

## PLANNING, DESIGN AND DEVELOPMENT

No. of Pages – 20

### 7.2 Planning Application YR-2019/418 - 28 Central Avenue Mooroolbark

APPLICATION DETAILS	
<b>Site Address</b>	28 Central Avenue Mooroolbark
<b>Application No.</b>	YR-2019/418
<b>Proposal</b>	Buildings and works to construct six dwellings and variation of an easement under Clause 52.02
<b>Existing Use</b>	Dwelling
<b>Owner</b>	Azura Investments Pty Ltd
<b>Applicant</b>	Azura Investments Pty Ltd C/-Millar Merrigan
<b>Zone</b>	General Residential Zone Schedule 1 (GRZ1)
<b>Overlays</b>	Design and Development Overlay Schedule 8 (DDO8) Significant Landscape Overlay Schedule 23 (SLO23)
<b>Objections</b>	13 objections
<b>Reason for Council Decision</b>	More than ten (10) objections
<b>Ward</b>	Melba

### SUMMARY

The application seeks permission to construct six (6) double storey dwellings. The site is currently developed with a single dwelling which is proposed to be demolished to enable the proposed development.

The proposal includes removal of a total of five (5) native and exotic trees, none of which require planning permission for removal.

The application has been advertised and 13 objections have been received. The main grounds of objection relate to: an overdevelopment, car parking, traffic and overflow car parking as result of the overdevelopment of the area, devalue the property, removal of asbestos from the existing dwelling, visual bulk, overshadowing, privacy, waste collection, reduced front setback, amenity impact as a result of construction, and poor documentation.

The subject site is located within the *Mooroolbark Neighbourhood Activity Centre (MNAC)* and is well serviced by infrastructure (including public transport) and community services. Moreover, the land is within a consolidation area where the proposed density is encouraged to enable efficient use of available infrastructure.

Overall, the proposed development is considered to be an appropriate design response and is satisfactory when assessed against the relevant policies and provisions of the Yarra Ranges Planning Scheme.

Accordingly, it is recommended that the application be approved.

## RECOMMENDATION

***That Council resolve to approve Planning Application YR-2019/418 for Buildings and works to construct six (6) dwellings and variation of an easement under Clause 52.02 at 28 Central Avenue, Mooroolbark and issue a Notice of Decision to Grant a Permit subject to the conditions in Attachment 1 to the report.***

## DISCLOSURE OF CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any direct or indirect conflict of interest as defined within the *Local Government Act 1989*.

## SITE LOCATION AND DESCRIPTION

The subject site is described on title as Lot 37 on PS011290.

The subject site is located on the northeast side of Central Avenue, Mooroolbark. It is an irregular shaped block with a street frontage of 21.11m and a variable depth of 38.47 metres to 45.71 metres with a total site area of 1,368m<sup>2</sup>. There is a 3.05 metres drainage and sewer easement which runs along the rear boundary.

