

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## ADMINISTRATIVE DIVISION

### PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P631/2017  
PERMIT APPLICATION NO. WH/2016/886

<b>APPLICANT</b>	BC & JX Investment Pty Ltd
<b>RESPONSIBLE AUTHORITY</b>	Whitehorse City Council
<b>RESPONDENTS</b>	Ken Conrick & Birgit Band, Glenda & Stephen Reid, P & A.P. Band, Robert Patterson
<b>SUBJECT LAND</b>	493-503 Canterbury Road VERMONT VIC 3133
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Carol Daicic, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	21 August 2017, 22 August 2017 & 10 November 2017
<b>DATE OF INTERIM ORDER</b>	23 August 2017, 8 September 2017, 10 October 2017 <sup>1</sup> & 8 February 2018 <sup>2</sup>
<b>DATE OF ORDER</b>	3 April 2018
<b>CITATION</b>	BC & JX Investment Pty Ltd v Whitehorse CC [2018] VCAT 514

### ORDER

- 1 In application P631/2017 the decision of the responsible authority is affirmed.
- 2 In planning permit application WH/2016/886 no permit is granted.

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<sup>1</sup> The interim orders of 23 August 2017, 8 September 2017 and 10 October 2017 reflected the consent of the parties to allow submission after the permit applicant circulates an updated Arborist Report following the ‘audit’ that took place at the site inspection between Council and the permit applicant at the site inspection on Day 2 of the hearing. Council asked for a further hearing and the matter was listed for Day 3.

<sup>2</sup> These interim orders allowed the parties to make submissions in writing after the hearing in relation to a number of Ministerial planning scheme amendments to the Whitehorse Planning Scheme including Amendment VC139, VC138, VC140 and C191.

**Carol Daicic**  
**Member**

**APPEARANCES**

For applicant	Mr Stephen Coleiro, town planner, of G2 Urban Planning.  He asked the project architect, Mr Mel Gawi to provide a summary of the development at the commencement of the hearing on Day 1 by way of submission.
For responsible authority	Mr Gintaras Simkus, of Direct Planning instructed by Mr Mitch Seach, town planner with Whitehorse City Council.
For Ken Conrick & Brigit Band	Mr Ken Conrick, in person on Day 1. No appearance on Day 2. Mr Patterson on Day 3.
For Glenda & Stephen Reid	Mrs Glenda Reid, in person on Day 1 and 2 and Mr Patterson on Day 3.
For P & A. P. Band	Mr Ken Conrick, in person on Day 1. Mr Patterson on Day 3.
For Robert Patterson	Mr Robert Patterson, in person.

## INFORMATION

Description of proposal	Subdivision of land into 10 lots and development of 19 dwellings (nine lots with two dwellings, and 1 dwelling on the tenth lot).
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. <sup>3</sup>
Planning scheme	Whitehorse Planning Scheme
Zone and overlays	Clause 32.09 – Neighbourhood Residential Zone – Schedule 1 ( <b>NRZ1</b> ) Clause 42.03 – Significant Landscape Overlay – Schedule 7 – Vermont (Glenburnie Road and Environs) ( <b>SLO7</b> )
Permit requirements	Clause 32.09-3 – To subdivide land. Clause 32.09-6 – To construct two or more dwellings on a lot. Clause 43.02-2 and Clause 3.0 of the schedule – To remove, destroy or lop a tree. Clause 43.02-2 and clause 3.0 of the schedule – To construct works within 4.0 metres of vegetation that requires a permit to remove, destroy or lop a tree under the SLO7. A development must meet the requirements of clause 55. Clause 52.29 – To create or alter access to a Category 1 Road Zone. <sup>4</sup>
Relevant scheme policies and provisions	9, 10, 11, 15, 16, 18, 21, 22, 32, 52.06, 52.29, 55, 56 and 65.

<sup>3</sup> Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.

<sup>4</sup> This was not in issue at the hearing and VicRoads did not object to the application.

Land description	<p>The site is regular in shape and is comprised of five lots with a combined area of 6,912sqm. It has a frontage of 93.27m to Canterbury Road and 30.48m to Grove Street.</p>
	<p>There are no covenants or other restrictions on title.</p>
	<p>The review site is currently occupied by a series of vacant former industrial and residential buildings and scattered vegetation.</p>
	<p>The review site is relatively flat from north to south. There is a gradual fall of about 2m across much of the review site from west to east. The eastern portion of the site – from a point located about 15m from the east boundary, falls a further 3m-4m from west to east.</p>
	<p>All abutting properties are occupied by single storey detached dwellings. In the wider area there is a presence of medium density residential developments and commercial / community based land uses around the nearby intersection of Canterbury Road, Mitcham Road and Boronia Road.</p>
	<p>Canterbury Road is a major arterial and carries high volumes of traffic.</p>
	<p>The area to the north of Grove Street is notable for its treed and leafy character.</p>
Tribunal inspection	<p>An accompanied site inspection took place on the morning of Day 2 of the hearing.</p>

## REASONS<sup>5</sup>

### WHAT IS THIS PROCEEDING ABOUT?

#### Nature of proceeding

- 1 BC & JX Investment Pty Ltd (**Applicant**) seeks a planning permit to subdivide the review site into 10 lots and develop the land for 19 dwellings. It has filed an application for review pursuant to section 79 of the *Planning and Environment Act 1987* (Vic) (**PE Act**) against Council's failure to make a decision within the prescribed time.

#### Proposal

- 2 The proposal is the redevelopment of a former dairy and bakery site.
- 3 The review site is to be cleared of buildings and trees to allow the subdivision of land into 10 lots to accommodate 19 contemporary dwellings with hip roof forms.
- 4 The land is divided into three notional development clusters: one to Grove Street, and two to Canterbury Road.
- 5 One entry point from Grove Street will service six dwellings and a second crossing is proposed at Grove Street frontage for Townhouse 18 (**TH18**). Two crossings are proposed for the Canterbury Road frontage with the western crossing servicing six dwellings and the eastern crossing servicing seven dwellings.
- 6 This is the first stage of subdivision and is to consolidate five different titles to give one large site and then subdivide that into 10 lots so that each title would be in the order about 600sqm,
- 7 The second stage of subdivision (to be considered in a separate planning permit application) is to subdivide each one of these lots into minimum 300sqm per lot.<sup>6</sup>
- 8 All dwellings provide two car spaces and one visitor space with entry at ground level. The number of residential and visitor car parking spaces satisfies the planning scheme requirement under clause 52.06.
- 9 Proposed materials will make use of face brickwork and render at first floor level, varying in colour. Privacy screens to provide between the townhouses to avoid unreasonable overlooking impacts.
- 10 Each dwelling will be double storey in scale, containing four bedrooms and a double car garage for each dwelling. The dwellings will have a maximum

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<sup>5</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>6</sup> The applicant explained that the reason the application was formulated in such a manner was to address the limitation on dwellings in the NRZ prior to Amendment VC110 to the planning scheme, which has now been lifted.

overall height varying between 6.5m - 7.0m with a maximum overall building height of 7.7m above ground level.

- 11 The dwellings propose traditional living arrangements with living areas at ground level and bedrooms at first floor level. Secluded open space areas are provided at ground level, either within the front setback along Canterbury Road, and within the service road frontage accessed from Canterbury Road.
- 12 Site coverage is about 2,357.8sqm or about 34%<sup>7</sup> whilst a permeable area of 56% is retained.

### **Council's position**

- 13 Had Council been given an opportunity, it would have resolved to refuse to grant a planning permit on the following grounds:
  - 1 The proposal fails to comply with Clause 15 of the State Planning Policy Framework in relation to well-designed development that contributes positively to the local urban character.
  - 2 The proposal is contrary to the Local Planning Policy Framework contained in the Whitehorse Planning Scheme, particularly in relation to the following Clauses:
    - a) Clause 21.05 (Environment);
    - b) Clause 21.06 (Housing);
    - c) Clause 22.03 (Residential Development); and
    - d) Clause 22.04 (Tree Conservation).
  - 3 The proposal fails to provide an appropriate response to the purpose of the Neighbourhood Residential Zone, Schedule 1 under Clause 32.09.
  - 4 The proposal fails to satisfy decision guidelines of the Significant Landscape Overlay, Schedule 7.
  - 5 The development fails to meet several objectives of Clause 55, including:
    - a) Clause 55.-2-1 (Neighbourhood character objective)
    - b) Clause 55.02-2 (Residential policy objective)
    - c) Clause 55.02-3 (Dwelling Diversity objective);
    - d) Clauses 55.03-7 and 55.05-2 (Safety /Dwelling entry objectives); and
    - e) Clause 55.03-5 (Energy efficiency objective).
  - 6 The development fails to meet several objectives of Clause 56, including:
    - a) Clause 56.02-1 (Strategic implementation objective);

<sup>7</sup> This would increase under applicant's concession given on Day 1 of the hearing to delete dwelling TH14 for the retention of Tree 29 and conversion of that lot for communal garden area for the Grove Street Cluster.

- b) Clause 56.03-5 (Neighbourhood character objective); and
- c) Clause 56.05-1 (Integrated urban landscape objective).

