VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P2037/2017Permit no. TPA/46792 |
| CATCHWORDS |
| Monash Planning Scheme; Application under section 80 of the *Planning and Environment Act 1987* – to review conditions on a permit; C1Z; DDO12; Proposal for 13 storey mixed use development; Site in Glen Waverley Major Activity Centre; Height and built form response; Car park design and access. |

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| APPLICANT | Rocky Surace and Bill Kaimakamis |
| responsible authority | Monash City Council |
| SUBJECT LAND | 50 Montclair Avenue, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Mary-Anne Taranto, Member  |
| HEARING TYPE | Hearing |
| DATEs OF HEARING | 15 and 19 March 2018 |
| Dates of interim orders | 26 March 2018, 22 May 2018 and 6 August 2018 |
| DATE OF ORDER | 24 October 2018 |
| CITATION | Surace v Monash CC [2018] VCAT 1608 |

# Order

### Amendment of Application for Review

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act* *1998* the application for review is amended by deleting reference to the following conditions which are no longer disputed:
	1. Conditions 1(c), 1(d), 1(e), 1(h), 1(p), 1(u), 1(v), 1(x), 1(aa), 1(bb), 1(cc), 1(dd) and 17.

### Conditions changed

1. In application for review P2037/2017 the decision of the responsible authority is varied.
2. The Tribunal directs that planning permit TPA/46792 must contain the conditions set out in Appendix A.
3. The responsible authority is directed to issue a modified planning permit in accordance with this order.

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| **Mary-Anne Taranto Member** |  |  |

# Appearances

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| For applicant | Mr Paul Little, town planner of Planning and Property Partners.He called the following witness:* Mr Brodie Blades, urban designer of David Lock Associates.
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| For responsible authority | Ms Maria Marshall, solicitor of Maddocks Lawyers |

# Information

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| Description of proposal | Construction of a 13 storey building comprising a café and restaurant, commercial offices and dwellings. |
| Nature of proceeding | Application under section 80 of the *Planning and Environment Act 1987* – to review conditions on a permit. |
| Zone and overlays[[1]](#footnote-1) | Commercial 1 Zone (**C1Z**)Design and Development Overlay – Schedule 12 (**DDO12**) |
| Permit requirements | Clause 34.01-4 – Buildings and works in C1ZClause 43.02-2 – Buildings and works in DDO12  |
| Relevant scheme policies and provisions | Clauses 10, 11, 15, 16, 17, 18, 21, 22.14, 52.06, 65 and 71.02. |
| Land description | Located on the south side of Montclair Avenue in the Glen Waverley Major Activity Centre, this 810.7sqm rectangular site has a frontage of 17.98m and depth of 45.09m. The site is developed with a single storey, detached brick dwelling – reflecting the area’s earlier residential zoning. The site falls by about 1m from the rear to the front north-west corner.  |
| Amendment VC148 | The parties were provided with the opportunity to make further submissions on the implications of Amendment VC148.[[2]](#footnote-2) No submissions were received from any party.  |
| Tribunal Inspection | Unaccompanied subsequent to the hearing. |

# Reasons[[3]](#footnote-3)

### What is this proceeding about?

1. This is an application for a review of multiple conditions on a permit issued by the Monash City Council for a 13-storey mixed use development (to be used for restaurants, offices and dwellings) in the Glen Waverley Activity Centre (**GWAC**).
2. The conditions that in dispute can be broadly categorised under the following themes:
* Building height;
* Design detailing of the building’s facades and street level entry;
* Internal layout and design;
* Car park design and access;
* Number of car parking spaces and their method of provision.
1. During the course of the hearing, a number of conditions were either said to be no longer disputed or the parties agreed to varied wording that addressed the applicant’s concerns with them.
2. Another condition originally in dispute was Condition 4. This condition requires a financial contribution in lieu of car parking by way of an Agreement under s.173 of the *Planning and Environment Act 1987*.
3. This condition was imposed in response to a Parking Overlay that applied to the GWAC at the time of Council’s decision. Condition 4 was ultimately the subject of a Practice Day hearing before Senior Member Rickards on 3 August 2018.[[4]](#footnote-4) The applicant advised that this condition is no longer disputed and the Tribunal in that proceeding subsequently amended the application for review.
4. Thus, the substantive issues that remain before me for my consideration relate to the proposed building height and detailed design issues.
5. I have concluded that it is not necessary to combine the ground and first floor levels but I have found the height of the building is required to be reduced by six metres to reflect the strategic aspirations for the GWAC more broadly and the preferred maximum height nominated for this precinct under DDO12. I have also decided that it is appropriate and necessary to require some further refinements to the design detailing of the building. My reasons follow.

## conditions that remain disputed

### Condition 1(a)

1. This condition as drafted in its contested form reads as follows:

Ground and first floor levels combined to be not more than 4.5 metres in height and building height (excluding lift overrun) reduced to be no higher than 33.7 metres to the top of the parapet.

1. It is the applicant’s case that these modifications are unnecessary in a strategic context where more intensive development is unequivocally envisaged. As Mr Little submitted, the question to be posed is why building height at 45m shouldn’t be allowed.
2. It was Mr Blades’ evidence that application of the 4.5m floor to floor heights to each of the commercial levels would over 10 storeys equate to an overall height of 45m. The proposed height of 43m is said to be directly consistent with the implied 45m maximum height for Area D. In addition, it was his opinion that the overall height of the proposal is of a scale that would not be problematic when viewed from the low scale character of Kingsway while also contributing to a broader pattern of height transition in a north-south and east-west direction and within the GWAC. Considerable reliance was placed on the future development potential of neighbouring land with built form of a comparable scale, particularly the abutting site to the west as justification for this proposal.

