

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11645/2021  
PERMIT APPLICATION NO.TPA/52247

<b>APPLICANT</b>	Gavin Zhang
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	69 Bruce Street MOUNT WAVERLEY VIC 3149
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	1 April 2022
<b>DATE OF ORDER</b>	21 April 2022
<b>CITATION</b>	Zhang v Monash CC [2022] VCAT 435

## ORDER

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: Hartland Architecture
- Drawing numbers: Project 2171 – Revision E - TP.03- TP06. TP07.1, TP07.2, TP08.1, TP08.2, TP08.3 and TP09
- Dated: 23 February 2022
  
- Prepared by: Justin Hutchison Landscape Design
- Drawing numbers: Project 3335, Revision B
- Dated: 14 February 2022



- 2 In application P11645/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52247 a permit is granted and directed to be issued for the land at 69 Bruce Street MOUNT WAVERLEY VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Development of four dwellings

Jane Tait  
**Member**

#### **APPEARANCES**

For Gavin Zhang

Russell Hocking, town planner, Cityshire  
Planning

For Monash City Council

David de Giovanni, town planner, David de  
Giovanni Town Planning

## INFORMATION

Description of proposal	To construct four 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 3 (GRZ3) Vegetation Protection Overlay, Schedule 1 (VPO1)
Permit requirements	Clause 32.08-6 A permit is required for construction of two dwellings on a lot.
Land description	<p>The subject site is located on the west side of Bruce Street, approximately 36 metres north of Waverley Road, Mount Waverley. It is an irregular shaped lot with a frontage of 31.09 metres, depth of 41 metres and site area of 1063 square metres. The site is vacant and has a moderate slope of 5.12 metres and cross-fall of 2 metres from north to south.</p> <p>There are no significant vegetation or easements and there is an existing crossover in the north-east corner of the site. An existing rock retaining wall remains along the frontage.</p> <p>Abutting and nearby land uses are single and two storey detached houses and some multi-dwelling development.</p>
Tribunal inspection	An unaccompanied site inspection of the site and surrounding area was conducted after the hearing.



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Gavin Zhang (applicant) proposes to construct four dwellings<sup>2</sup> at 69 Bruce Street, Mount Waverley. Monash City Council (Council) refused to grant a permit and the applicant seeks a review of this decision.
- 2 Council submits the proposal is inconsistent with the neighbourhood character objectives of the General Residential Zone Schedule 3 (GRZ3) that requires a site responsive design to achieve the preferred neighbourhood character for the area. It says the applicant should not rely on the excessive building mass and dominance of paving areas of the abutting properties to justify approval of this development as it is contrary to the strategic context of this area which is to preserve and enhance Monash's Garden City Character over more intensive housing.
- 3 The applicant argues the development clearly and obviously complies with the necessary design requirements of Clause 55 that are varied in the GRZ3. He says the proposal respects the streetscape character and backyard-scape and there will be no unreasonable amenity impacts on adjoining properties. He submits extensive landscaping is provided throughout the site, having regard to the Vegetation Protection Overlay (VPO1).
- 4 Three statements of grounds opposing the grant of a permit have been lodged with the Tribunal by adjoining neighbours. They raised concerns about visual bulk, traffic, parking, overlooking, fencing, crossovers, overdevelopment, landscaping, excavation and retaining walls.
- 5 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions of the Monash Planning Scheme (Planning Scheme). Net community benefit is central in reaching a conclusion. Clause 71.02-3 - Integrated Decision Making of the Planning Scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 6 My role is to determine if a permit should be granted and, if so, what conditions should apply. Having inspected the site and surrounds and having regard to the submissions, policies and provisions of the Planning Scheme, I have decided a permit should be granted as I find the proposal

---

<sup>1</sup> The submissions and 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.

<sup>2</sup> Prior to the commencement of the hearing, the applicant circulated amended plans in accordance with the Tribunal Practice Note PNPE9. These amendments include alteration to the basement, ground and first floor layouts, altered window openings and increased separation between Dwellings 3 and 4. Whilst Council does not object to the substitution of the plans, it maintains its opposition to the proposal based on the original grounds of refusal. I substituted the plans for the decision plans and these now form those upon which my decision is reached.



responds to the preferred neighbourhood character, strategic policy expectations and existing site constraints. I have reached this decision based on my findings on the following key issues:

- Does the proposal respond to its policy context?
- Is the proposal respectful of neighbourhood character?
- Are there unreasonable amenity impacts arising from the proposal?

