

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P198/2023  
PERMIT APPLICATION NO.TPA/53761

### CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone (GRZ2); Vegetation Protection Overlay (VPO1); Two dwellings; Neighbourhood Character; Tree Removal, Landscape Response and Clause 55.

<b>APPLICANT</b>	RD Design and Drafting Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	3 Wallabah Street MOUNT WAVERLEY Vic 3149
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	26 June 2023
<b>DATE OF ORDER</b>	19 September 2023
<b>CITATION</b>	RD Design and Drafting Pty Ltd v Monash CC [2023] VCAT 1078

### ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic) the permit application is amended by substituting for the permit application plans the following plans filed with the Tribunal:
  - Prepared by: RD Design and Drafting Pty Ltd
  - Drawing numbers: TP-01, TP-02, TP-03, TP-04, TP-05, TP-06, TP-07, TP-08, TP-09 (all Revision 2).
  - Dated: March 2023
  - Prepared by: Bradbury Culina
  - Drawing number: 3944-A (Sheet 1/1)
  - Dated: 30 March 2023
- 2 In application P198/2023 the decision of the responsible authority is set aside.



- 3 In planning permit application TPA/53761 a permit is granted and directed to be issued for the land at 3 Wallabah Street Mount Waverley Vic 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
- Construction of two or more dwellings on a lot.
  - Removal of vegetation.

Shiran Wickramasinghe  
**Member**

### **APPEARANCES**

For RD Design and Drafting  
Pty Ltd

Tim Radisich, town planner of Associated  
Town Planning Consultants Pty Ltd

For Monash City Council

Gareth Gale, town planner of Gareth Gale  
Consulting Pty Ltd



## INFORMATION

Description of proposal	Construction of two double-storey dwellings and tree removal.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme (‘Planning Scheme’)
Zone and overlays	General Residential Zone, Schedule 2 (‘GRZ2’) Vegetation Protection Overlay, Schedule 1 (‘VPO1’)
Permit requirements	Clause 32.08-6 - Construction of two or more dwellings on a lot. Clause 42.02-2 - Removal of vegetation.
Key scheme policies and provisions	Clauses 11, 15, 16, 21.04, 22.01, 22.05, 32.08, 42.02, 55 and 65.
Land description	<p>The site is located at a 90 degree bend of Wallabah Street, where the road alignment is, curved in a similar manner to a court-bowl. The site is irregular in shape with a curved frontage, north boundary length of 31.5 metres, south boundary length of 42.0 metres and an area of 776 metres squared. The site currently contains a single storey brick veneer dwelling. There is an existing crossover located in the north-east corner of the site.</p> <p>To the north at 5 Wallabah Street is a two double-storey, two dwelling (side by side) development.</p> <p>The east (opposite) at 4 Wallabah Street is a double-storey, two dwelling development.</p> <p>To the south at 1 Wallabah Street is a single storey brick veneer dwelling.</p> <p>To the west at 9 Torroodun Street is a single storey brick veneer dwelling</p>
Tribunal inspection	An unaccompanied site inspection was conducted.

## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to the Tribunal for review of the Monash City Council's ('Council') refusal to grant a planning permit for the construction of two double-storey dwellings and tree removal.
- 2 Since the lodgement of the application for review, the applicant circulated amended plans that I substituted for the planning permit application plans at the commencement of the hearing. The changes shown on the amended plans, amongst other things, include:<sup>2</sup>
  - External cladding amended to brick veneer in compliance with registered restrictive covenant B575675 which requires walls to be of brick or brick veneer.
  - The crossover for dwelling 1 relocated to enable retention of the street tree – Tree 1 – at the front south-east corner of the site.
  - Relocating the crossover for dwelling 1 has enabled the driveway to dwelling 1 garage to be realigned further away from Tree 10. The driveway is noted as 'above grade and permeable to minimise impact on Tree 10'.
  - Increased ground level rear boundary setback of 600m for dwelling 1 (6.265m) and 500mm for dwelling 2 (5.50m) with consequential reduction in the ground level footprint.
  - The increased ground level rear boundary setback provides more space for landscaping and increases the setback of dwelling 2 from Tree 14 in the rear north-west corner of the site.
  - The rear decks have been replaced with small landings out on to the rear private yards which increases permeable area and takes the 'deck construction' away from Tree 14 Structural Root Zone.
- 3 In response to the amended plans, Council amended its grounds of refusal to be as follows:
  - The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the area.
  - The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to

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<sup>1</sup> The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

<sup>2</sup> Council submission, paragraph 9, pages 2 and 3.



Clause 55.02-1 Neighbourhood character objectives, Clause 55.02-2 Residential policy objectives, Clause 55.03-2 Building height objective, Clause 55.03-8 Landscaping objectives, Clause 55.04-1 Side and rear setbacks objective and Clause 55.06-1 Design detail objective.

