

18 December 2020

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The Principal Registrar
 Victorian Civil and Administrative Tribunal
 55 King Street
MELBOURNE VIC 3000

By way of email: admin@vcat.gov.au

Dear Sir/Madam,

**S87A APPLICATION TO AMEND PERMIT TPA 845451
 149 HANSWORTH STREET, MULGRAVE**

We act for Hansworth Land Pty Ltd, the applicant for review in the above matter.

We have been instructed to lodge an Application for Review with the Major Cases List to amend Planning Permit TPA pursuant to section 87A of the *Planning and Environment Act 1987* (the Act).

We enclose the following documents in support of this application for review:

- Amended permit, with tracked changes
- Amended town planning drawings prepared by *Parallel Workshop Pty Ltd*;
- Statement of Changes, prepared by *Parallel Workshop Pty Ltd*; and
- Amended Landscape Plan, prepared by *John Patrick Landscape Architecture*.

Background

Planning Permit TPA 845451 was originally issued at the direction of the (VCAT Ref 2017/1360) on 8 November 2017.

The permit allows for the following:

The development of two residential apartment towers (including podium) of 9 and 10 stories in total height and associated landscaping and works and of 30 two or three storey townhouses and associated landscaping and work

Condition 35 of the Permit stated that the permit will expire if one of the following circumstances applies:

- *The development is not started before 2 years from the date of issue.*
- *The development is not completed before 6 years from the date of issue.*

Plans were endorsed under Condition 1 of the permit on 23 April 2019. No works had commenced.

On 6 February 2020, this office lodged an extension of time request on behalf of the applicant for review pursuant to Section 69(1) of the Act for an additional two years to commence and three years to complete the development.

On 19 March 2020, Council refused this extension of time request.

VCAT reviewed Council's refusal (P510/2020). By order dated 16 November 2020, it allowed an extension of time as follows:

- The development is to be started by 8 November 2021; and
- The development is to be completed by 8 November 2024.

In reaching a decision to grant an extension of time, the Tribunal established a number of matters. Two of which are relevant in this matter:

1. The development benefits from the transitional provisions of the zone. This matter was not disputed by any parties; and
2. The changes in planning policy in terms of neighbourhood character does not necessitate reconsideration of the appropriateness of the development in the form approved under the permit.

Site and Surrounds

The Site is located at 149 Hansworth Street, Mulgrave. It is formally known as Lot A, PS505303. It is an irregularly shaped lot with an overall area of 1.67 hectare. A portable sales office has recently been installed in the centre of the Site.

Key features of its abuttal include:

- A Melbourne Water pipe track is located to the immediate north. The Monash Freeway is located further north.
- Single and double storey dwellings abut the western and southern boundaries.
- The Blue Cross Hansworth aged care facility is located to the immediate east.
- Waverley Gardens Shopping Centre is located to the south-east.



Aerial Photographs (source: VicPlan)

Planning Controls

Pursuant to the Monash Planning Scheme, the Site is in a General Residential Zone – Schedule 2 (GRZ2). It is not subject to any overlays.

As established in VCAT application no. P510/2020, the proposal benefits from the transitional provisions of the GRZ2.

Proposed Amendments

This section should be read in conjunction with the accompanying amended town planning drawings and Statement of Changes prepared by Parallel Workshop Pty Ltd (“PWA”).

Following the most recent VCAT Order, it is proposed to deliver the proposed development in three (3) stages noting the scale of the project and the current market conditions.

It is also proposed to reduce the total number of townhouses from 30 to 28, reduce the maximum townhouse building height from three storeys to two storeys, and minor built form changes as a result of the progression of the development through planning into the detailed design phase.

Presently, no changes are proposed to the currently approved residential towers in any form.

