

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1340/2022
PERMIT APPLICATION NO. TPA/52268

CATCHWORDS

Application under section 79 of the *Planning and Environment Act 1987* – to review the failure of the responsible to grant a permit within the prescribed time.

APPLICANT	Hongxing Springvale Road Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Owners Corporation PS738885P
SUBJECT LAND	251-261 Springvale Road GLEN WAVERLEY VIC 3150
HEARING TYPE	Hearing
DATE OF HEARING	11, 12, 13, 14, 18 and 20 April 2023, and 26 May 2023
DATE OF ORDER	13 July 2023
CITATION	Hongxing Springvale Road Pty Ltd v Monash CC [2023] VCAT 659

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and 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: Plus Architecture

Drawing numbers: Drawing Nos. TP095-TP099; TP100-105; TP200-204; TP210-213; and TP7.1-7.4, previously provided from Section 3 of the application's earlier submitted urban context report.

Dated: Amended plans date 21/02/23.

Permit granted

- 2 In application P1340/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52268 a permit is granted and directed to be issued for the land at 251-261 Springvale Road Glen Waverley VIC



3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

Use of the land for the purpose of accommodation (residential apartments), construction of a mixed use building and a reduction in car parking.

Laurie Hewet
Senior Member



APPEARANCES

For applicant

Nicola Collingwood of Counsel instructed by Tyrone Rath of Planning and Property Partners. They called expert evidence from:

- Sophie Jordan, town planning
- Clare McAlister, urban design
- Charmaine Dunstan, traffic engineering
- Jan Talacko, environmentally sustainable design.

Kim Stapleton filed photo montage material and statement but was not called to give evidence.

For responsible authority

David Vorcheimer solicitor and Nick Sissons solicitor of HWL Ebsworth Lawyers.

For respondent

No appearance



INFORMATION

Description of proposal	Construction of a 21 storey mixed used building comprising, retail and food and drink premises at ground level and levels 1 and 2, and apartments on levels 3-20. Four basement levels providing car parking are proposed.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure of the responsible to grant a permit within the prescribed time.
Planning scheme	Monash Planning Scheme
Zone and overlays	Clause 34.01: Commercial 1 Zone Clause 43.02: Design and Development Overlay (DDO12).
Permit requirements	Clause 34.01.1: A permit is required to use land for Accommodation as the frontage at ground floor level exceeds 2 m Clause 34.01-4: A planning permit is required to construct a building or construct or carry out works. An apartment development must meet the requirements of Clause 58. Clause 43.02-2: A permit is required to construct a building or construct or carry out works.



Land description

The review site is a consolidated site with a frontage of approximately 32.8 metres to Springvale Road and a depth of 47.2 metres. It has an area of approximately 1,548.5 square metres.

The site is currently occupied by two single storey commercial buildings divided into 6 tenancies. Vehicle access and car parking is obtained from a laneway to the rear.

The site is part of the Glen Waverley Activity Centre.

Abutting to the north is 249 Springvale Road which comprises 6 double storey shops. O'Sullivan Road abuts those properties to the north.

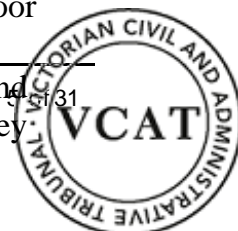
The Glen shopping centre is located immediately to the north of O'Sullivan Road. The Glen is a recently renovated centre which in addition to the established retail and commercial function, comprises residential apartments in three towers. The tower located above the podium on the north side of O'Sullivan Road is proximate to the review site and comprises 20 storeys, including the shopping centre podium.

Single and double storey dwellings are located on the eastern side of Springvale Road, which is a main road and, in this section, comprises three lanes in each direction.

To the west of the site is Glenway Arcade, which is a laneway that extends in a north to south alignment and connects to O'Sullivan Road to the north and an east-west laneway to the south. It provides for two way traffic.

To the west of Glenway Arcade is a recently constructed, 15 storey mixed use development (the Galleria) comprising commercial uses at ground floor level and residential apartments at the upper levels.

A two storey commercial building abuts the review site to the south. Further south, the property at 263A Springvale Road comprises a 5 storey building including a shop at ground floor level and residential apartments at the upper levels. Further south, the properties at 265 and 265A Springvale Road each contain two storey commercial buildings.





REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the failure of the Responsible Authority to grant a permit within the prescribed time in respect of a permit application for the construction of a multi storey, mixed use building at 251 Springvale Road, Glen Waverley.
- 2 The Responsible Authority ultimately decided that had it not been for the application for review it would have refused permission for the following reasons:
 1. The proposed building height is excessive and is not in keeping with the aspirations of the Glen Waverley Structure Plan or the design objectives of the Design and Development Overlay, 12.
 2. The proposal does not provide sufficient car parking on the site for the demand generated by the proposal, pursuant to Clause 52.06.
 3. The proposal does not provide for an appropriate podium height which will enable the development to sit comfortably within the streetscape, due to excessive floor to ceiling heights of the lower three levels.
 4. The proposed development does not provide for appropriate setbacks and the width of the tower element is not in keeping with the requirements of the Structure Plan and Design and Development Overlay 12, resulting in unequitable development impacts.
 5. The setback of the southern portion of the ground floor wall to Springvale Road is inappropriate for pedestrian movement and the activation of the proposed food and drinks premises.
 6. The proposal does not provide for a variety of housing types to accommodate future housing needs and preferences in accordance with Clause 22.1 and 16.01-1S.
 7. Apartment Type 03 will result in poor internal amenity as it does not allow for an appropriate living area width to allow for the functional use of this space.
 8. The proposal does not allow for appropriate waste management in accordance with objectives and standards of Clause 58.06-3.
 9. The proposal fails to provide a sufficient application of high quality materials.