7 My detailed reasons follow.

### WHAT IS PROPOSED?

8 The application proposes to construct four detached dwellings. The site layout includes two dwellings facing Bruce Street (Dwellings 1 and 2) and the remaining two dwellings (Dwellings 3 and 4) are at the rear with access from a central driveway.

Figure 1 – Ground Floor Plans<sup>3</sup>

Figure 2 – First Floor Plans<sup>4</sup>



Figure 3 – South and North Elevations<sup>5</sup>



9 The proposal has the following design elements:

- Frontage setbacks of 7.6 metres to 8 metres;

<sup>3</sup> TP04 Revision E.

<sup>4</sup> TP05 Revision E.

<sup>5</sup> TP07.1 Revision E.

- Construction of three crossovers on the Bruce Street frontage;
- Each dwelling has a semi-basement double garage and store;
- The semi-basement garages of Dwellings 1 and 2 abut the side (north and south) boundaries;
- The dwellings include the living areas and bedroom at ground floor level;
- Three bedrooms and en-suites are provided at first floor level;
- The dwellings have a maximum overall height of 6.8 metres;
- Site coverage of 40.2%, permeability of 32.6% and garden area of 36.8%; and
- Conservative contemporary design including pitched tiled roof forms, eaves and brick and render materials.

### WHAT IS THE PHYSICAL CONTEXT OF THE SITE?

10 The subject site is vacant and contains no vegetation. There is a moderate slope of 5.12 metres that falls from the north-west to south-east across the site. There is also a cross fall of 2 metres from north to south. This topography plays a significant role in the design of the development and its presentation in the streetscape and wider area.

Figure 4 – Subject site and abutting properties<sup>6</sup>



71 Bruce Street

Review Site (69 Bruce Street)

74B Albert Street and 74 Albert Street

11 Abutting to the north is a recently completed double storey dwelling at 74B Bruce Street that is one of pair of dwellings with 71 Albert Street. This dwelling is setback 3 metres from Bruce Street and there is garage on the common boundary. The secluded private open space is in the southern setback and the upper levels are recessed back from the subject site.

<sup>6</sup> Council photograph – pg 1.

- 12 To the west of this dwelling is the rear yard of a double storey dwelling at 72 Albert Street. This dwelling has an elevated ground floor deck that is set back approximately 4 metres from the common boundary. There is also a large tree in the corner of the rear yard that overhangs into the subject site.
- 13 To the south is a large double storey dwelling with a semi-basement garage at 71 Bruce Street. This dwelling has an open rear yard and ground floor patio facing the subject site. To the west are the rear yards of dwellings at 5 and 6 Doorawarra Court. The dwelling at 6 Doorawarra Court has a garage that is setback 5 metres from the common boundary. The dwelling at 5 Doorawarra Court has a ground floor veranda that is set back 5 metres and ground and first floor windows that overlook the subject site. There is some screen vegetation along this boundary.
- 14 Due to the slope of the land, dwellings on the west side of Bruce Street are elevated and have retaining walls (approximately 1.5 metres high) along the frontage. However, the east side of Bruce Street contains dwellings that sit below street level and are less prominent in the streetscape. These dwellings are within the Creek Environs Area (Category 7)<sup>7</sup>.

Figure 6 – East side of Bruce Street <sup>8</sup>



- 15 As can be seen by the above photographs, the area contains a mixture of single and newer, infill double dwellings and intermittent double storey multi-dwelling developments.

### **DOES THE PROPOSAL RESPOND TO ITS POLICY CONTEXT?**

- 16 The site is within a GRZ3 - Garden City Suburbs which has purposes including encouraging development that respects the neighbourhood character of the area and encouraging a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

<sup>7</sup> At CI 21.04.

<sup>8</sup> Application photos – page 8.

