VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P239/2019  Permit Application no.TPA/49074 |
| CATCHWORDS | |
| Section 79 of the *Planning & Environment* Act 1987; Monash Planning Scheme; General Residential Zone Schedule 2; Multiple dwellings; Policy; Neighbourhood Character; Amenity Impacts; Parking and traffic | |

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| APPLICANT | Audrey Khaw |
| responsible authority | Monash City Council |
| RESPONDENT | Mary Miras, Geoffrey Stokes, Connie Greaves |
| SUBJECT LAND | 29-31 Prospect Street, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Katherine Paterson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 15 August 2019 |
| DATE OF ORDER | 19 September 2019 |
| CITATION | Khaw v Monash CC [2019] VCAT 1456 |

# Order

1. Pursuant to clause 64 of Schedule 1 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:

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| * Prepared by: | Jesse Ant Architects |
| * Drawing numbers: | TP05 to TP10 all Rev D |
| * Dated: | 25 June 2019 |

### Permit granted

1. In application P239/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49074 a permit is granted and directed to be issued for the land at 29-31 Prospect Street, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows the construction of five dwellings on the land.



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| **Katherine Paterson** |  |  |
| **Member** |  |  |

# Appearances

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| For applicant | Mr John Joyner, Town Planner, Melbourne Planning Outcomes. He called the following expert witness:   * Mr Robert Thompson, Landscape Architect |
| For responsible authority | Mr David De Giovanni, Town Planner |
| For Geoffrey Stokes | Mr Geoffrey Stokes, in person |
| For Mary Miras and Connie Greaves | No appearance |

# Information

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| Description of proposal | Construction of five double storey dwellings on the land. Dwelling three is proposed to contain three bedrooms with the remainder to contain four. Each dwelling has been provided with a double garage. A visitor space has been provided centrally in the site. Access to dwelling 1 is proposed via a single crossover to Prospect Street with the remainder to gain access via a central driveway accessed via an existing crossover to Prospect Street. The architectural style of the dwellings incorporates pitched roofs with brick and rendered facades. A large tree is proposed to be retained in the south eastern corner of the site, but all other vegetation is to be removed from the site. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-1) |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 2, Vegetation Protection Overlay Schedule 1 |
| Permit requirements | Clause 32.08-6 – Construct two or more dwellings on a lot |
| Land description | The site consists of two allotments with a combined site area of 1467 square metres. Both lots contain a single dwelling, with associated outbuildings and a large amount of vegetation |
| Tribunal inspection | 16 August 2019 |

# Reasons[[2]](#footnote-2)

## What is this proceeding about?

1. Audrey Khaw wishes to construct five dwellings on land at 29-31 Prospect Street, Mount Waverley. Following Council’s failure to determine the application within the statutory time period, she has requested that the Tribunal review this matter.
2. Under delegation, the Council determined that if they had been able to do so, they would have refused the application on a number of grounds. Council is concerned that having regard to the strategic context of the site, the development is simply too large. In their view the design is inconsistent with the neighbourhood and landscape character of the area, will unreasonably affect the amenity of the adjoining properties, and will lead to a poor living environment for the future occupants of the dwellings. Finally, they are concerned that the parking and access arrangements are unacceptable.
3. Mr Stokes shares Council’s views but is particularly concerned about the traffic implications of the proposal, and the impact on his amenity through visual bulk, loss of light and noise, particularly during the construction phase of the development.
4. The Tribunal also received a number of grounds from nearby residents, who raised concerns regarding neighbourhood character, traffic, and loss of vegetation from the site.

### What are the key issues?

1. Having considered all the submissions and evidence and inspected the subject land and its locality I am of the opinion that the key issues in this proceeding are:

* Is the development of five large dwellings on this site supported by planning policy?
* Is the proposal respectful of the neighbourhood character?
* Does the proposal provide adequate car parking?
* Does the proposal create unacceptable amenity impacts?
* Will the proposal provide a reasonable level of amenity for the future occupants of the dwellings?