14 Council submits that its arborist raises concerns about the Arborist report prepared by Treemendous that was submitted with the application. Council says the English Oak (Tree 29) which would be removed to accommodate Townhouse 14 (TH 14) and the two Bhutan cypress trees at the driveway entrance (Trees 39 and 40) should be retained as they have a high retention value.<sup>8</sup>

15 Also, Council is critical of the Arborist report because it does not provide an impact assessment for the key areas in terms of neighbouring trees and whether works will cause issues as to viability of neighbouring trees. I am also concerned that the landscaping plan fails to acknowledge the location of neighbouring trees and fails to disclose what impact the proposed works may have on the viability of these neighbouring trees.<sup>9</sup>

16 In this regard, Council relies on the Australian Standard (Protection of trees on development sites (AS 4970-2009)), which requires the project arborist must demonstrate that the tree would remain viable if proposed encroachment is greater than 10 per cent of the Tree Protection Zone (**TPZ**) or inside the Structural Root Zone (**SRZ**). Those lost need to be compensated elsewhere and contiguous with the TPZ and one might need to do a root investigation. A number of trees along the western side of the driveway servicing Grove Street abuts these neighbouring trees.

### **Respondents' positions**

17 The respondents (Ken Conrick & Birgit Band, Glenda & Stephen Reid, P & A.P. Band, Robert Patterson) all reside in Grove Street. They oppose the proposal and say the development would adversely affect the amenity of their property because it is out of keeping with the leafy character of the area, and that the intensity is not compatible to the requirements of the SLO7. They say there has been a lack of consideration about the appropriate level of density for what is suitable for Grove Street and what is suitable for Canterbury Road as they both have very different landscapes.

### **16 – 18 Grove Street**

18 Mr Conrick who resides at 16-18 Grove Street explained he is concerned about the protection of trees on his property and potential overlooking of TH 10 and TH 11. He says the cypress trees are an important feature for his

<sup>8</sup> Council encourages the retention of those trees as they make a contribution to Canterbury Road.  
<sup>9</sup> Council considers the following trees could be directly impacted: Tree 8 Camphor Laurel, 20+ life expectancy, TPZ 4.8m; Tree 9, Camphor Laurel, 20+ life expectancy, TPZ 10.8m; Tree 19, cypress, 10-20 years expectancy, TPZ 2.1m; Tree 20, Lilly Pilly, 1- 20 years expectancy, TPZ 4.4m; Tree 21, Lemonwood, 1-20 years expectancy, TPZ 2m; Tree 22, Loquat 10-20 years expectancy, TPZ 2.1m; Tree 23 Broad leaf privet, 10-20 years expectancy, TPZ 2.9m; Tree 24 Bottlebrush, 10-20 years expectancy, TPZ 2m; Tree 27, Weeping bottlebrush, 10-20 years expectancy, TPZ 2m; Tree 27, Weeping bottlebrush, 1—20 years expectancy, TPZ 3.2m; Tree 34 Willow Peppermint, 1—20 years expectancy.

property from a privacy, wind and noise perspective and he would like to see them protected. A rear boundary brick wall abuts part of his property on the south (along No 16). It is approximately 27 m long and 4 – 6m high. The rear wall is critical to his property for privacy, wind and noise as well. On the western side, the brick wall comes onto his land.<sup>10</sup>

#### 14 Grove Street

- 19 Ms Reid resides at 14 Grove Street since 1992 and she appreciates the country feel and amenity afforded in living in Grove Street. She says Grove Street hosts a diversity of home styles with generous front setbacks.
- 20 She is concerned the development does not blend into the existing landscaping and does not accord with the purposes of the SLO7. She says the proposal is a medium density proposal, whereas Grove Street is low density and that the proposed dwellings lacks diversity in so far they are too similar in style and materials and do not contribute to the character of the area. Mrs Reid says: Grove Street has a combination of building types and styles and the application does not address that; there is no other development of this scale proposed here and previous developments are low density, single level and blend into the landscape.
- 21 Ms Reid considers that TH 18 is too close to her western boundary and there is no landscaping buffer proposed for that interface and will cause overshadowing problems. She agrees that the Arborist report did not appropriately assess the trees and vegetation on her property.
- 22 Like Mr Conrick, Ms Reid prefers for the brick wall on her southern boundary to be retained because it provides protection and character to her property, and gives her privacy. She says there is little information about what is proposed as a replacement fence but she might accept a 2.5 metre timber fence appropriately designed as such a replacement.
- 23 Ms Reid is also concerned about traffic given the capacity of Grove Street and that it will not cope with the capacity of an additional five dwellings; it will have a negative impact on the fragility of the road.

#### 9 Grove Street

- 24 Mr Patterson who resides at 9 Grove Street submits that he is concerned about the intensity and density of the development which he says does not accord with planning policy, the lack of landscaping and visual amenity impacts associated with a poor design layout, traffic and car parking to both Grove Street and Canterbury Road.

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<sup>10</sup> During the course of the hearing and following discussions with the applicant, Mr Conrick explained that he would withdraw his objection provided the applicant agreed to construct a new timber paling fence that is 2.5m high with certain agreed specifications in place of the brick wall and that there would be attempts to protect the cypress trees on his property.

## 20 Grove Street

25 Mr Band who resides at 20 Grove Street is concerned about the capacity of Grove Street to take on more traffic given its current state and increased in car parking and noise issues. He is also considers that the proposal will spoil the character and ambience of the street. He thinks there is a need for additional planting of trees. With the intensity of proposed dwellings, he say the development this will give rise to increased traffic and cause safety concerns for the elderly and young children. Mr Band also is concerned with potential overlooking issued from TH 20 and he finds it difficult to read from the plans whether north facing windows will be obscured or not.

## Non parties

26 A number of statements of grounds have been filed by local residents who oppose the proposal. They did not wish to appear at the hearing but would like the Tribunal to take their submissions into account, which I have done.

## **Applicant's position**

27 The Applicant says the development is under-utilised land. It is in a very good location that is proximate to public transport and community facilities. Further, it says the master planning for this redevelopment site accords with State policy and would provide greater housing choice and affordability, it would comfortably fit into the neighbourhood and it would provide acceptable amenity to neighbours and future residents. It says it would not cause traffic or parking problems for its neighbours and accords with State and local policy in delivering the rejuvenation of an urban renewal site and enhancing the amenity of the area.

## **SITE INSPECTION**

28 At the accompanied site inspection on Day 2, the Council's arborist and the arborist of Treemendous conducted an audit of the existing trees on the review site and adjoining sites against the report filed with the application. The Arborist explained he had been retained at late notice.

29 An updated Arborist report was filed and circulated to all parties on 15 September 2017. A new swept path analysis was also updated and circulated in accordance with Tribunal orders for comment.

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

30 I must determine the following key issues in this matter:

- Does the development respond to its built form and policy contexts?
- Would the development provide acceptable amenity for its neighbours?
- Would the development provide acceptable amenity for its future residents?

31 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Whitehorse Planning Scheme, I have decided to affirm the decision of the responsible authority and direct that no permit. My reasons follow.

## **PROCEDURAL ISSUES AND RULINGS**

32 The Applicant has not circulated formal amended plans to address the concerns of the responsible authority and local residents and nor did it rely on any expert evidence at the hearing.

33 However, the following documents were circulated prior to Day 3 of the hearing by the Applicant, showing potential amendments to the application plans by way of condition if I was minded to grant a planning permit in response to concerns raised by Council and objectors at the hearing on Day 1:

- a. Updated informal application plans dated 14 September 2017.
- b. Written summary of informal changes.
- c. Updated survey plan by a licensed surveyor showing the location of the existing trees on the review site following the accompanied site inspection on 22 August 2017.
- d. An updated Arborist Report.
- e. Updated Swept path analysis.
- f. Updated without prejudice conditions.

34 The concessions which the Applicant seeks to make as shown on the Informal Amended Plans by way of condition comprise:

- a. Existing Tree 29 and Tree 28 to be retained.
- b. Deletion of TH 14 and conversion of that lot to proposed common property for the purpose of a communal garden area for the benefit of the residents occupying the 'Grove Street Cluster' of townhouses.
- c. The area comprising the former TH 14 land is shown as common garden space, and the landscape plan to be updated accordingly.
- d. A proposed location for a potential communal visitor car parking space outside TH 15.
- e. The garage to TH15 has been pushed by 1280mm to the west to increase the depth of the private open space and an additional canopy tree has been added inside the secluded private open space of TH 15.

- f. A 1m wide green space has been added along the western edge of the driveway leading to / from Grove Street servicing the ‘Grove Street Cluster’ of townhouses.
- g. Additional notations on the plans relative to permeable paving and footing constructions within the TPZ of various trees per the recommendations contained in the updated Arborist report.
- h. Updated swept path analysis.