- The design response fails to provide adequate room at the rear of the site for the planting of canopy trees and any meaningful landscaping and there are no landscaping opportunities between the two dwellings.
- The development will result in the loss of vegetation including canopy trees.
- The design response will result in a loss of amenity when viewed from the streetscapes and the adjoining properties by way of visual bulk and scale. The upper level of the two dwellings is extensive with long elongated walls on the northern and southern elevations. The extent of upper level built form will have a direct impact on the secluded open space areas of the adjoining properties.
- The proposed development is considered a poor design outcome and an overdevelopment of the site.
- The design response fails to address the site constraints. The garages of the dwellings take up the majority of the façade, the garage of Dwelling 1 is forward of the dwelling's façade and the parapets are considered to be out of character with the area.

4 The applicant submits:<sup>3</sup>

1. The plans can be brought into conformity with the requirement of Covenant B575675 by showing brick veneer construction.
2. The proposal is an appropriate response to Clauses 21.04 and 22.01 of the Monash Planning Scheme with respect to neighbourhood character and the desired future character of the area.
3. The proposal is an acceptable response to the Objectives and standards of Clause 55 of the Monash Planning Scheme.
4. A large tree is retained at the rear of the site. The proposal provides for an adequate landscape response.
5. The proposal will not significantly impact on the amenity of adjoining properties or the streetscape.
6. While vegetation is to be removed two significant trees are retained and new canopy tree planting is proposed.
7. The proposal is not an overdevelopment of the site.

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<sup>3</sup> Applicants submission, paragraph 1.2, page 3.



8. The proposed garages are an acceptable response to this very wide site and do not dominate the frontage or the streetscape.
- 5 A number of Tribunal decisions were referred to by the parties in support of their positions. I have taken them into account.

### **WHAT IS THE RELEVANT PLANNING CONTEXT?**

- 6 The site is zoned GRZ2, the relevant purposes of which are:<sup>4</sup>
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To encourage development that respects the neighbourhood character of the area.
- To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- 7 Relevant decision guidelines at clause 32.08-13 include:
- Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:
- General
- The Municipal Planning Strategy and the Planning Policy Framework.
  - The purpose of this zone.
  - The objectives set out in the schedule to this zone.
  - Any other decision guidelines specified in a schedule to this zone.
  - The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.
- Dwellings and residential buildings
- For the construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55.
- 8 Clause 32.08-4 specifies a minimum garden area of 35% applies to the proposal and clause 32.08-10 specifies a maximum building height of 11 metres and three-storeys.
- 9 Clause 1.0 to Schedule 2 to clause 32.08 does not include any Neighbourhood character objectives.

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<sup>4</sup> Clause 32.08.



10 At clause 4.0 of Schedule 2 to clause 32.08, there are three varied clause 55 standards:

- a. Minimum street setback: Standard B6, - Front setback – 7.6 metres. Side street setbacks as specified in the Tables to Standard A3 and Standard B6 continue to apply.
- b. Private open space: Standard B28, a dwelling or residential building should have private open space consisting of:
  - 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; or
  - A balcony of 8 square metres with a minimum width of 1.6 metres and convenient access from a living room; or
  - A roof top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.
- c. Front fence height: Standard B32, A front fence within 3 metres of a street should not exceed 1.2 metres in height.

11 Clause 7.0 of Schedule 2 to clause 32.08, does not provide any additional decision guidelines to those specified in clause 32.08:

12 The site is also located within VPO1, the relevant purposes at clause 42.02 are:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To protect areas of significant vegetation.

To ensure that development minimises loss of vegetation.

To preserve existing trees and other vegetation.

To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.

To maintain and enhance habitat and habitat corridors for indigenous fauna.

To encourage the regeneration of native vegetation.

13 At clause 42.02-5 the relevant decision guidelines include:

- The Municipal Planning Strategy and the Planning Policy Framework.
- The statement of the nature and significance of the vegetation to be protected and the vegetation protection objective contained in a schedule to this overlay.
- The effect of the proposed use, building, works or subdivision on the nature and type of vegetation to be protected.

- The role of native vegetation in conserving flora and fauna.
- The need to retain native or other vegetation if it is rare, supports rare species of flora or fauna or forms part of a wildlife corridor.
- Whether provision is made or is to be made to establish and maintain vegetation elsewhere on the land.
- Any other matters specified in a schedule to this overlay.

14 Clause 1.0 of Schedule 1 to clause 42.02 provides the following Statement of nature and significance of vegetation to be protected:

The significance of vegetation in Monash is in its contribution to the urban character of the municipality, particularly in residential areas. The Municipal Planning Strategy and tree conservation policy recognise the importance of canopy trees as a significant aspect of urban character. Canopy trees unify the streetscape in residential areas, avoid the impression of visual clutter, and provide a strong naturalistic image and a sense of enclosure within a street.