¹ 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.



10. The proposal will result in unreasonable overlooking into the existing development at 52-54 O'Sullivan Road.
 11. The proposal is an overdevelopment of the site.
- 3 Prior to the hearing the applicant has filed and served amended plans. In broad terms the amended plans incorporated the following changes to the original application plans, as described in the documentation accompanying the applicant's amended plans proposal:
- Reduction in building height from 22 storeys to 21 storeys in responding to Council concerns.
 - Removal of built form (wings) to the site's northern and southern boundaries from Level 3 – 10 to provide a more slender tower form in responding to DDO12 requirements.
 - Reduction in tower width from approximately 23.5 metres to 22.5 metres through increasing northern and southern setbacks of tower form from approximately 4.5 metres to 5-5.1 metres in responding to Council concerns and achieve a more slender tower form in responding to DDO12 requirements.
 - General reduction in floor to floor heights for the retail/restaurant uses and upper level accommodation, further lowering the building's height in responding to Council concerns.
 - Rationalise revised upper floor plan (Level 20) to accommodate an integrated plant/services area, revised internal residential communal area and associated outdoor terrace area to and two (2) dwellings to the north/north-west.
 - Reduction in number of dwellings from 147 to 138 as a result of reduced building height and removal of aforementioned northern and southern 'wings' and associated updates to internal apartment layouts.
 - Revised podium and building façade appearance/expression including updated material palette in responding to Council concerns.
 - Building core shifted further north.
- 4 The was no objection to the substitution of the amended plans and I amended the application accordingly.
- 5 Following its consideration of the amended plans the Council advised that it no longer pursued grounds of refusal 3, 5 and 7.
- 6 The proposal now before me is conveniently and accurately described in Ms Jordan's witness statement which I adopt:

The Application proposes the use and development of a part 20 / part 21 storey building for a mixed use development above four basement levels. The ground floor level and Levels 1 and 2 include retail space



and food & drink premises and Levels 3 to 20 include residential apartments and associated facilities.

The proposed accommodation across each level of the development will consist of the following:

- Four basement levels accommodating 167 car spaces, 7 motorbike spaces, services for the building and storage areas for the apartments.
- The ground floor level will accommodate a retail tenancy, two food & drink tenancies, residential entry and lobby, mail boxes, 40 bicycle parking spaces (30 residential visitor spaces, 6 staff spaces and 4 customer spaces), bin storage areas, services for the building, storage areas, a loading bay and vehicle entry to the basement levels from the Glenway Arcade.
- Level 1 will accommodate two food & drink tenancies, amenities, end of trip facilities, bin storage, 46 bicycle parking spaces for residents, storage areas and services for the building.
- Level 2 will comprises two food & drink tenancies, amenities and services for the building.
- Levels 3 to 20 will feature residential apartments and resident communal facilities. Level 20 also accommodates service areas with the necessary plant equipment.

- 7 There are objectors to the application, some of whom filed statements of grounds but indicated they would not be attending the hearing. They are not parties to this proceeding.
- 8 While those objectors are not parties to this proceeding, I have considered the matters raised in their statement of grounds which generally raise concerns about the proposal's overshadowing impacts, loss of privacy, car parking and traffic impacts and lack of access for emergency services.
- 9 Owners Corporation PS738885P which comprises owners of apartments in the Galleria development (a 15 storey mixed use development to the west of the review site) is a party to this proceeding. It filed a statement of grounds and indicated an intention to appear at the hearing. A detailed submission accompanied the statement of grounds.
- 10 Prior to the hearing representatives for Owners Corporation PS738885P advised that it would not be appearing at the hearing. The correspondence does not amount to a withdrawal of the objection. I have considered the statement of grounds and the filed submission which references the following grounds of objection:
 - Overshadowing
 - Overlooking, loss of privacy.
 - Building design not in line with surrounding buildings.
 - Inappropriate visual bulk.



- Insufficient car parking. Traffic congestion.
- Impact on stormwater drainage.

WHAT ARE THE KEY ISSUES?

- 11 Having considered the submissions and the evidence and having inspected the review site and the surrounding area, I have concluded that the key issues in this case can be categorised as follows:
- Is the proposal acceptable in its physical and strategic context?
 - Is the proposal's built form, massing and scale acceptable?
 - Does the proposal provide acceptable equitable development opportunities?
 - Does the proposal provide acceptable levels of internal amenity?
 - Are the proposal's external amenity impacts acceptable?
 - Are the proposal's car parking and traffic impacts acceptable?
- 12 I am satisfied that the proposal achieves an acceptable outcome having regard to all the relevant matters.
- 13 My reasons are set out below.

IS THE PROPOSAL ACCEPTABLE IN ITS PHYSICAL AND STRATEGIC CONTEXT?

- 14 There is no substantive dispute between the parties about the review site's physical and strategic context.
- 15 I have been provided with extensive submissions and evidence about these matters. It is not necessary for me to repeat that material here other than to record that:
- The review site is located in a major activity centre (MAC). It has a generous frontage (32.8 m) to a main road (Springvale Road). At this location Springvale Road is typically three lanes in each direction with a central median. The review site is a consolidated site with an area of approximately 1,548.5 square metres.
 - The review site's immediate environs are characterised by a very urban and commercial context comprising a range of land uses and facilities including Glen Waverley railway station and bus interchange, the recently redeveloped and expanded Glen Shopping Centre, commercial properties generally extending along Springvale Road and the Kingsway, civic and community facilities, entertainment and hospitality uses, hotels, schools, residential properties and public open space.