Proposed Changes to Planning Permit

To facilitate the proposed changes, amendments will be required to the planning permit. Attached is an amended version of the planning permit. All changes are “tracked” for ease of identification. By way of summary, it is proposed to:

- Amend the Permit preamble to:
 - Allow for staged delivery of the development;
 - Revise the total number of townhouses from 30 to 28;
 - Remove reference to three storey townhouses;
- Amend Condition 1 to:
 - Reflect revised plans;
 - Allow for plans to be submitted and endorsed on a stage by stage basis;
 - Set out the requirements under each stage;
- Amend Condition 3 to require the provision of the 6.0m wide reserve prior to the occupation of Stage 1;
- Amend Condition 24 (Wind Assessment) so it relates to Stage 3 only (i.e. the two apartment towers);
- Amend Condition 26 (Acoustic Report) so it relates to Stages 2 and 3 only (i.e. those properties with an interface to a noise source);
- Changes to various conditions to allow supporting / specialist reports to be endorsed on a stage-by-stage basis, including Conditions 4, 8, 9, 13, 14, 15, 20, 23, 29, 31 and 33;
- Remove references to “*use of the land permitted by this permit*” from condition 8 due to lack of permit trigger for use; and
- Amend the wording of Condition 35 (Expiry) to reflect VCAT’s order dated 16 November 2020.

Proposed Changes to Plans

Amended plans have been prepared by PWA and dated 16 December 2020. To allow easy identification of the built form change, the previously approved building footprint at each level is shown by a red dotted line.

It is proposed to introduce a Staging Plan (TP005) to allow the development to be delivered in stages. As shown on the Staging plan, each stage will include:

- Stage 1 – Dwellings 1 to 18 (inclusive), the necessary sections of internal roads, and the 6m wide path in its entirety;
- Stage 2 – Dwellings 19 – 28 (inclusive), the necessary sections of internal roads; and
- Stage 3 – Two residential towers, balance of internal roads, and communal open space area.

A range of built form and layout change are proposed to the townhouses. The most significant change relates to the central portion of the Site, where nine three-storey reverse living style dwellings have been approved. It is proposed to alter this area by replacing the approved dwellings with seven

double storey three bedroom conventional living dwellings. Please see the accompanying plans for additional information.

Additionally, the table below provides a summary of changes relating to dwellings 1 – 21 inclusive.

Unit No.	Proposed Changes
Units 1, 2, 4 – 7	No built form changes are proposed. All currently approved setbacks are maintained. Changes are confined to: <ul style="list-style-type: none"> - Minor internal rearrangement. - Amended window sizes and locations to suit revised internal layout.
Unit 3	The dwelling is flipped so that the garage is now located on the west side. No changes are proposed to the minimum rear setback at both the ground and first floor levels.
Units 8, 9	Minor built form amendments, including: <ul style="list-style-type: none"> - Dwelling entry moved further east; - Ground floor bedroom wall and garage wall moved further east by 0.615m; and - First floor eastern wall moved further east by between 1.070m – 0.650m. Consequently, the internal layout, window sizes and locations have been amended to suit.
Units 10, 16, 17	Built form amendments, including: <ul style="list-style-type: none"> - Deletion of the second-floor level. - Regularising the dwelling's south-western corner, resulting in a longer section of southern wall on the ground floor. No changes are proposed to the minimum western (rear) setback. - On the first-floor level, the western wall is moved further west, resulting in a minimum rear setback of 7.076m. - Increase to the front setback at the first-floor level as a result of changes to façade design and materials. Consequently, the internal layout, window sizes and locations have been amended to suit.
Units 11, 12	Minor built form amendments, including: <ul style="list-style-type: none"> - Increase the ground floor front setback by setting the eastern wall of the study back by 0.3m. - Remove the step in the eastern wall at the first-floor level. The previously approved minimum setback is maintained. Consequently, the internal layout, window sizes and locations have been amended to suit.
Units 13, 14, 15	Minor built form amendments, including: <ul style="list-style-type: none"> - Increase the ground floor front setback by setting the eastern wall of the study back by 0.3m. - On the first-floor level, reduce the front setback from by 1.2m and 1.61m. The rear setback will achieve a minimum of 8.086m. This is an increase of 1.2m from the previously approved rear setback of 6.886m. Consequently, the internal layout, window sizes and locations have been amended to suit.
Unit 18	Minor built form amendments, including: <ul style="list-style-type: none"> - Minor realignment of the front and northern setbacks. - The rear setback is increased by between 0.286m and 0.291m. - On the first-floor level, the rear setback is increased from 5.876m to 6.112m, and the northern setback decreased by 0.655m. - Minor amendment to side fence location. Consequently, the internal layout, window sizes and locations have been amended to suit.
Unit 19	Minor built form amendments, including: <ul style="list-style-type: none"> - Increasing the width of the front entry;

