

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11754/2021  
PERMIT APPLICATION NO.TPA/52196

### CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.

<b>APPLICANT</b>	Hilsea Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	1 Hilsea Court MOUNT WAVERLY VIC 3149
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	4 May 2022
<b>DATE OF ORDER</b>	5 May 2022

### ORDER

#### Amend permit application

- 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:

Prepared by:	R Architecture
Drawing numbers:	TP01 – TP05 inclusive, all Rev. F, TP05.1, & TP05.2 both Rev. F, TP06 & TP07 both Rev F.
Dated:	17/03/2022

#### Permit granted

- 2 In application P11754/2021 the decision of the responsible authority is set aside.



3 In planning permit application TPA/52196 a permit is granted and directed to be issued for the land at 1 Hilsea Court MOUNT WAVERLY VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

- The construction of three double storey dwellings.

Laurie Hewet  
**Senior Member**



## APPEARANCES

For applicant

Mr A Clarke, town planner

Mr Clarke called expert evidence from:

- Mr T Aravidis, landscape architect.

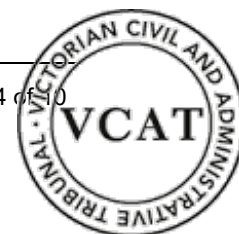
For responsible authority

Mr G Gilfedder, town planner



## INFORMATION

Description of proposal	Construction of three double storey dwellings
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone (GRZ3) Vegetation Protection Overlay (VPO1)
Permit requirements	A permit is required to construct two or more dwellings on a lot.
Land description	<p>The site is located on the northern side of Hilsea Court and is approximately 30 metres west of Hayfield Road. Hilsea Court is a short cul de sac with a dog leg in the road alignment.</p> <p>The land is an irregularly shaped lot with a frontage of approximately 15.24 metres and a depth of 34.63m and 46.45m. The site has a total area of 1165 square metres.</p> <p>The site is part of an established residential area comprising a mix of single and double storey dwellings. Medium density housing in the form of double storey town houses are increasingly prominent contributors to the character of the neighbourhood.</p> <p>The site is reasonably well located in terms of its access to services and facilities.</p>



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the decision of the Responsible Authority to refuse permission for the construction of three dwellings at 1 Hilsea Court Mt Waverley. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:

The proposal is inconsistent with the Residential Development Policy at Clause 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having regard to the desired future character of the area.

The proposal is inconsistent with the purposes of the General Residential Zone Schedule 3 specifically to ensure development minimizes building mass and visual bulk in the streetscape.

The proposal is inconsistent with the Monash Housing Strategy.

The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regards to:

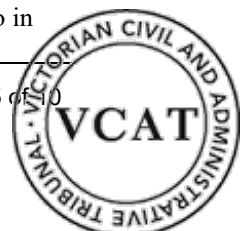
- B1 Neighbourhood character
- B5 Integration with the street
- B12 Safety
- B22 Overlooking
- B26 Dwelling entry
- B29 Solar access to secluded private open space
- B31 Design detail

The car parking and accessways do not satisfy the design standards for car parking at clause 52.06-9.

- 2 The Council's refusal of the application was based on an application for four, double storey dwellings.
- 3 At the start of the hearing, I amended the application by substituting amended plans which among other things reduced the number of proposed dwellings from four to three,
- 4 The Council advised that it is now satisfied that the proposal complies with the standards of Clause 55 referenced in the refusal and meets the relevant

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<sup>1</sup> 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.



objectives. It is also satisfied that the car parking arrangements satisfy the requirements of Clause 52.06-9.

- 5 The Council did however raise a new ground of refusal relating to standard B13 of Clause 55.03-8 (Landscaping).
- 6 At the end of the hearing, I provided oral reasons for my decision to set aside the Council's refusal and to grant a permit.

Laurie Hewet  
**Senior Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/52196
<b>LAND</b>	1 Hilsea Court MOUNT WAVERLY VIC 3149

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The construction of three double storey dwellings.

### CONDITIONS

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The plans must be generally in accordance with the plans prepared by 'r architecture', Revision F, but modified to show:
  - (a) A notation 'No boundary fencing between Dwellings 2 and 3 and the street alignment'.
  - (b) Mail box heights not exceeding 900mm with minimal horizontal aspect.
  - (c) The finished floor levels of each unit (including outdoor areas shown as paved on the plans) and boundary fences between each unit must be designed to the satisfaction of the responsible authority to meet the responsible authority's requirements to address potential overland flow from the Hayfield Road drain.
  - (d) As a result of the modifications sought in Condition 1(c) an overlooking assessment indicating compliance with Standard B22 of Clause 55.04-6 must be submitted to and approved by the responsible authority. Any amendments required by assessment must be implemented to the satisfaction of the responsible authority. Any trellis required to be provided is to be freestanding.
  - (e) The Dwelling 1 garage wall height in accordance with Standard B18.
  - (f) Corner splays or areas at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.



- (g) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is at or behind the setback alignment of buildings on site or in compliance with Council's 'Guide to Electricity Supply Meter Boxes in Monash.
- (h) A notation is to be provided indicating the meter boxes inside the western boundary are to service all units.
- (i) A Landscape Plan prepared in accordance with Condition 3 of this permit.
- (j) A Sustainable Design Assessment in accordance with Condition 9 of this permit and notations on the plans reflecting changes arising from that assessment.
- (k) Provision of water tanks (for all dwellings) and any other aspects required to meet the Melbourne Water STORM report.

### **No Alteration or Changes**

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

### **Landscape Plan**

- 3 Concurrent with the endorsement of any plans pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the plan L1 dated April 2022 prepared by 'Species Landscape architecture, but modified to show:
  - (a) any changes required by Condition 1;
  - (b) the provision of tree protection fencing as specified in condition 6 to the tree protection zones (not within);
  - (c) the location and details of all fencing.
  - (d) the location of any retaining walls associated with the landscape treatment of the site; and
  - (e) details of all proposed surface finishes including pathways, accessways, patio or decked areas.

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

### **Landscaping and Tree Retention**

- 4 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.

- 5 All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the Responsible Authority.
- 6 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained on-site, or are located within or adjacent to any works area (including trees on adjacent land and the nature strip). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority. Tree protection fencing must be constructed of wire or similar as per Australian Standard Trees on Development Sites (AS4970 2009) to the satisfaction of the Responsible Authority.
- 7 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.
- 8 No excavation for crossover construction is to extend beyond the distance shown on the endorsed plans.

### **Sustainability Design Assessment**

- 9 Concurrent with the endorsement of any plans pursuant to Condition 1 an updated Sustainable Design Assessment reflecting any changes made to the plans and noting the energy ratings upon which the results were based to the satisfaction of the Responsible Authority. The report is to provide a NatHERS energy rating report reflecting what is actually proposed rather than what could be achieved. All assumptions upon which the report is based are to be demonstrated with reference to the specific application plans.

### **Drainage & Stormwater**

- 10 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.
- 11 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve.
- 12 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.



- 13 The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 600 mm Council drain in the rear easement via a Council approved saddle adaptor to be constructed to Council standard.
- 14 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 15 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services unless with the prior written consent of the authority owning such an asset. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 16 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.

### **Engineering Permits**

- 17 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. A refundable security deposit is required to be paid prior to the drainage works commencing.

### **Time for Starting and Completion**

- 18 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
  - (a) The development has not started before 2 (two) years from the date of issue.
  - (b) The development is not completed before 4 (four) years from the date of issue.
- 19 In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or:
  - i within six (6) months afterwards if the use or the development has not commenced; or
  - ii within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**– End of conditions –**