- Strategically MAC's are locations to which intensive job and housing growth is directed. MACs are locations that support high density development near services, jobs and public housing to support consolidation and housing choice.²
- The Glen Waverley MAC exhibits characteristics reflective of a locality undergoing significant built form and functional change. While there remains low scale commercial development and car parking that are reflective of the original built form of the centre, there is also substantial, multi storey mixed use developments emerging. These include the Glen to the north and the Galleria to the west. The transformation of the MAC is occurring generally in accordance with the strategic settings for the MAC.
- Under local policy at Clauses 21.06-1 and 21.06-2 the Glen Waverley MAC is identified as the preferred location for high rise residential development. Clause 21.04 is a local policy for residential development. The residential framework plan identifies Glen Waverley MAC as a Category 1 Activity and Neighbourhood Centre with potential for growth. Springvale Road is also identified as a boulevard which has potential to provide higher density development.
- Clause 22.14 is a local policy which has the objective of ensuring use and development within the MAC is in accordance with the *Glen Waverley Activity Centre Structure Plan, 2014 (updated 2016)* (the Structure Plan). The policy contains a wide range of objectives for different precincts in the MAC. Relevantly the review site is included within the Kingsway Precinct 1. Policy for the Precinct supports mixed use redevelopment of underutilised sites throughout the precinct with housing or other uses above ground floor retail and hospitality uses. Active frontages, with fine grain tenancies to provide for a variety of shops and experiences, and additional outdoor dining opportunities are encouraged.
- The implementation of the review site's strategic settings is reflected in the site's inclusion in the Commercial 1 zone. The built form outcomes for the MAC are primarily determined by the provisions of DDO12.
- Under DDO12 the review site is included in Area B. The preferred height for Area B is:
 - More than 10 storeys and,
 - (More than 36 metres)

² Clause 11.03-1S and 11.03-1R

- Preferred setbacks and development outcomes for Area B are included in Table 1 of DDO12. Design objectives for the MAC as a whole together with requirements for building form and design, activated laneways, wind and weather protection, landscaping and solar access, are also included. Decision guidelines require consideration of:
 - Whether the development meets the building heights, building setbacks, building form and design, activated laneways, wind and weather protection, landscaping and solar access requirements specified in this schedule.
 - How the development achieves the Development Outcomes outlined in this schedule.
 - Whether development is consistent with the GWAC Structure Plan, 2014 (updated June 2016).
- 16 Notwithstanding the Council's acknowledgement that the redevelopment of the review site for high rise residential development is strategically acceptable, the Council submits that the proposal is an overdevelopment of the site. It submits that the overdevelopment is reflected in its height and scale which the Council considers to be excessive, and contributes to the following unacceptable outcomes:
- The proposal's failure to provide for equitable development of adjoining properties to the north and south, and providing for a structure which will dominate existing and proximate anchor developments on larger sites.
 - The proposal's failure to provide an acceptable urban design response as anticipated in the Structure Plan, DDO12 and relevant policies including failing to provide appropriate floor to floor heights, and appropriate setbacks. Internal amenity considerations are also identified. The proposal in the Council's submission does not provide for use adaptability and does not suitably integrate with the emerging character of the surrounding area
- 17 The Council submits that the alleged overdevelopment is a result of the culmination of design features relating to side boundary setbacks, floor to floor heights, tower width and length which to varying degrees depart from the discretionary standards contained in DDO12.
- 18 The Council further submits that the proposal's height (68.435m) will make it the highest development in the MAC, an outcome which is not warranted because the review site is not identified as an opportunity site or a key redevelopment site on which landmark buildings are encouraged. The Council submits that the proposal's height should be subservient to that of the Glen to the north (68.345m) and equivalent to that of the Galleria to the west (47.250m).

- 19 The Council is also critical of the proposal's adoption of what it describes as substandard floor to floor heights in an attempt to achieve additional yield out of the site. The Council submits this approach has led to a compromised design and poor internal amenity outcomes and has the potential to create a development at odds with other developments in the MAC that adhere to the requirements of DDO12. In the Council's submission the reduced floor heights, reduce the adaptability of the development in terms of accommodating a mix of uses.
- 20 Criticisms are also levelled at the proposal's architectural expression (lack of recessing and articulation) and the lack of specificity around the materials and finishes.
- 21 I will address subsequently detailed aspects of the proposal's design and the Council's criticisms of its internal and external impacts.
- 22 It is appropriate that I record my conclusion that the combination of the review site's physical context, the planning scheme's relevant policies, zone and overlay provisions provide compelling support for the height, scale and form of development that is proposed in this application.
- 23 DDO12 which specifies a preferred height more than 10 storeys (and more than 36 m) is the clearest possible expression of the intent to give effect to the strategic settings for this part of the MAC.
- 24 There is no preferred maximum height. Consequently the determination of an acceptable height for each proposal is informed by design related policies that call up consideration of such matters as protecting solar access to nominated public spaces.
- 25 Where relevant, height transitions are intended to protect the residential neighbourhoods surrounding the core of the Activity Centre.
- 26 For the reasons I elaborate on below, this proposal's design response is acceptable with respect to these and other relevant matters.
- 27 The planning scheme does not offer persuasive support for the Council's proposition that the proposal should be lower than The Glen or equivalent to the Galleria. DDO12 which is the primary mechanism for implementing the Structure Plan, does not reflect this aspiration.
- 28 As I have stated above, appropriate heights for developments in Area B are to be determined by reference to the design related matters itemised in DDO12.
- 29 The consideration of the proposal's relationship to The Glen and the Galleria is appropriately considered in the context of the matters outlined above. I note in this respect that DDO12 does not single out The Glen as a development to which other developments in Area B should be subservient.
- 30 Ms McAllister in her evidence provided an assessment of the proposal in terms of its skyline impact and its relationship to The Glen.