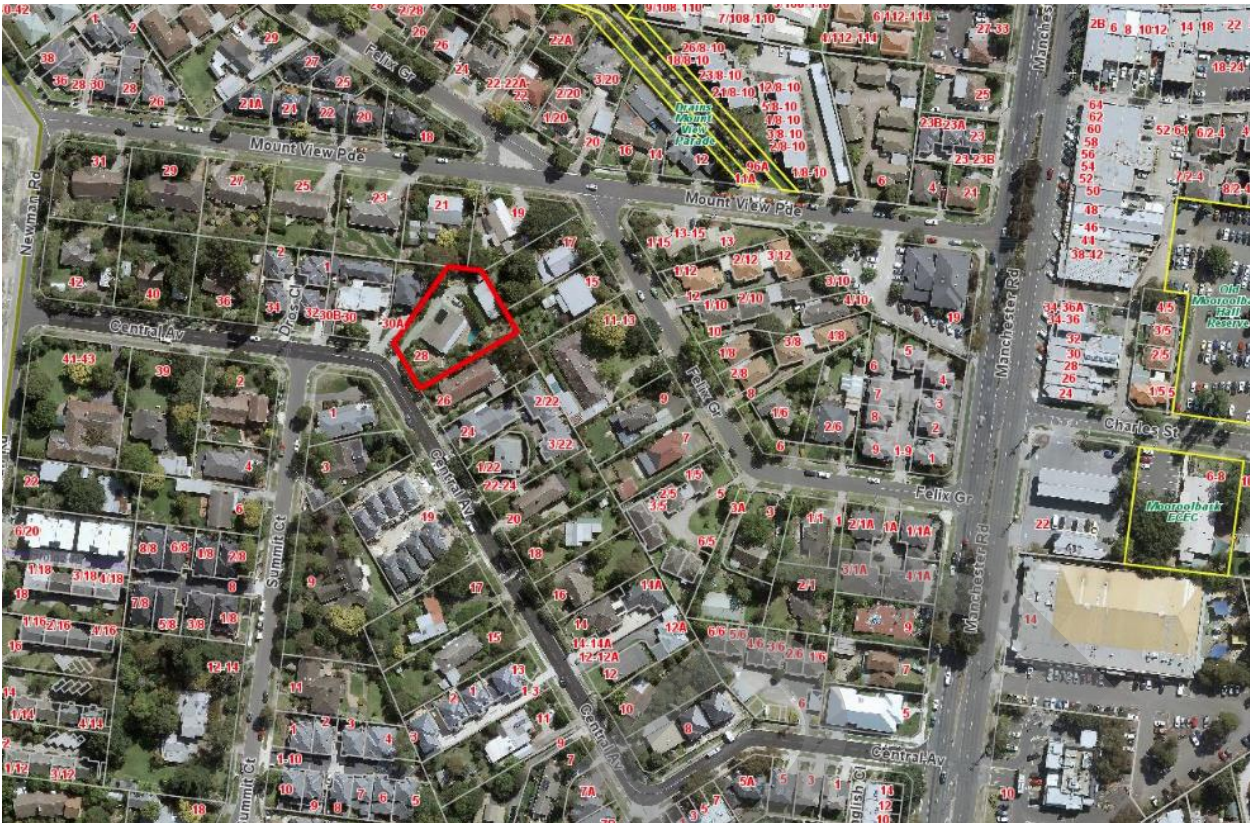
Central Avenue is a sealed local road with barrier kerb and channel with footpaths on either side. The road carries a moderate traffic volume which has increased at a greater rate than other nearby local roads in the last 10 years.

The topography of the site has a fairly steep slope from east to west resulting in a fall of approximately eight (8) metres.

The site is currently developed with a split-level weatherboard dwelling that is setback approximately ten (10) metres from the frontage. The land also contains a swimming pool and outbuildings. The vegetation onsite comprises of a mix of exotic shrubs and hedging along the boundaries and a number of trees, some of which have been cleared using the bushfire exemptions.

There is an existing concrete crossover and driveway which runs along the north boundary providing access to the site.

The subject site is not affected by any restrictions on title.



## SURROUNDING AREA

The subject site adjoins six (6) properties which are described below:

- North:
  - 21 Mount View Parade, Mooroolbark: Is a regular shaped block with a lot size of 883m<sup>2</sup>. It comprises a single dwelling and several outbuildings. There is scattered vegetation.
- East:
  - 19 Felix Grove, Mooroolbark: Is an irregular shaped block with a lot size of 846m<sup>2</sup>. It comprises a single dwelling and some vegetation;
  - 17 Felix Grove, Mooroolbark: Is an irregular shaped block with a lot size of 838m<sup>2</sup>. It comprises a single dwelling and some vegetation. Planning Permit YR-2018/377 was issued on 30 October 2018 to construct four (4) double storey dwellings on the land; and
  - 15 Felix Grove, Mooroolbark: Is a regular shaped block with a lot size of 833m<sup>2</sup>. It comprises a single dwelling and some vegetation.
- West:
  - 30A Central Avenue, Mooroolbark: Is an irregular shaped block with a lot size of 431m<sup>2</sup>, developed with a double storey dwelling. This lot was created as a result of Planning Permit YR-2008/1231 (development permit to construct two

additional dwellings) and YR-2009/1449 (three lot subdivision). Review of the delegate report for the above property notes at the time of approval that land was affected by the Residential 1 Zone.

