

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P915/2018  
PERMIT APPLICATION NO. TPA/48085

**CATCHWORDS**

Eight dwellings; Vegetation removal; Neighbourhood character; Amenity impacts; Access arrangements.

<b>APPLICANT</b>	MCN Property Group
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>RESPONDENT</b>	Mr T and Mrs J White
<b>SUBJECT LAND</b>	13-14 Woodview Court, Wheelers Hill
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Rachel Naylor, Senior Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	2 November 2018
<b>DATE OF ORDER</b>	7 January 2019
<b>CITATION</b>	MCN Property Group v Monash CC [2019] VCAT 16

**ORDER**

**No permit granted**

- 1 In application P915/2018 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/48085 no permit is granted.

**Rachel Naylor**  
**Senior Member**



## APPEARANCES

For applicant	<p>Mr R Siedlecki of Urban Design &amp; Management</p> <p>He called Mr E Boloutis of EB Traffic Solutions Pty Ltd to give expert traffic engineering evidence.</p> <p>Mr Kohli<sup>1</sup>, the owner of the site, spoke at the end of the hearing</p>
For responsible authority	<p>Ms A Kellock of Kellock Town Planning</p>

## INFORMATION

Land description	<p>The site comprises two lots and is located on the northeast corner of Woodview Court and Woodington Drive in Wheelers Hill. Its two street frontages are 47 and 48.5 metres in length, the north and east boundaries are about 38.6 and 53.9 metres respectively. The site area is approximately 2,455sqm.</p> <p>There is a 2.5 metre wide easement running along the north and east boundaries. The land falls from west to east. The fall is about 1.8m at the north end and about 4.0m at the south end.</p> <p>There are three vehicle crossovers along the combined street frontages.</p> <p>There are 39 trees on the site (with tree 7 identified in an arborist report as being just outside of the splayed corner boundary in the Council's view).</p>
Description of proposal	<p>Construction of eight three bedroom double storey dwellings with associated car parking and open space. Overall, there are four vehicle crossovers proposed.</p> <p>Council's submission identifies all trees on the site are to be removed other than trees 7 and 11.</p>
Nature of proceeding	<p>Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.</p>

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<sup>1</sup> Apologies if misspelt as the Application for Planning Permit form suggests it is spelt Kholi but the copy of Title states Kohli.



Planning scheme	Monash Planning Scheme
Zone and overlays	Neighbourhood Residential Zone Schedule 4 – Dandenong Valley Escarpment Areas (NRZ4) Vegetation Protection Overlay Schedule 1 – Tree Protection Area (VPO1)
Permit requirements	Clause 32.09-6 Construction of two or more dwellings (8 dwellings) on a lot in NRZ4 Clause 42.02-2 Removal of a tree that has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level and is higher than 10m in VPO1. Council’s advice is this applies to nine trees based on the features of each tree identified in the arborist report – trees 11, 14, 29 (group of 4 trees), 31, 32 and 34, of which 8 are proposed to be removed.

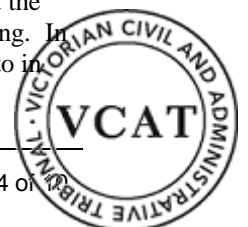
## REASONS<sup>2</sup>

### What is this proceeding about?

- 1 MCN Property Group seeks planning permission to construct eight double storey dwellings across the site, which comprises two lots known as 13 and 14 Woodview Court, Wheeler Hill.
- 2 The owner of the site, Mr Kohli, advises he has lived there for 15 years and he wants to live in this proposed development. He also advises that he initially proposed to build 11 dwellings, but worked with Council through preliminary discussions to modify the proposal in order to gain Council's support.
- 3 Mr Kohli expressed frustration about what he considers was limited communications from the Council regarding its expectations, and a lack of willingness by the Council to discuss its concerns after the Notice of Refusal was issued. Whilst it can be helpful for Councils to engage with permit applicants in an effort to assist them through the permit application process, there are always limitations on how much time can be devoted to each permit application. Mr Kohli's keenness to build on the site and to do what needs to be done to gain planning permission was obvious in the hearing. The process to gain a planning permit can be difficult. This proceeding is an example of this because the proposed design needs to respond to various issues such as neighbourhood character, vegetation protection and the amenity of neighbouring properties. Often in such cases, expert planning assistance as well as design expertise can be of assistance in order to navigate the planning process.
- 4 The role of the Tribunal in this proceeding is to decide whether the proposed design is an acceptable response to the amenity of the neighbours, and to the neighbourhood character in terms of both built form and vegetation. This decision must be made on the basis of the current planning controls and policies in the planning scheme.
- 5 In this case, the zoning of the site has changed since the Council made its decision in March 2018 from General Residential to Neighbourhood Residential with a schedule (Schedule 4) (NRZ4) that outlines preferred built form and landscape outcomes. As a result of this change, the proposed design now does not meet all of the preferred design outcomes sought in NRZ4. It is not the role of the Tribunal to design or redesign a proposal. Whilst the planning scheme clearly provides for a medium density housing development on this site to be an acceptable planning outcome in general terms, this particular design response is not acceptable. I will now explain the reasons why I have reached this decision.