#### The proposed design response and contextual considerations

1. The following details of the proposal are relevant to my assessment of this condition.
	* Floor to floor height at ground level proposed is 4m;
	* Floor to floor height at level 1 proposed is 3.6m;
	* The building height to the top of the 13th storey (level 12) is 43m (or approximately 43.5m including the parapet);
	* The height at the top of the lift overrun is 45.1m;
	* The typology could be described as a podium form at the first four levels with a tower element above;
	* The ground level is to be occupied by a café with entry, corridor and service areas to the levels above adjacent to the east boundary;
	* Level 1 is to accommodate a restaurant at the front with a balcony and office space at the rear;
	* Levels 2 and 3 adopt identical floorplates and are to accommodate two office tenancies on each level;
	* Level 4 is to contain two office tenancies and a terrace across the front and west side;
	* Level 5 is to contain two office tenancies with a similar floorplate to level 4 excluding terraces;
	* Levels 6 to 10 adopt similar internal floorplates each with six dwellings except that level 6 includes large balconies on the west side; and
	* Levels 11 and 12 would each have four dwellings, adopt progressively larger setbacks from boundaries compared the residential levels below and larger balconies are proposed to level 11.
2. In addition to the purposes and decision guidelines of the C1Z, key elements of the planning framework that are integral to my assessment are:
	* the *Glen Waverley Activity Centre (GWAC) Structure Plan 2014* as updated in June 2016 (the **Structure Plan**);
	* the Glen Waverley Major Activity Centre Structure Plan policy at Clause 22.14; and
	* DDO12 whose schedule is titled ‘Glen Waverley Major Activity Centre’.
3. The Structure Plan is a reference document in the scheme whose implementation is effected primarily through the clause 22.14 policy and DDO12. These parts of the planning scheme were introduced following gazettal of Amendment C120 to the Monash Planning Scheme on 25 January 2018 after Council’s decision on the permit application.
4. The Structure Plan outlines a 20 year plan for the growth and improvement of the GWAC including preferred use and development outcomes. Its preparation is consistent with the planning policy framework which seeks to facilitate the orderly development of urban areas.[[5]](#footnote-5)
5. Similarly, the policy basis at clause 22.14-1 indicates that the Structure Plan (and Transport Plan for the GWAC) were ‘prepared to manage the future growth and change in the centre by providing clearly defined outcomes to ensure the centre develops in an orderly and sustainable way’.
6. Under the GWAC policy, ten broad precincts are identified. The site is included in ‘Precinct 2 – Montclair’ which is envisaged to play an important role for office and commercial uses with housing above.
7. The DDO12 includes design objectives that, amongst other things seek to:
	* ensure that development is consistent with theStructure Plan;
	* create a strong and distinct image for the commercial core of the GWAC with high quality and site responsive development;
	* create active and engaging street frontages and support a high level of pedestrian amenity to encourage walking around the centre;
	* retain the existing fine grain character of commercial buildings along the traditional strip shopping areas within the GWAC such as Kingsway;
	* encourage development that retains human scale and an appropriate transition in building height from the Centre to the residential areas adjoining the activity centre; and
	* ensure development in residential land surrounding the commercial core is sensitively designed and complements or enhances the existing character of the area.
8. The GWAC is divided into 11 different precincts in which preferred building heights expressed both in terms of storeys and metres are indicated. In essence, higher built form is proposed within the core areas of the GWAC close to Springvale Road, transitioning down to lower built form to residentially zoned areas within the activity centre. In the following image extracted from the precinct plan in DDO12, I have added a table of preferred heights for clarity.



1. The review site is located within ‘Built Form Area D’ in DDO12 as illustrated by the red star. From my reading of the DDO12 I note that:
	* The preferred building height ranges from 8 to 10 storeys (29 to 36m) in Area D;[[6]](#footnote-6)
	* A preferred street wall height of 3 storeys, equivalent to 11.5m with a zero setback is preferred;[[7]](#footnote-7)
	* Building heights and setbacks are expressed as ‘preferred’ and are thus discretionary under DDO12;
	* Notwithstanding, at clause 2 to DDO12, in relation to building heights, it is stated that development should not exceed the preferred maximum building heights;
	* The following minimum floor to floor dimensions should apply:
		+ 3.2 - 3.5 metres for residential use
		+ 4.2 - 4.5 metres for retail or restaurant use
		+ 3.2 - 3.5 metres for any other use.
2. Clause 2 states that an application to exceed the preferred maximum building height must demonstrate how the development will continue to achieve the design objectives, development outcomes and all other relevant requirements of this schedule.
3. Decision guidelines also require a consideration of the proposal’s consistency with the Structure Plan.
4. In relation to the surrounding physical context, abutting land to the east at 52 Montclair Avenue has been recently developed with a 7-storey commercial building stepping down to 6-storeys at the rear.[[8]](#footnote-8)
5. East again at No. 54 Montclair Avenue, construction is occurring for an 11 storey mixed use development.
6. Abutting land to the west at No. 44-46 Montclair Avenue, comprises a large parcel currently occupied by the Church of Christ with low scale, predominantly single storey buildings.
7. To the south with access from Bogong Parade, land is developed with a four level multi-deck car park. South again on the opposite side of Bogong Parade are residential properties, mostly single and two storeys in scale, within the Residential Growth Zone (Schedule 4). Residential use and development predominates on land in the General Residential Zone (Schedule 4) further from the commercial core as illustrated in the following image of existing zones.



1. Land on the opposite, north side of Montclair Avenue is an at-grade Council car park.
2. Three residential towers of 12, 14 and 20 storeys have been granted permits within the southern end of The Glen, on land which I understand is in Precinct B under DDO12, where buildings greater than 10 storeys are envisaged. A fourth 15 storey apartment building in this precinct has also been permitted on the south side of O’Sullivan Road opposite The Glen.