- 31 I agree with Ms McAlister's assessment that when considered in the context of the emerging and possible future development pattern along Springvale Road, within Area B, a building on the review site assuming an equivalent height to that of The Glen, does not unduly diminish any landmark qualities that the Council may wish to ascribe to The Glen.
- 32 I am satisfied that the proposal will be viewed as part of a cluster of high rise buildings along Springvale Road which will progressively emerge in accordance with DDO12 and its underpinning strategic settings.

IS THE PROPOSAL'S BUILT FORM, MASSING AND SCALE ACCEPTABLE?

- 33 DDO12 contains a range of building form and design objectives that in broad terms encourage a podium/tower typology for developments in Area B of the MAC, with taller elements setback from front and side streets and existing and proposed open space.
- 34 Taller buildings are encouraged to be designed as slender tower forms oriented to minimise overshadowing of the public realm. To this end the following standards are specified:
- A minimum space of 10-12 metres between tower forms to ensure good access to light, air and views
 - A maximum tower width of 18-22 metres
 - A maximum tower length of 35-40 metres
- 35 Objectives also relate to matters including the creation of human scaled places, active street frontages, minimisation of visual bulk of large buildings through significant breaks and recesses in building massing, environmental and amenity considerations.
- 36 DDO12 also addresses matters relating to activated laneways, wind and weather protection, landscaping, and solar access.
- 37 The Council focusses its criticisms on detailed design aspects of the proposal in support of its submission that the proposal's massing, scale and architectural expression is not consistent with the design objectives of DDO12 and related policies.
- 38 Specifically the Council is critical of the following aspects of the design:
- The floor to floor heights are substandard and do not comply with the discretionary dimensions specified in DDO12.
 - The discretionary separation distance between towers, width and length of towers specified in DDO12 are not met.
 - There is a lack of recessing and articulation in the proposal's architectural expression, and a lack of detail about materials and finishes.

- The proposal's pedestrian access arrangements are confusing and there is no integration with the rear back of house interface with the rear Glenway Arcade.
- 39 Because of the above the Council submits that the built form, scale and proportions of the proposal are inappropriate and do not suitably integrate with the established and emerging character of the MAC.
- 40 In relation to those features of the design that have some variance from the dimensions referenced in DDO12, those variances are not significant and do not detract in any meaningful way from the design objectives and associated built form outcomes encouraged by DDO12 and related policies.
- 41 The proposal adopts a podium/tower typology and presents as a slender tower form broadly consistent with the dimensions called for in DDO12. Specifically, the proposal's width of 22.575m is imperceptibly greater than the 18-22m width specified in DDO12. The side setbacks of the tower above the podium are nominally 5.0m (other than for minor variations due to the alignment of the boundaries), in accordance with DDO12. These setbacks are sufficient to allow a 10m separation between towers as contemplated by DDO12 (separation of 10-12m specified).
- 42 The acceptability of the proposal's massing and scale is reflected in its shadow impacts which are in line with those specified in DDO12. The proposal has no shadowing impacts on the relevant nominated areas i.e. the Central Carpark site, and the north facing footpath of Coleman Pde between 12pm and 3pm on 21 September.
- 43 In addition, there will be no overshadowing of existing secluded private open space within the residential neighbourhood.
- 44 The proposal's architectural expression and its materiality has been resolved to a high standard. The Council's criticisms of the proposal with respect to these matters are not sustained.
- 45 Ms McAlister provided a detailed analysis of this aspect of the proposal. I agree with her analysis which is summarised as follows:
- The architectural expression proposed is an acceptable design approach. The rational, repeating façade treatment and restricted materials palette is a 'restrained' design response while the façade 'fluting' details will relieve the flat planes and provide visual interest. The materials are good quality, and low maintenance, and the finer grain materials to the podium wall are a good outcome. The proposed design will complement the emerging architectural character of the precinct, while providing enough variation from the existing towers to avoid a uniform, and homogenous, built form outcome.
- 46 Importantly, the proposal effectively activates the Springvale Road frontage at ground level by the introduction of retail premises, one of which links to

the Glenway Arcade at the rear. These premises complement the residential entry and upper level lobby accessed off Springvale Road.

- 47 While the Glenway Arcade interface comprises a range of services and basement car park access, it is acceptably activated by the glazed retail frontage of the premises mentioned above.
- 48 The activation of the ground level and the design of the podium in general successfully responds to DDO12's objective to create human scaled places that promote visual and pedestrian amenity.
- 49 With respect to the Council's concerns about the variances from DDO12's specified floor to floor dimensions, the proposal adopts dimensions at the podium levels of 3.7m, at levels 4 - 10 of 3.05m, at levels 11-19 at 3.1m, level 20 is 3.3m and level 21 is 4.0m.³
- 50 These dimensions are functional and effectively provide for the proposal's intended uses. To the extent that the proposal varies from the floor to floor dimensions specified in DDO12, those variances have no significant impact on the proposal's external expression or its internal uses. I address below any internal amenity impacts of the proposed dimensions.