	<ul style="list-style-type: none"> - On the ground floor level, the width of the master bedroom's western wall is increased by 0.566m. The minimum rear setback of 4.196m is maintained. - On the first-floor level, the western wall associated with the upper living room and the south-western bedroom is moved further west by between 0.8m to 0.9m. The master ensuite and master WIR's 8.186m rear setback is maintained. - Minor amendment to side fence location. <p>Consequentially, the internal layout, window sizes and locations have been amended to suit.</p>
Units 20	<p>Built form amendments, including:</p> <ul style="list-style-type: none"> - Deletion of the second-floor level. - Regularising the dwelling's south-western corner. No changes are proposed to the minimum western (rear) setback. - On the first-floor level, the western wall is moved further west, resulting in a minimum rear setback of 6.576m. - Increase to the front setback at the first-floor level as a result of changes to façade design and materials. <p>Consequentially, the internal layout, window sizes and locations have been amended to suit.</p>
Unit 21	<p>Minor built form amendments, which is confined to a minor increase in the setback of the western wall of the master WIR.</p> <p>The internal layout of the dwelling has been revised. Consequentially, the window size and locations have been amended to suit.</p>
Visitor Car Parking Spaces	<p>The location of the visitor car parking spaces has been rearranged. The total number of spaces have not been amended.</p>
Bin Collection Areas	<p>The proposed bin collection areas for the townhouses have been updated. They have been indicated to confirm that there is sufficient area for the temporary storage of bins for collection. The locations will be confirmed subject to a future Waste Management Plan, on a stage-by-stage basis.</p>

Assessment

Staging

The approved development is of a significant scale. It is necessary to stage the delivery to allow for the development to be progressively delivered.

The proposed staging has been designed to ensure that each stage will contain all necessary infrastructure and services for that stage and the wider community where applicable. In particular:

- In recognition of the importance of maintaining and improving the link between Hansworth Street to the east and west of the site, the 6m wide pedestrian link (as required by condition 3 of the Permit) will be delivered in Stage 1 of the proposal.
- Internal roads have been staged to ensure that sufficient road network is available for private waste collection in all stages. Additionally, the road network will not create confusing "dead-ends" in the interim.
- Visitor car parking spaces for the townhouse component of the development will be delivered in Stage 1.
- The communal open space (east of Dwellings 24, 26 and 28) will be delivered in Stage 3. This area currently accommodates the portable display home on the land. It is proposed to remove the display home and landscape this area prior to the occupation of any dwelling in Stage 3. This area is also likely to be required to assist with construction activities for Stage 3.

For the above reasons, the proposed staging will continue to support the orderly development of the Site, does not challenge any condition within the Permit and warrants support.

To facilitate the proposed staging, amendments are required to the existing Permit. These changes have been “tracked” on the attached amended document. They are administrative in nature and seeks to require plans and supporting documents to be prepared and submitted for approval on a stage-by-stage basis.

Build form changes

As outlined earlier in this submission, a series of minor built form changes are proposed to the townhouses.

In *Hansworth Land Pty Ltd v Monash CC* [2020] VCAT 1281, the Tribunal found that policies changes in terms of neighbourhood character does not necessitate reconsideration of the appropriateness of the development in the form approved under the permit. As the built form changes will generally result in a reduction in built form, the Tribunal’s finding continue to be relevant.

An assessment of the proposed changes will relate to the following three groups:

1. Southern row – Dwellings 1 – 7;
2. Western row – Dwellings 8 – 21; and
3. Middle group – Dwellings 22 – 28.

Southern Row

No changes are proposed to the building envelope of these seven dwellings, except for unit 3. The changes are confined to an internal rearrangement, window sizes and locations.