- South:
  - 26 Central Avenue, Mooroolbark: Is a regular shaped block with a lot size of 828m<sup>2</sup>. It comprises a single dwelling and some vegetation.

The site is located within the *Residential Precinct* of the Mooroolbark Activity Centre as identified by the Local Policy Clause 22.09 in the Yarra Ranges Planning Scheme. The surrounding area is host to a variety of allotment sizes and configurations; where allotment sizes are in the order of 140m<sup>2</sup> to 2000m<sup>2</sup>.

This precinct has undergone a gradual change in recent years with evidence of several multi-unit developments along Central Avenue as well as Summit Court. Such examples are evident at 34-32 Central Avenue, 30 Central Avenue, 19 Central Avenue, and 24-22 Central Avenue.

The site has good access to existing infrastructure and community facilities, including public transport and shopping centres. Mooroolbark Railway Station and shopping centre are within 800 metres to the northeast. The site also has access to a range of recreation reserves and schools in Mooroolbark.

Refer to Melways Map at Attachment 5 for details.

## HISTORY

<b>Application Number and Decision Date</b>	N/A
<b>VCAT History</b>	N/A
<b>Other History</b>	The original application lodged with Council was to construct seven (7) dwellings. Following the request for further information and concerns raised by Planning, the applicant amended the application under Section 50 of the <i>Planning &amp; Environment Act 1987</i> to construct six (6) dwellings to address planning concerns.

## PROPOSAL

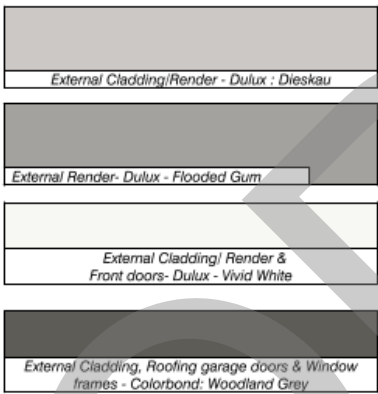
Buildings and works to construct six dwellings and variation of an easement under Clause 52.02; development plans are provided under Attachment 7.

The key aspects of the proposal include:

- The proposed layout of six (6) dwellings separated by a common accessway. All dwellings are proposed to be double storey:

- Dwelling one fronts Central Avenue;
  - Dwelling two and three are setback 3.0 metres from Dwelling one. Dwellings two and three are separated by 1.2 metre setback; and
  - Dwellings four, five and six are located along the eastern boundary. All three dwellings are setback 3.5 metres from this boundary. Dwellings four and five are attached at ground level.
- The proposal includes five three bedroom and one two-bedroom dwellings;
  - One visitor car parking space is provided for the development and is sited adjacent to Dwelling four towards the end of the accessway along the northern boundary;
  - Dwellings two to six are provided with a double garage, while Dwelling one includes a single garage. A reduction of car parking is not required;
  - Pedestrian access for Dwelling one is along the front boundary facing Central Avenue, while the remainder of the dwellings are accessed from the common accessway;
  - The design response includes pitched roofs, rendered walls, and vertical wall cladding;
  - Earthworks required include cut and fill which range from 0.4 metres to 2 metres; and
  - The maximum overall height of 8.05 metres is proposed for front Dwelling one, with the overall height for all other dwellings ranging between 7.42 metres to 9 metres.