#### Analysis

1. The disputed condition seeks to reduce the height of the building by 9.8m by combining the ground and first level into one level and then removing further unspecified levels.
2. The preferred built form and building heights for the GWAC have been informed in part by a consideration of shadow impacts in the public realm and the presence of residential interfaces. The Structure Plan explains that:

The proposed building heights scale down to adjoining areas to provide heights that are compatible with existing one and two storey streetscapes, while providing an edge to the Commercial Centre of the GWAC.[[9]](#footnote-9)

1. I am not persuaded by the evidence that a preferred future character outcome of 45m is implied by applying the preferred 4.5m floor to floor heights over 10 storeys. If a 45m preferred height was intended to apply to this precinct, Table 1 to Schedule 12 of the DDO would have said so. Instead, it provides a range in metres of 29m to 36m.
2. I consider that the inclusion of floor to floor heights is intended to usefully recognise the different scale of the internal space typically required for different uses – office, retail and residential – all of which are encouraged in this precinct. While references to 8 to 10 storeys are a useful guide, I consider that the preferred height expressed in metres provides the most meaningful measure. I am also mindful that Clause 2 in Schedule 12 to the DDO clarifies that:

The preferred maximum building heights have been calculated on the basis that the ground floor measures 4.5m, and each floor following measures 3.5m.

1. Applying this statement, for a 10 storey building, one level at 4.5m plus nine levels at 3.5m adds up to 36m.
2. I also note that the preferred heights expressed throughout the DDO12 area for each precinct include references to both storeys and height in metres. Some include a range, as is the case in this precinct of 29m to 36m, others only specify a lower preferred height but no upper range (such as in Areas B and C where greater flexibility and thus more substantial change above 36m is achievable) while in the abutting Precinct E – at the interface with more sensitive residentially zoned land – a singular, and I think, more definitive 15m height is specified.
3. The panel which considered Amendment C120 found that the different approaches to the expressions of preferred heights and their quantum, have a sound strategic basis.[[10]](#footnote-10) I agree.
4. In this case, the proposal with its height of 43.5m would extend by 7.5m above the upper range of the preferred height. For comparative purposes, the proposed building would rise approximately 13.7m higher than the abutting commercial development at No. 52 (increasing to a height difference of 16.5m at the rear) and approximately 8m higher than the new development under construction at No. 54 Montclair Avenue.
5. As I have mentioned, a departure from the preferred heights is possible given their non-mandatory nature. However, as the Tribunal observed in *Boneng (Portman) Pty Ltd v Monash CC* [2017] VCAT 797:[[11]](#footnote-11)

… the discretionary nature of preferred heights does not mean they have less weight than mandatory heights; it means that such provisions are consistent with the fundamental principle of performance-based assessment.[[12]](#footnote-12) Further, as the Tribunal noted in *Athedim (Vic) Pty v Moonee Valley CC (No. 2)*:[[13]](#footnote-13)

12 The Tribunal must give effect to the DDO. Notwithstanding the fact that the preferred height within the subject DDO is a discretionary limit, the Tribunal must avoid decisions which in effect render the specification of a preferred height meaningless. I agree with Mr Holdsworth, there needs to be special circumstances which warrant a departure from the preferred maximum specified by the DDO.

13 Special consideration should not be too narrowly construed. They could be:

* characteristics of the proposal, for example, its social utility or the atypical excellence of its contribution to architecture and urban design, or
* characteristics of the site, its size, its location, the sensitivity of its interfaces etc.

On the other hand special consideration should not be urban design and amenity considerations which would be broadly applicable on a general basis throughout the precinct.

1. In the case before me, none of the arguments advanced for the departure from the preferred heights were based on the building’s exemplary contribution to architectural design, social utility or other such features. The site’s relatively compact size as a single traditional lot was recognised as a constraint but I have not been provided with any compelling reason as to why this circumstance in itself justifies a departure from the range of preferred heights for Precinct D.
2. While the two uppermost levels described as a ‘cap’ to the building by Mr Blades have greater boundary setbacks than the levels below, these two levels are in no way minor or visually diminutive elements. I regard this response as one that is an urban design device that is not uncommonly applied to taller buildings of this kind in many contexts.
3. Rather, the strongest reasons advanced by the applicant in support of the higher building scale centres on the proposal’s acceptability on views from Kingsway and the potential redevelopment with a similar or larger scaled building in excess of 43m on the Church of Christ site.
4. I accept that the development with its proposed height would not have an adverse effect on the Kingsway environs.
5. However, I think that the more critical consideration is the proposed building height and skyline impacts from the lower scale residential areas further to the south-west. In the neighbouring Precinct E to the south and south-west, a scaling down of built form to a preferred height of 15m is envisaged.
6. I find that the development at a height in excess of 43m would, in longer range views from this neighbouring residential area to the south-west, introduce an intrusive skyline element, particularly on approach from Bogong Avenue west of Myrtle Street. In saying this I have taken into account the potential future development in Precinct E as a foreground element.
7. I am also troubled by the potential expectation that a building of the height proposed on the review site would set for the neighbouring Church of Christ site and the GWAC more broadly. Documentation accompanying the permit application plans already anticipates a higher built form outcome on this neighbouring site with a building envelope about one storey higher than this proposal. I find that this ‘leap-frog’ approach is one that represents a flawed starting point and lacks strategic rigour. It is at odds with the very clear strategic guidance that the Structure Plan and DDO12 provide for the GWAC.
8. I consider that the proposed height represents too great a departure from the preferred heights for Area D in this part of the GWAC. Its approval would dilute the strategic intent of specifying different heights for different parts of the GWAC. This runs counter to the Structure Plan’s role of achieving orderly planning and the delivery of greater certainty for investment and development – outcomes that are underpinned by a scaling down of built form away from the more robust environs within the commercial core to the lower scaled residential streetscapes further south and south-west.
9. I therefore consider that the development should be reduced by two levels and not less than 6m. This would result in a maximum building height of 37.5m measured to the parapet of the 11th level.
10. Having regard to the desirability of avoiding large, high massing of buildings in the GWAC[[14]](#footnote-14) while maintaining the integrity of the podium form, I consider that the two levels to be deleted should come from that part of the building presently occupied by levels 5 to 10. This may include one office level and one residential level or two residential levels.
11. I otherwise find that the proportions of the ground and first floor level and the presentation of the podium form to the street is acceptable subject to some refinements for reasons which follow shortly.
12. Other modifications to be made to the layout and design of the building by other parts of condition 1 are to be incorporated into the revised, lower building form.
13. I also note that consequential changes to the number of parking spaces may arise, but I consider that this matter can be resolved between the parties as part of the assessment of amended plans submitted for endorsement to the Council.
14. I conclude that condition 1(a) is to be modified so that it reads as follows:

The building height (excluding lift overrun) reduced by at least 6m to be no higher than 37.5 metres to the top of the parapet. The two levels to be deleted are to come from that part of the building presently occupied by levels 5 to 10. This may include one office level and one residential level or two residential levels. Other modifications required to be made to the layout and design by other parts of condition 1 are to be incorporated into the revised, lower building form.