Existing on-site canopy trees contribute to the Garden City Character of Monash. Retention of canopy trees helps integrate new development into the existing urban form and reduces the impact of higher densities or larger buildings on neighbourhood character.

The tree canopy presents a “special” leafy character valued by the community in terms of consistent and visible vegetation and the opportunity for residents to live in a treed, predominantly low density, detached house environment. Retention of existing canopy trees is necessary to complement any new development.

The highest concentration of trees is to be found in the creek valley reserves and within private and public land adjacent to creeks and over old drainage lines and other easements.

The western slopes of the Dandenong valley are known for having a dense canopy of native trees. While most of these are due to planting that has occurred since development, there are some large remnant trees throughout the area.

Monash City Council is committed to conserving, continuing and extending the Garden City Character and all its elements throughout Monash. To ensure that development is in keeping with and contributes to the Garden City Character as set out in the Municipal Planning Strategy, Council is following a policy of retaining the existing tree canopy on private and public property.



- 15 Clause 2.0 at Schedule 1 to clause 42.02 includes the following vegetation protection objective:

To conserve significant treed environments and ensure that new development complements the Garden City Character of the neighbourhood.

- 16 Pursuant to clause 42.02-2 a planning permit is required to remove or destroy any vegetation that:
- Has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level, and
  - Is higher than 10 metres.

- 17 Relevant decision guidelines at clause 5 of Schedule 1 to clause 42.02 are as follows:

- The reason for removing or destroying the vegetation and the practicality of alternative options which do not require removal or destruction of vegetation.
- The practicality and benefits of relocating significant vegetation.
- The condition and quality of the vegetation.

- 18 The Residential development framework map at clause 21.04-1, shows the site to be located in the ‘Category 8 – Garden City Suburbs’. The Category 8 – Garden City Suburbs areas are identified as areas suitable for ‘incremental change’.<sup>5</sup>

- 19 At Clause 22.01-4, Preferred future character statements, the Residential character types map shows the site to be in the Garden City Suburbs (Northern) character area. The preferred future character statement for the Garden City Suburbs Northern area is as follows:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided,

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<sup>5</sup> Clause 21.04-1, Residential development framework.



particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and nonexistent [sic] or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

- 20 Clause 22.01-3 includes Objectives, General policy as well as policy specific to Street setback, Site coverage and permeability, Landscaping, Side and rear setbacks, Walls on boundaries, Private open space, Fences, Vehicle crossings, Built form and scale of development, Car parking and Environment.
- 21 Relevant Decision Guidelines at clause 22.01-5 include
- The applicable preferred future character statement.
  - Whether the development will have an adverse impact on neighbourhood character.
  - Whether the development will have an adverse impact on the amenity of adjoining properties.
  - Whether the development will have an adverse impact on the environment.

## **WHAT ARE THE KEY ISSUES?**

- 22 Having regard to the submissions, the key issues for determination are
- Does the proposal acceptably respond to the preferred neighbourhood and landscape character ?
  - Does the proposal achieve a satisfactory level of compliance with Clause 55 of the Planning Scheme?

23 Having considered the submissions, with regard to the relevant policies and provisions of the Planning Scheme, I have determined to set aside the Council's decision. My reasons follow.

**DOES THE PROPOSAL ACCEPTABLY RESPOND TO THE PREFERRED NEIGHBOURHOOD AND LANDSCAPE CHARACTER?**

24 The Council submit the proposal will have an impact on the existing and preferred neighbourhood character for the following reasons:<sup>6</sup>

- i. The dominance of the garages;
- ii. Dominant upper-level presentation to the public realm and adjoining properties;
- iii. Lack of vegetation through the central parts of the site; and
- iv. Removal of trees at the rear of the site.

25 Whilst not supporting the proposal, Council acknowledges Wallabah Street contains a mix of original and newer housing stock including some examples of prominent double garaging; blocky upper levels and limited side-setback vegetation. However they say:<sup>7</sup>

- Many of the developments would have been approved prior to the imposition of current policy which strengthened character responses found within the Planning Scheme;
- Many of the developed sites have different attributes to the subject site.
- The majority of the previously developed sites contain fewer elements considered problematic by the Council.

26 The applicant in support of the proposal submitted:<sup>8</sup>

- The proposal for two 2-storey dwellings is a positive response to the strategic directions for this policy area and is also a satisfactory response to the preferred future character statement for the Garden City Suburbs Northern Areas.
- The proposal has a modest site coverage of 46.91% and permeability of 42.5%.
- The proposal satisfies the mandatory minimum garden area requirement.
- The additional crossover on this large site with its 27.85m wide frontage will not fragment the streetscape and will not impact the existing street trees in front of the site.