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<sup>2</sup> The submissions and evidence of the parties, the supporting exhibits given at the hearing and the statements of grounds received 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.



## Features of the site and surrounds

- 6 The planning scheme explains that the development of land needs to analyse the features of the site and surrounds so that a design can respond to these features. These are physical features such as existing vegetation, the slope of the land and the nature of a site's interface with the surrounding land, particularly the abutting properties.
- 7 The fall of the land across this site is from west to east. The fall is about 1.8m at the north end and about 4.0m at the south end. This can have an impact on the prominence of building forms as some may sit higher on the land or elevated above a street frontage. This can also have an impact on the interface with an adjoining property.
- 8 The existing vegetation on this site is quite extensive and to the extent that the vegetation is the dominant element in the Woodview Court streetscape. Whilst the arborist report<sup>3</sup> submitted with the permit application identifies 49 trees, including 39 on this site, not all of them require planning permission to be removed. For those that do require permission, this fact automatically raises the bar in terms of the need to consider the extent to which an effort should be made to retain them.
- 9 All of these features need to be considered together with the relevant planning controls and policies in deciding whether a design is an acceptable response.

## Vegetation removal

- 10 The submissions and material presented during the hearing reveal that there are differing views amongst the parties about the extent to which vegetation is proposed to be removed.
- 11 The Council and the Applicant agree that the permit application material initially lodged sought planning permission to construct the proposed eight dwellings.
- 12 The permit application form contains different hand writing seeking permission for the development to that which seeks permission for 'removal of vegetation in a VPO'. When I queried this in the hearing, I was advised that the Council officer made the handwritten amendment to the permissions being sought in the application form after obtaining consent from the designer who was managing the permit application process. This amendment was made by the Council in order to capture the permission for vegetation removal under VPO1. It appears the Council has then proceeded to assess the proposal on a presumption that all vegetation will be removed.
- 13 At this hearing, Ms Kellock (appearing for the Council) explained she undertook an analysis of the details of the trees listed in the arborist's report. She advised that tree 7 appears to be sited just outside of the site's

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<sup>3</sup> Arborist Report, 13-14 Woodview Court Wheelers Hill prepared by Paul Jameson of Bluegum Consultancy



boundaries; trees 11,14, 29 (a group of four trees), 31, 32 and 34 require planning permission to be removed under VPO1 and all but tree 11 are proposed to be removed.

- 14 The arborist report notes the proposed development ‘will affect 49 trees’ so the health and condition of these trees are reported on together with recommendations based on the arborist’s assessment. Overall, the report notes there are 39 trees on this site, 37 of which have low retention value and could be removed and replaced as part of the proposed development. Trees 7 and 11 have low to moderate retention value and will be retained.
- 15 Ms Kellock submits that the Council is not concerned with the individual tree removal, but does have concerns about the collective impact of this removal upon the existing landscape character of the neighbourhood. In support of this position, the Council identified that the new NRZ4 contains a number of additional landscaping matters to be considered in the Schedule 4 decision guidelines. I also note that the vegetation protection objective of VPO1 is ‘to conserve significant treed environments and ensure that new development complements the Garden City Character of the neighbourhood’.
- 16 My inspection of the site and surrounds revealed that Woodview Court does have a dominant landscaped character and there is a scattering of canopy vegetation in both the public realm and some private properties. There is also a sense of spaciousness given the size of the lots and the open or lack of front fencing. This site is currently a generous contributor to this landscaped character as the existing grassed areas, vegetation and limited solid fencing (particularly in Woodview Court) illustrate the landscape dominance over the building form.
- 17 On the basis that the Council does not oppose the proposed removal of any tree, there is no material before me to suggest that permission should not be given for the extent of tree removal. However if, as indicated by Mr Kohli, there is the opportunity to incorporate existing vegetation (including trees that do not require permission to be removed) into the development that will assist in the integration of the development with the neighbourhood, this opportunity should be considered.

### **Neighbourhood character**

- 18 The Applicant referred to existing developments in the area, including the units at the end of Woodview Court and more broadly such as in Jells Road. All of these predate the current zone provisions that apply to this site and predate some of the policy directions for this area.
- 19 As I explained earlier, the change in zoning to NRZ4 occurred after the Council’s refusal was issued. This means there was an opportunity to seek to amend the proposal prior to this hearing, but this has not been sought. So, it is the case that aspects of the design do not accord with the new schedule (Schedule 4). Whilst the varied standards in Schedule 4 (such as



75 square metres of private open space, 5 metre rear setbacks, 50% site coverage and 30% permeability) are not mandatory requirements and it is the relevant objective that must be met, there needs to be an acceptable design response in order to find that the relevant objectives are met.