1. I have also made consequential modifications to the description of ‘What the permit allows’ as a result of the changes required to be made to the building.

### Conditions 1(b) and 1(j)

1. These conditions as drafted in their contested form read as follows:

**Condition 1(b)**

Levels 2 and 3 (cantilevered office element) setback a minimum of 1.5 metres from the front title boundary and the two central support columns deleted accordingly.

**Condition 1(j)**

Enhancement of the presentation of the building to Montclair Avenue from ground floor level through to level 3. Plans should consider redesigning the facade so that support columns are not required for the cantilevered second and third floor levels. Treatment (e.g. glazing) to enhance the eastern facade of the cantilevered level where it extends forward of 52 Montclair Avenue should also be included.

1. It was Mr Blades’ evidence that the façade treatment is well resolved and will allow a suitable level of integration with the streetscape and functionality at street level for pedestrians.
2. The council submits that the architecture is too heavy, the columns are ‘brutal’ and a softer more contemporary and refined look is warranted to better achieve the vision for GWAC.
3. I am not persuaded that there is a sufficient justification for the deletion of the columns. These elements would not unreasonably interfere with pedestrian permeability noting that they do not encroach into the public realm. The cantilevered form is also in my view a contextually acceptable response to the front setback condition of the neighbouring development to the east. The design including the columns at street level and cantilevered balcony above will maintain a degree of permeability and visibility between the two sites – an outcome I regard as desirable in the circumstances. The podium levels above (levels 2 and 3) extend to the front boundary which I regard as an acceptable response to the preferred setback guidance to the street for this precinct under DDO17. While ultimately higher than the 3-storey street wall envisaged for this precinct, I am satisfied that this response strikes an acceptable balance between its contextual setting and desired built form outcomes for this precinct.
4. I agree however with the Council’s position that the north and east face of the framing element to levels 2 and 3 (which I note also sits slightly above the floor level of level 4) should be further refined.
5. In relation to the north face, the framing element comprises precast concrete panels painted white. This is to be broken by a brown vertical metal clad element near the middle of the façade. I consider that the use of higher quality materials, particularly in preference to the concrete panel is necessary, having regard to the ‘excellence’ and the ‘high architectural quality’ that is a key desired outcome for development in the GWAC.[[15]](#footnote-15)
6. On the east elevation, I consider the blank appearance of the framing element is poor but would be acceptable if treated with the green feature panel that is used on this element on the west side, as discussed at the hearing. I will therefore modify condition 1(j) to reflect these findings as follows:

Enhancement of the framing element on to north and east elevations at levels 2 and 3 (and where extending in parapet form partly above the floor level of level 4) as follows:

* To the north (front) elevation, the use of higher quality materials and design refinements to achieve a higher quality architectural presentation to the street; and
* To the east elevation, application of the green feature panel used on this element on the west side, unless an alternative treatment is agreed to by the responsible authority and to its satisfaction.
1. Condition 1(b) is to be deleted. A further consequential modification arises in relation to condition 1(d) which cross-references condition 1(b). I will therefore also modify this condition.

### Condition 1(g)

1. This condition as drafted in its contested form reads as follows:

The eastern facade of the lift overrun and stair core (constructed along the eastern boundary) reduced in length to encompass the lift overrun only where the overrun extends above the top of the habitable levels of the building. The eastern facade of the lift overrun is to be treated differently (e.g. colour) to boundary wall construction below to the satisfaction of the Responsible Authority.

1. With the lowering of the building by two levels as required by my changes to condition 1(a), I am satisfied that the design of the lift overrun would be acceptable and not unreasonably intrusive.
2. I will therefore require deletion of this condition.

### Condition 1(k)

1. This condition as drafted in its contested form reads as follows:

Enhancement of the southern (rear) facade of the building and the blank section of wall along the western facade (south west corner) at the commercial levels.

1. It was clarified at the hearing that the first part of this condition relates to levels 3 to 10 and the second part of this condition relates to levels 2 to 5.
2. It was Mr Blades’ evidence that these elements of the building would be largely obscured by either the car park in Bogong Avenue or by future development on the neighbouring site to the west and consequently no further enhancement of the façade is required.
3. I agree with Mr Blades’ opinion in relation to levels 3 and 4 on the south elevation having regard to foreground elements comprising existing built form along Bogong Avenue.
4. I am not however persuaded that the present design and appearance of:
	* the west elevation, and
	* the south elevation commencing from Level 5 up to and including level 10 (the latter which will become level 8 following the reduction in building height by two levels)

would achieve ‘excellence’ and the ‘high architectural quality’ that is a key desired outcome for development in the GWAC.[[16]](#footnote-16) These elements are the be constructed in precast concrete and painted in either light or dark grey.

1. While redevelopment may occur on abutting land to the west and south in the future, particularly the former, the timeframe for any redevelopment is uncertain. I consider that in the interim, there is a need to ensure that the built form response achieves the excellence and high design quality envisaged for the GWAC. I consider that greater refinement of these elements is appropriate. To reflect these findings, I will require modifications to this condition so that it reads as follows:

Enhancement of the southern (rear) facade of the building (commencing at level 5 and continuing upwards but excluding the two uppermost levels) and the blank section of wall along the western facade (south-west corner) at the commercial levels (commencing from level 2 upwards).

### Condition 1(l)

1. This condition as drafted in its contested form reads as follows:

Dimensions added to all balconies located on the southern facade of levels 6-10. Balconies must be a minimum of 2 metres from the southern title boundary.