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<sup>6</sup> Council's submission paragraph 36, page 12.

<sup>7</sup> Council's submission paragraph 41, pages 12 and 13.

<sup>8</sup> Applicant's submission, paragraph 11, page 24.



- The proposal provides for a comprehensive landscape response with four new canopy trees including three within the front setback.
- The proposal is a positive response to the purpose of the General Residential Zone and the Schedule 2 varied Clause 55 Standards – front setback and private open space.
- The proposal has a high degree of compliance with the Objectives and Standards of Clause and will not result in any significant amenity impacts to neighbouring dwellings.

27 The relevant neighbourhood character considerations include the purpose of the GRZ2 that seeks to encourage development that respects the neighbourhood character of the area. The neighbourhood character objectives of clause 55.02-1 are:

To ensure that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

To ensure that development responds to the features of the site and the surrounding area.

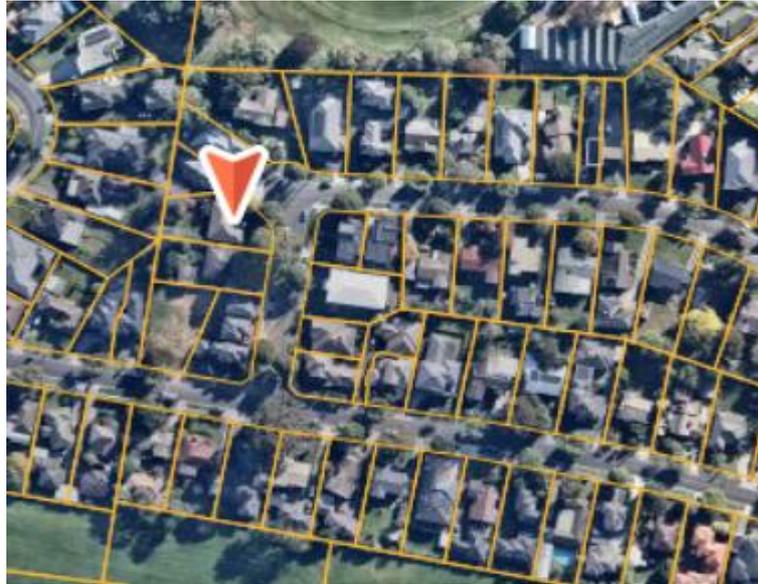
28 The Preferred future character statement for the Garden City Suburbs (Northern) precinct<sup>9</sup> amongst other things acknowledges that there will be some change to some to houses in these areas including sensitively design unit developments. New development will be visible from the street and will complement established buildings through consistent siting, articulated facades and use of materials. Gardens are to consist of open front lawns and include retained existing mature trees. Additional vehicle crossovers are discouraged.

29 The site has a curvilinear front boundary with a straight line width between the north-east and south-east corners of approximately 26.4 metres. The curvilinear frontage of the site varies the subdivision pattern to form a semi court bowl comprising the frontages of 3, 5A, 5B and 7 Wallabah Street as shown below.

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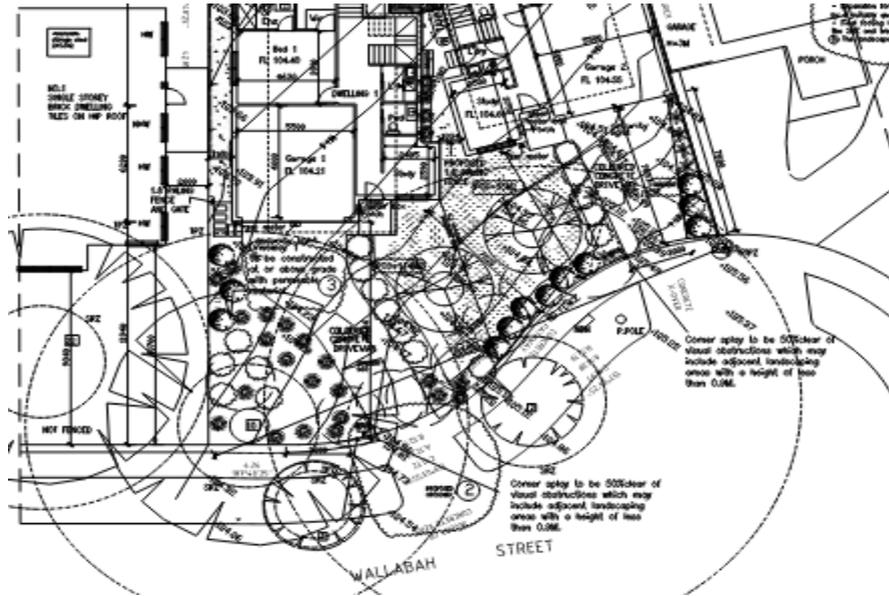
<sup>9</sup> Clause 22.01-4.