- 20 Having regard to the planning controls and policies, this site can be developed with multiple dwellings but the location of these need to be considered in light of these varied standards and additional decision guidelines in NRZ4 as well as the vegetation objective in VPO1. At this time, the Residential Development and Character policy seeks building design that reflects the spacing and rhythm of existing streetscapes. I am not persuaded the groups of attached houses along Woodington Drive and the rear (east boundary) achieve a respectful response. The proposed changes in the remaining part of Amendment C125 identify this site as part of the Dandenong Creek Escarpment where modest housing ground and diversification is acknowledged but with emphasis on the protection of neighbourhood character, landscape and native vegetation. The proposed new Residential Development and Character policy in this Amendment places emphasis of buildings that integrate and blend in with the landscape. Again, consideration of existing vegetation retention and new landscaping is important as part of the design of the buildings on this site. I am not persuaded this design has achieve an acceptable outcome, particularly to the south and east.
- 21 The style of the proposed dwellings is contemporary. There is nothing wrong with that, even though it may be different to surrounding existing housing styles. The spacing of the layout, with dwellings or groups of dwellings spread around the site is an acceptable outcome in general terms subject to the matters I have identified already.
- 22 Decks (described on the plans as balconies) are proposed on the garage roof tops and are not a feature found in this area. That, of itself, does not make them unacceptable. What is of concern is the size of them and the amount of structure over them (as they have pergolas, bronze feature screens and timber battens creating a strong visual presence), all of which adds to the building bulk and makes the buildings read as continuous two storey forms rather than highlighting the breaks between the dwellings at first floor level. These decks are accessible via bedrooms and are a secondary open space. I asked the Applicant whether they could be deleted, who advised that they could be deleted. This should be considered as part of any redesign.

### **Amenity impacts**

- 23 The neighbours to the east in particular are concerned about the visual bulk, overlooking and overshadowing impacts of this proposal.
- 24 Mr and Mrs White point out that the rear living areas of their house are oriented to take advantage of their back garden. This in turn means the proposal is visible to them over the back fence. Visibility per se is not a



reason to refuse a proposal. The visual bulk is exacerbated by the decks with pergola structures and 1.7m high screens and, as already explained, are unnecessary. So this impact can be reduced to an acceptable level.

- 25 Mrs White is concerned about overlooking, but what is proposed in terms of screening complies with the planning scheme. The planning scheme does not require all potential for overlooking to be blocked and prevented. Rather, the overlooking objective is to limit overlooking, so it is inherent in this objective that some possible overlooking is an acceptable design response. The Council points out there are some inconsistencies between the floor plans and the elevations about the location of windows at the first floor level. Despite this, I reiterate that what is shown on the plans/elevations in terms of screening of windows and balconies/decks complies with the planning scheme. Hence, this is not a reason to refuse this proposal.
- 26 The new shadow cast to the properties to the east is only marginally greater than the shadow cast by the existing boundary fencing with the properties to the east. Each of these back gardens to the east are of a reasonable size so this additional overshadowing is minor and complies with the additional overshadowing contemplated and provided for in the planning scheme. Hence, this impact is not sufficient reason to refuse this proposal.
- 27 Hence, there are no unreasonable amenity impacts arising from this proposal.