DOES THE PROPOSAL PROVIDE ACCEPTABLE EQUITABLE DEVELOPMENT OPPORTUNITIES?

- 51 The Council's grounds of refusal reference inappropriate setbacks and tower width, resulting in '*unequitable development impacts*'.
- 52 I have addressed above the acceptability of the proposal's tower width and setbacks in terms of its massing, height and scale.
- 53 In terms of the proposal's impact on the development opportunities of abutting sites in Area B of DDO12, I have been assisted by Ms Jordan's evidence which provided a comprehensive analysis of this issue.
- 54 Ms Jordan's evidence is based on indicative massing diagrams for adjacent land parcels, which were informed by the relevant provisions of DDO12.
- 55 Ms Jordan concluded that in summary:
- The site abutting the review site to the north (245-247 Springvale Road) which is significantly smaller than the review site has potential to accommodate a building in the order of 10 storeys.

³ DDO12 specifies floor to floor dimensions of 3.2 - 3.5 metres for residential use, 4.2 - 4.5 metres for retail or restaurant use and 3.2 - 3.5 metres for any other use. I have reservations about the relevance of the floor to floor dimensions in circumstances where the preferred building height for Area B is stated as more than 10 storeys (more than 36 metres). The floor to floor dimensions are included in that section of DDO12 concerned with those areas of the MAC where preferred maximum heights are specified. I have nevertheless assessed the proposal's floor to floor heights and for the reasons contained in this decision found them to be acceptable.



- To the south (263-265 Springvale Road) the site comprises a series of small parcels which if consolidated could provide for a building in the order of 18 storeys in total height before potentially overshadowing the Council owned car park after 9am. This is a relevant constraint on the development potential of that consolidated site noting the requirements of DDO12 in relation of overshadowing and the potential for public open space on the car park land as depicted in the Structure Plan.
- Further to the south the development potential of the Council owned car park is unaffected by the proposal on the review site.

56 The development of properties adjacent to the review site is constrained by factors unrelated to the current proposal (e.g. fragmented ownership and site size and configuration). These constraints have been appropriately taken account of in Ms Jordan's analysis.

57 I am satisfied that the assumptions underpinning Ms Jordan's evidence are soundly based. Consequently, I have concluded that the ongoing development of Area B of DDO12 is not prejudiced in any significant way by the proposal that is before me.

OTHER MATTERS

58 My findings with respect to other relevant matters are set out as follows.

Internal amenity

59 Ms Jordan provided a comprehensive analysis of the proposal's response to Clause 58 standards and objectives.

60 The analysis demonstrates substantial compliance with relevant standards and therefore the objectives. Ms Jordan did identify a number of issues⁴ for which additional detail is appropriately required by way of permit conditions.

61 The Council is critical of the evidence because it submits these are not matters that can or should be left to permit conditions. It submits that because the details around these matters are not fully resolved, there is a high level of uncertainty about the acceptability of the eventual outcome.

62 The proposal provides apartments with functional and logical floor plans, with a range of layouts intended to provide for diverse household needs. Significantly the proposal demonstrates compliance with the minimum living room and bedroom dimensions, and room depth dimensions. The

⁴ Standards D6 Energy Efficiency, D8 Solar access to communal open space, D10 Landscaping, D11 Access, D13 Integrated water and stormwater objectives, D16 Noise impacts, D23 Waste and recycling, D19 Private open space, D26 Windows.



minor variations identified by Ms Jordan are all appropriately addressed by permit conditions where necessary.

- 63 The proposal's residential floor to floor heights comfortably equate to 2.7 m internal floor to ceiling heights which is acceptable. I have included a permit condition requiring this floor to ceiling height for habitable spaces be shown on the endorsed plans.
- 64 These aspects of the proposal, combined with Mr Talacko's analysis which demonstrates that, subject to minor changes, the proposal can achieve best practice standards in relation to environmentally sustainable design and the Energy Efficiency and Stormwater Management objectives of clause 58.01, are sufficient to persuade me that the proposal is acceptable.
- 65 Mr Talacko, at my direction, undertook further daylight modelling based on alternative development scenarios for the adjacent site at 263 Springvale Road. The further analysis led to Mr Talacko concluding that all apartments within the proposed development will receive adequate daylight in both built form scenarios analysed, assuming the alternative level 3 & 4 layouts are amended as recommended by him in his Statement of Evidence.
- 66 Conditions incorporating Mr Talacko's recommendations have been included in the permit.

External amenity

- 67 The Council's grounds of refusal relating to amenity impacts are limited to *unreasonable overlooking into the existing development at 52-54 O'Sullivan Road (the Galleria)*.
- 68 Objectors to the proposal did however raise in their statements of grounds amenity related concerns including overlooking, overshadowing and visual bulk.
- 69 The proposal's amenity impacts are acceptable having regard to the review site's strategic context which provides overwhelming support for high density development, as outlined previously.
- 70 In relation to the specific concerns raised in the objections I make the following observations:
- Clause 58.04 of the planning scheme does not contain standards or guidelines for assessing shadowing impacts on existing dwellings. Notwithstanding, the shadow analysis demonstrates that shadows cast by this proposal on the Galleria to the east are limited to the mornings, after which the east facing balconies are shadow affected by the form of the Galleria itself. This impact is acceptable in an area designated for high density development.
 - Because of the building design and the proposed setbacks, overlooking to the west (the Galleria) is contained to levels that are

acceptable in this high density context. Relevantly apartments in the proposal are separated from those in the Galleria by more than 9.0m and up to 12 metres.⁵

- The visual impact of the proposal on the residential area on the east side of Springvale Road is consistent with the strategic settings for the locality and the encouragement for high density development.