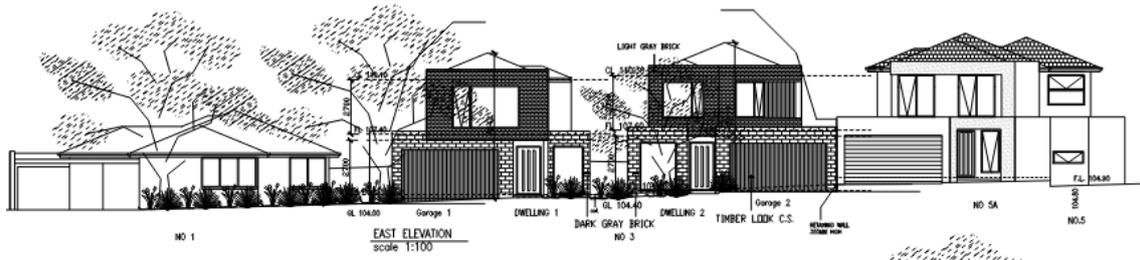
Source: Nearmap (image captured 24 April 2023)

- 30 The proposal includes two double-storey dwellings with each having a street frontage and varying setbacks from the front, side and rear boundaries. Dwellings 1 and 2 are set back approximately 11.6 metres and 7.5 metres at ground-floor level and 11.3 metres and 10.4 metres at first-floor level respectively from the front boundary.
- 31 The proposal provides an acceptable transition in front setbacks with respect to the abutting dwellings located respectively to the south and north of the site at 1 and 5A Wallabah Street. The minimum 11.3 metre street front setback of dwelling 1 is greater than the approximate 9.3 metre setback of the dwelling at 1 Wallabah Street. Further, dwelling 2 is detached from dwelling 1 and sited to follow the curvilinear frontage in a staggered design that 'aligns' its front façade with the existing dwelling to the north at 1/5 Wallabah Street as shown below. The staggered setback is responsive to the curvilinear alignment of this section of Wallabah Street and maintains the existing pattern of development. In this context the design with respect to the pattern of development is in keeping with the existing character of the area.



Source: Applicant

- 32 The design response includes two dwellings that front the street and sited side-by-side. The dwellings are contemporary in design and are to be constructed with a variety of materials that includes two different types of face brickwork and a hipped tiled roof behind a first floor parapet wall. The contemporary form of the dwellings and materials are generally consistent with existing nearby development. In particular the newer two-storey dwellings that have a robust architectural form that comprise flat and pitched roofs and a variety of material that including brickwork and render with as shown below.



Source: Applicant



View from the east side of Wallabah Street to the dwellings under construction at 24 Torcedon Street

View to 5A Wallabah Street and 50 Wallabah Street



Source: Applicant

- 33 The design of both dwellings includes garages that will be visible from the street. Whilst the garages will be visible, I am not persuaded by Council that they are unacceptable having regard to the existing character of more recently constructed dwellings that include garages that are visible from the street as shown above. Further, having regard to the design response, I am persuaded by the applicant the proposed garages are an acceptable response to the streetscape.
- 34 With respect to dwelling 1, the part projection of the first floor overhang (11.3 metre setback) over the garage (11.6 metres setback) creates an architectural feature that will be prominent when viewed from the street. The overhang result in the garage being recessive to the first floor above and ‘reading’ as a secondary element when viewed from the street. Further, the curved driveway and opportunity for landscaping within the front setback will filter views of the garage.
- 35 The dwelling 2 front façade at ground level includes a study, entry with porch and garage. The separation between the dwellings and their siting that follows the curvilinear frontage and irregular shape of the site results in the dwellings not being visually ‘aligned’ when viewed from the street. The variation in design and alignment combined with separation between the dwellings and articulated façade will ensure the garage associated to dwelling 2 whilst visible, will blend into the existing streetscape.
- 36 The 7.9 metre maximum height of the dwellings is also less than the maximum building height of 11.0 metres and three-storeys specified at clause 32.08-10. Therefore, the construction of dwellings that are two-storey in scale is an acceptable outcome and is consistent with the more recently constructed dwellings in the area.