- 17 GRZ3 contains seven variations to Clause 55 including Standard B6 that specifies a minimum frontage setback of 7.6 metres, Standard B8 that recommends a minimum site coverage of 50% and Standard B9 that states permeability should be at least 30%. Standard B13 requires indigenous canopy tree planting and Standard B17 recommends 5 metre rear setbacks. Standard B28 varies the private open space requirements to consist of an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling with a minimum area of 35 square metres, a minimum width of 5 metres and convenient access from a living room. Standard B32 is varied to specify a maximum front fence height of 1.2 metres.
- 18 The proposal satisfies or exceeds the seven variations to the Clause 55 standards. The development also achieves a minimum 36.8% Garden Area and therefore satisfies Clause 32.08-4 and has a maximum overall height of 6.8 metres which is below the maximum height specified in Clause 32.08-10.
- 19 The site is also within a VPO1 that contains purposes such as protecting areas of significant vegetation. Given the site is cleared, a permit is not triggered by this overlay.
- 20 Council argues the site is not located close to an activity centre that contains services and infrastructure and therefore should be considered as having a hinterland context where greater weight is given to achieving neighbourhood character outcomes over housing growth. It says the neighbourhood character objectives in GRZ3 also emphasise appropriate built form and landscaping outcomes. It says this is further reinforced in the Local Planning Policy Framework (LPPF) that contains objectives to preserve and enhance Monash's Garden City Character over more intensive development. It notes that nomination of the site as a Garden City Suburb (Category 8) in the Residential Development Framework Plan<sup>9</sup> instead of Accessible Areas, indicates the site is not within an area where there is greater focus on change.
- 21 I am not persuaded by this argument and consider the site is well located in accordance with various provisions of the Planning Policy Framework (PPF)<sup>10</sup> and purposes of the GRZ3. I note Mount Waverley Neighbourhood Activity Centre (NAC) is approximately 900 metres from the site and is connected by bus services that run along Waverley and Stephenson's Roads. The site is also approximately 900 metres from Pinewood NAC.
- 22 I acknowledge these policies also must be balanced with the neighbourhood character objectives in the GRZ3, PPF<sup>11</sup> and LPPF<sup>12</sup> that seek to

---

<sup>9</sup> At C 21.04.

<sup>10</sup> At Clauses 11.01-1S, 16.01-2S, 16.01-1R.

<sup>11</sup> At Cl 15.02-5S.

<sup>12</sup> At Cl 21.04, 22.01 and 22.04.





complement and enhance the garden city character. However, I consider the provision of a different type and size of housing will go some way in providing a diversity of housing to accommodate the changing (and ageing) population of Monash<sup>13</sup>. I find the provision of four dwellings on a lot over 1000 square metres consistent with the prevailing objective for Category 8 - Garden City Suburb that envisages modest housing growth and diversification that preserves and enhances the garden character of the area.

## **IS THE PROPOSAL RESPECTFUL OF NEIGHBOURHOOD CHARACTER?**

### **What does the Planning Scheme say about neighbourhood character?**

23 Schedule 3 to the GRZ (GRZ3) relates to Garden City Suburbs and contains the following neighbourhood character objectives:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

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 support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

To support new development that locates garages and carports behind the front walls of buildings.

24 In addition to seeking development that responds to context and the neighbourhood objectives in GRZ3, the PPF seeks respect for existing neighbourhood character or for a preferred neighbourhood character.<sup>14</sup> The local policy includes the site within an area suitable for incremental change<sup>15</sup> and designates it as part of the “Garden City Suburbs Northern Areas” character type.

25 It is policy that the preferred future character statement for the area is considered in addition to whether the proposal will have an adverse impact on neighbourhood character. The preferred future character statement for Garden City Suburbs Northern Areas is:

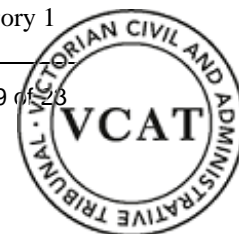
Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

---

<sup>13</sup> As identified in Cl 21.01-1.

<sup>14</sup> At clause 15.01-5S.

<sup>15</sup> At clause 21.04-1 shown on Map 3 Residential development framework map as part of Category 1 – Garden city suburbs.



Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and non-The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

- 26 Clause 22.01 – Residential Development and Character Policy contains objectives<sup>16</sup> that apply to all residential land. These encourage development that builds upon the contribution landscaping makes to the garden city character of Monash; achieves architectural and urban design outcomes that contribute positively to neighbourhood character; contributes to a variety of housing types; and achieves best practice environmental sustainability. There is a range of policy set out at clause 22.01-3 relating to general matters, built form and scale of development, vehicle crossings, landscaping and non-existent or transparent front fences. Additional vehicle crossovers are discouraged.

---

<sup>16</sup> At clause 22.01-2.



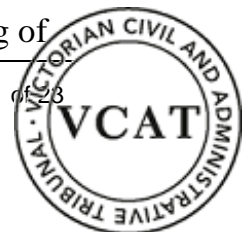
## Neighbourhood Character Issues

### Streetscape presentation

- 27 Council argues the design has an excessive reliance on the form of the abutting properties at 71 Bruce Street (south) and 74B Albert Street (north). It says these dwellings are not representative of the prevailing or emerging house forms and are anomalous in this section of the street. Council considers the scale of the new dwellings is excessive and fails to achieve an appropriate transition to housing along Bruce Street. It says this is due to the size of the semi-basements that extend across the width of the site and raise the floor levels to a point where they are disproportionate to their abutments. It says this is different to 74B Bruce Street that deliberately lowers the floor levels above the garage. It submits the semi-basement garages create an elevated bench that causes excessive bulk at ground level and highly exposed walls when viewed in the street. Council argues this is a stark contrast to the neighbourhood character objective of the GRZ3 which encourages development to minimise building and visual bulk in the streetscape.
- 28 The applicant refutes this proposition and argues the development is a well-articulated response that will sit comfortably between two contemporary dwellings in the streetscape. It submits the building scale is minimised by providing two breaks and recesses in the built form and a variety of materials and finishes that will be complemented by the landscaping in the frontage. It says this is a sensible transition that responds to its topography and requirements of the schedule.

### Tribunal Findings

- 29 I acknowledge the neighbourhood character objectives and decision guidelines of the GRZ3 seek to minimise bulk and mass in the streetscape through generous front and side setbacks, landscaping in the frontage setback and breaks and recesses in the built form. Whilst Council argues the scale is uncharacteristic of this neighbourhood, I found the street and wider area contains examples of larger multi-dwelling developments and imposing infill detached houses that have a similar impact on the streetscape. Whilst the infill detached dwellings do not require a planning permit, they also contribute to the built form character of the area.
- 30 The topography plays a big role in the design and its impact on the streetscape. I observed development on the west side of Bruce Street sits higher and is more pronounced than dwellings on the east side due to the moderate fall to the east. I find this proposal also has these characteristics but has achieved an acceptable response to the slope and the preferred neighbourhood character for the following reasons:
- The dwellings will present as two detached houses that includes setbacks to the side boundaries. This is consistent with the spacing of





- 32 I note these walls are elevated above the semi-basement and require excavation into the site. However, I consider they will not have unacceptable impacts on the streetscape given the frontage setbacks contain landscaping and canopy trees which will assist in filtering these views. I also note there is a landscape strip either side of the central driveway that will contribute to the garden character of the area.

#### Building scale within the site

- 33 Council argues there is a high level of bulk and massing throughout the site due the significant excavation for the semi-basements. It highlighted this is evident at the entrances to Dwellings 3 and 4 that have a wall height of 9 metres which is not softened by landscaping. It says this will be a harsh and dominant entrance for residents and visitors.

#### Tribunal findings

- 34 I note the design has utilised the slope to provide generous semi-basements that include a double garage, store, and home office. Whilst understanding Council's concerns, I consider this aspect of the design will have limited visibility from the frontage and adjoining properties because it is internal to the site and set back over 27 metres from the frontage. I note that a small garden bed is provided between Dwellings 3 and 4 and there is landscaping adjacent to the central driveway which will enhance the arrival at the entrances of these dwellings.

#### Building scale for abutting properties

- 35 Council and the abutting property owners are concerned that the dwellings do not include suitable setbacks to scale down the built form to adjoining properties. They say this is contrary to the backyard realm of this neighbourhood that has a feeling of spaciousness and openness.