## DOES THE DEVELOPMENT RESPOND TO ITS BUILT FORM AND POLICY CONTEXTS?

### What is the planning policy context?

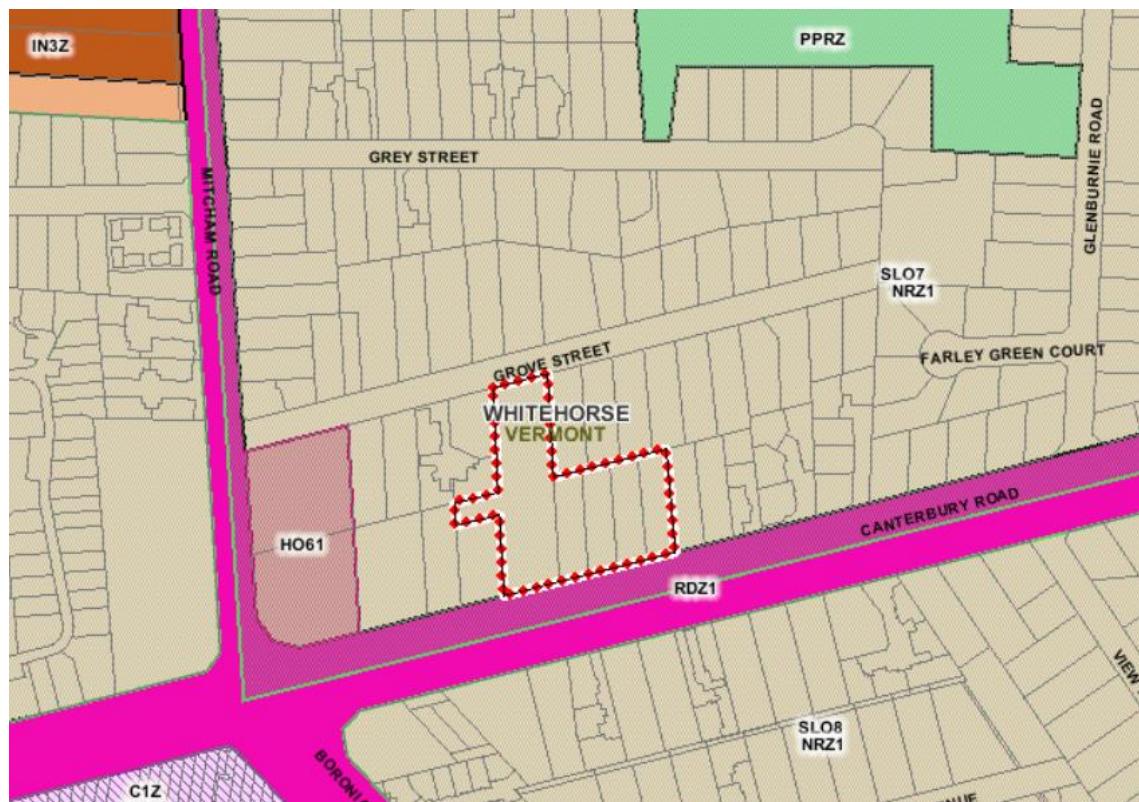


Figure 1 – Zone and overlay map

### Zone control

35 The review site is located in a Neighbourhood Residential Zone (Schedule 1 – Bush Environment Areas) (**NRZ1**) pursuant to clause 31.09 of the planning scheme.

36 In addition to implementing the State and local planning policy frameworks, the zone purposes are:

- To recognise areas of predominantly single and double storey residential development.

- To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.
- To allow educational recreational, religious, community and a limited range of non-residential uses to serve local community needs in appropriate locations.

[Tribunal emphasis]

37 The schedule to the zone does not have a minimum subdivision area. It does however provide variations to:

- a. Standard B8 – Site coverage<sup>11</sup>
- b. Standard B9 – Permeability<sup>12</sup>
- c. Standard B13 – Landscaping<sup>13</sup>
- d. Standard B17 – Side and rear setbacks<sup>14</sup>
- e. Standard B18 – Walls on boundaries<sup>15</sup>
- f. Standard B28 – Private open space.<sup>16</sup>

38 The decision guidelines at clause 7 of the schedule to the Neighbourhood Residential Zone (**NRZ**) require consideration of the following:

- Whether the vegetation in the street setback will contribute to the preferred neighbourhood character and the public realm.
- The potential for trees and vegetation to be provided between dwellings on the same site.
- Whether there is sufficient permeable space that is not encumbered by an easement to enable the planting of canopy trees.
- Development should provide for the retention and / or planting of trees, where these are part of the character of the neighbourhood.

Significant Landscape Overlay – Schedule 7 – Vermont (Glenburnie Road and Environs) (**SLO7**) - Overlay control

39 The SLO7 applies to the review site pursuant to clause 42.03 of the planning scheme.

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<sup>11</sup> Maximum 40%

<sup>12</sup> Minimum 40%

<sup>13</sup> Provision of at least two canopy trees per dwellings that have the potential of reaching a minimum mature height of 12m. At least one of those trees should be in the secluded open space of the dwelling. The species of canopy trees should be native, preferably indigenous.

<sup>14</sup> A new building not within 200mm of a boundary should be set back from side or rear boundaries 1.2m, plus 0.3m for every height over 3.6m up to 6.9m, 1m for every metre over 6.9m.

<sup>15</sup> No walls to be constructed on boundaries.

<sup>16</sup> A dwelling or residential building should have private open space consisting an area of 40sqm, with one part of the private open space at the side and rear of the dwelling or residential building within a minimum area of 35sqm, a minimum dimension of 5m and convenient access from a living room. It cannot include a balcony or roof top terrace.

40 In addition to implementing the State and local planning policy frameworks, the purpose of the overlay is:

- To identify significant landscapes.
- To conserve and enhance the character of significant landscapes.

41 The Statement of Nature and Key Elements of Landscape for Vermont (Glenburnie Road and Environs) states:

The natural landscape of the southern end of Glenburnie Road and the adjacent streets and properties is predominantly dense remnant indigenous and native trees and understorey vegetation. The tree canopy encloses the space and creates the impression of homes being sited within the landscape rather than trees being planted around homes. Buildings are a mix of styles with few front fences interrupting the overall bush landscape. Glenburnie Road, Grove and Grey Streets are sealed but narrow, with no footpaths or kerbs. The street verges are covered by shrubs and trees creating an informal streetscape. In Glenburnie Road, the essentially single lane width of the street, undulating land and impaired lines of sight have a traffic calming effect and create a pedestrian friendly environment.

42 The relevant 'landscape character' to be achieved in SLO7 is:

- To retain the dominance of vegetation cover in keeping with the bush character environment.
- To encourage the retention and regeneration of native vegetation for the protection of wildlife habitat.
- To ensure that a reasonable proportion of a lot is free of buildings to provide for the planting of large trees in a natural garden setting.
- To encourage the development of sympathetic buildings within an envelope which ensures the maintenance of a tree-dominated landscape.
- Encouraging the use of materials and finishes that blend with the landscape, and ensuring buildings are located below the predominant tree canopy height, to ensure that buildings and works retain an inconspicuous profile and do not dominate the landscape.
- Ensuring building and impervious surface site coverage is minimised.
- Encouraging the use of vegetation as an alternative to front fencing, and low to average height open style front fences.
- To ensure that development is compatible with the character of the area.

43 Under the SLO7, a permit is required to remove, destroy or lop a tree under clause 3.0 (subject to certain exceptions: the tree must be a certain size; for pruning purposes; or unless the tree is dead).

44 A permit is required to construct a front fence that is in within 4m of any vegetation that requires a permit under the SLO7 (save for like-for-like replacement).

45 A permit is not required to construct a building or construct or carry out works provided all of the following requirements are met:

- The total area covered by buildings does not exceed 35% of the site area; and
- The works, comprising hard surfaced and impervious areas (including tennis courts and swimming pools, but excluding buildings) are less than 15% of the site area; and
- The buildings or works are set back more than 4m for any tree for which a permit is required to remove, destroy or lop under the provision of this schedule.

46 The decision guidelines under the SLO7 are extensive:

**Before deciding on an application to construct a building or construct or carry out works, the responsible authority must consider, as appropriate:**

The landscaping plan accompanying the application, detailing existing vegetation, vegetation to be removed, new plantings incorporating substantial native or exotic tree species.

Whether the proposed building will achieve a front setback that is consistent or greater than the adjoining two neighbouring dwellings, and provides adequate space in the front yard for substantial vegetation to be retained or planted.

Whether the proposed building or works retain an inconspicuous profile and do not dominate the landscape, in particular, with the height respecting the predominant building height in the street and nearby properties, and designed not to exceed the predominant tree canopy height.

Whether the proposed building is setback a substantial distance from at least one side boundary and the rear boundary to accommodate substantial large canopy trees.

If the total building coverage exceeds 35%, or the hard surface coverage exceeds 15%, that adequate space is retained on site for tree planting, landscaping and open space use.

Whether the materials and finishes proposed will harmonise with the landscape setting.

Whether the vehicle access and storage proposed is located to minimise the loss of front garden space and the dominance of car parking structures.

The impact of the proposed development on the conservation of trees.

The impact of the proposed development on natural ground levels and drainage patterns which may have a detrimental impact on the health and viability of surrounding trees.

Whether a reasonable proportion of the lot is free of buildings and available for tree planting, landscaping and open space use.

The maintenance of an adequate buffer strip along watercourses, roads, rail lines and other property boundaries.

**Before deciding on an application to remove, lop or destroy a tree, the responsible authority must consider, as appropriate:**

The species of vegetation, its age, health and growth characteristics.

The location of the vegetation on the land and its contribution to the lot garden area, neighbourhood and streetscape character.

Whether the tree is isolated or part of a grouping.

