentially single or more elderly members of the population. As noted in clause 21.04 in relation to residential development, 'there is an increasing demand for a variety of different housing styles to cater for changing household sizes and structures'.
 - 17 The council in refusing the proposal on the subject site because it only provides four dwellings, is taking a very narrow view of the policy to provide for residential intensification. In my view, the proposal in terms of providing four dwellings with four bedrooms each will contribute to the range of housing types to meet diverse needs and varying densities that offer more choice in housing within the Glen Waverley Activity Centre.

³ *New Bee Pty Ltd v Monash CC* [2019] VCAT 1971.



- 28 My finding regarding the question of underdevelopment of this site are influenced by the Applicant's submissions and by *New Bee*.
- 29 I agree with the Applicant's interpretation of the Structure Plan. In effect the land subject to Schedule 4 of the Residential Growth Zone has less intensive development expectations than other precincts.
- 30 I also accept that the proposal can proceed without creating isolated small holdings and without prejudicing the consolidation of the lots to the north.
- 31 I give significant weight to the Tribunal's decision in *New Bee* given that the Council made the same submissions in that case.

IS THE PROPOSAL TOO INTENSIVE GIVEN THE PROPOSED DENSITY?

- 32 The Council says that the proposal does not provide the '*buildings-in-landscape*' sought by clause 22.14 and Schedule 4 to the Residential Growth Zone. It says that the proposed footprints relative to the site's size leave inadequate space for landscaping along the side and rear boundaries.
- 33 I am not persuaded by these submissions. Schedule 4 varies the landscape standard of clause 55 in a prescriptive manner. It seeks three canopy trees per site with two located in the frontage. It requires a landscape plan that '*proposes new canopy trees and other vegetation*' around the buildings. This indicates that other types of landscaping can fulfil the '*buildings-in-landscape*' objective. Arguably, it acknowledges that canopy tree planting may be limited by development of a greater intensity.
- 34 Regarding the decision guideline requiring consideration of whether the proposed landscape '*contributes to the green enveloping edge along the ring road*', I am satisfied that the proposed hedge along the rear boundary meets this expectation. The landscape edge of Snedden Drive is a combination of landscaping in the Snedden Drive verge and landscaping in private properties. Judging by the current balance between public and private works, I am satisfied that the proposed planting is acceptable.
- 35 Regarding the limited planting along the side boundaries, the Applicant persuades me that it reflects the site's context. Relatively new and large two storey dwellings occupy the sites on the opposite side of Blair Road and planting on the side boundaries is very limited. Apart from this, they advise that the proposed plants are intended to climb the chain mesh fence along the boundary with the School. This is an acceptable outcome.
- 36 Regarding the development's bulk, I acknowledge that the side setback standard is not met, yet I find this is acceptable given that policy encourages more intensive development on the site.

ARE THERE ANY OTHER ISSUES?

- 37 Due to the site's fall, the eastern end of the floor level of Dwelling 3's patio and associated glazed sliding doors and windows is more than 800mm



above natural ground level. The patio is also shown as extending to the shared boundary with the property to the north. The Applicant says that overlooking from the living area and patio can be resolved by reducing the patio's width and installing a free-standing screen that is 1.7m higher than these floor levels.

- 38 I find that this is not acceptable given that the screen is likely to be between 1m and 1.5m higher than the boundary fence. Rather, I find that the patio must be relocated to the southern side of the living area and that the glazed doors and windows must be replaced with a window with a sill height no less than 1.7m above the living area's finished floor level. While the relocated patio will not receive northern sunlight, I am satisfied that the secluded private open space in the rear setback will compensate for this. I will also require this patio to be a minimum of 1.5m clear of the southern boundary.

WHAT CONDITIONS ARE APPROPRIATE?