	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Dwelling 5	Dwelling 6
<b>Storeys</b>	Double	Double	Double	Double	Double	Double
<b>Front setback</b>	7m	-	-	-	-	-
<b>Maximum height of dwelling</b>	8.05	7.42m	7.65	8.87m	8.87m	8.99m
<b>Bedrooms</b>	2	3	3	3	3	3
<b>Car parking</b>	Single garage	Double garage	Double garage	Double garage	Double garage	Double garage
<b>Total POS (POS + SPOS)</b>	121m <sup>2</sup>	51m <sup>2</sup>	54m <sup>2</sup>	91m <sup>2</sup>	44m <sup>2</sup>	62m <sup>2</sup>
<b>Total SPOS</b>	35m <sup>2</sup>	51m <sup>2</sup> <i>including the 8m<sup>2</sup> balcony</i>	54m <sup>2</sup> <i>including the 9m<sup>2</sup> balcony</i>	91m <sup>2</sup>	44m <sup>2</sup>	62m <sup>2</sup>
<b>Other Details</b>						
<b>Lot density</b>	1:228m <sup>2</sup>					

	Dwelling 1	Dwelling 2	Dwelling 3	Dwelling 4	Dwelling 5	Dwelling 6
<b>Site Coverage</b>	40.6%					
<b>Permeability</b>	34.3%					
<b>Garden Area</b>	36.1%					
<b>Front Fence Details</b>	N/A					
<b>Common property area</b>	343m <sup>2</sup>					
<b>Vehicle access</b>	Common driveway access to all dwellings along the north.					
<b>External materials and finishes</b>	<ul style="list-style-type: none"> <li>▪ Grey render at ground floor level.</li> <li>▪ Grey/cream rendered finish at upper floors.</li> <li>▪ 22.5° pitched roof – Colourbond sheeting</li> </ul> <p><i>MATERIALS, FINISHES &amp; COLOURS UNIT 1 &amp; 2:</i></p> 					
<b>Other changes within the property</b>	Provision of one (1) visitor car space accessed via the common property driveway.					
<b>Tree removals</b>	The proposal includes removal of five (5) trees, none of which have a diameter at breast height greater than 0.26 metres and therefore do not require planning permission for removal.					

## PLANNING CONTROLS

<b>Zoning:</b>	Clause 32.08 - General Residential Zone Schedule 1 (GRZ1)
<b>Overlay:</b>	Clause 42.03 - Significant Landscape Overlay Schedule 23 (SLO23) Clause 43.02 - Design and Development Overlay Schedule 8 (DDO8)
<b>State Planning Policy:</b>	Clause 15 - Built Environment and Heritage Clause 15.01-1S - Urban Design Clause 15.01-2S - Building Design Clause 15.01-5S - Neighbourhood Character

	Clause 16 - Housing Clause 18.02-4S - Car Parking Clause 19 - Infrastructure
<b>Local Planning Policy:</b>	Clause 21.04-1 - Residential Land Use Clause 21.05 - Settlement Clause 21.06 - Built Form Clause 21.07 - Landscape Clause 22.09 - Mooroolbark Activity Centre
<b>Other Requirements:</b>	Clause 52.06 - Car Parking Clause 55 - Two or More Dwellings on a lot and Residential Buildings Yarra Ranges Multi-Unit Development Guidelines 2019

For further information on the planning controls refer to Attachment 2.

### **CULTURAL HERITAGE MANAGEMENT PLAN (CHMP)**

The application has been checked against the requirements of the *Aboriginal Heritage Act 2006* as to the need for the requirement of a Cultural Heritage Management Plan (CHMP). It has been assessed that a CHMP is not required.

### **EXTRACTIVE INDUSTRY**

The subject site is not located within 500 metres of land on which a work authority has been applied for or granted under the *Extractive Industries Development Act 1995*.

### **STAKEHOLDER VIEWS**

#### ***External Referrals***

<b>Authority</b>	<b>Consent/Objection – Summary of Conditions</b>
<b>Yarra Valley Water</b>	Consent provided – No conditions.

#### ***Internal Referrals***

<b>Department</b>	<b>Summary of Response</b>
<b>Development Traffic Engineer</b>	Consent, subject to conditions.
<b>Development Stormwater Engineer</b>	Consent, subject to conditions.