The potential to achieve an average density of one tree reaching a height of over 15 metres to each 200 square metres of site area.

The availability of sufficient unencumbered land to provide for replacement planting.

The impact of the tree on the structural integrity of existing buildings including foundations.

Other options for further planting on the site.

Vegetation management requirements to reduce fire hazard, prevent erosion and maintain flood control measures.

[Tribunal emphasis]

### State planning policy framework

47 According to Council, the main thrust of clause 11 (Settlement), clause 15 (Built environment and heritage) and clause 16 (Housing) as they relate to the proposal is:

- a. Planning is to recognise the need for healthy and safety and diversity of choice. It seeks to provide diversity of housing in locations close to jobs and services. This is to be done through the creation of 20 minute suburbs and through the protection of Melbourne suburbs from inappropriate development. A spectrum of minimal, incremental and high change residential areas that balance the need to protect valued areas with the need to ensure choice and growth in housing is encouraged.
- b. Planning is to provide for a range of housing types to meet increasingly diverse needs importantly this to be achieved particularly throughout the middle and outer suburbs.
- c. Furthermore, housing affordability and greater densities should be located closer to jobs, transport and services.

48 The review site is a large non confirming land use site that made little contribution to the residential character of the area. It represents a strategic opportunity to provide additional housing that is consistent with the relevant neighbourhood objectives within a landscape setting and will see the use of the land revert from long established industrial use / commercial use to residential. Whilst there are a scattering of trees on the site, I accept the review site makes a little contribution to the landscape character.

### Local planning policy framework

49 There are four key local planning policies relevant in this matter.

#### **Clause 21.05 (Environment)**

50 Clause 21.05 (Environment) provides that there are issues of natural environment, visual environment and the built environment which are important to Council. Several areas in the City have special natural, environmental or historic significance while many open space reserves provide habitats for a diverse range of flora and fauna, as well as a range of both active and passive recreation activities.

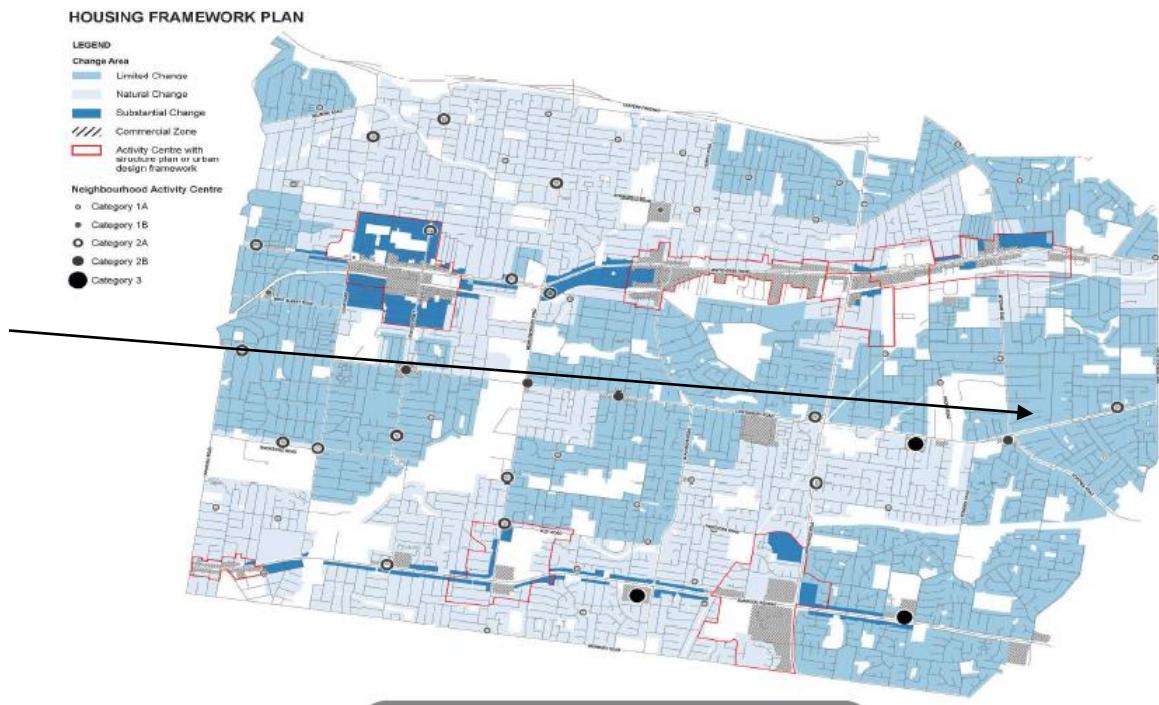
51 Visual amenity and promotion of design excellence are stated as key issues under clause 21.05-2 and objectives include to protect and enhance areas

with special natural, environmental, cultural or historic significance for the future enjoyment of the community.

- 52 The strategies include replanting that retains biodiversity, ensuring development is of a high quality that is compatible with the character and appearance of the area and providing adequate open space and landscaping for new development. Planting of upper canopy trees and other vegetation that enhances the character of the area is required. In addition, reducing the visual impact of on-site car parking from the street by locating parking areas to the side and rear of building and the provision of appropriate landscape buffers to soften hard surface areas.
- 53 The strategies will be implemented by applying the SLO and the Special Building Overlay to areas identified by Melbourne Water using clause 22.03 (Residential Development).
- 54 In relation to policy and the exercise of discretion under clause 21.05 include:
  - Using Clause 22.03 (Residential Development Policy) and Clause 22.04 (Tree Conservation) to supplement ResCode for the assessment of all residential applications.
  - Ensuring the lot sizes in the area affected by the Significant Landscape Overlay are generally in accordance with the prevailing minimum lot size of 650 square metres.
  - Ensuring that all tree removal and development complies with the Tree Conservation Policy at Clause 22.04.
  - Apply the tall tree ratio to the Significant Landscape Overlay to all applications to the ....Glenburnie Road...and Vermont areas.
  - Strongly encouraging the planting of indigenous species where appropriate.
  - Using Clause 22.15 to ensure suitable land for public open space is provided by new developments in areas where a land contribution is preferred.
  - Requiring professional landscape plans (including the planting of upper canopy trees) for all new developments.

[Tribunal emphasis]

## Clause 21.06 (Housing)



**Figure 2 – Housing Framework plan (clause 21.06)**

55 The review site is included in a **Limited Change Area** under the Housing Framework plan and<sup>17</sup> for the purposes of the Housing policy at clause 21.06-1 which reinforces the importance of the natural environment in the municipality:

The municipality's leafy character is particularly valued, strengthened by the presence of quality canopy trees and other native and exotic vegetation. Trees and vegetation are considered one of the most significant determinants of neighbourhood character in the municipality, and tree preservation and regeneration is of vital importance if the character of residential areas is to be maintained and enhanced....

The Council's Housing Strategy 2014 identifies areas of substantial, natural and limited growth. These categories of housing change are aligned with the neighbourhood character statements prepared for each area as part of the Neighbourhood Character Study 2014 and the planning controls applying to the land.

- Limited change areas enable specific characteristic of the neighbourhood, environment or landscape to be protected through greater control over new housing development. These are represent the lowest degree of intended residential growth in

<sup>17</sup> Limited change areas are the lowest order of housing growth compared with 'Natural Change Area' (modest housing growth) and Substantial Change Area (increased densities).

Whitehorse. Individually significant Heritage Overlay sites are included, but not illustrated on maps.

56 Council's Neighbourhood Character Study 2014 further defines precincts with preferred future character types within the City:

- a. Garden Suburban Area.
- b. Bush Suburban Area.
- c. Bush Environment.