At the ground floor level, the currently approved 2.1m high fence will be installed along the rear boundary (refer TP360 for fence details). This will mitigate any unreasonable overlooking to the adjoining secluded private open spaces (SPOS) to the south. At the first-floor level, all windows will be appropriately screened to a minimum of 1.7m above the finished floor level (FFL) to prevent unreasonable overlooking.

The rear setbacks at both the ground and first floor levels remain unchanged. No changes are proposed to the building height. According, the proposed amendment will have no change with respect to overshadowing impacts to the south.

In relation to Unit 3, the dwelling typology and overall massing has not been changed. The proposed change is limited to mirror imaging the layout. The minimum rear setback is maintained.

We note that on the endorsed plans, the separation between Units 2 and 3 is 6.25m. This separation was shown incorrectly. This has now been corrected as 5.857m on the amended drawings.

Western Row

The currently approved development included four three-storey townhouses (Unit 10, 16, 17 and 20). It is proposed to remove the top level from these units whilst holding the finished floor levels constant. At the ground floor level, there is no reduction to the currently approved minimum rear setback. At the first-floor level, the rear setback will be reduced marginally to achieve a minimum setback of 7.076m for Units 10, 16 and 17, and a minimum setback of 6.75m, for unit 20. These changes will have no unreasonable off-site impacts and there is no increase in shadow cast off site. All west facing windows will be appropriately screened to mitigate any unreasonable overlooking.

The eastern walls of units 8 and 9 will be moved further east by 0.615m. The minimum separation between these units and Unit 7 will achieve a minimum of 10.285m. This continues to present a significant break in built form when viewed from the south.

No changes are proposed to minimum western (rear) setback at the ground floor level. At the first-floor level, the western setback of units 13, 14 and 15 will be increased by 1.2m. The western setbacks of units 10, 16, 17, 19 and 20 will be reduced by between 0.8m and 1.1m. The reduced

setback will vary between 6.576m and 7.076m. This continues to significantly exceed the minimum setback requirements of Clause 55.04-1 (Standard B17).

The balance of the built form changes in this part of the Site is minor in nature. They include minor front setback variations as a result of internal layout changes. All windows will be screened to prevent unreasonable overlooking.

The minor amendments to the fence alignment to Units 18 and 19 will have no impact on the overall landscape scheme for the development. The variations are minor and have been made to provide a more functional internal space. As shown on TP101, all fencing will be located outside of the 6m-wide pedestrian path.

Amended shadow diagrams have been prepared (refer TP 150 – 152). They confirm that there is no unreasonable overshadowing of existing secluded private open spaces to the west.

Middle Group

The approved proposal includes nine three-storey dwellings at this location. The proposal seeks to replace these with seven double storey dwellings. A detailed assessment of the revised dwellings is provided below.

Unit 22 – the currently approved built form at the ground and first floor levels remain generally consistent with the approved mass. 35sqm of SPOS will continue to be provided at the rear of the dwelling. Dwelling entry has been relocated to improve the dwelling's sense of address. Overall, the changes are not readily discernible.

Key features of Units 23-28 include:

- Two rows of two-storey townhouses, which represent a significant reduction in overall built form;
- Each dwelling will comprise three bedrooms at the first-floor level, a living and dining space at the ground floor level with convenient access to SPOS; and
- Vehicular access will be provided via a central driveway of 7.5m wide.

By virtue of the location of these dwellings, the proposed built form changes will not result in any potential off-site amenity impacts. The revised design adopts the same architectural design and uses the same mixture of external finishes as the balance of the townhouses.

In assessing whether the changes are proposed, an assessment against clause 55.05 (On-site amenity and facilities) is provided below to confirm that these dwelling will continue to achieve a high level of internal amenity to future residents.

Clause 55.05-1 – Accessibility objective (Standard B25) – Complies

The rear entry is provided at-grade. They will provide a convenient entry for people with limited mobility. Given the overall width of each dwelling, where modifications are required to further improve accessibility they can be accommodated.