Car parking and traffic

- 71 The Council's grounds of refusal state that the proposal does not provide sufficient car parking on the site for the demand generated by the proposal, pursuant to Clause 52.06.
- 72 Objector statement of grounds also raised the quantum of car parking and traffic impacts more generally.
- 73 The proposal is to required to provide 89 spaces for the retail use and 169 spaces for apartments (a total of 258), pursuant to Clause 52.06 of the planning scheme.
- 74 The proposal provides 167 spaces, meaning a reduction of 91 spaces is sought.
- 75 My assessment is assisted by the evidence of Ms Dunstan who undertook a traffic engineering assessment of the proposal.
- 76 In summary Ms Dunstan concluded that with respect to the provision of car parking, the proposal is acceptable because:
- There is policy support for providing car parking at a reduced rate on well located sites that enjoy access to public transport. The review site enjoys that locational attributes.
 - The Car Parking Demand Assessment indicates a short-term overflow of 31 car spaces associated with customers of the commercial tenancies.
 - Car parking is available within the nearby area for use by customers, including within the extensive off-street car parking resources within the Activity Centre, and due to the high turnover over of short-term on-street car parking within the nearby area.
- 77 In relation to traffic generation and distribution, Ms Dunstan concluded the proposal is expected to generate up to 632 vehicle movements per day, including 66 movements during the AM and PM peak hours. Subtracting

⁵ Ms McAllister did identify a potential for overlooking from the west facing food and drink premises at Level 2. I would support a permit condition requiring a form of screening that would prevent direct views from this tenancy to the Galleria apartments within a 9m viewing cone, while still allowing views down to the laneway below.

the existing traffic generated by the site, the proposal is expected to generate an additional 580 daily vehicles trips, including 59 trips in each peak hour.

- 78 Ms Dunstan’s modelling demonstrates that post-development the nearby road network and intersections will continue to operate within the “metrics of acceptability” and consequently the post-development conditions will not unreasonably impact the local road network or exacerbate the existing conditions of the turn lane on Springvale Road.
- 79 Having regard to the review site’s location in a MAC, its proximity to alternative transport modes including public transport, the strong policy support for reduced parking supply in this location, are all factors that, combined with Ms Dunstan’s undisputed traffic engineering evidence, have informed my conclusion that the proposal provides an acceptable level of car parking and will not unacceptably impact on the surrounding road network.

Wind impacts

- 80 A wind environment assessment was undertaken based on the original application plans.
- 81 Following the preparation of amended plans the wind environment assessment was not repeated
- 82 Correspondence has been received from RWDI Australia Pty Ltd who undertook the original wind environment assessment. The intent of the correspondence is to describe the impact of the design changes on the anticipated wind conditions around the site.
- 83 A series of recommendations are made for the level 3 podium terraces, corner balconies on level 14 and above, and corner balconies along the southern aspect, and the roof top terrace. The recommendations are aimed at improving wind conditions for passive amenity use at these locations.
- 84 In relation to the balconies full height screens are proposed along one of the open aspects of the balconies to create a single aspect design. Two metre deep fixed porous awnings at the corners are recommended for the podium terraces.
- 85 Full height screening is proposed for the open aspects of the northern terrace, and raised parapets are proposed for the southern terrace.
- 86 The Council is critical of the applicant’s failure to undertake an assessment based on the amended proposal. It submits this failure creates uncertainty about the impact of the proposal now before me, and uncertainty about the visual impacts of the recommended changes.
- 87 I am satisfied that the recommended changes which are reflected in permit conditions are sufficient to ensure ongoing acceptable outcomes resultant



from the changes to the proposal reflected in the amended plans. The recommendations have no perceptible or significant impact on the architectural expression of the proposal.

CONCLUSION

- 88 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be set aside and a permit issued.
- 89 In deciding the conditions to be included on the permit I have had regard to the "without prejudice" conditions provided to the Tribunal by the responsible authority and the submissions and evidence of the parties in addition to the matters which arise from my reasons.

Laurie Hewet
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52268
LAND	251-261 Springvale Road GLEN WAVERLEY VIC 3150

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

Use of the land for the purpose of accommodation (residential apartments), construction of a mixed use building and a reduction in car parking.

CONDITIONS

Amended Plans Required

- 1 Before the development and use commences, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans prepared by Plus Architecture dated 21/02/2023 (VCAT Amended Plans) but modified to show:
 - (a) Clarification to be provided on all structures located at roof level including elevations of all enclosures to plant and balustrade height.
 - (b) Level 2, western facing windows associated with the commercial premises to be screened to prevent unreasonable views into habitable room windows of 52-54 O’Sullivan Road.
 - (c) Allocation of car parking spaces to be identified.
 - (d) Provide 300mm clearance to adjacent storage cages for car door opening in accordance with Diagram 1 of Clause 52.06-9 of the Monash Planning Scheme.
 - (e) A minimum headroom clearance of 4.5m provided within the loading bay in accordance with the requirements of AS2890.2-2018 for an 8.8m MRV medium rigid vehicle.
 - (f) Annotations to ensure double glazing to the apartments and retail tenancies necessary to comply with the acoustic noise levels prescribed by Standard D16 (Table D3) (SJ para 119).
 - (g) Outdoor areas at roof level to comply with the solar access provisions of Standard D18, excluding the wind protection measures noting they are highly permeable (SJ para 134 and oral evidence).