- 39 We discussed the draft conditions at the hearing. I agree that draft Condition 1c) should apply to all north-facing windows, and that draft Condition 1d) is not warranted. I have revised draft Condition 1g) because I am satisfied with the proposed location of the electricity supply/meter boxes. I have deleted draft Condition 1h) because a corner splay is only required on the north side of the driveway, and it is shown on the architectural and landscape plans.
- 40 I have deleted draft Conditions 1i), j), k) and 4 to 8 because I agree with the updated Arborist Report that says that all trees on site can be removed and replaced, that no trees on neighbouring properties are affected and that no street trees are affected.
- 41 I consider the landscape plan circulated by the Applicant is satisfactory in concept and will revise draft Condition 9 to refer to this plan, while allowing the Council to review the proposed species. Given my findings, both the amended plans and the landscape plan are revised to include my requirements for Dwelling 3's patio.
- 42 I have also deleted draft Conditions 16 to 19 regarding works in the road reserve as these works are regulated by other legislation.
- 43 I have also amended the permit expiry condition to reflect the wording preferred by the Tribunal.

CONCLUSION

44 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Michael Nelthorpe
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52147
LAND	14 Blair Road GLEN WAVERLEY VIC 3150

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of three (3) triple storey dwellings.

CONDITIONS

Amended Plans

- 1 Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans prepared by RBD – Residential Building Design, TP01 – TPO8 Revision C 0221, but modified to show:
 - (a) The patio of Dwelling 3 to be relocated to the south side of that dwelling and be adjacent to the ‘Meals/Living’ area, and be served with floor to ceiling glazed doors, and to be a minimum of 1.5m clear of the southern boundary.
 - (b) The glazed doors and windows on the north side of Dwelling 3’s ‘Meals/Living’ area replaced with a window with a sill height no less than 1.7m above the living area’s finished floor level.
 - (c) Retaining wall heights.
 - (d) Overlooking diagrams and view lines from unscreened upper level north facing windows and the north facing ground floor glazed doors and windows of Dwelling 2 indicating compliance with Standard B22 of Clause 55. Any trellis sought to be used is to be freestanding.
 - (e) Acoustic treatment of any windows orientated to Snedden Drive.
 - (f) Letter boxes no greater than 900mm in height.
 - (g) The design of the proposed electricity supply meter boxes/supply structures.
 - (h) A landscape plan required in Condition 4.
 - (i) An updated Waste Management Plan in accordance with Condition 11.



- (j) An updated Sustainable Design Assessment in accordance with Condition 13.

No Alterations

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

Common Boundary Fences

- 3 All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

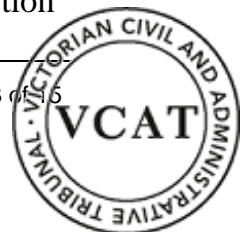
Landscaping

- 4 Concurrent with the endorsement of any plans requested 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 prepared by Keystone Alliance dated 24/02/2022 subject to a review of the species chosen and amended to show:
 - (a) The patio of Dwelling 3 relocated to the southern side of that dwelling in accordance with the architectural plans.
 - (b) additional planting on the northern side of Dwelling 3.
 - (c) the location of any fencing internal to the site.
 - (d) the location of any retaining walls associated with the landscape treatment of the site including naturalistic materials for any retaining walls and the planting of creepers or other plants to screen the walls to the common driveway.
 - (e) details of all proposed surface finishes including pathways, accessways, patio or decked areas.
 - (f) an in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority.
 - (g) the location of external lighting.

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

Landscaping Prior to Occupation

- 5 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.

Drainage

- 6 Drainage of the site is to be to the satisfaction of the Responsible Authority.
- 7 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
- 8 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve.
- 9 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing and is to be to the satisfaction of the Responsible Authority.
- 10 The nominated point of stormwater connection for the site is to the north-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 300 mm Council drain in the rear easement via a Council approved saddle adaptor via a 100mm pipe to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

Waste Management Plan

- 11 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 be generally in accordance with the Waste Management Plan prepared by TTM dated 24 August 2020, except that the plan must be modified to show:
 - (a) Any changes required by Condition 1 of this Planning Permit;
 - (b) The revisions required pursuant to comments provided to the permit applicant dated 22 January 2021 by Council's Senior Waste Officer.
- 12 The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Sustainable Design Assessment

- 13 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainable Design Assessment prepared by Keystone Alliance Sustainability Solutions, dated October 2020, except that the plans must be



modified to show any changes required by Condition 1 of this planning permit.

Completion of Buildings and Works

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

Permit Expiry

- 15 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
- (a) The development has not started before two (2) years from the date of issue.
 - (b) 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*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –