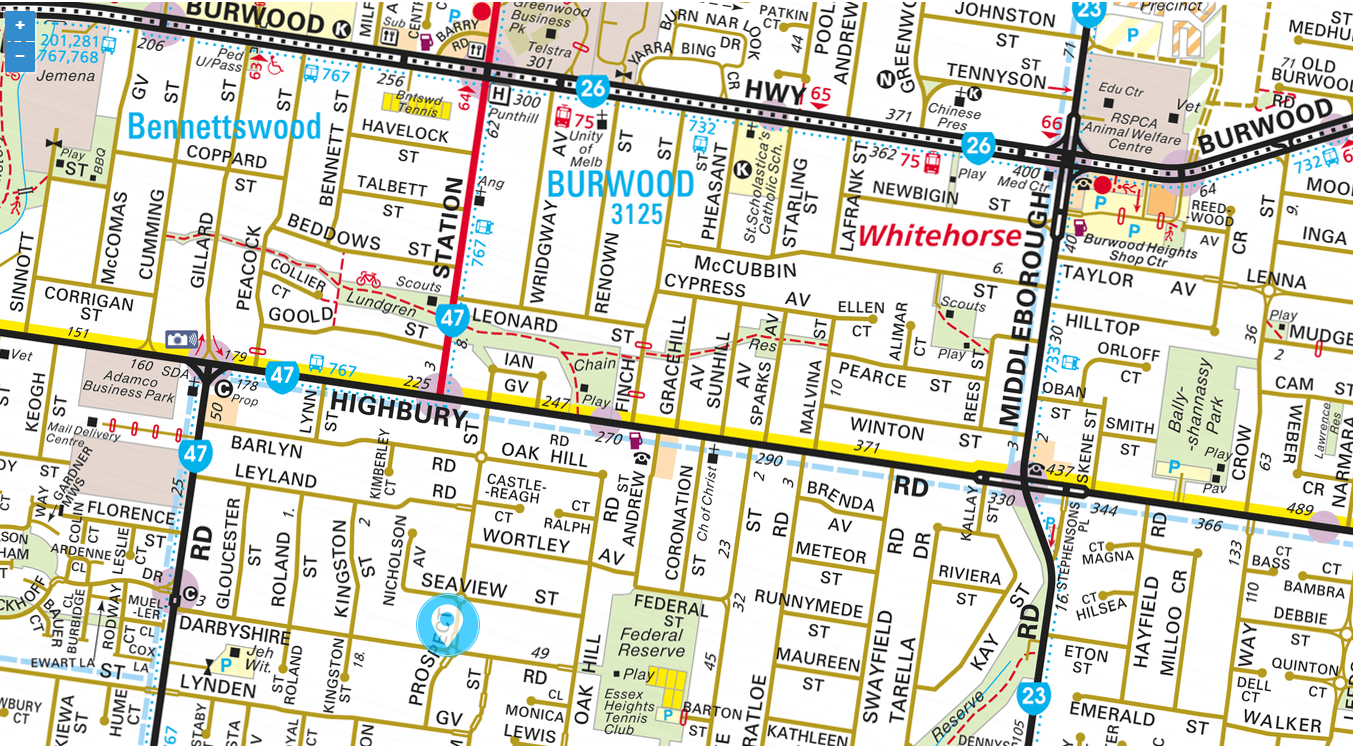
### Summary of findings

1. I have decided to grant a permit for the following reasons:

* The development of five dwellings on the site is generally consistent with planning policy;
* The design is an acceptable response to the character of the area;
* With the changes I have made I am satisfied that the parking arrangements are acceptable;
* With the changes I have made I am satisfied that the proposal will not unreasonably affect the amenity of adjoining properties; and
* The proposal will provide a reasonable level of amenity for the future occupants of the dwellings.

## Is the development of five large dwellings on this site supported by planning policy?

1. Clause 16.01-2R of the planning scheme seeks to facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.



1. As can be seen from the above extract from Melways Online,[[3]](#footnote-3) the subject site is located approximately 1.8 kilometres (a 24 minute walk) from the nearest activity centre, known as Burwood Heights Shopping Centre.[[4]](#footnote-4) Closer to the site, there is a small group of shops, which include a small IGA supermarket, at the corner of Highbury and Andrew Roads located approximately 650 metres (an 8 minute walk) away. A tram service operates along Burwood Highway, with the nearest stop located 1.2 kilometres (a 14 minute walk). Nearby public transport is in the form of buses that operate along Highbury Road, with the nearest stop located 600 metres (a 7 minute walk) from the site, linking the site with Southland and Chadstone Shopping Centres and Deakin University. I find that due to its location, the development of medium density housing on this site is supported by the Planning Policy Framework.

### Local Planning Policy Framework

1. Clause 21.01-1 states that the City of Monash is one of Melbourne's most populous municipalities, with an estimated 189,000 residents in 2016. The population is expected to increase by over 26,000 to over 215,000 by 2031. The rising population has resulted in an increase in the number of households and it is estimated that this will drive demand for at least 10,000 new dwellings over the period between 2016-2031.
2. Clause 21.04-3 directs the provision of higher and medium rise developments towards activity centres as one way to provide the additional housing. Outside of these areas, low rise developments are anticipated. Relevant strategies include:

* Maintain the predominantly single detached dwelling style in urban areas by promoting low rise development as the preferred character for the majority of the residential areas within the City.
* Ensure that new residential development achieves high quality architectural and urban design outcomes that positively contribute to neighbourhood character.
* Encourage site consolidation to facilitate better design solutions, maintain existing canopy trees and achieve high design standards.

1. I consider that the development of this site for five double storey dwellings is generally consistent with the low-rise outcome sought by planning policy for this site, particularly as the application proposes the consolidation of two separate parcels of land. I will consider whether the form of the proposed development is consistent with the neighbourhood character later in my decision.

### Monash Housing Strategy 2014

1. The Monash Housing Strategy 2014 was adopted by Council in October 2014. The strategy divides the municipality into various precincts, with the subject site included within Precinct 8 – Garden City Suburbs, which has been designated for incremental change. The following future character statement is provided for these areas:

In broad terms the Garden City Suburbs will continue to provide lower scale residential development, with new development comprising a mix of single dwellings and medium density units and townhouses. Modest dwellings, with simple pitched rooflines and articulated facades, will continue the prevailing development themes.

On larger sites, apartment development may be appropriate, provided the development is sited within generous open space, is well landscaped while still retaining the ‘open landscape character’ of the garden suburban setting and any development tapers down in scale closer to the boundaries of the site.

The character of the area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary. Expanses of blank, or continuous walls, will be discouraged, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Improved building design and quality will be encouraged, to maximise the comfort for future residents (and neighbours) as well as minimising running and maintenance costs.

1. I find that the development of this site for five two storey dwellings in generally consistent with this strategy. I will address the design aspects of the proposal later in my decision.

### Amendment C125 (Part 2)

1. This amendment has had a somewhat chequered history, which is reflected in the numerous Tribunal decisions relating to this amendment.
2. With respect to this site, the amendment originally proposed to include the site within a General Residential Zone Schedule 4 (GRZ4), which proposed to vary several provisions related to Clause 55 of the planning scheme.
3. The amendment was considered by a planning panel who recommended that the land proposed to be zoned General Residential Zone Schedule 3 (GRZ3) and GRZ4 areas be combined into a single zone with a revised schedule including:

* A front setback of 7.6 metres or the average of adjoining lots (whichever is the lesser);
* Maximum 50% site coverage;
* 30% permeability;
* The provision of one tree per 5‐7 metres of site width;
* 5 metre rear setback;
* A side setback of 1 metre to one side plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres
* A secluded private open space requirement of 35 square metres with a minimum 5 metre width or balconies and roof top areas, with the exhibited dimensions of a 10 square metre area and a 2 metre minimum width.

1. Whilst Council supported the combining of the proposed GRZ3 and GRZ4 into a single zone, (to be known as GRZ3) they did not support all of the recommendations with respect to the schedule. The adopted schedule by Council includes most recommendations by the panel but still seeks the provision of 75 square metres of secluded private open space per dwelling and a 1 metre setback of garages or carports from the front façade of dwellings.
2. In response, the Minister for Planning resolved to split the amendment into two parts. Part 1 was gazetted on 19 April 2018 and now forms part of the planning scheme. Part 2 includes the revised GRZ3. In a letter the Minister advised that Part 2 of the amendment needs further strategic work, including additional public consultation.
3. In response, Council resolved at its meeting of 26 February 2019 to remove the accessible and boulevard areas from the amendment and:

Request the Minister to approve Part 2 of Amendment C125 as adopted by Council at its meeting of February 2017 as soon as possible, acknowledging that the maximum mandatory 3 storey (11 metre) height limit will continue to apply in the General Residential zone.

1. The officer’s report for that meeting states:

In March 2017 the Minister for Planning introduced changes to the General Residential zone through Amendment VC110 that set a mandatory default height limit of 11m, and a maximum of 3 storeys. This represented an increase from the existing 9 metre (2 storey) discretionary height that applied at the time of exhibition of Amendment C125.

…In response to the changes made by VC110 Council requested that the Minister approve Amendment C125 with the lower height of 9 metres in the General Residential zones, as this aligned with the exhibited amendment and would allow Council to progress other elements of the Housing Strategy over the next three years, to promote appropriate growth, in appropriate locations.

The Minister subsequently advised that with the introduction of the 3 storey (11 metre) height limit to the General Residential zone, it was no longer possible insert a lower height in the schedule to the zone. It was therefore not possible to approve C125 in the manner in which Council requested.

As a consequence of the changes brought about by VC110 the Minister for Planning decided to split Amendment C125 into two parts.

…Part 2 was put on hold and contains the General Residential Zone – Schedule 3 areas of Monash that were affected by the increase to 3 storey height limit introduced by the Minister for Planning in VC110 in March 2017. Part 2 also included the major revisions to neighbourhood character policy of the Monash Planning Scheme.

The General Residential Zone - Schedule 3 differs from the existing General Residential Zone 2 in setting different discretionary siting, rear setback and site coverage standards to better respond to garden character. The maximum building height of 3 storeys is the same.

…Officers understand that initially it was the inability to resolve the increase in building height to 3 storeys in the General Residential Zone - Schedule 3 that resulted in the splitting of the Amendment. However, given the time that has passed since the Amendment was submitted, the delays in a decision being made on Part 2 and the progress on the strategic work for the Accessible Areas and Boulevards, officers of DEWLP have now indicated that they are unlikely to support to rezoning of these areas (Accessible Areas and Boulevards) as part of C125 Part 2. This is particularly the case given that it is likely that further changes to the zoning provisions will be proposed in the near future.

They have also indicated that for the amendment to proceed with their support, Council should request the removal of the Accessible Areas and Boulevards from Amendment C125 - Part 2.

…The Minister indicated that no further notification would be required for the application of the General Residential Zone – Schedule 3 to areas where schedule changes were consistent with what was previously exhibited by Council.

1. It has now been some time since the revised amendment was put before the Minister for Planning for approval, which is an indication that no all issues with respect to the proposed GRZ3 have been resolved. In this context, I find that I cannot consider the proposed GRZ3 as a seriously entertained planning proposal, and I have given the amendment little weight in my decision.

## Is the proposal respectful of the neighbourhood character?

1. The purposes of the General Residential Zone Schedule 2 (GRZ2) include:

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

1. Clause 55.02-1 states that design of medium density developments should respect the existing neighbourhood character or contributes to a preferred neighbourhood character.
2. Clause 22.01 of the Monash planning scheme contains the residential development and character policy. The policy divides the municipality into various character precincts, with the subject site included within precinct C. Relevant components of the preferred character statement include:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees.

Architecture, including new buildings and extensions, will, in the majority of cases, be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated.

Setbacks will be generous and consistent within individual streets.

Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrasts between buildings.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Neighbourhoods that are influenced by the naturalistic landscape of the creek valleys or on highpoints and ridges will have a predominance of native trees in both the public and private realm. Trees within lots to be redeveloped will be retained wherever possible in order to maintain the established leafy character.

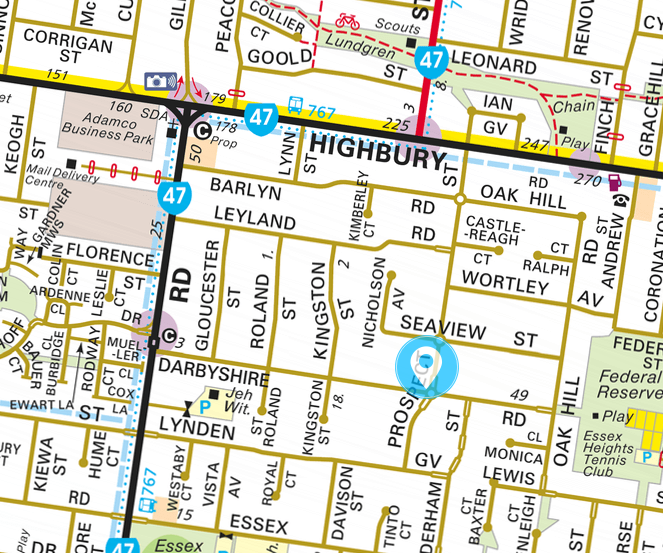
Streets which have a majority of gardens currently lacking fences will continue to do so. Walls and fences in other streets will be low to allow plants in the front garden to be visible from the street. Colours and materials will be sympathetic to the architecture of the house.

The soft quality of streets derived from the nature strips will be protected by ensuring that each lot frontage has only one single crossover. Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until horticulturally unstable.

1. This preferred character statement is reflected in the schedule to the zone which requires 75 square metres of private open space per dwelling, a front setback of 7.5 metres and a front fence height of 1.2 metres. The proposal ‘ticks the boxes’ against these requirements.
2. The focus on the preferred character statement is on maintaining a pleasant leafy framework of canopy trees. This desire is echoed in the Vegetation Protection Overlay Schedule 1 (VPO1) that applies to the site, which requires a planning permit to remove trees with a height of greater than 10 metres and Council’s Tree Conservation Policy found at Clause 22.01 of the scheme.
3. An arborist report[[5]](#footnote-5) accompanied with the application indicates that there currently are 21 trees on the subject site, the most significant of which is proposed to be retained. This tree, identified as Tree 12, is a Narrow Leafed Black Peppermint Gum, located within the south east corner of the site. The arborist report indicates that the tree has a ‘Medium’ Useful Life expectancy, which the arborist defines as a lifespan of between 15 to 40 years. Landscape evidence was provided to the Tribunal by Mr Thompson, who advised during his evidence that the tree appears to have declined since the arborist report was prepared and suggested it may be better for the tree to be removed and replaced. Having inspected the tree following the hearing, I consider that the tree has a role to play in the ‘pleasant leafy’ character desired by the planning scheme for this site and particularly given its lifespan should be retained.
4. The plans indicate that the development will encroach into the tree protection zone of this tree by 6.4% comfortably meeting the Australian Standard’s ‘benchmark’ of 10%. Based on this plan, I am satisfied that the tree should be able to be retained post development. I have required the implementation of the tree protection measures suggested by the arborist as a condition of permit to ensure that the tree is protected during construction.
5. The remaining 20 trees are to be removed from the site. None of these trees require a planning permit for their removal, which range in height from 4 to a 10 metre Sweet Pittosporum which is specifically exempt under the provisions of the VPO1 from requiring a permit.
6. A landscape plan was prepared by Mr Robert Thompson as part of his evidence. This plan indicates that the 20 trees are proposed to be replaced by 69 trees, which when mature, will range in height from 4 to 10 metres. I am satisfied that the proposed landscaping will achieve the ‘pleasant leafy’ character desired by scheme for this site.
7. Council was critical of the two storey form of this development, submitting that it would appear overly dominant in the streetscape. Whilst there are some examples of two storey development within Prospect Street, the upper levels of these dwellings are typically recessed either through an increase in setback from the street or changes in materials. The first floor of this development is setback one metre from the ground floor, and is to be constructed of render, with the ground floor constructed in face brickwork.
8. Whilst the built form is larger than the modest original homes still found in the area, the style is consistent with the more recently constructed dwellings in the area. From the street, the development will read as two large contemporary dwellings, which is consistent with what you would expect on two separate parcels of land in Mount Waverley.
9. The development incorporates the use of two crossovers, which is at odds with the preferred character statement which seeks to only have one per development. I find that the use of two crossovers on this site to be acceptable, as the site does consist of two separate allotments providing a combined site width of 34.14 metres and the crossovers assists in providing a ‘detached dwelling’ appearance to the front two dwellings. As demonstrated by the landscape plan, the use of two crossovers has not limited the ability of the front setback to be landscaped.
10. Council was critical of the proposed driveway to access dwellings 2, 3, 4 and 5 submitted that this was a substantial amount of hardstand which limits the ability of the site to be landscaped. The landscape plan prepared by Mr Thompson shows the use of grasscrete in sections of the driveway to break up the extent of hard surfacing, as well as the planting of Upright Lilypily and Capital Pears in this location. Whilst not ideal, I am satisfied that the proposed landscaping will ensure that the effect of the driveway is softened when viewed within the streetscape.
11. Clause 21.01-3 states that the scale and bulk of double storey buildings at the rear of properties, adjacent to single storey dwellings, be low key. This can be achieved by generous upper floor articulation and setbacks off site boundaries sufficient to allow new landscaping incorporating canopy trees. I find that the proposed two storey form of the rear of the site is consistent with this objective. The proposed rear setback of 5.3 metres can accommodate a significant amount of planting with the upper levels recessed from the ground floor. I will determine the impact of this form on the amenity of the adjoining properties later in my decision.
12. I am also satisfied based on the arborist report that the proposed development will not have an adverse impact on any of the vegetation located within the neighbouring properties.
13. The Tribunal therefore finds that the proposed development is an acceptable response to the preferred character statement for this area. I have required the endorsement and implementation of the arborist report and landscape plan as conditions of permit.

## Does the proposal provide adequate car parking?

1. The application provides two spaces per dwelling and one visitor space, meeting the requirements of Clause 52.06-5 of the scheme.
2. Council was critical of the layout of the garages for dwellings 1, 2 and 3. I will consider each in turn.
3. The permit applicant provided swept path diagrams for the garage of dwelling one in a ‘memorandum of opinion’ prepared by David Beaton of Quantum Traffic. Council was concerned that a vehicle would need to drive over the garden bed of dwelling one in order to enter or exit the site in a forward direction. Whilst the turning template shows the use of the landscaped area at the front of the dwelling, based on the Tribunal’s assessment using a turning template, I am satisfied that there is sufficient room to enable a car to exit and enter the site without requiring a vehicle to drive over this area, or affecting the ability of the area to be landscaped. I have therefore not required any changes to this garage or landscaping in this area.
4. It is proposed to contain the laundry for dwelling two within the garage. Council was concerned that this would limit the usability of the garage, enticing the residents to park in the street, particularly when using the laundry.
5. Clause 52.06-9 requires a double garage to have a minimum dimension of 6 metres long and 5.5 metres wide. Due to the presence of the laundry and storage area, the internal space of the garage has been reduced to 5.9 metres long and 5.5 metres wide. Whilst marginally less than that required by the scheme, based on a turning template I am satisfied that a vehicle will still be able to enter and exit the garage in a forward direction.
6. The plans indicate that there is approximately 900mm between the laundry and a vehicle, which may be insufficient to open the door of a front loader washing machine unless the machine is sited so that the door can swing out above a car bonnet. Whilst possible, this would be inconvenient for a resident and may lead to the resident parking on the street rather than using the space. I have therefore required the laundry to be relocated so that it is inside the dwelling. A convenient location may be the ground floor ensuite, which could be converted to a laundry and powder room or next to the second pantry for the kitchen, but I will leave the final location to the discretion of the designers. Dwelling two is a large dwelling within four bedrooms and three bathrooms, and whilst relocating the laundry inside will result in a loss of living space to the dwelling, I find there will be still enough space for this dwelling to be liveable.
7. The swept path diagrams indicate that corrective manoeuvres are required for a vehicle to enter and exit the garage of dwelling 3 in a forward direction. Mr Beaton advised that this was acceptable as the Australian Standard allows for corrective manoeuvres for resident car parking. I agree, and I am satisfied that the parking arrangements for this dwelling, whilst not ideal, are acceptable.
8. Council submitted that the landscape plan will need to be modified to ensure that a vehicle can exit and enter the garage from dwelling three as per the swept path. I agree, specifically there will need to be a change of species for the proposed Upright Lilypily and Capital Pear located in the vicinity of dwelling two. I have required this as a condition of permit.
9. A number of nearby residents raised concern about the affect the increase in traffic will have on the amenity of the area. Unfortunately, the Memorandum of Opinion did not provide any commentary on the likely traffic generated by the proposal, or the impact this will have on the street network.
10. Using the figure of 10 vehicles per dwelling per day as guide, the proposed development will result in an additional 30 traffic movements per day within the street.



1. As shown from the above extract from Melways Online,[[6]](#footnote-6) this section of Prospect Street could potentially be used by vehicles seeking to avoid the traffic lights at Highbury and Huntingdale Roads, by travelling along Prospect Street and Darbyshire Road to Huntingdale Road. It is unknown as to what level of traffic is generated by vehicles taking this alternative route, but this section is home to approximately 79 dwellings and a child care centre located at the corner of Darbyshire and Huntingdale Roads.
2. Using the road design descriptions provided at Clause 56.06-8, Prospect Street and Darbyshire Roads would fall within the definition of an ‘Access Street – level 1’. This type of road has a road capacity of between 1000 and 2000 vehicles per day.
3. The existing dwellings would generate approximately 790 trips per day, with additional trips generated by the childcare centre and those taking the ‘rat run.’ I consider unlikely that these additional users of the street network would generate more than 1210 vehicles per day. Given the design capacity of the roads is in the order of 2000 vehicle movements per day, I am confident that the existing road network can accommodate the additional 30 traffic movements per day without having a significant impact on the amenity of the residential streets.

## Does the proposal create unacceptable amenity impacts?

1. The two storey form of the development has the potential to affect its neighbours through overshadowing, overlooking, loss of light and visual bulk. I will consider each in turn.

### Overshadowing

1. The shadow diagrams indicate that whilst the development will cast additional shadow into the adjoining property at 8 Seaview Street, the shadows are limited to the driveway and garage. Elsewhere, the shadows cast will be limited to be within the shadow cast by the existing fence. I am therefore satisfied that the proposal will not adversely affect the amenity of the adjoining properties through overshadowing.

### Overlooking

1. The development proposes to prevent overlooking to the neighbouring properties through the use of obscure glazing to a height of 1.7 metres and highlight windows. Whilst this treatment meets the requirement of Standard B22 of Clause 55.04-6, it will lead to a poor amenity outcome for the future occupants of the dwellings. The window to bedroom 2 does not actually need to be treated, and the other windows could be treated with alternative methods such as blades or fins which prevent downward views into the adjoining properties whilst still enabling an outlook for the occupants of the dwelling. I have therefore required amended plans showing the deletion of the obscure glazing to bedroom 2 of dwelling four, and alternative measures used for the habitable room windows with an outlook to the adjoining properties as a condition of permit.
2. Due to the floor of the land, some of the ground floor windows and decks require additional treatment to prevent overlooking. The applicant proposes to raise the boundary fence opposite the affected habitable windows and deck by using a lattice screen to 0.4 metres which I consider to be acceptable. During the hearing, it was suggested that the trellis would need to extend to the Master bedroom to ensure compliance with the standard. Whilst this would meet the standard, I note that the southern and western boundary fences are only 1.7 metres high. To meet the standard the fences need to be raised to at least 1.8 metres. I have required this as a condition of permit.

### Loss of light

1. The plans indicate that there is a north facing window at 33 Prospect Street, which is located approximately 2.8 metres from the subject site. The height and setbacks of dwelling five meet the requirements of Standard B20 of Clause 55.04-4 which indicates that the proposal will not result in an unacceptable loss of light to this window.
2. The only other windows that may be affected by the development are the south facing habitable room windows of 27 Prospect Street. The height and setbacks of the development comfortably comply with the requirements of Standard B19 of Clause 55.04-3, which will ensure that these windows will receive adequate daylight.

### Visual Bulk

1. Council and Mr Stokes were particularly concerned that the amenity of 33 Prospect Street through visual bulk. This property has a north facing covered deck and verandah which forms the primary open space for this dwelling. Below the deck, the site contains two large trees, which will provide some buffer from the built form to the proposed development.
2. This dwelling currently has an outlook to the single storey form of the existing dwelling at 31 Prospect Street. Following the development, the ground floor garage and bedrooms three and four will be clearly visible from this space. Whilst the development meets the requirements of B17 of Clause 55.04-1, I consider that more needs to be done to protect the amenity of this space. Dwelling four is a large dwelling containing four bedrooms with a large retreat area. Based on a sightline diagram taken from the middle of the private open space area, I consider that first floor setback to the wall of bedroom four of this dwelling should be increased to be 5.8 metres.
3. Council was also concerned that this proposal would have an adverse impact on the amenity of 33A Prospect Road through visual bulk. During the hearing I was provided with a photograph of the private open space for this dwelling, which shows that this area contains a raised north facing deck and garden which lowers to a service yard located along the western boundary of the property. The plans indicate that this space has an area of 55 square metres. Whilst I find that the development responds somewhat better to this space, I consider that more needs to be done to reduce the impact on the amenity of this space. I have therefore required the setback of the first floor to the western boundary to be increased by 1 metre to 7 metres. This will ensure that the impact on the widest section of secluded open space of 33A Prospect Street is minimised.
4. I recognise that both these changes will result in a significant change to the first floor footprint of this dwelling. However, the first floor of the dwelling is very large, with a retreat, walk in robe, ensuite and bathroom in addition to the three bedrooms. Given there is already a Master bedroom with walking robe and ensuite at the ground floor, I consider that a reduction in the size of the first floor of this dwelling is possible without compromising the overall liveability of dwelling four.
5. With respect to the other interfaces, I note that these properties generally have large secluded private open space areas and are therefore less sensitive. The changes I have required to dwelling four will have a beneficial affect on the amenity of the rear of 39 Darbyshire Road, and I am satisfied that the level of articulation will ensure that the remaining properties are not unduly affected by visual bulk.

### Noise and dust

1. Mr Stokes was concerned that the amenity of the surrounding area would be affected through noise and dust during the construction phase of the development. I find that these matters are best addressed via Council’s local laws, and given the scale of the development, there is no need for a specific construction management plan to be prepared.

## Will the proposal provide a reasonable level of amenity for the future occupants of the dwellings?

1. Council was concerned that the entry arrangements to dwellings 2, 3 and 4 were poor and would provide a poor sense of address and outlook for these dwellings.
2. I find that all three entries will be clearly visible from the accessway, and from the visitor space. Whilst they are located approximately 29 metres from the street frontage, it will be obvious to a person walking down the street that there are dwellings located behind the front two dwellings. Mr Thompson suggested that the entry to the porches could be altered so that the entry to the porches comes directly off the driveways rather than through the landscaped area. This would provide a greater ability for landscaping in this space. I consider that this change is appropriate and I have required this as a condition of permit.
3. Internally, once inside the entries for dwelling two and three, the layout is somewhat awkward and consists of a corridor, stairwell and toilet, providing little surveillance of the accessway from the street, save for the window next to the front door and the upper level bedroom windows.
4. Whilst it is awkward, I find that it is acceptable. The corridor is not overly long, and once through to the living areas at the rear of the dwelling, both dwellings will provide a comfortable home for the occupants of the dwellings.
5. Mr Thompson’s landscape plan has relocated the clothes line for dwelling to be within a service area located outside of bedroom 1. I consider that this change is appropriate and I have required this as a condition of permit.

## What conditions are appropriate?

1. Draft conditions were discussed at the hearing and any changes to those conditions reflects those discussions as well as further consideration by the Tribunal. For completeness, I have added the Tribunal’s standard expiry condition.

## Conclusion

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

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| **Katherine Paterson** |  |  |
| **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/49074 |
| Land | 29-31 Prospect Street, Mount Waverley |

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| What the permit allowS |
| The permit allows the construction of five dwellings on the land in accordance with the endorsed plans: |

## Conditions

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the plans, prepared by Jesse Ant Architects dated 25 June 2019 (drawing numbers TP05 to TP10 all Rev D), but modified to show:
2. Any changes shown on the landscape plan prepared by Habitat consultants endorsed under condition 3 of this permit, including the use of grasscrete for sections of the driveway.
3. The laundry located in the garage for dwelling 2 relocated so that it is inside the dwelling;
4. The setback from the southern boundary to the first floor wall of bedroom four increased to be 5.8 metres to the boundary.
5. The setback from the western boundary to the first floor of dwelling four increased to 7 metres.
6. Any design changes required as a consequence of conditions 1(b), 1(c) and 1(d)
7. Deletion of the obscure glazing to north facing window to bedroom two of dwelling four;
8. Alternative measures (such as blades, fins, additional fence height) used to prevent overlooking within nine metres of the secluded private open space and habitable room adjoining properties from the following windows:
9. Bedroom three of dwelling one;
10. Bedroom three and four of dwelling two;
11. Bedroom two of dwelling three;
12. Retreat and bedroom 4 of dwelling four
13. Bedroom two and three of dwelling five;

Sightline diagrams must be provided which demonstrate that the method used prevents downward views into the adjoining secluded private open space and habitable room windows within nine metres of the window, whilst still enabling an outlook for the resident of the dwellings.

1. The pedestrian garage door of dwelling 1 opening outwards.
2. The porches to dwellings two and three redesigned to ensure access to the porches is provided directly from the driveway adjacent to the garage to each dwelling.
3. The clothes line for dwelling two relocated to be outside the bedroom one, generally in accordance with the landscape plan prepared by Habitat dated July 2019.
4. The southern and western boundary fences increased in height to 1.8 metres (except where additional trellis is required to prevent overlooking from windows of habitable room windows with a finished floor level of 0.8 metres or greater above ground level).
5. The storage for dwelling 5 having an area of 6 cubic metres.
6. A garden area plan.
7. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
8. 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 prior to the commencement of any works. The plan must be generally in accordance with the plan prepared by Habitat Consultants dated July 2019 but modified to show:
9. Alterations to the proposed landscaping to enable a vehicle to exit from the garage from dwelling three in a forward direction, generally in accordance with the swept path diagrams provided in the Memorandum of Opinion prepared by David Beaton of Quantum Traffic dated 5 August 2019

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

1. 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.
2. Prior to the commencement of buildings and works the arborist report prepared by Bluegum dated 15 February 2019 (version 2/18) must be endorsed by Council to form part of this permit. During construction, the tree protection measures recommended in the arborist report must be implemented to the satisfaction of the Responsible Authority.
3. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
4. The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
5. The new vehicle crossing must be constructed in accordance with Council standards.
6. Any existing redundant crossings are to be removed and replaced with nature strip and kerb and channel to Council standards.
7. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
8. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
9. Any new drainage work within road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
10. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
11. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
    1. The development is not started within two (2) years of the issue date of this permit.
    2. The development is not completed within four (4) years of the issue date of this permit.

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 –**

1. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-1)
2. 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 of this material will be cited or referred to in these reasons. [↑](#footnote-ref-2)
3. https://online.melway.com.au/melway/ retrieved 13 September 2019 [↑](#footnote-ref-3)
4. Identified as a Neighbourhood Activity Centre at Clause 21.04 of the Whitehorse Planning Scheme [↑](#footnote-ref-4)
5. Prepared by Paul Jameson of Bluegum dated 15 February 2018 [↑](#footnote-ref-5)
6. https://online.melway.com.au/melway/ retrieved 18 September 2019 [↑](#footnote-ref-6)