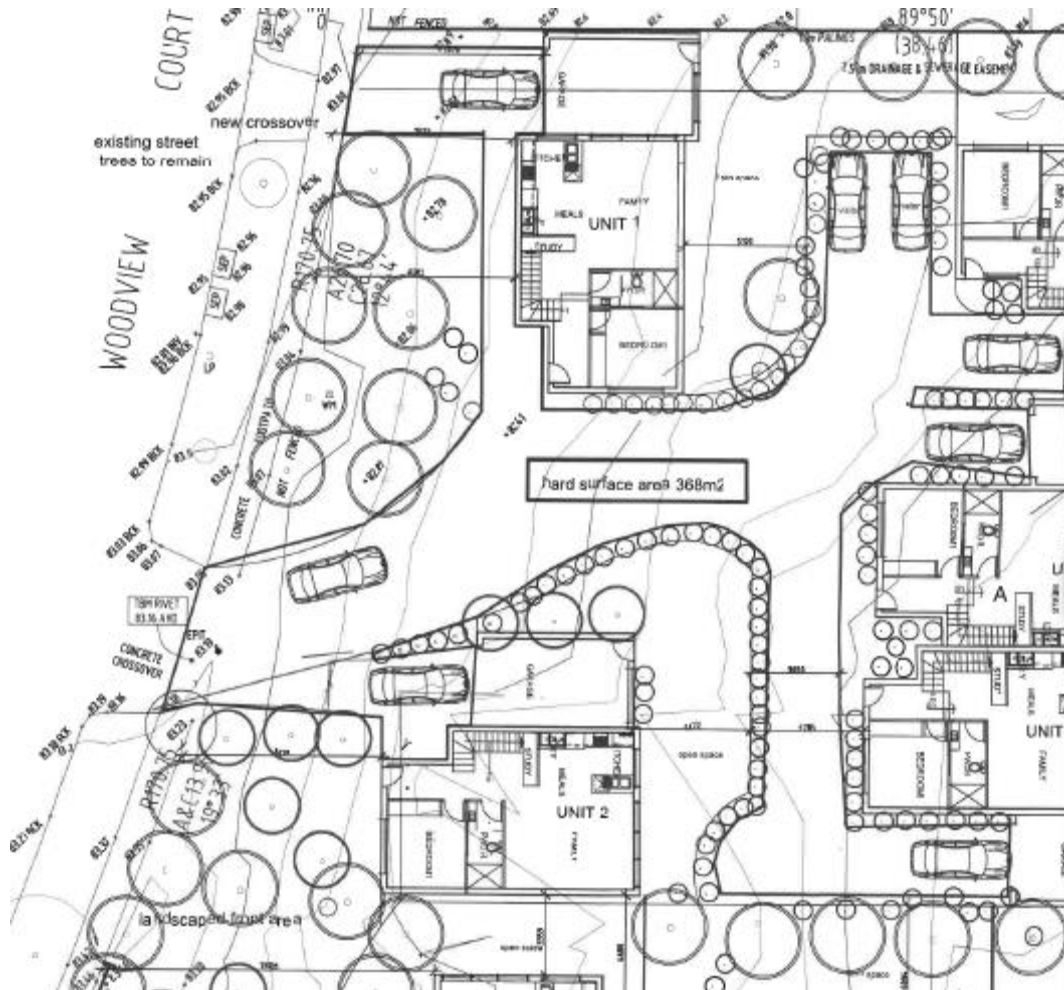
### **Access arrangements**

- 28 The Council is concerned about the acceptability of having a driveway and tandem car space for dwelling 2 that is effectively alongside and utilising part of the common driveway that services four other dwellings in the development. The proposed access arrangements are illustrated in the extract of part of the ground floor plan on the following page.
- 29 I am not persuaded by Mr Boloutis' traffic engineering evidence that this proposed vehicle arrangement is acceptable. He agrees that the tandem car space required to meet the standard car parking requirement of two car spaces for this dwelling should be 5.4 metres in length but what is proposed does not achieve this, hence it appears it may encroach into what is depicted as being the common driveway. Mr Boloutis' response to the Council's question about whether this tandem car space extends into the common driveway was – 'it's a grey area and it depends on how you look at it'. His opinion is that the tandem space goes up to the point where the space intersects with the common driveway. This arrangement is by no means ideal. Mr Boloutis suggests it could have a delineating line on the driveway edge to 'enclose' the tandem space. I am not persuaded this is sufficient. It perhaps could be acceptable if the space was sufficiently separated by a solid barrier such as a landscaping bed. However, there is another issue of





concern with this tandem space that I also find unacceptable and unable to resolve by permit condition.



Extract from part of the ground floor plan

- 30 The Council points out the planning scheme seeks safe vehicle access whereby vehicles are to be able to enter and exit the site in a forward direction. The proposed access off Woodview Court is of double width sufficient to allow to cars to pass each other on entry/exit. The Council submits it will be necessary for this Dwelling 2's vehicles to reverse whilst turning across the common driveway in order to be able to exit in a forward direction. Mr Boloutis acknowledges this dwelling's access is the 'most difficult' but reversing across the driveway is safe because it will be of slow speed and there will be low vegetation either side of the driveway. This access arrangement is not acceptable. The layout of the access for Dwelling 2 is too close to the main entry in and out of the site. It seems to me an alternative driveway and garage/car space location for this dwelling further within the site would be a more acceptable design outcome.
- 31 In response to the Council's questions, Mr Boloutis recalls assessing the turning circle for Dwelling 6 (at the end of the common driveway) and that 'it is on the tight side'. Whilst he considers it acceptable, he observed the reverse area and the corners could be modified to make it easier. This is a



large site and achieving 'easier' access arrangements that are acceptable should be incorporated into any new design.

### **Conclusion**

- 32 Whilst this site is suitable to accommodate additional housing, this particular design is not acceptable for the reasons already outlined. Hence, the decision of the responsible authority is affirmed. No permit is granted.

**Rachel Naylor**  
**Senior Member**