Department	Summary of Response
Arborist	Consent, subject to conditions.

### ***Objections and Consultation***

✓ Mail    ✓ Sign    ✗ Local Newspaper

Number of Objections: 13

Originally the application received fifteen (15) objections. However, two (2) objections were later withdrawn keeping the total number objections at thirteen (13).

The main grounds of objection include the following issues:

- Overdevelopment
- Car parking traffic and overflow car parking as result of overdevelopment of the area
- Devalue the property
- Removal of asbestos from the existing dwelling
- Visual bulk
- Overshadowing
- Impact on north facing windows/Privacy
- Waste collection
- Reduced front setback
- Amenity impact as result of construction
- Poor documentation

The applicant has had the opportunity to review the objections and provided a response to the objections. Given the applicant is not making any changes to the advertised documents as a result of the objections, a community consultation meeting was not undertaken in this current climate with COVID-19. The planning officer has contacted each objector individually to discuss the submissions.

Given the applicant is not proposing any changes to the layout of the proposed development, the matter of Community Consultation not being held was discussed with the relevant Ward Councillor.

### **ASSESSMENT/ KEY ISSUES**

Overall, it is considered that the proposal is consistent with the strategies and objectives of the Planning Policy Framework (PPF) including the Municipal Strategic Statement (MSS) and the Local Planning Policy Framework (LPPF). The development is appropriately sited



and sensitively designed to ensure that it sits comfortably within this location. The overall design and massing is respectful of the emerging built form and landscape character of the surrounding residential area.

The site is within an identified urban consolidation area where higher density developments and more diverse housing are encouraged. This is supported by *Clauses 15 - Built Environment & Heritage, Clause 21.04 - Land Use, Clause 21.05 Settlement and Clause 22.09 – Mooroolbark Activity Centre*.

The proposal has responded to Objective 1: Residential and Objective 2: Housing Diversity under Clause 21.04-1 by the following:

- The site is within easy walking distance of shops, public transport, open space and schools. The site is not constrained by significant vegetation, infrastructure requirements or topography;
- The scale and design of the development is compatible with the preferred character of the surrounding area; and
- The proposal provides housing diversity to the broader area and housing stock by incorporating one (1) x two (2) bedroom dwelling and five (5) x three (3) bedroom dwellings.

Clause 21.05 'Settlement' reinforces Clause 21.04-1 and highlights the hierarchy of activity centres throughout the municipality. As relevant, it seeks to establish sustainable and attractive townships that can support a range of residential, commercial, retail, community and recreational facilities and services. The proposal aligns with this policy objective.

Clause 21.06 'Built Form' includes objectives and policy for buildings in residential areas across the Shire. Development is encouraged to reflect the environmental and physical form of the surrounding neighbourhood. The development has been designed to sit comfortably within the natural topography of the area. The overall massing and scale is an acceptable outcome within this consolidation area.

The Yarra Ranges Planning Scheme also includes a range of more specific built form requirements at DDO8. A more detailed built form assessment is provided later in this report.

The local policy that is relevant to the determination of the application is Clause 22.09 – *Mooroolbark Activity Centre Policy*. At the local level, Mooroolbark is nominated as a lower order activity centre precinct under the Yarra Ranges Planning Scheme. As such, it is required to accommodate significant increases in housing density and housing variety around the core retail district and transport district. The subject site is on the outer boundary of the precinct of the activity centre.

The subject site is located within the Residential Precinct of the *Mooroolbark Neighbourhood Activity Centre (MNAC)*. Whilst Clause 22.09 does not include any specific policy objectives for the Residential Precinct, the proposal is consistent with the overarching policy objectives at Clause 22.09, which includes providing additional and more diverse quality housing by increasing density in the town centre and adjoining residential precincts within walking distance of the train station.

Based on the assessment above, it is clear that there is policy support for a higher density residential development at this location. The key issues include:

1. Is the proposed development respectful of the preferred character of the area?
2. Is the proposed development consistent with the requirements of DDO8?
3. Will the proposed development have any unreasonable off-site amenity impacts on adjoining properties?