#### Tribunal findings

- 36 Clause 22.01 seeks to encourage setbacks from side and rear boundaries and to scale down the built form to the adjoining properties. I find this has been achieved as Dwellings 3 and 4 are set back a minimum of 5 metres from the rear boundary and thus satisfy Standard B17 of GRZ3. This variation to Clause 55 is designed to maintain a spacious backyard realm which is capable of accommodating landscaping. This has been shown on the landscape plans that shows the planting of six canopy trees in the rear yard. I also note this neighbourhood is characterised by tall and robust built forms that extend deep into sites, including to the west at 5 Doorawarra Court.

#### Landscaping

- 37 Council emphasised the importance of the garden city character which is reflected in the GRZ3 neighbourhood character objectives that state:



- To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.
- 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.

38 It has concerns that the large semi-basement garages and wide pedestrian paths require high retaining walls to respond to the topography. It says the series of terraced forms fragment the front gardens and draw your attention to the visual bulk in the street.

#### Tribunal findings

39 I find the retaining walls and terraces in the frontage of the dwellings to be an acceptable response to the garden city character of this neighbourhood. I note they are required to combat the slope and are designed to maximise the size of the garden beds to accommodate six mid and tall canopy trees that are shown on the landscape plan. I consider this will enhance the landscape character of the streetscape and wider area.

40 Whilst I acknowledge there will be views of the high retaining walls adjacent to the driveways for Dwellings 1 and 2, this is a characteristic of dwellings on the west side of Bruce Street, including those north of Albert Street.

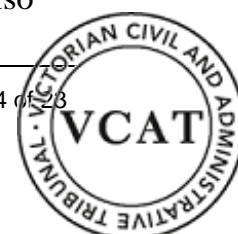
#### Crossovers and street trees

41 Council submits the provision of three crossovers further fragments the sense of spaciousness and garden character associated with the existing long nature-strip. It says this is a poor response as the abutting and nearby dwellings, including multi-dwelling developments, are designed with a single crossover. It considers this is contrary to the decision guidelines of the GRZ3 that discourages additional vehicle crossovers. The applicant disagrees and says the number of crossovers is of little consequence given the site has a 31 metre long frontage and there is excellent opportunities for planting either side of the driveways.

42 Council's arborist also says the long-term growth of the existing street tree will be compromised as it is setback 1.4 metres from the central crossover. It submits this tree is in good condition and it should not be a given to just remove it, particularly where there is a site frontage of 31 metres. It says this is contrary to the decision guidelines in GRZ3 and Clause 22.01.

#### Tribunal findings

43 I agree with the applicant that the provision of three crossovers will not detract from the garden character of this area. They are single width crossovers (3 metres) which are evenly spaced along the frontage and also do not require a variation of Standard B14 (i.e. 29% of the length of



frontage). Whilst there are few examples of properties with multiple crossovers within the vicinity of the site, they do not have the benefit of the generous length of frontage that is available for the subject site.

- 44 The loss of the street tree is unfortunate, but it is a juvenile specimen that could either be relocated or replaced. I note Condition 4 of the draft conditions requires the removal and replacement of the street tree, at the applicant's expense.

## **ARE THERE UNREASONABLE AMENITY IMPACTS ARISING FROM THE PROPOSAL?**

### **Visual bulk and massing**

- 45 Council and the abutting property owners are concerned there will be excessive visual bulk and massing impacts on the abutting properties. They say:
- There is limited separation and recessing of the upper levels of Dwellings 3 and 4 which will dominate the adjoining rear yards of 5 and 6 Doorawarra Court;
  - There are minimal setbacks at ground and first floor level of Dwelling 3 that is available for landscaping adjacent to 72 Albert Street; and
  - The south elevation of Dwelling 4 has excessive wall heights due to the raised semi-basement that will result in a stark building mass opposite the rear yard of 71 Bruce Street.