57 The review site falls within '**Bush Environment**'.

MAP 1: NEIGHBOURHOOD CHARACTER PRECINCTS

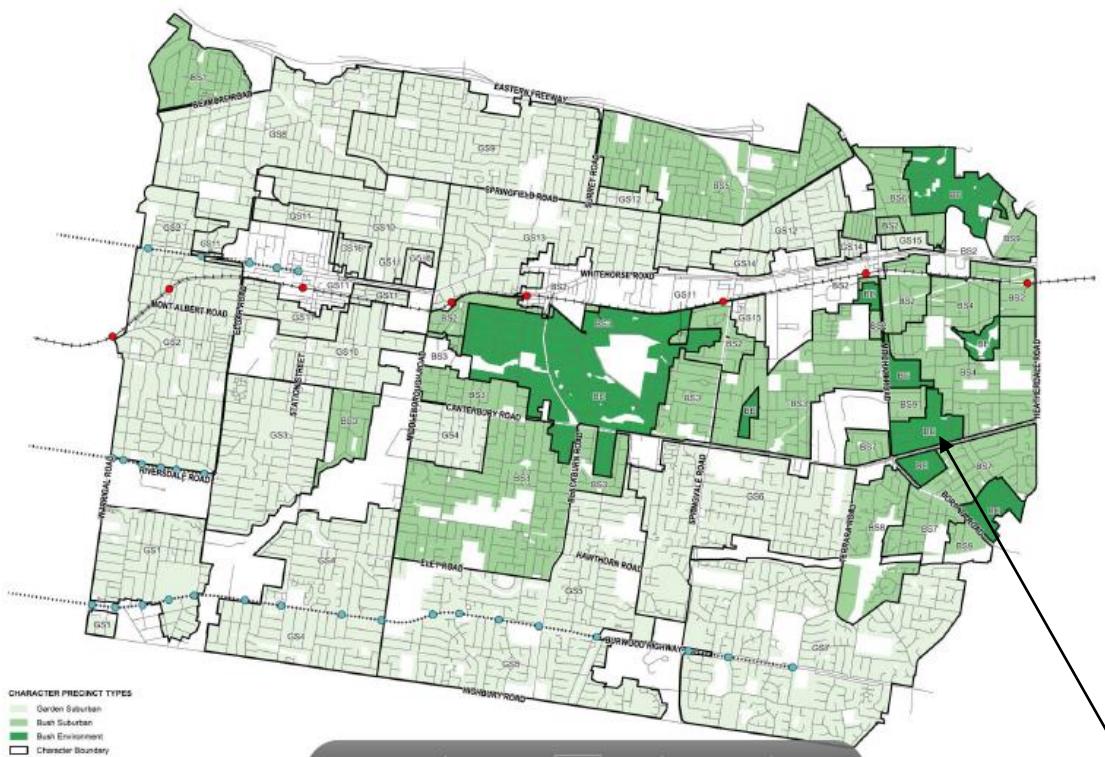
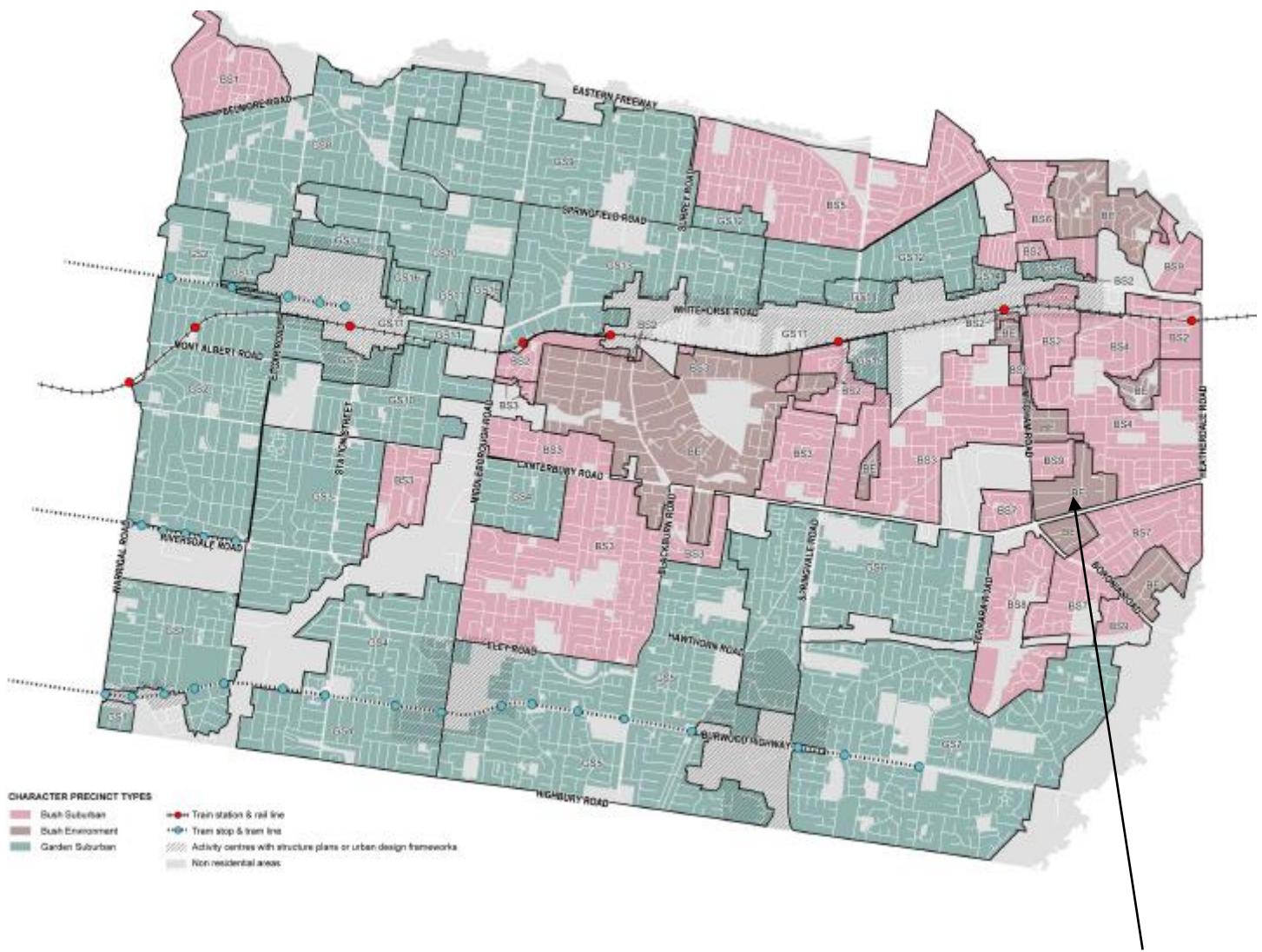
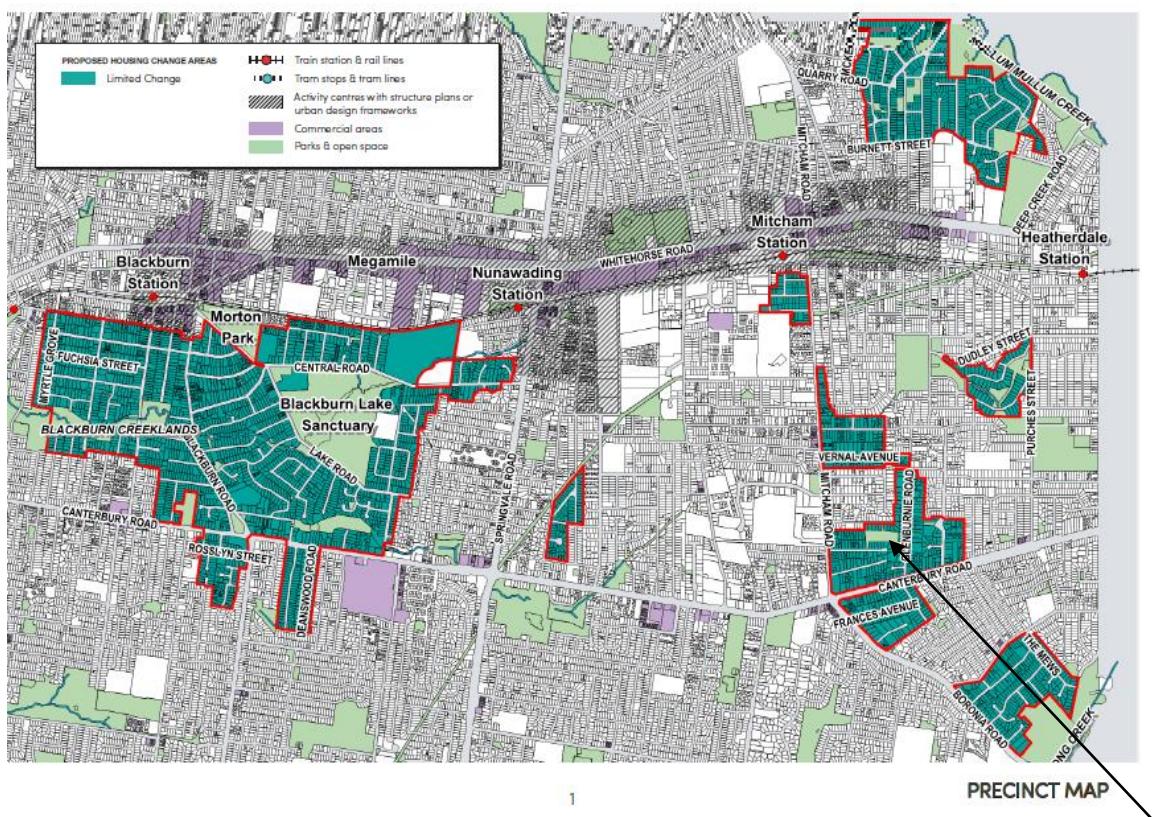


Figure 3: Map: Neighbourhood Character Precincts at clause 22.03



**Figure 4: Neighbourhood character precinct maps (City of Whitehorse Neighbourhood Character Study 2014 at page 10)**



**Figure 5 – Precinct Map – Bush Environment (Neighbourhood Character Study 2014 at page 1)**

- 58 Council will use the three categories of change and the identified character types to supplement 'ResCode' to encourage high quality development design that is responsive to the site constraints and opportunities whilst making a positive contribution to neighbourhood character.
- 59 The vision for housing is expressed at clause 21.06-2 and acknowledges the need for more housing to accommodate projected population growth in the City. Housing that supports preferred neighbourhood character objectives and urban design aspirations for the City are encouraged. Whilst housing growth and diversity is promoted in locations within walking distance of public transport and local services such as shops, parks and education, residential growth is to be limited in areas of valued landscape or built form character, and / or with infrastructure limitations.
- 60 In Limited Change Areas, the objectives for housing location include conserving and enhancing those elements which contribute to the valued environmental, heritage and neighbourhood character of the place. It is policy to ensure that new development protects and reinforces the environmental, heritage values and / or preferred future neighbourhood character of the area. Some limited medium density development is envisaged.

61 Planning policy at clause 21.06-6 for housing design seeks to (amongst things):

- Ensuring new developments do not result in a loss of the existing vegetation coverage and tree canopy.
- Encouraging appropriate development within the municipality's established areas.
- Maintaining the preferred neighbourhood character of Limited Change Areas.
- Providing adequate space for substantial vegetation in Limited and Natural Change Areas.
- Ensuring new development adjoining or close to environmental significant and sensitive areas are carefully and respectfully designed.

[Tribunal emphasis]

62 Objectives include to enhance the design quality and character of residential development and to encourage the provision of well designed, adaptable and accessible housing.

#### Clause 22.03 (Residential Development)

63 The Residential Development policy at clause 22.03 which applies to the review site applies the limited change area policy and housing objectives under clause 21.06 (Housing).

64 The preferred built form, landscape and neighbourhood character sought by Council and the community for each of the Character precincts is specified. Building on the MSS objectives in clause 21.05 (Objectives), development is to be of high quality and compatible with the character and appearance of the area and providing adequate open space and landscaping for new development.

65 Certain of the objectives at clause 22.03-2 seek to ensure that residential development within the City is consistent with the built form envisaged for the three categories of change and to ensure that development contributes to the preferred neighbourhood character where specified (the SLO7 and Bush Environment character guidelines are relevant). New development is to provide adequate vegetation and gardens consistent with the preferred neighbourhood character. Dwelling densities are to be limited in limited change areas, whereas areas of substantial and natural change are recognised as the areas that will make a significant contribution to increases in housing stock.

66 Different strategies are to be applied depending on the level of change area. For limited change areas, policy at clause 22.03-4 seeks to ensure that residential development is of a scale, form and character that is consistent with the surrounding area in the form of detached and semi-detached dwellings. The scale and appearance of new housing is to respect the

appearance of surrounding development and the environmental, heritage and neighbourhood character values of the area. This is to be compared to Natural change areas where new medium density is supported and Substantial change areas where flats and apartments are encouraged.

67 Incorporated into the planning scheme at clause 22.03-5, the preferred character statement of areas identified as 'Bush Environment' is:

The streetscapes will be dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees. The buildings will nestle into the topography of the landscape and be surrounded by bush-like native and indigenous gardens, including large indigenous trees in the private and public domains.<sup>18</sup>

Buildings and hard surfaces will occupy a very low proportion of the site. They will be sited to reflect the prevailing front, rear and side setbacks. The larger rear setbacks will accommodate substantial vegetation including large canopy trees, the bushy environs are complemented by street trees and a lack of front fencing. Properties abutting and close to creeks and lake environments will contain more indigenous trees and shrubs that act in part as wildlife corridors.

This precinct is identified for the lowest scale of intended residential growth in Whitehorse (Limited Change Area) and the preservation of its significant landscape character and environmental integrity is the highest priority.

[Tribunal emphasis]

68 The decision guidelines at clause 22.03-7 require consideration of the following additional key principles in the merits of a subdivision application:

- Buildings should be sited on the lot to protect substantial trees and vegetation to be retained.
- Encourage development, which responds to the preferred neighbourhood character as detailed in this policy.
- Encourage a diversity of lot sizes and types having regard to the subdivision layout of the neighbourhood.
- Ensure that off-street vehicle parking provision and design complies with relevant standards.
- Encourage energy efficient outcomes within subdivisions.
- Ensure that the landscape design and retention of vegetation of a future subdivision achieves the design objectives and design responses as detailed in this policy.
- The need for an Agreement under Section 173 of the *Planning and Environment Act 1987* relating to the future development of the land.

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<sup>18</sup> The landscape plan prepared by John Patrick in terms of the canopy trees, is that the greater balance of those trees are exotics, and certainly no indigenous trees.

69 Apart from the preferred character statement (which is incorporated into the scheme), the Bush Environment Precinct Guidelines is a reference document for the purposes of the planning scheme. There are a number of character elements including ‘gardens and landscaping’ which has the objective *to maintain and strengthen the garden setting of the dwellings and the tree canopy of the neighbourhood and to maintain and strengthen the bush dominated setting of the dwellings.*

70 The design response in the Bush Environment Guidelines requires development to seek to, amongst other things:

- Retain established mature trees and provide for the planting of new canopy trees and substantial vegetation.
- Provide for at least two ground level areas with minimum dimensions of 5m x 5m for open space to accommodate substantial trees.
- Plant at least two canopy trees within a minimum mature height of 12m, with at least one tree provided in the rear setback per dwelling.
- Avoid of the removal of large, established trees and loss of established vegetation.
- Avoid inadequate space for trees / planting around buildings.

#### Clause 22.04 -Tree conservation

71 The policy basis provides at clause 22.04-1 that tree conservation is important in the City as set out in the Municipal Strategic Statement (**MSS**), clause 21.05 and clause 21.06. Trees are seen to play a crucial role as vegetation as being the most significant determinant of neighbourhood character.

72 The objectives include to ensure that new development minimises the loss of significant trees and to promote the regeneration of tall trees through the provision of adequate open space and landscaping areas in new development.

73 It is also planning policy to retain healthy trees (unless justified) and trees that are significant for a variety of reasons, including their aesthetic so that they are important beyond the immediate surrounds of the site. Appropriate minimum separation distances are to be applied between any tree to be retained and proposed buildings and works.

74 In circumstances where there is to be tree regeneration, it is policy for:

- New upper canopy trees be planted and significant trees that are unable to be retained be replaced to ensure that the treed canopy of the City is maintained in the long term.
- New trees have sufficient space and separation from buildings and impervious surfaces to successfully obtain their optimum height and avoid any damage to property in the future.

- New trees are to be situated in an open area that is free of buildings and impervious surfaces and of other tree canopies, to minimise competition and facilitate normal growth.
- Juvenile trees be used for replanting, as opposed to advanced species, as they are better able to adopt to their surroundings and develop a strong, healthy root system.

75 The performance standards provide that for tree regeneration, the site for a new tree should be separated by a minimum distance of 3m from a building and in areas included in a SLO, situated in a minimum area of 50sqm of open ground with a minimum dimension of 5m that is free of buildings and impervious surfaces and of other tree canopies, to minimise competition and facilitate normal growth. Council submits this is an important policy requirement.

**Clause 22.10 (Environmentally sustainable development)**

76 It is policy to integrate environmental sustainability principles into land-use planning, new developments and redevelopment of existing infrastructure.

**What is the physical context**

77 The review site is a large irregular shared parcel comprised in five lots, including a consolidated lot with an overall area of 6912sqm. As a former dairy and bakery, the review site is occupied by vacant derelict industrial and residential buildings and some scattered vegetation and large trees. It is proposed to demolish the existing buildings and clear the site for development. There are a number of existing cross overs to Canterbury Road, some of which will be removed as part of the proposal.

78 The Applicant submits that the review site is an anomaly in this site context for a number of reasons due to it being:

- a. A large and extensive lot.
- b. The former industrial use.
- c. Devoid of vegetation with low retention value.
- d. Existing apart of the surrounding residential area and has made little or no contribution to the residential or landscape character of the area.

79 The surrounding area is generally used for residential purposes and developed with single dwelling allotments, although some examples of medium density development exists.

80 The original Arborist report submitted with the application concludes that there were 31 trees located on neighbouring properties. And, as for the review site, there were a total of 10 trees of which six were considered of low retention value (Trees 7, 28, 35, 36, 37 & 41) and four were considered as 'moderate' retention value (Trees 29, 38, 39 and 40).

81 The review site benefits from two access roads: Canterbury Road and Grove Street. However, they could not be more apart in terms of character and function.

82 Grove Street and its surrounds is notable for its treed character reflected in its zoning and application of the SLO7. Grove Street is a dead end street that is quiet and attractive. It is a 3.5m single one way private road which is sealed but there are no kerbs or channels. The verges are heavily landscaped and go to the road. There is an existing gate from the rear of the review site presenting to Grove Street.

83 The review site has a common boundary with No 14 Grove Street to the east and No 8 Grove Street to the west. Both homes are close to the boundary and are single storey height.

84 The architecture of the homes Grove Street vary from modern to more traditional, and are generally single dwellings apart from No 6-8 Grove Street which contains villa units. The homes in Grove Street appear to have the one thing in common at least in that they are nestled into the landscaped and bush environment. The one house that does not appear to 'fit' in the same sense is No 3 Grove Street which is a large double storey mansion like house with a long set back (due to tennis courts in the front setback), and driveway and cypress trees at the entrance.

85 By contrast, Canterbury Road has a far more robust frontage given the six lane arterial road. It is busy and carries much traffic. It has a typical urban suburban dwelling stock character to its frontage with single and medium density double story homes on both side of the road.

86 For example, No 505 Canterbury Street abuts the review site to the east and is developed with a single dwelling and an office for a seed spray business. There are single villa units further to the east. No 491 Canterbury road abuts the review site to the west and contains a single dwelling.