- (h) The wind protection measures set out in the letter from RWDI Australia Pty Ltd, dated 27 March 2023 as modified by any recommendations arising from the wind tunnel testing required by Condition 5 with:
- any rooftop pergola or similar structure to be constructed of a material that provides for sunlight penetration (such as light grey glazing, operable fins or similar); and
 - the full height glazing proposed for the balconies with a southern aspect at levels 4 – 19 is to be comprised of clear glazing above balustrade height.
- (i) An annotation ensure a minimum floor to ceiling height of 2.7m in all habitable rooms of the dwellings;
- (j) The platform lift at ground to be provided with direct access to the residential access;
- (k) The location of any air-conditioning or cooling units, condensers and the like located on roofs, external walls or on balconies.
- (l) Taller balustrades with landscaping at Level 3 within the south-west and south-east corners in accordance with the recommendations of the pedestrian wind study prepared by RWDI Australia Pty Ltd dated 28 July 2021.
- (m) The relevant floor plans and elevations to provide details of awnings and screens to terrace areas of the building in accordance with the revised recommendations prepared by RWDI Australia Pty Ltd dated 27 March 2023.
- (n) Any required fire services, electricity supply, gas and water meter boxes to be discreetly located and/or screened.
- (o) Details of basement ventilation (design, location and noise levels) ensuring any external flues are designed and integrated into the building design.
- (p) The volume of the rain water tank increased to 40,000L and the location noted to be connected to irrigation and toilet flushing as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023.
- (q) At least eighteen (18) vehicle parking spaces be provided with electricity charging points and associated infrastructure as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023.
- (r) Revised layouts of apartments 303 & 403 and 305 & 405 as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023. Deletion of the full height

glazing element to the west facing balcony of apartment type 06c as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023.

- (s) An increase in the capacity of the rooftop photovoltaic system from 25kW to 89.6kW as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023.
- (t) An additional 50 bike racks for residents as recommended in the statement of evidence prepared by Jan Talacko, Ark Resources Dated 29 March 2023.
- (u) Annotation to indicate food and glass recycling receptacles for each dwelling;
- (v) Manoeuvrability of bins within waste room to be improved, by increasing the size and arrangement of the waste room;
- (w) A Landscape Plan required by Condition 3 of this Permit.
- (x) A Waste Management Plan required by Condition 4 of this Permit.
- (y) A Wind Tunnelling Model Study required by Condition 5 of this Permit.
- (z) A Sustainable Management Plan required by Condition 6 of this Permit.
- (aa) A Green Travel Plan required by Condition 7 of this Permit.

Layout Not to be Altered

- 2 The development and use 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 requested 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 Landscape Concept Plan prepared by Jack Merlo Design & Landscape, dated 12/11/20 (Revision D) except that the plan must be modified to show:

- (a) Consistency with the plans prepared by Plus Architecture dated 21/02/2023 (VCAT Amended Plans); and
- (b) Any changes as required by Condition 1 of this Permit.

Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

Waste Management Plan

- 4 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must be generally in accordance with the Waste Management Plan prepared by Leigh Design dated 15 December 2020, except that the plan must be modified to show:
- (a) Any changes required by Condition 1 of this Planning Permit;
 - (b) Purpose as stated in the City of Monash MUD and Commercial Developments WMP Guide for Applicants (last page of this checklist) must be added to the WMP;
 - (c) Accessibility to hard waste and clothing/textiles waste area clarified;
 - (d) Measures to minimise the impact upon the residents, users of Glenway Arcade and the local amenity including proposed hours for the waste collection;
 - (e) Litter management; and
 - (f) Location of e-waste storage.

The provisions, recommendations and requirements of the endorsed Waste Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Wind Tunnel Modelling Study

- 5 Concurrent with the endorsement of any plan requested pursuant to Condition 1, an amended Wind Tunnel Modelling Study prepared by a suitably qualified Wind Engineer must be submitted to and approved by the Responsible Authority. The study must be generally in accordance with the Wind Impact Assessment Prepared by RWDI Australia Pty Ltd dated 28 July 20 except that the plan must be modified to show:
- (a) Any changes required by Condition 1 of this Planning Permit.

The provisions, recommendations and requirements of the endorsed Wind Assessment Report must be implemented and complied with to the satisfaction of the Responsible Authority.

Sustainable Management Plan

- 6 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with, and include all recommendations made within the statement of evidence

prepared by Jan Talacko, Arc Resources dated 29.03.2023, including the modifications to the plans required by condition 1.

Upon approval the Sustainable Management Plan will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority.

Green Travel Plan

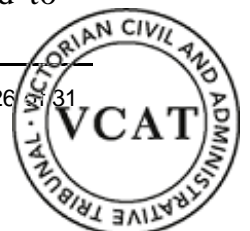
7 Before the use and development commences, a Green Travel Plan to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the Green Travel plan will be endorsed and will form part of this permit. The Green Travel Plan must include, but not be limited to, the following:

- (a) A description of the location in the context of alternative modes of transport;
- (b) Details of end of trip facilities provided;
- (c) Education and awareness initiatives and incentives for residents and visitors to encourage more sustainable modes of travel to/from the site;
- (d) Management practices identifying sustainable transport alternatives;
- (e) Details of the provision of electric vehicle charging facilities;
- (f) Lobby areas of building to include real time information of train, tram and bus services;
- (g) Details of bicycle spaces for staff;
- (h) Employee and resident packs (ie myki cards for new workers);
- (i) An obligation to update the plan not less than every 5 years;
- (j) Details of when and how this travel plan will be available for new staff; and
- (k) Any other relevant matters.