### Tribunal findings

- 46 I am satisfied the new dwellings will not be overbearing or intrusive on the abutting properties for the following reasons:
- Dwellings 3 and 4 are set back a minimum of 5 metres from the rear boundary and thus satisfy Standard B17 of GRZ3;
  - The planting of six canopy trees in the rear yard will filter views of the new dwellings from the adjoining rear yards to the west;
  - The first floor west elevations of Dwellings 3 and 4 include recesses and window openings to provide visual interest;
  - There is a 1.2 metre separation between the Dwellings 3 and 4 at ground floor level and a 2.1 metre separation at first floor level which breaks up the expanse of built form when viewed from the west;
  - The ground floor south elevation of Dwelling 4 is set back 1.5 metres from the south boundary which provides adequate space for screen planting that has been shown on the landscape plan;
  - The south elevation of Dwelling 4 wall includes an indent that provides the opportunity for the planting of a canopy tree;



- The upper floor south elevation of Dwelling 4 is set back 2-2.7 metres to step the built form away from the neighbouring rear yard; and
- The secluded open space of 71 Albert Street is in the western setback and the new dwelling will not fully enclose this space.

47 I am concerned, however, with the scale and setbacks of Dwelling 3 on the amenity of the rear yard at 72 Albert Street. This dwelling is set back 1 metre from the north boundary at ground floor level and a minimum of 1.6 metres at first floor level. I find this a ‘pinch point’ in the design that requires greater setbacks for the following reasons:

- The dwelling setback fails to reflect the sense of spaciousness found elsewhere on the site and surrounding which is noted as a feature of this neighbourhood;
- The landscape plan shows there is no landscaping proposed adjacent to the kitchen and living room due to lack of space and the canopy of the adjoining tree; and
- The dwelling will impact the outlook from the open rear yard of 72 Albert Street that includes an elevated deck that overlooks the subject site.

48 I acknowledge the north elevation wall of Dwelling 3 is staggered along this boundary but consider a minimum ground and first floor setback of 2 metres is required to provide more opportunities for landscaping in this setback. I raised these concerns in the hearing and the applicant indicated that the plans could be amended to increase this setback, if required. I will therefore include a condition on the permit to amend the design of Dwelling 3 to require a minimum setback of 2 metres from the north boundary at ground and first floor level.

### **Overlooking**

49 The property owners to the north at 72 Albert Street and 5 Doorawarrah Court raised concerns about overlooking into their rear yards. I find this matter is satisfactorily addressed as the plans show the provision of fixed obscure glazing to 1700mm above floor level for the first floor habitable room windows in the north and west elevations. This meets the requirements of Standard B22 of Clause 55. I will also require screen planting along the north boundary adjacent to Dwelling 3 given this dwelling is to be setback a minimum of 2 metres from the boundary.

### **ARE THERE ANY OTHER ISSUES?**

50 In response to the statements of grounds raised by abutting property owners, I make the following comments:



- Concerns about the structural integrity of the neighbouring dwellings due to construction of semi-basements and retaining walls is a matter that is dealt with under the building regulations;
- The provision a double garage per dwelling meets the car parking requirements of Clause 52.06 of the Monash Planning Scheme (i.e. two spaces per dwelling). Visitor car parking is not required to be provided on site for four dwellings;
- The plans show adequate sight lines at the entrance of each driveway in accordance with Clause 52.06-9; and
- The configuration of the driveway for Dwellings 3 and 4 will allow vehicles to exit the site in a forward direction.

### **WHAT CONDITIONS ARE APPROPRIATE?**

51 Other conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.

### **CONCLUSION**

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

Jane Tait  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/52247
<b>LAND</b>	69 Bruce Street MOUNT WAVERLEY VIC 3149

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Development of four 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 Hartland Group Pty Ltd, Revision D dated 23 February 2022, but modified to show:
  - (a) Setback of the ground and first floor north elevation of Dwelling 3 a minimum of 2 metres from the north boundary.
  - (b) Additional landscaping area between the wall of the Dwelling 3 garage and column of that dwelling on the east side of the area labelled as 'Entry'.
  - (c) All retaining walls finished in naturalistic materials.
  - (d) Gas/water meter locations in unobtrusive locations.
  - (e) A notation that prior to the commencement of works the street tree is to be removed and replaced by Council at the cost of the developer in accordance with Condition 4.
  - (f) Reference to the Tree Management Plan required in accordance with Conditions 5 & 6 along with any plan changes arising to satisfy the plan.
  - (g) A landscape plan required in Condition 11.
  - (h) An updated Sustainable Design Assessment in accordance with Condition 21.