87 There are a number of community facilities further to west towards the Mitcham Road intersection.

88 On Day 2 of the hearing, I undertook an accompanied site inspection and I have taken the time to appreciate characteristic of the surrounding neighbourhood. My role is to take account of the preferred character statement, but also consider the extent to which the surrounding existing characteristics might direct a different preferred character, and factor in the location of the site on Canterbury Road as a former industrial site that is now ripe for urban renewal. It is clear that Grove Street is not a typical urban environment, it has a much more treed and bush-like environment.

89 I find that the character to which this proposal should respond as consisting of the following:

- Canterbury Road is a completely different interface from Grove Street.

- b. In Grove Street, there are few dwellings that have some scale or presence about them when viewed from the public realm or streetscape compared to Canterbury Road. The Canterbury Road frontage presents as a wide site and in open manner without the same level of vegetation, apart from the tall cypress trees along the western driveway.
- c. Grove Street is a 3.5m single road compared to Canterbury Road which is a 6 lane highway with a middle medium strip.
- d. A range of single and double storey dwellings were sighted on both Grove and Canterbury Road.
- e. On Grove Street, the dwellings nestle into the topography of the landscape and are surrounded by bush-like native and indigenous gardens.
- f. Vegetation in the surrounding area that consists of mainly native and indigenous species with the presence of exotic trees.
- g. Good separation between dwellings and well landscaped gardens in Grove Street.
- h. Materials where timber, brick, standard glass and masonry walls and tiled pitched roofs are prevalent.

90 The review site is close to the Vermont village Neighbourhood Activity Centre, Brentford Square Shopping Centre, Forest Hill Shopping Centre, community services, and public transport and other larger order Centres located accessible distances from the site.

91 There are a number of medium density developments in the vicinity at No 6 -8 Grove Street and on Canterbury Road and on Boronia road. There is commercial activity at the corner of Mitcham Road and Canterbury Road.

92 It is noted that historically, the properties south of Grove Street did not have a bush character compared to the north side of the street. Any contribution to bush environment has been made after this time rather than a long historical character of the area.

## **Assessment**

### Overview

93 The review site is a former non-confirming industrial site that is ripe for urban renewal. Redevelopment of such sites is encouraged by State planning policy provided it appropriately responds to its context and the design should respond positively to its environment.<sup>19</sup>

94 I find that the review site presents an excellent strategic opportunity for to achieve increased housing and, enhance the landscape / bush character of

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<sup>19</sup> Clause 15.

the area. Appropriately designed, it will make a significant contribution to the area and landscape character.

- 95 However, the review site also is located in a small pocket of residential land which the planning scheme has identified as having a special landscape quality and this reflected in the review site's inclusion in the SLO7. Whilst it has an industrial history, it is nevertheless set within a bush like setting that applies to the entire site.
- 96 The planning policy context for land in this area is extensive and clear. In assessing whether the proposal is appropriate given its physical and planning policy context, I have placed significant weight on the requirements of the NRZ1 and SLO7 and the policy guidance which seeks to provide for the lowest level of change in the municipality and in this Bush Environment Area setting.
- 97 The planning scheme clearly identifies those areas which it gives special regard due to its environmental features and attributes and surrounding context. In this regard, the review site itself, as a former industrial site, does not retain the same level of special environmental attributes that are evident in the land to the north in Grove Street. Grove Street is akin to a quaint country lane with its lack of front fences, extensive bush and vegetated environment with houses nestled or hidden from view behind tall trees and vegetation. The policy expression for preferred neighbourhood character seeks to preserve this special neighbourhood setting recognising that trees are crucial as vegetation as being the most significant determinant of neighbourhood character.
- 98 Whilst some limited medium density developments will be accommodated in limited change areas, development must conserve or enhance those elements which contribute to the valued environmental and neighbourhood character of the place.<sup>20</sup> Further, development is to be of a scale, form and character that is consistent with the surrounding area.<sup>21</sup>
- 99 Whilst the townhouse dwelling typology is acceptable given this is an urban renewal site, I find that the development fails to appropriately respond to its context when taking into account the policy intent and represents an unacceptable departure from the landscaped setting sought by policy. My main reasons are that it is set in a bush-like setting particularly at the Grove Street cluster and the SLO7 raises the bar in terms of built form, level of density and landscaped outcomes.
- 100 To this extent, the planning context is calling for a tempered redevelopment where provision of substantial vegetation and indigenous or native canopy trees are considered a key test in determining successful integration with the neighbourhood character.

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<sup>20</sup> Refer clause 21.06-3.

<sup>21</sup> Refer clause 21.05-5.

- 101 Whilst I consider the Canterbury Road presentation is capable of a more robust response, I do not consider that the development will appear as inconspicuous as required by policy particularly at the Grove Street frontage. This is because of the extent of built form and the dominance of the two driveways. The density and intensity of the development on this site, despite its size does not accord with the outcomes the planning controls are seeking to achieve.
- 102 I find that the development is a poor response to the garden and landscaping objectives to maintain and strengthen the garden setting of the dwellings and the tree canopy of the neighbourhood and to maintain and strengthen the bush dominated setting of the dwellings.
- 103 Had the planning regime been one where the review site was included in a Natural Change area with a Garden Suburban Area setting, my findings in this regard may well have been different. However, the planning scheme identifies this precinct as the lowest scale of intended residential growth in the City and the preservation of its significant landscape character and environmental integrity is the highest priority. At nineteen dwellings, the proposal is just too compact on this site resulting in a density that it unable to deliver on the high standards which policy is seeking be delivered in this unique setting with regard to landscaping and a bush environment character.

#### Failing to respond to the purpose of the NRZ

- 104 The decision guidelines in the NRZ1 seek provision of a stronger landscaped outcome than what is offered in this proposal.
- 105 Internally, I find that there is a lack of space between dwellings to afford sufficient space for vegetation and canopy trees, particularly given the attached townhouse forms. This is particularly important for the Grove Street presentation given its bush-like setting.
- 106 The variation in the NRZ1 at Standard B13 calls for provision of at least two canopy trees per dwelling capable of reaching a mature height of 12m. The schedule to the NRZ1 calls for native trees, preferably indigenous. In this instance, there are no trees capable of growing to a height of 12m and no indigenous trees proposed. I do not consider the objective has been met.

#### Failing to respond to the purposes and intent of the SLO7

- 107 I find that the proposal does not adequately respond to the purpose, intent and requirements of the SLO7. The SLO7 calls for dwellings to take a subservient role to the bush landscape and whilst I appreciate it is a high bar, I do not consider the design of 19 dwellings on this site has achieved what planning policy calls for in this instance.
- 108 The policy seeks a built form outcome where buildings will nestle into the topography of the landscape and surrounded by bush-like native and indigenous gardens. The development delivers on a scheme that does not

adequately respond to the planning controls and policy applicable to the site.

- 109 For example, the proposal fails to achieve an adequate mix of native, indigenous and exotic trees sought by the decision guidelines under the SLO7.
- 110 Also, the plans do not show the potential to achieve the average density of one tree reaching a height over 15m to every 200sqm of site area, which at its maximum requires 34 trees. Whilst there will be planting under the proposal, the schedule and local planning policies call for trees capable of growing to a height of 12m and this has not been accommodated in the plans.
- 111 I am also concerned how larger trees might impact on building envelopes and hard standing and the like given the density proposed.
- 112 Further, there is a lack of space retained for the placement of canopy trees which forces many to be located within 3.0m of a building contrary to clause 22.04-4 which provides for appropriate separation distances for new trees (for example, a minimum distance of 3m from a building and increased areas for new trees in the SLO).
- 113 There are few examples of where the design has employed substantial side setbacks that would accommodate 'substantial large trees'. For example, TH15 and TH16 will not and cannot accommodate any canopy trees by virtue of neighbouring trees.
- 114 I find that the areas around the proposed dwellings provided for landscaping are too constrained in size without the necessary separation called for by policy. As a result, the development will result in an incongruous built form outcome particularly when viewed from the Grove Street frontage. I find that it will create an unacceptable departure from the landscaped setting sought and will create a poor response to the existing and preferred neighbourhood character of this bush environment area particularly from Grove Street where tree regeneration is of vital importance.

#### Bush Environment Areas Guidelines

- 115 I am mindful that the preferred character for Bush Environment Areas will provide for streetscapes dominated by vegetation with subservient buildings frequently hidden from view behind vegetation and tall trees.
- 116 The objective regarding 'Garden and Landscaping' states 'to maintain and strengthen the garden setting of the dwellings and the tree canopy of the neighbourhood' and 'to maintain and strengthen the bush dominated setting of the dwellings.'
- 117 The Bush Environment Guidelines also look for at least two ground floor areas with minimum dimensions of 5m by 5m for open space to accommodate substantial trees (which is repeated in the schedule to the

NRZ1). Only three of the THs (TH 8, 13 and 18) comply with this guideline.