Clause 55.05-2 – Dwelling entry objective (Standard B26) – Complies

Entry to each dwelling is clearly identifiable from the internal road network through dwelling numbers, locations of letter boxes, and entry canopies.

Clause 55.05-3 – Daylight to new windows objective (Standard B27) – Complies

All new habitable rooms will have access to natural daylight. All relevant windows have access to a light court with the minimum dimensions prescribed by this Standard.

Clause 55.05-4 – Private open space objective (Standard B28) – Complies with SPOS requirement

GRZ2 includes a variation to this standard. It requires (as relevant) *an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum width of 5 metres and convenient access from a living room.*

The currently approved development, the central group of units do not meet this requirement in its totality. A total of between 41.2sqm and 52.9sqm of total private open space was approved. This includes a secluded private open space in the form of a terrace of between 29.2sqm and 35.4sqm.

The amended layout will locate the SPOS to either the east or the west of each dwelling. The overall size will be between 35sqm and 41sqm, with a minimum dimension of 5m.

For units 23, 25 and 27, a 2.1m high fence (comprising part masonry structure and part timber battens) will be used to ensure sufficient seclusion will be provided to these spaces. This is an appropriate design outcome given the nature of the overall development. The internal road will be managed by the Owners Corporate and not a public road. Despite the location of the pedestrian path to the west of the fences, it is likely to be used by the residents of units 22, 23, 25 and 27 only. Provision for public access through the site is provided via the 6m wide public pedestrian path further north. Given the private nature of the development, type of road, and the low level of anticipated foot-traffic, the proposed location and fencing treatment of the SPOS warrant support.

For units 24, its SPOS is provided to the north of the dwelling. A 2.1m high fence will be provided around its perimeter to ensure a reasonable degree of seclusion from the 6m wide path to the immediate north. The fence will include anti-graffiti treatment.

Due to the natural topography of the land, excavation is required throughout the site. For units 24 and 26, they include a lower finished floor level to provide convenient vehicular and rear pedestrian access. Consequentially, the SPOS's ground level will be lower than the existing natural ground level (NGL). Due to the level differential and the location of the adjoining pedestrian path, 1.5m high fence would achieve an appropriate level of seclusion. Please see the cross-sectional sightline analysis on TP350.

Clause 55.05-5 – Solar access to open space objective (Standard B29) – Complies

Where it is possible to do so, the SPOS are located to the north of dwellings.

There are no SPOS on the south-side of any dwellings.

Clause 55.05-6 – Storage objective (Standard B30) – Complies

Secure storage space is provided within each the garage of each dwelling.

Having regard to the foregoing assessment against Clause 55.05, the amended units will continue to provide a high level of amenity to future residents.

Notice

Noting the minor extent of the amendments sought in the context of the what the Permit and current endorsed plans allow, it is considered the proposal would generate limited, if any change in material impact off site.

Accordingly, should notice be required under the Act, it is respectfully submitted that this should only be to the owners and occupiers of the immediately adjoining properties and no other owner or occupier, specifically: 147 Hansworth Street, 168 Hansworth Street, 2 Colston Place, 3 Colston Place, 4 Colston Place, 4 Acol Court, 9 Abbeydale Court, 10 Abbeydale Court, 11 Abbeydale Court, 12 Abbeydale Court, 13 Abbeydale Court, 182 Hansworth Street and 181 Hansworth Street.

Conclusion

For the reasons discussed above, it is submitted that the proposed changes are entirely appropriate, closely align to the existing endorsed plans and do not challenge conditions within the Permit or any matter previously determined. The proposed staging of the development will allow the development to be delivered in a logical manner whilst subsequent stages are put to the marketed and the required pre-sales are achieved.

The proposed built form changes will result in improved internal amenity for future residents and will continue to respond positively to the Site's residential abuttals
For the reasons outlined above, it is respectfully submitted that the proposed amendments are appropriate and warrant approval.

Kind regards



SUE ZHANG
Planning & Property Partners Pty Ltd