### 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.

### Tree Removal

- 4 Prior to commencement of the development the existing street tree (*Acacia pendula*) is to be removed by Council for replacement by Council at the cost of the developer with payment made prior to the satisfaction of the Responsible Authority. Council's Horticultural department must be contacted regarding the removal of the street tree proposed.

### Tree Management Plan

- 5 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to, be to the satisfacion of and be approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 16, 17 and 20, as identified in the Arborist Report of Nicholas Holian dated 28 July 2021 submitted with the application.
- 6 The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:
  - (a) A Tree Protection Plan drawn to scale that shows:
    - i Tree protection zones and structural root zones of all trees to be retained,
    - ii All tree protection fenced off areas and areas where ground protection systems will be used;
    - iii The type of footings (associated with the buildings and any proposed fencing) within any tree protection zones;
    - iv Details on any earthworks including ground level finishes/works that alter the existing condition of the land in respect of the tree protection zone.
    - v Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and



- vi Information on what specific details/actions are required within the tree protection zones.
  - (b) Details of how the root system of any tree to be retained will be managed having regard to the works proposed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
  - (c) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur; and
  - (d) Supervision timetable and certification of tree management activities including stages required by the Project Arborist to the satisfaction of the Responsible Authority.
- 7 Prior to occupation of the buildings, confirmation in writing to Council is required by the project arborist that all recommended measures of the TMP were undertaken in accordance with the requirements of the TMP.
- 8 The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.

#### **Contractors to be advised of trees to be protected**

- 9 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of protected trees/large shrubs on abutting land and be advised of any obligations in relation to the protection of the trees detailed in the TMP.
- 10 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on the site or adjoining land during the construction period of the development hereby permitted.

#### **Landscaping**

- 11 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 generally in accordance with the plan prepared by Justin Hutchingon Pty Ltd Revision B, 14 February 2022, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:
- (a) Screen planting along the north boundary adjacent to Dwelling 3 that is a minimum height of 2 metres at the time of planting;

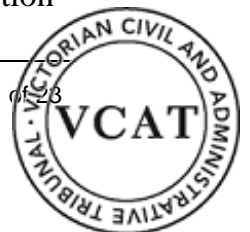


- (b) Deletion of the pebble paving abutting the north elevation of Dwelling 3 and replacement with landscaping;
- (c) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
- (d) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
- (e) Creepers to all retaining walls.
- (f) Removal of the pebble area on the north side of Dwelling 3 and replacement with grass;
- (g) Shrubs that will grow to a height of at least 1.5 metres above the fence line on the north side of the private open space of Dwelling 1 (outside the Tree 20 tree protection zone) and Dwelling 3 living area;
- (h) Trees with a minimum height of 1.5 metres at planting;
- (i) The location of any fencing internal to the site;
- (j) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (k) Canopy trees / significant plantings on adjoining properties within 3 metres of the site including tree protection zones and tree protection fencing;
- (l) the location of any retaining walls associated with the landscape treatment of the site;
- (m) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (n) 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;
- (o) The location of external lighting;
- (p) Planting required by any other condition of this permit; and
- (q) Landscaping and planting within all open areas of the site.

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

### **Landscaping Prior to Occupation**

- 12 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**

- 13 Drainage of the site is to be to the satisfaction of the Responsible Authority.
- 14 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.
- 15 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve.
- 16 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.
- 17 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 225 mm Council drain in the naturestrip via a 900mm x 600mm junction pit to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### **Road Infrastructure**

- 18 All new vehicle crossings are to be no close than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 19 Any works within the road reserve must ensure the footpath and naturestreip are to be reinstated to Council standards.
- 20 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department and be to Council's approval.

### **Sustainable Design Assessment**

- 21 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Design Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainable Design Assessment submitted as part of the application except modified to show any changes required arising from Condition 1 of this planning permit.



### **Completion of Buildings and Works**

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

### **Permit Expiry**

23 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.

**– End of conditions –**