1. In their current form, these balconies have nominated areas of 9.46sqm, a dimensioned length of 4.3m and therefore, a depth of 2.2m. Scaling the plans indicates that these balconies are setback 1.7m from the south boundary. While I accept that it is reasonable for all balcony dimensions to be shown, it remains unclear to me as to why it is necessary for an increase in the setback from the south boundary.
2. I see no basis for the second sentence in this condition and will require this condition to be amended so as to delete the second sentence.

### Condition 1(r)

1. This condition as drafted in its contested form reads as follows:

Car spaces 5 and 6 in each of basement levels 2-4 setback a minimum of 300mm to abutting walls to provide sufficient space to open doors and assist in vehicle turning movements.

1. It was agreed that the design of these spaces does not comply with the design standards for carparking and Diagram 1 at clause 52.06-9 of the planning scheme. The applicant submits that persons using non-conforming spaces, being regular users as either residents or staff, will become familiar with the constrained design.
2. Amongst other things, the purposes of clause 52.06 ask for the design and location of car parking that is of a high standard, creates a safe environment for users and enables easy and efficient use. I am not persuaded that there is sufficient justification for a departure from the standard design requirement that leads me to find that the proposed design would facilitate their convenient and efficient use.
3. I will therefore require that this condition is to remain unchanged.

### Condition 1(s)

1. This condition as drafted in its contested form reads as follows:

Reallocation of car parking spaces to provide a minimum of 46 on-site car spaces for the residential component of the development with 1 car space allocated to each two bedroom dwelling, 2 car spaces allocated to each three bedroom dwelling. Six (6) car spaces must be allocated to the office use and three (3) car spaces allocated to the restaurant use.

1. The applicant does not take issue with the parking rates nominated, but rather, the reference to 46 car spaces for resident use is contested on the basis that a lesser number of dwellings may be only be permitted.
2. I agree. I also note that the in light of my findings on the issue of building height, one of the two building levels to be deleted may be for commercial use. In the circumstances, it is appropriate to allow discretion to depart from six car spaces nominated for commercial use. This condition will therefore be modified to read as follows:

Car parking spaces for use by residents are to be provided at the following minimum rates:

* 1 car space allocated to each two bedroom dwelling,
* 2 car spaces allocated to each three bedroom dwelling.

Six (6) car spaces must be allocated to the office use and three (3) car spaces allocated to the restaurant use, unless an alternative number is otherwise allocated to these non-residential uses to the satisfaction of the Responsible Authority.

### Condition 1(t)

1. This condition as drafted in its contested form reads as follows:

Clearance to car parking spaces to be in accordance with Diagram 1 of Clause 52.06-8 of the Monash Planning Scheme in relation to placement of wall, fence, column, tree, tree guard or any other structure that abuts a car space.

1. For the reasons I have explained in relation to Condition 1(r), I find that it is necessary to retain this condition. I note however that there is a typographical error in Condition 1(t). This condition should refer to clause 52.06-9 rather than clause 52.06-8. I will amend this condition accordingly.

### Condition 1(w)

1. This condition as drafted in its contested form reads as follows:

Provide a corner splay or area at least 50% clear and visual obstructions (or with a height of less than 1.2 metre), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2 metres long x 2.5 metres deep (within the property) along both sides of the exit lane to provide a clear view of pedestrians on the footpath of the frontage road.

1. The corner splay referred to in this condition is partially encroached upon by the western most support column.
2. The corner splay’s purpose is to allow views of pedestrians in both directions from exiting vehicles. Having regard to the narrow width of the column, its position commencing 2m into the site and the provision of an unobstructed area for a further 2m south of the column, I am satisfied that acceptable levels of visibility to the west will be achieved with the design and location of the column in its current form.
3. I will therefore require this condition to be amended by adding the following sentence:

The western-most column at ground level may remain in the location shown on the plans subject to the inclusion of a plan notation which states that “no temporary or permanent visual obstructions are to be placed in the area between the front title boundary and the front edge of the building’s west wall”.

## conditions to be amended as agreed by the parties

1. Conditions are to be amended as set out below following submissions made about their intended meaning and discussion at the hearing about modifications that would be accepted by the parties.

### Condition 1(f)

1. Reference is to be made to Residential Levels 6 to 10 instead of 6 to 11 so that this condition reads:

The front facade of Residential Levels 6 to 10 inclusive, setback a minimum of 5 metres from the front title boundary and corresponding balconies setback to a minimum of 3.2 metres from the front boundary accordingly. The increased setback must be achieved through overall reduction in the length of each floor level.

### Condition 1(i)

1. This condition states ‘deletion of all southern facing balconies/terraces from Levels 1 – 5 inclusive (commercial uses)’.
2. The Council agrees that the deck on Level 1 for offices can be retained. It was also agreed that the air conditioning plant notated as ‘AC’ on the plans at Levels 2 to 5 are not intended to be accessed for general use by building occupants, noting that internal access to them is limited via the men’s toilets. Rather, it was agreed that access to air conditioning plant in these locations should be restricted to persons requiring maintenance access to this plant only. I will amend this condition so that it reads:

Plan notations indicating that the external decks marked ‘AC’ (air conditioning plant) on the south side of the building on Levels 2 to 5 are only permitted to be accessed by persons carrying out maintenance to this plant. Doors to these areas from within the building are to remain locked at all other times to prevent general access to these areas by building occupants or their visitors for non-maintenance related purposes.

### Conditions 1(m), 1(n) and 1(o)

1. These three conditions variously require refinement of external building elements and the building entry at ground level which are not disputed. What is disputed are the following underlined words:

Modifications required by this condition must be carried out in consultation with a qualified Urban Design professional to be chosen by Responsible Authority and at full cost to the permit holder.

1. The parties agree that the Council need not choose the urban designer provided the persons is suitably qualified and experienced person with expertise in urban design.
2. Conditions 1(m), 1(n) and 1(o) will be modified so that the second sentence in each condition reads as follows:

Modifications required by this condition must be carried out to the satisfaction of the Responsible Authority in consultation with a suitably qualified and experienced person with expertise in urban design at full cost to the permit holder.