- 37 The proposal includes setbacks from the side (south) boundary of approximately 1.1 metres at ground level and 2.1 metres to 2.8 metres at first floor level for dwelling 1. Dwelling 2 has a side (north) boundary setback varying from zero to 1.23 metres at ground level and 1.8 metres to 2.2 metres at first floor level. The proposed setbacks combined with the limited built-to-boundary wall associated to the garage of dwelling 2 (approximate length of 6.4 metres) generally maintains the existing pattern of development in the area that includes garages and carports that are typically built to one side boundary and a reduced setback from the other side boundary .
- 38 Similarly, the separation between the dwellings at ground and first floor level also assists the proposal to maintain the existing pattern of development. The side-by-side siting limits the opportunity for planting along the side boundaries adjacent to the dwellings and between the dwelling. However, there is sufficient opportunity for landscaping within the front and rear setbacks. This includes an area of approximately 155 metres squared<sup>10</sup> within the front setback and secluded private open space areas for dwelling 1 and 2 of approximately 52.0 metres squared and 43.0 metres squared respectively.
- 39 Notably, the plans show an SPOS area of 96 metres squared and 59 metres squared plus 10.0 metres squared for dwelling 1 and 2 respectively. Council has identified areas specified on the plans to be inaccurate whilst not raising concerns regarding the actual provision of SPOS as shown on plan. A condition has been imposed requiring the plans to be amended to show the dimensions and area of the SPOS.
- 40 The preferred character for the Garden City Suburbs (Northern) character area discourages additional vehicle crossovers. Clause 55.03-9 – Access objective relevantly seeks to ensure the number and design of vehicle crossovers respect the neighbourhood character. The relevant Standard states:

**Standard B14**

The width of accessways or car spaces should not exceed:

- 33 per cent of the street frontage, or
- if the width of the street frontage is less than 20 metres, 40 per cent of the street frontage.

No more than one single-width crossover should be provided for each dwelling fronting a street.

The location of crossovers should maximise the retention of on-street car parking spaces.

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<sup>10</sup> Applicants submission 67 percent of 230 metres squared.



The number of access points to a road in a Transport Zone 2 or a Transport Zone 3 should be minimised.

Developments must provide for access for service, emergency and delivery vehicles.

### **Decision guidelines**

Before deciding on an application, the responsible authority must consider:

- The design response.
- The impact on the neighbourhood character.
- The reduction of on-street car parking spaces.
- The effect on any significant vegetation on the site and footpath.

- 41 The site has straight line street frontage width of approximately 27.8 metres, accordingly the Standard allows the width of accessways to occupy a maximum of 33 per cent. The proposed crossovers will occupy approximately 21.54 per cent of the frontage and therefore meet the requirements of Standard B14.
- 42 The proposal seeks to remove the existing crossover located in proximity to the north boundary and construct two new crossovers proximate to the north and south boundary of the site. The siting provides sufficient separation between the crossovers to enable on-street parking in front of the site and retention of the two existing street tree located within the nature strip. In this context having regard to proposal meeting the requirements of Standard B14 the provision of two crossovers is acceptable.
- 43 The landscape plans show a theme of layered planting including trees and an assortment of shrubs and groundcover plants. The landscape proposal includes the retention of eight small to tall trees that vary in height from 3.0 metres to 18.0 metres and planting of four additional trees that vary in mature height from 8.0 meters to 12.0 metres. More specifically the plan shows the existing 18.0 metre tall *Corymbia citridora* (Tree 10) located proximate to the south-east corner of the frontage to be retained. Further, three additional trees comprising two *Eucalyptus leucoxylon* ‘Rosea’ and one *Acacia implexa* that grow to a mature heights of 12.0 metres and 8.0 metres are also proposed within the front setback.

- 44 The proposed landscaping in the front setback provides an acceptable response to the landscape character of the area. The retention of the existing 18.0 metre tall tree and planting of three additional trees within the front setback combined with the assortment of shrubs and ground covers is generally consistent with the preferred character sought for the Garden City Suburbs Northern character area that seeks the provision of open lawns, planted with a mix of native and exotic vegetation and trees and retention of existing mature trees.<sup>11</sup>
- 45 To the rear of the site it is proposed to retain an existing 17 metre tall Pin Oak (Tree 14 - *Quercus palustris*) that is located in the SPOS associated to dwelling 2 and remove a 11.0 metre tall Norfolk Island Pine (Tree 15 - *Araucaria heterophylla*) and Red Spotted Gum (Tree 18 – *Eucalyptus mannifera*) that are located in the SPOS of dwelling 1.
- 46 Council raised concern about the removal of tree 15 and 18 and say:<sup>12</sup>
64. Whilst Tree 18 was not considered necessary to be retained by Council’s Arborist, officer’s nonetheless thought it reasonable to require its retention to enhance the garden character of the development. This Spotted Gum provides an important element within the local area as can be appreciated in the above photograph.
65. Council’s Arborist did however take issue with the removal of the Norfolk Island Palm, which is, according to the Applicant’s Arboriculture Report, of moderate retention value and has a SULE of 20+ years. As per the table at page 7:
- 47 The applicant submitted the Norfolk Island Pine tree should be removed as at its mature height of up to 30.0 metres it will outgrow the space available in the SPOS associated to dwelling 1.
- 48 Whilst I am generally satisfied with the landscape response I am not persuaded that the removal of the Norfolk Island Pine is acceptable. The site is located in a VPO1 and a relevant purpose seeks to preserve existing trees.<sup>13</sup> The Statement of nature and significance of vegetation to be protected recognises that retention of canopy trees helps integrate new development into the existing urban form and is necessary to complement any new development.<sup>14</sup> Further as previously stated the Garden City Suburbs (Northern) character area that seeks retention of existing mature trees.<sup>15</sup>

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<sup>11</sup> Clause 22.01-4, Preferred future character statements, Garden City Suburbs (Northern) character area.