The provisions, recommendations and requirements of the endorsed Green Travel Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Construction Management Plan

8 Prior to the commencement of any site works (including any demolition and excavation), a Construction Management Plan (CMP) must be submitted and approved by the Responsible Authority. No works are permitted to occur until the Plan has been endorsed by the Responsible Authority. Once endorsed, the CMP will form part of the permit and must be implemented to



the satisfaction of the Responsible Authority. The CMP must address the following issues:

- (a) Appropriate measures to control noise, dust and water and sediment laden runoff;
- (b) Appropriate measures for the prevention of silt or other pollutants from entering into the Council's underground drainage system or road network;
- (c) Appropriate measures relating to removal of hazardous or dangerous material from the site, where applicable;
- (d) A plan showing the location and design of a vehicle wash-down bay for construction vehicles on the site so as to prevent material leaving the site and being deposited on Council's road network;
- (e) A program for the cleaning and maintaining surrounding road surfaces;
- (f) A site plan showing the location of any site sheds, on-site amenities, building waste storage and the like, noting that Council does not support the siting of site sheds within Council road reserves;
- (g) Measures to provide for public Safety and site security;
- (h) A plan showing the location of parking areas for construction and sub-contractors' vehicles on and surrounding the site, to ensure that vehicles associated with construction activity cause minimum disruption to surrounding premises. Any basement car park on the land must be made available for use by sub-constructors/tradespersons upon completion of such areas, without delay;
- (i) A Traffic Management Plan showing truck routes to and from the site;
- (j) A swept path analysis demonstrating the ability for trucks to enter and exit the site in a safe manner for the largest anticipated truck associated with the construction;
- (k) Appropriate measures to ensure that sub-contractors/tradespersons operating on the site are aware of and adhere to the requirements of the CMP;
- (l) The provision of contact details of key construction site staff; and
- (m) Include a requirement that except with the prior written consent of the Responsible Authority, a requirement that demolition, excavation or construction works must only be carried out during the following hours:
 - Monday to Friday (inclusive) – 7.00am to 6.00pm;
 - Saturday – 9.00am to 1.00pm;

- Saturday – 1.00pm to 5.00pm (Only activities associated with the erection of buildings that does not exceed the EPA guidelines)
- No works are permitted on Sundays or Public Holidays.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with by all contractors to the satisfaction of the Responsible Authority.

The provisions, recommendations and requirements of the endorsed Construction Management Plan must be implemented and complied with to the satisfaction of the Responsible Authority.

Privacy screens

- 9 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

Amenity of Area

- 10 The amenity of the area must not be detrimentally affected by the use or development, through the:
- (a) transport of materials, goods or commodities to or from the land;
 - (b) appearance of any building, works or materials;
 - (c) emission of noise, artificial light, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil; and
 - (d) presence of vermin.

To the satisfaction of the Responsible Authority.

Landscaping Maintenance

- 11 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.

Hours for Waste Collection

- 12 Waste collection must only to be carried out within hours prescribed by EPA requirements for residential noise under the *Environment Protection Regulations 2021* (or any replacement regulations), so that the collection of waste does not cause unreasonable noise.



No Waste Bin in View

- 13 No bin or receptacle or any form of rubbish or refuse shall be allowed to remain in view of the public from any public land and no odour shall be emitted from any receptacle so as to cause offence to persons outside the land.

Ongoing Architect Involvement

- 14 As part of the ongoing consultant team, Plus Architecture or an architectural firm which is acknowledged to have comparable skill and expertise to the satisfaction of the Responsible Authority must be engaged to:
- (n) oversee design and construction of the development; and
 - (o) ensure the design quality and appearance of the development is realised as shown in the endorsed plans or otherwise to the satisfaction of the Responsible Authority.

Plant / Equipment or features on roof

- 15 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.

Car Parking and Driveways to be Constructed

- 16 Before the use starts or any building is occupied, areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed to the satisfaction of the Responsible Authority;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
 - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
 - (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
 - (f) Parking areas and access lanes must be kept available for these purposes at all times.

Use of car parking spaces and driveways

- 17 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.

- 18 Car parking spaces allocated for the residential dwellings must only be used by residential occupants of the residential dwellings or their visitors.
- 19 Car spaces must not be individually subdivided, on-sold or leased to any other person unless with the prior written consent of the Council.

Lighting of carparks and accessways

- 20 Low intensity / baffled lighting must be provided to ensure that car park areas and pedestrian accessways are adequately illuminated without any unreasonable loss of amenity to the surrounding area, to the satisfaction of the Responsible Authority.

Drainage & Stormwater

- 21 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 22 No polluted and/or sediment laden stormwater runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 23 Stormwater 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 any stormwater drainage works commencing.
- 24 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on www.monash.vic.gov.au.

Department of Transport Conditions

- 25 The demolition and construction of the development must not disrupt bus operations on Springvale Road without the prior written consent of the Head, Transport for Victoria.
- 26 Any request for written consent to disrupt bus operations on Springvale Road during the demolition and construction of the development must be submitted to the Head, Transport for Victoria not later than 8 weeks prior to the planned disruption and must detail measures that will occur to mitigate the impact of the planned disruption.

Time for Starting and Completion

- 27 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 4 years from the date of issue.
- (b) The development is not completed before 6 years from the date of issue.
- (c) The use of the land has not commenced before 6 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:

- 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