### Condition 1(q)

1. This condition refers in part to the screening of the balcony for apartment 5. It is agreed that this condition should apply to the floor layout plans that are proposed to levels 7 to 10 rather than levels 6 to 10. This condition will therefore be modified to read as follows:

Screening of the western edge of balconies of apartment 5 at each of levels 7 to 10. Screening must extend from floor to ceiling and be designed to create a vertical architectural feature on the western facade of the building to the satisfaction of Responsible Authority.

### Condition 1(y)

1. This condition refers to an area for the storage and collection of large roll away bins at basement level. The applicant does not oppose the provision of a suitably sized area for the storage of waste bins *per se*, but prefers that the size of the storage area be linked to bin sizes specified in the approved Waste Management Plan. This condition will therefore be modified to read as follows:

An area for the storage and collection of bins at basement level whose design, size and location is to be consistent with the recommendations contained in the approved Waste Management Plan referred to in condition 11 of this permit.

### Condition 23

1. This condition refers to stormwater discharge and the design of any detention system. The third and contentious part of the condition refers to notes appearing at the end of the permit. The parties agree to delete this last sentence so that this condition will read:

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.

### Condition 25

1. This condition refers to building clearances from a drain in an easement. The parties agree to the provision of the words ‘or otherwise to the satisfaction of the Responsible Authority’. This condition will therefore be modified to read as follows:

A minimum clearance of 300 mm is to be provided to the Council drain in the easement to the south of the property, or otherwise to the satisfaction of the Responsible Authority. Appropriate lateral restraint must be applied during excavation of the basement.

### Condition 29

1. This condition allows the Responsible Authority to ask the owner and management of the premises for evidence of compliance with State Environment Protection Policies. The parties agree to the addition of the words ‘of the Responsible Authority acting reasonably’ after the words on request. For consistency, I will also substitute the term ‘Council’ for ‘Responsible Authority’ where later appearing in this condition. This condition will therefore be modified to read as follows:

The owner and management of the premises must ensure that any noise emanating from the premises, during and post construction, must not exceed the standards of the State Environment Protection Policies No. N1 and must on request of the Responsible Authority acting reasonably provide evidence to the Responsible Authority of compliance with the policies.

### Conclusion

1. For the reasons set out above, a modified permit is to be issued.

|  |  |  |
| --- | --- | --- |
| **Mary-Anne Taranto Member**  |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No | TPA/46792 |
| Land | 50 Montclair Avenue, Glen Waverley |

|  |
| --- |
| What the permit allowS |
| * The development of an 11 storey building comprising of cafe and restaurant, offices and dwellings together with the provision of car parking and a reduction in the loading bay facilities in accordance with the endorsed plans.
 |

## Conditions

1. Before the development starts, three copies of amended 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 submitted with the application, but modified to show:

* 1. The building height (excluding lift overrun) reduced by at least 6m to be no higher than 37.5 metres to the top of the parapet. The two levels to be deleted are to come from that part of the building presently occupied by levels 5 to 10. This may include one office level and one residential level or two residential levels. Other modifications required to be made to the layout and design by other parts of condition 1 are to be incorporated into the revised, lower building form.
	2. --- *Condition deleted*---
	3. The front facade of the ground floor restaurant relocated to not more than 4.5 metres from the front title boundary. Bicycle racks should be relocated accordingly within the setback.
	4. The front facade of level 4 (office 5) setback a minimum of 5.0 metres from the front title boundary.
	5. The front facade of level 5 (office 7) setback a minimum 5 metres from the front title boundary.
	6. The front facade of Residential Levels 6 to 11 inclusive, setback a minimum of 5 metres from the front title boundary and corresponding balconies setback to a minimum of 3.2 metres from the front boundary accordingly. The increased setback must be achieved through overall reduction in the length of each floor level.
	7. --- *Condition deleted* ---
	8. Deletion of ‘pedestrian connection to public car park’ from the level 1 floor plan and removal of public arcade notation from plan.
	9. Deletion of all southern facing balconies/terraces from Levels 1 – 5 inclusive (commercial uses)
	10. Enhancement of the framing element on to north and east elevations at levels 2 and 3 (and where extending in parapet form partly above the floor level of level 4) as follows:
		1. To the north (front) elevation, the use of higher quality materials and design refinements to achieve a higher quality architectural presentation to the street; and
		2. To the east elevation, application of the green feature panel used on this element on the west side, unless an alternative treatment is agreed to by the responsible authority and to its satisfaction.
	11. Enhancement of the southern (rear) facade of the building (commencing at level 5 and continuing upwards but excluding the two uppermost levels) and the blank section of wall along the western facade (south-west corner) at the commercial levels (commencing from level 2 upwards).
	12. Dimensions added to all balconies located on the southern facade of levels 6-10.
	13. Refined detail of all materials and finishes to all aspects the development including use of high quality architectural treatments. Modifications required by this condition must be carried out to the satisfaction of the Responsible Authority in consultation with a suitably qualified and experienced person with expertise in urban design at full cost to the permit holder.
	14. Prominent residential entrance to the building to provide a strong sense of address. Secure mailboxes must also be provided. Modifications required by this condition must be carried out to the satisfaction of the Responsible Authority in consultation with a suitably qualified and experienced person with expertise in urban design at full cost to the permit holder.
	15. A prominent and widened commercial entrance to the building for upper floor commercial uses that is easily identifiable and distinguishable from the residential entry. Modifications required by this condition must be carried out to the satisfaction of the Responsible Authority in consultation with a suitably qualified and experienced person with expertise in urban design at full cost to the permit holder.
	16. Detailed layout of the dining area proposed in the front setback to the ground floor cafe detailing entrance point, steps and any planter box locations which may be proposed to enclose setback at the footpath interface.
	17. Screening of the western edge of balconies of apartment 5 at each of levels 7 to 10. Screening must extend from floor to ceiling and be designed to create a vertical architectural feature on the western facade of the building to the satisfaction of Responsible Authority.
	18. Car spaces 5 and 6 in each of basement levels 2 to 4 setback a minimum of 300mm to abutting walls to provide sufficient space to open doors and assist in vehicle turning movements.
	19. Car parking spaces for use by residents are to be provided at the following minimum rates:
		1. 1 car space allocated to each two bedroom dwelling,
		2. 2 car spaces allocated to each three bedroom dwelling.