<sup>12</sup> Council submission paragraphs 64 and 65, page 19.

<sup>13</sup> Clause 42.02.

<sup>14</sup> Clause 1.0 of Schedule 5 to clause 42.02, Statement of nature and significance of vegetation to be protected.

<sup>15</sup> Clause 22.01-4, Preferred future character statements, Garden City Suburbs (Northern) character area.



- 49 I am not persuaded by the applicant that the potential mature height of the tree is sufficient reason to support its removal. Notably the Arboricultural Impact Assessment provided by the applicant states the Norfolk Pine tree is in good health with a fair structure and life expectancy of 20 plus years. The tree is recommended for removal due to the siting of the proposed shed. Therefore, there are no reason related to the trees health or structural impact on the dwelling provided to justify its removal.
- 50 The tree has a current height of 11.0 metres with a moderate amenity and retention value.<sup>16</sup> The tree is visible from surrounding land and contributes to the vegetation character of the area. In this context, having regard to the relevant purpose of the VOP1, the Statement of nature and significance of vegetation to be protected and the health of the tree I find it should be retained.
- 51 With respect to removal of the Red Spotted Gum, the applicant relied on the Arboricultural Impact Assessment<sup>17</sup> that states the tree has a fair to poor health and structure with a moderate amount of deadwood, sparse canopy and a life expectancy of 5 to 10 years. Having regard to the health and life expectancy of Red Spotted Gum, its removal and replacement with a Snow Pear (*Pyrus nivalis*) that will grow to a height of 8.0 metres is acceptable. Councils arborist has not opposed its removal.
- 52 In addition to the above two trees that require a permit for removal, a permit is also sought to remove one further tree pursuant to the provisions of the VPO1. The tree is a Smooth-barked apple tree (Tree 17 – *Angophora costata*) that is located proximate to the south west (rear) corner of the site. The applicants Arboricultural Impact Assessment states the tree is senescent and in poor health. Accordingly, its removal is acceptable. Council does not oppose removal of this tree.
- 53 Having regard to the above I am persuaded that the purpose of clause 32.08 is met and the proposal meets the objectives of clause 55.02-1 Neighbourhood character objectives, clause 55.02-2 Residential policy objectives, Clause 55.03-2 Building height objective, Clause 55.03-8 Landscaping objectives, clause 55.04-1 Side and rear setbacks objective and clause 55.06-1 Design detail objective. Therefore, I find the proposal is an acceptable response to the existing and preferred neighbourhood and landscape character.

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<sup>16</sup> Arboricultural Impact Assessment prepared by TMC Reports dated 7 June 2022, page 7.

<sup>17</sup> Arboricultural Impact Assessment prepared by TMC Reports dated 7 June 2022, page 8.



## **DOES THE PROPOSAL ACHIEVE A SATISFACTORY LEVEL OF COMPLIANCE WITH CLAUSE 55 OF THE PLANNING SCHEME?**

- 54 Several areas of non-compliance with the provisions of clause 55 relating to clause 55.02-1 Neighbourhood character objectives, clause 55.02-2 Residential policy objectives, clause 55.03-2 Building height objective, clause 55.03-8 Landscaping objectives, clause 55.04-1 Side and rear setbacks objective and clause 55.06-1 Design detail objective, were raised as being of concern to Council.
- 55 As discussed earlier in this decision I am satisfied the proposed development is acceptable with respect to neighbourhood character, built form and landscape response.
- 56 The proposal has a site coverage is 47 per cent which is below the 60 per cent specified at clause 55.03-3, Site coverage objective - Standard B8 and the provides a garden area of 42 per cent which exceeds the minimum required 35 per cent.<sup>18</sup> The proposal provides a 42.5 per cent site permeability which exceeds the minimum 20 per cent specified at clause 55.03-3, Permeability and stormwater management objective – Standard B9.
- 57 I am satisfied the proposal sufficiently complies with the standards and objectives of clause 55.

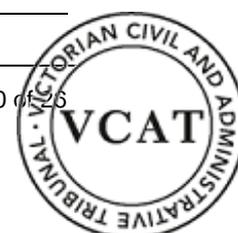
### **CONCLUSION**

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

Shiran Wickramasinghe  
**Member**

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<sup>18</sup> Clause 32.08-4



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/53761
<b>LAND</b>	3 Wallabah Street MOUNT WAVERLEY Vic 3149

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two or more dwellings on a lot.
- Removal of vegetation.