### Design response

118 In support of my findings that the proposal does not adequately respond to the purpose and intent of the NRZ1 and SLO7 and policy context for this site, I set out below indications of where the design response is not appropriate for this site context :

- a. There are no examples of any proposed lot being able to accommodate two trees capable of growing to a height of 12m as required by the NRZ1. I am concerned how this might impact on building envelopes and the like.
- b. The species chosen for this development site are mostly if not all exotic species, which is not in accordance with clause 21.05 (Environment).
- c. Only three of the nineteen town houses (TH8, TH13 and TH18) comply with the Bush Environment Precinct Guidelines of at least two ground floor areas with minimum dimensions of 5m by 5m for open space to accommodate substantial trees.
- d. Many of the proposed dwellings have prominent double car garage doors sitting forward of their respective dwellings which is a poor response to the front gardens guidelines which state 'to minimise the loss of front garden space and the dominance of car parking structures.' For example, the area around TH15 is poorly designed where the dominance of garage doors and hard stand is located adjacent to a bedroom with no capacity for any landscaping. Although, this might be resolved with the conversion of TH 14 to common garden area.
- e. The prominence of the garages, fencing and the reliance on side by side development and relatively small side setbacks make it a poor response to the objective 'To maintain the sense of openness and visibility of tree canopies in rear gardens' and to avoid 'bulky development dominating the tree canopy, and, lack of space for trees.' The elevation of TP10, TH9, TH8 and TH7 indicates the lack of separation between buildings.
- f. The internal access ways which will form part of this master planned site need to respond to planning policy which is asking for a specific landscape character response, particularly from the Grove Street perspective and not to present built form that might be 'jarring' when viewed from the street. I am concerned the combination of TH 18 and TH 19 as presented to the street will result in a poor visual amenity outcome at this unique interface.

- g. TH 18 also appears too close to the dwelling at 14 Grove Street to provide for adequate landscaping at that interface.
- h. The design appears to struggle with creating the bush like setting sought be policy, rather it presents a typical suburban medium density development. I consider it does not hit the mark in delivering on the desired outcome.
- i. The Bush Environment Guidelines call for the avoidance of walls on boundaries and the Decision Guidelines of the SLO require consideration of whether the proposed building is setback a substantial distance from at least one side boundary and the rear boundary to accommodate large canopy trees. However, the lack of rear setback for TH19, and the attached forms for TH 16 and TH 17 and proximity of TH 15 results in a hard edged built form response where substantial landscaping between dwellings is non-existent, let alone the provision of upper canopy trees.
- j. The design fails in the requirements of providing separation of 3 – 4m between dwellings on the same site to accommodate vegetation.
- k. The prominence of the garages doors and lack of landscaping opportunity within front setback areas, is a design shortcoming that ‘carports, garages or outbuildings should be setback a minimum of 1 m from the façade of a dwelling fronting the street with on walls on a boundary’.
- l. The Bush Environment Guidelines also contain a character element ‘front fencing’ which has the stated objective ‘to retain views to dwelling and gardens and complement the predominant style of front boundary delineation in the street’ suggesting that a low open style fence up to 1m in height. The combination of internal access ways with high front fences and coupled with garage doors which sit proud and hard paving entrances, do not provide a landscaping setting that is anticipated for a Bush Environment area.
- m. The length of driveway from Grove Street at 6.5m does not have adequate landscaping on its western side to contribute to the bush environment setting sought by planning policy. (The Applicant is now willingness to provide a 1 metre landscape strip long the western side of the driveway by way of condition).
- n. I am concerned about safety of access on Canterbury Road under clause 52.06 given the observations I made at the site inspection regarding traffic when travelling in a easterly direction on Canterbury Road.

#### Clause 55 shortcomings

119 Clause 22.03 and clause 22.04 supplement ResCode.

120 Whilst the proposal generally meets the numerical requirements of ResCode, I note below the following shortcomings which not of themselves are determinative, but in combination, weight against the grant of a planning permit for the proposal.

121 First, in light of my comments above, I find that the development fails to meet the neighbourhood character objective in clause 55.02-1.

122 Clause 55.02-3 (Dwelling diversity objective) calls for a different number of bedrooms for developments of 10 or more dwellings. In this case, all the dwellings provide a kitchen and/or a bath and shower on the ground floor. Whilst not of itself determinative, I consider that the proposal produces the ‘same’ in terms of accommodation whereas a more site responsive design may have produced a different outcome with dwellings that are diverse in terms of size that ‘fit’ in terms of its location and impact on the environment.

123 Clause 55.03-7 and clause 55.05-2 (Safety / dwelling entry objectives) call for the creation of developments that do not obscure or isolate dwelling entries. Similarly TH 12, TH 4 and TH 10 are arguably poorly designed as they are tucked away from the front of the dwelling adjacent to a 2.0m high fence, which is in turn adjacent to bin enclose areas (although the latter could be relocated). I find that a number of dwelling entries are compromised and fail to adequately provide a suitable sense of personal address as required by Standard B26. TH12 has similar typology to TH 10.

124 The swept path analysis indicates that some of the landscaping might interfere with turning circles and require re-visiting.

125 In relation to clause 55.03-5 (Energy Efficiency objective), the Canterbury Road facing dwellings have no access to northern light which I consider is a poor design response. Also, certain secluded private open space areas are not orientated to the north to make use of passive solar energy. TH 1, TH 2, TH 3, TH 4 and TH 7 all have south facing secluded private open space and not north facing living areas. The secluded open space of TH 5 and TH 6 are compromised given the location of TH 12 and TH 11. This could be resolved with larger side setbacks and then incorporate living areas.

#### Clause 56 shortcomings

126 The following matters also weight against a planning permit being granted in this instance as I am persuaded by Council’s submission that the subdivision:

- a. will result in a layout and design that is inconsistent with many of the policies identified in the planning scheme, contrary to the strategic implementation objective which requires ‘to ensure that the layout and design a subdivision is consistent with and implements any objective, policy, strategic or plan for the area set out in this scheme’.

- b. Does not meet Standard C6 which seeks that the subdivision ‘respects existing neighbourhood character or achieves a preferred neighbourhood character consistent with any relevant neighbourhood character objective, policy or statement set out in the planning scheme’ and ‘should integrate with the surrounding urban environment.
- c. Does not meet integrated urban landscape objectives requires for a subdivision under clause 56.05-1 to ‘implement any relevant streetscape, landscape, urban design or native vegetation precinct plan, strategy or policy for the area set out in this scheme’ because:
  - It does not provide any 15 m high upper canopy trees, called for by the schedule to the SLO; and
  - The Bush Environment Neighbourhood Character Guidelines and the schedule to the NRZ1 require the provision of two 12 m high trees per lot (dwelling) and the design fails to provide any 12 m high trees.

### **WHAT DOES THE PROPOSAL DO WELL?**

127 Despite my findings above, I consider that the following matters raised at the hearing would contribute towards an acceptable alternative design response for this site:

- a) The townhouse typology, architectural style, and materials and finishes proposed are appropriate given this is an extensive urban renewal site and those responses are respectful of the existing neighbourhood character. Although, greater dwelling diversity would improve on this.
- b) The conversion of TH 14 to an area of common property is a positive change, taking into account the large elm (Tree 29) which makes a valuable contribution to the landscape character sought by policy and benefits the site and adjoining properties.
- c) Retention of Tree 29 and the cypress trees at the Canterbury Road frontage / existing driveway is appropriate.
- d) The fact that the design does not allow for a through road from Canterbury Road to Grove Street is a sensible one given the concerns expressed about the capacity of Grove Street to handle increased traffic volumes and its current state of fragility. Also, the bush like setting which may be vulnerable to access and egress requirements and need to protect human life above all else, despite the site not being affected by a Bush Management Overlay.
- e) The provision of a communal visitor space in the Grove Street Cluster is appropriate given the lack of off-street car parking in Grove Street. And, although I do not prescribe it, greater provision of on-street visitor car parking might assist to ameliorate concerns about the safety

of Canterbury Road and the limited capacity of Grove Street to take on off-street parking at this location. This would particularly benefit the other two clusters off Canterbury Road.

- f) A proposed new fence interface treatment between the review site to the north and the southern boundary to the properties at No 14 and No 16/18 Grove Street, if the existing brick wall is to be demolished. Whilst I do not prescribe it, the recycling of the bricks from the existing wall or a 2.5m timber fence appropriately specified might provide an appropriate interface between the properties and contribute to the character along that common boundary.
- g) The Canterbury Road frontage is robust and capable of coping with a more intense level of density and compared to the Grove Street frontage. The 2m front fence is an appropriate response to the site context.
- h) A Phase 1 Environmental Audit should be required given the site's previous industrial use.
- i) Provision of residential and visitor car parking spaces that comply with the requirements of clause 52.06. But, the addition of a communal visitor space for the Grove Street cluster could assist in avoiding off-site car parking in Grove Street given the limited capacity of that street.

### **WOULD THE DEVELOPMENT PROVIDE ACCEPTABLE AMENITY FOR ITS NEIGHBOURS?**

128 Given my findings above, I need not turn my mind to whether the development provides an acceptable amenity for its neighbours in terms of overshadowing, overlooking or visual bulk and I have already expressed my concerns about the intensity and density of the development being unacceptable in this site context.

### **WOULD THE DEVELOPMENT PROVIDE ACCEPTABLE AMENITY FOR ITS FUTURE RESIDENTS?**

129 Given my findings above, I need not turn my mind to whether the development provides an acceptable amenity for its future residents. Although this was not pressed by Council at length, any new proposal should address interface issues between dwellings.

### **CONCLUSION**

130 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

**Carol Daicic**  
**Member**