Six (6) car spaces must be allocated to the office use and three (3) car spaces allocated to the restaurant use, unless an alternative number is otherwise allocated to these non-residential uses to the satisfaction of the Responsible Authority.

* 1. Clearance to car parking spaces to be in accordance with Diagram 1 of Clause 52.06-9 of the Monash Planning Scheme in relation to placement of wall, fence, column, tree, tree guard or any other structure that abuts a car space.
	2. A signal system to the basement ramps to manage conflict between levels. A vehicle waiting bay/line is to be clearly line marked at each level to ensure ramp access ways remain clear at all times to the satisfaction of the Responsible Authority.
	3. Proposed vehicle crossing to Montclair Avenue not less than 5.0 metres in width.
	4. Provide a corner splay or area at least 50% clear and visual obstructions (or with a height of less than 1.2 metre), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2 metres long x 2.5 metres deep (within the property) along both sides of the exit lane to provide a clear view of pedestrians on the footpath of the frontage road. The western-most column at ground level may remain in the location shown on the plans subject to the inclusion of a plan notation which states that “no temporary or permanent visual obstructions are to be placed in the area between the front title boundary and the front edge of the building’s west wall”.
	5. A minimum of two showers and associated change rooms provided in accordance with the requirements of Clause 52.34 of the Monash Planning Scheme.
	6. An area for the storage and collection of bins at basement level whose design, size and location is to be consistent with the recommendations contained in the approved Waste Management Plan referred to in condition 11 of this permit.
	7. Details of all rooftop plant and any associated screening to ensure plant is not visible from outside the property.
	8. The location and design of any required fire services, electricity supply, gas and water meter boxes discretely located and/or screened to compliment the development.
	9. The inclusion of environmentally sustainable design measures consistent with Council’s adopted Glen Waverley Structure Plan and Environmentally Sustainable Design Policy.
	10. A Wind Modelling Assessment must be undertaken by a suitably qualified person to assess the wind impact of the development at street level. Any recommendations or required modifications to the development must be implemented to the satisfaction of Responsible Authority.
	11. An acoustic assessment must be undertaken by a suitably qualified acoustic consultant to demonstrate to Council’s satisfaction that residential apartments will be reasonably protected from external noise sources, including on-site noise from restaurant activity, the commercial building to the west, the car park to the south and the Kingsway and laneway environs to the east
1. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
2. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
3. Prior to the endorsement of plans, the owner of the land must enter into an agreement under section 173 of the Planning and Environment Act 1987 in which the owner agrees to pay $22,000 (including GST) indexed by CPI (all groups) from 1 July 2016 to the responsible authority for:
	1. each car parking space or part thereof required under this Scheme; or
	2. where a rate is not specified, then the rate determined by the responsible authority

and which cannot be provided on the land (net of car parking credits).

The agreement may provide for the payment of the contribution in instalments plus an interest component equivalent to the interest payable on unpaid rates and charges under the Local Government Act 1989 and it must provide that all installments and charges under the local Government Act 1989 and it must provide that all installments and accrued interest are paid within 5 years of the first installment. The agreement must provide that the contribution is to be indexed according to the CPI (all groups) from 1 July 2017 until it is paid.

The agreement must also provide for the owner to pay Council's costs of preparing, registering and then upon its ending, deregistering the agreement.

1. Prior to the commencement of the development, a plan detailing the urban design streetscape treatment of the public realm must be submitted to and approved by the Responsible Authority.

The plan must show the proposed urban design treatment of public areas within the subject land site and surrounding public realm area to ensure the integration of the site with these areas and consistency in the urban design treatment.

The plan must be developed in consultation and to the satisfaction of City of Monash Planning, Urban Design and Engineering Divisions.

The plans must show: -

• Detail of all proposed hard surface materials/paving.

• The inclusion of water sensitive urban design features.

• Bicycle facilities.

• Disabled access features where applicable.

• Any other feature deemed appropriate, to the satisfaction of the Responsible Authority.

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

1. Before the occupation of the buildings allowed by this permit, landscaping and urban design 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. Bicycle parking facilities shall generally follow the design and signage requirements set out in Clause 52.34 of the Monash Planning Scheme.
3. A minimum of 35 bicycle parking spaces must be provided on-site, with 8 spaces allocated for residential use, 15 spaces allocated for employee use and 12 spaces for visitors.
4. The amenity of the area must not be detrimentally affected by the use or development, through the:
	1. transport of materials, goods or commodities to or from the land;
	2. appearance of any building, works or materials;
	3. emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil;
	4. presence of vermin;
5. No goods must be stored or left exposed outside the building so as to be visible from any public road or thoroughfare.

#### Waste Management Plan

1. The development must not commence until a Waste Management Plan for the collection and disposal of garbage and recyclables for all uses on the site has been endorsed. The Waste Management Plan shall provide for:
	1. The method of collection of garbage and recyclables for uses;
	2. Designation of methods of collection utilizing private services;
	3. Appropriate areas of bin storage on-site and areas for bin storage on collection days;
	4. Measures to minimize the impact upon local amenity and on the operation, management and maintenance of car parking areas;
	5. Litter management.

The plan must be prepared and implemented to the satisfaction of the Responsible Authority. Once approved the Waste Management Plan will be endorsed to form part of this permit.

1. No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.
2. Adequate provision shall be made for the storage and collection of garbage and other solid wastes and these facilities are to be located on the site to the satisfaction of the Responsible Authority.
3. Any waste storage rooms must be constructed so to prevent the entrance of vermin and must be able to be easily cleaned. The floor must be graded to a sewer connection located within the waste storage room.

#### Traffic

1. Before the development permitted is completed, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
	1. constructed to the satisfaction of the Responsible Authority;
	2. properly formed to such levels that they can be used in accordance with the plans;
	3. surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
	4. drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
	5. line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.

Parking areas and access lanes must be kept available for these purposes at all times.