### CONDITIONS

- 1 Before the development starts, 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 prepared by RD Design and Drafting (Drawing Nos TP-01, TP-02, TP-03, TP-04, TP-05, TP-06, TP-07, TP-08, TP-09 - all Revision 2, dated March 2023) but modified to show:
  - (a) Replacement of 1.2 metre aluminium fence extending from corner of Dwelling 1 study out to the frontage with a timber fence.
  - (b) The finished height of all retaining walls.
  - (c) Details of all cut and fill proposed with locations clearly identified.
  - (d) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash".
  - (e) Gas/water and meter locations in unobtrusive locations.
  - (f) The retention of Norfolk Island Pine (Tree 15) and relocation of the garden storage sheds.
  - (g) Any changes as required by the Tree Management Plan at Condition 3.
  - (h) Any changes as required by the landscape plan at Condition 8.
  - (i) The dimensions of the SPOS areas including the correct area.



## No Alterations

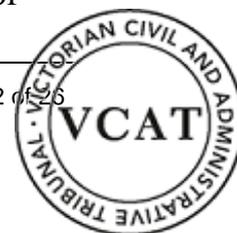
- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

## Tree Management

- 3 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of trees retained on the site and abutting land (including the street tree) as identified in the Arboricultural Impact Assessment prepared by TMC Reports, dated 7 June 2022 and the Norfolk Island Pine (Tree 15) which is to be retained.

The Tree Protection Plan must show:

- i Tree protection zones and structural root zones of all trees to be retained,
- ii Tree protection required during the pre-commencement of works, development and post-development phases
- iii All tree protection fenced off areas and areas where ground protection systems will be used;
- iv Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
- v A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones including but not limited to:
- vi The type of footings, and specific paving treatments within the tree protection zone of any retained trees on the site and abutting land;
- vii Specific requirements with regards the location of landscaping beds within the tree protection zones of retained trees.
- viii Details of how the root system of any tree to be retained/protected will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project Arborist
- ix Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority;



- x Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.
- xi Provide details on the key tree protection requirements to be included on the Condition 1 plans.

Key recommendations of the Tree Management Plan required in Conditions 3 required to be observed during the pre-commencement of works, development and post-development phases including the location of tree protection fencing.

- 4 The recommendations contained in the approved Tree Management Plan must be implemented to the satisfaction of the Responsible Authority. Photographic evidence taken by the project arborist of compliance with the recommendations is to be retained and produced on request.

#### **Contractors to be advised of trees to be protected**

- 5 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of protected trees/large shrubs on abutting land and be advised of any obligations in relation to the protection of the trees.
- 6 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on-the site or adjoin land during the construction period of the development hereby permitted.
- 7 The Council Street trees must be protected by temporary rectangular wire fencing as per Australian Standards AS 4970 to the edge of the Tree Protection Zone, erected prior to commencement of works until completion.

#### **Landscaping**

- 8 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 generally in accordance with the plan prepared by Bradbury Culina, dated 30 March 2023, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:
  - (a) Retention of the Norfolk Island Pine (Tree 15) and relocation of the garden storage sheds.
  - (b) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees



shown on the landscape plan must be consistent with that depicted on the development layout plan;

- (c) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
- (d) Removal of proposed trees off the easement;
- (e) The location of any fencing internal to the site;
- (f) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (g) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (h) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (i) The location and height of any retaining walls associated with the landscape treatment of the site;
- (j) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (k) The location of Tree Protection Zones, Structural Root Zones and Tree Protection Fencing as outlined within the Arboricultural Impact Assessment prepared by TMC Reports, dated 7 June 2022;
- (l) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (m) The location of external lighting (if any);
- (n) Planting required by any other condition of this permit; and
- (o) Landscaping and planting within all open areas of the site.
- (p) Any requirements of the Tree Protection Plan required to be implemented.
- (q) Confirmation in writing or certification of the landscape plan by the project arborist that the landscape outcome will not detrimentally impact on protected vegetation.

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

### **Landscaping Prior to Occupation and after completion**

- 9 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then be maintained to the satisfaction of the Responsible Authority.



## Drainage

- 10 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.
- 11 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on [www.monash.vic.gov.au](http://www.monash.vic.gov.au)
- 12 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 13 No polluted and/or sediment laden 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.
- 14 The full cost of reinstatement of any Council assets affected by the demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

## Vehicle Crossovers

- 15 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 16 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. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, nature strip, kerb and channel to the satisfaction of the Responsible Authority.

## Privacy Screens

- 17 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.

## Boundary Walls

- 18 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.



### **Satisfactory Continuation and Completion**

- 19 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

### **Expiry of permit for development**

- 20 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years of the issue date of this permit.
  - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**– End of conditions –**