1. The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-8 of the Monash Planning Scheme to the satisfaction of the Responsible Authority.
2. No less than 1 car space must be provided on the land for each one and two bedroom dwelling. No less than 2 car spaces must be provided on the land for each three bedroom dwelling. Any future subdivision of the approved development must provide allocation of 1 car space per dwelling on Title to the satisfaction of the Responsible Authority.
3. The accessible parking space must be designed in accordance with the Australian Standards for off-Street Parking for people with disabilities, AS/NZS 2890.6.
4. The existing side entry pit will be impacted by the proposed vehicle crossing and is to be converted into a junction pit fully incorporated within the vehicle crossing with a medium duty cast iron cover. A new side entry pit is to be created 1 metre east of the eastern turning point of the proposed vehicle crossing. All works are to be done at the full cost to the developer to the satisfaction of Council’s Engineering Department.
5. Any future subdivision of the approved development must show all on-site visitor car spaces included in common property on title.
6. The loading and unloading of goods from vehicles must only be carried out on the land.

#### Drainage conditions

1. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from driveways onto the footpath. Such a system may include either:-
	1. trench grates (150mm minimum internal width) located within the property; and/or
	2. shaping the driveway so that water is collected in a grated pit on the property; and/or
	3. another Council approved equivalent.
2. 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.
3. Direct the entire site’s stormwater drainage to the north-west corner of the property where it must be collected and free drained via a pipe to the Council pit in the nature strip to be constructed to Council Standards. (A new pit is to be constructed if a pit does not exist or is not a standard Council pit. If the point of discharge cannot be located then notify Council's Engineering Division immediately).
4. A minimum clearance of 300 mm is to be provided to the Council drain in the easement to the south of the property, or otherwise to the satisfaction of the Responsible Authority. Appropriate lateral restraint must be applied during excavation of the basement.
5. No equipment, services, architectural features or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
6. Any required fire services, electricity supply, gas and water meter boxes must be discreetly located and/or screened to compliment the development to the satisfaction of the Responsible Authority. Any required services must be cleared detailed on endorsed plans forming part of this permit.

#### Construction Management Plan

1. Before the development starts, a construction management plan must be prepared and submitted to the Responsible Authority for approval. The plan must be to the satisfaction of the Responsible Authority. Once approved, the plan must be implemented to the satisfaction of the Responsible Authority. The plan must address the following issues:
	1. measures to control noise, dust and water runoff;
	2. prevention of silt or other pollutants from entering into the Council’s underground drainage system or road network;
	3. the location of where building materials are to be kept during construction;
	4. site security;
	5. maintenance of safe movements of vehicles to and from the site during the construction phase;
	6. on-site parking of vehicles associated with construction of the development;
	7. wash down areas for trucks and vehicles associated with construction activities;
	8. cleaning and maintaining surrounding road surfaces;
	9. a requirement that construction works must only be carried out during the following hours:
		1. Monday to Friday (inclusive) – 7.00am to 6.00pm;
		2. Saturday – 9.00am to 1.00pm;
		3. Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings. This does not include excavation or the use of heavy machinery).
2. The owner and management of the premises must ensure that any noise emanating from the premises, during and post construction, must not exceed the standards of the State Environment Protection Policies No. N-1 and must on request provide evidence to Council of Compliance with the policies.
3. Air-conditioning and other plant and equipment installed on or within the buildings must be so positioned and baffled that any noise emitted complies with the appropriate Australian Standards and EPA requirements.

At the immediate request of the Responsible Authority noise testing must be taken to demonstrate compliance with EPA noise requirements. Noise testing is to be undertaken at no cost to the Responsible Authority.

1. Motors for equipment and air-conditioning/heating units to be located where no noise nuisance created to neighbours or insulated/sound proofed
2. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
	1. The development is not started before 2 years from the date of issue.
	2. The development is not completed before 4 years from the date of issue.

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 within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**– End of conditions –**

1. The Parking Overlay also applied to the site and surrounding land in the Glen Waverley Major Activity Centre at the time of the hearing. This was however deleted following the gazettal of Amendment C137 on 24 May 2018. [↑](#footnote-ref-1)
2. Order dated 6 August 2018 by Senior Member Rickards following a Practice Day Hearing on 3 August 2018. [↑](#footnote-ref-2)
3. 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-3)
4. That hearing followed two interim orders in relation to that condition and the gazettal of Amendment C137 on 24 May 2018 which resulted in the deletion of the Parking Overlay. [↑](#footnote-ref-4)
5. See for example clause 11.02-2S. [↑](#footnote-ref-5)
6. Preferred maximum building heights are defined to exclude rooftop services such as air conditioning, lift overruns and plant rooms. [↑](#footnote-ref-6)
7. Based on the statement in clause 2 of the schedule which indicates that building heights have been calculated on the basis that the ground floor measures 4.5m and each floor following measures 3.5m. [↑](#footnote-ref-7)
8. Internal alterations comprising the addition of a mezzanine level between the ground and first floor levels was refused by the Council, a decision recently upheld on review by Member Rundell in *Life Design Architecture v Monash CC* [2018] VCAT 1226. [↑](#footnote-ref-8)
9. Page 28. [↑](#footnote-ref-9)
10. Panel Report Monash Planning Scheme Amendment C120 (18 March 2016), pages 17-20, 30-31. [↑](#footnote-ref-10)
11. [50] [↑](#footnote-ref-11)
12. *Stockland Developments Pty Ltd v Stonnington CC* [2010] VCAT 2014 [22]. [↑](#footnote-ref-12)
13. [2010] VCAT 1090 [↑](#footnote-ref-13)
14. See for example p. 29 of the Structure Plan and Clause 22.14-3 of Monash planning scheme. [↑](#footnote-ref-14)
15. See for example DDO6 at clause 2 (Building form and design) and clauses 21.06-3, 22.14-2 and 22.14-3. [↑](#footnote-ref-15)
16. See for example DDO6 at clause 2 (Building form and design) and clauses 21.06-3, 22.14-2 and 22.14-3. [↑](#footnote-ref-16)