The proposed overall density of the development is 1:228m<sup>2</sup>.

There is clear support for a proposed increase in density as the site is located within the MNAC and is well serviced by infrastructure (including public transport) and community services as noted above. This ensures efficient use of infrastructure and supports Council's preference that established residential areas experience a gradual increase in population and density.

It is considered that the proposal is consistent with the strategies and objectives of the Planning Policy Framework, LPPF including the MSS and the Local Planning Policies for the following reasons:

- The proposal ensures housing diversity at a medium density in a neighbourhood activity centre that is close to schools, parks, services and public transport, including:
  - Mooroolbark Train Station 0.8km, Bus Route 689, 680 & 675 and Telebus Routes 3 & 4
  - Hookey Park is located 650m to east
  - Mooroolbark Plaza and The Terrace Shopping Centre to the north-west which includes Coles & IGA Supermarkets, Post Office, pharmacy, banks, and medical clinics with 0.95m
  - Schools including Mooroolbark Early Childhood Education Centre, Yarra Hills Secondary College and St Peter Julian Eymard Primary are all located within a 1km radius
  - Mooroolbark Community Centre is located 1.2km to the east.

***Is the proposed development respectful of the preferred character of the area?***

There are a number of multi-unit developments on Central Avenue; it is evident that the subject site is in an area that has undergone significant change in recent years. Given the site's designation within an urban consolidation area, there is clear expectation that the neighbourhood character will continue to evolve over time. In particular, on large lots, there is policy support (under DDO8) to support buildings of up to 11m above natural ground level. Clause 21.04 further advances support of such a development where it is policy to:

*“ensure higher density residential housing in identified housing consolidation areas are within easy walking distance of shops, public transport, open space and schools and in locations where there is an absence of constraints such as significant vegetation, infrastructure requirements or steeper slopes and to encourage*

*residential infill in the neighbourhood consolidation (General Residential Zone) areas (of Mooroolbark, Kilsyth, Healesville, Yarra Junction, Mt Evelyn and Yarra Glen”.*

Given the policy context of the site and the surrounding area, the most relevant consideration is whether the proposal is respectful of the preferred future character rather than responding to the existing character.

The proposed development is of an intensity that is consistent with the relevant policy directions and expectations. In this context, the proposal strikes the right balance between respecting the valued aspects of the existing neighbourhood character and responding to the future preferred character outcomes. Importantly, the proposal does not seek to replicate what's existing in the area. It achieves a balanced response to the applicable planning policies and provides a site-responsive design. In particular:

- The dwellings have been designed and sited to address the natural topography of the land;
- All six (6) dwellings are double storey. This will sit comfortably within this one (1) to two (2) storey streetscape;
- The resulting proposed development and stepped building form reduces the visual dominance of the development from Central Avenue and surrounding properties;
- The front setback achieves a minimum of 7m. This creates a generous area that can accommodate substantial landscaping to be provided. Whilst this proposed setback is less than what is required under the Standard B6 – Street setback it does meet overarching objective Clause 55.03-2 that is to ensure the setback of the dwelling respects the existing or preferred neighbourhood character of the area. Specific examples with similar front setbacks are evident at 34 and 32 Central Avenue (front setback = 6.96m) as well as at 19 Central Avenue (front setback = 7.5m);
- The development incorporates 3.5m setback along the rear; given the proposal includes removal of the drainage and sewer easement this will provide opportunity for landscaping which will contribute to the area's landscaped character;
- There are no walls on boundaries proposed which allows the development to maintain a minimum 1m side setback along the south boundary;
- The proposed building design utilises materials that are commonly found in the area;
- The development comprises of pitched roofs which complements the character of the area;
- The development provides separation at ground level between all dwellings with the exception of Dwellings 5 and 6 which are connected at ground level;
- Given the land topography and separation of three (3) metres between the dwellings when viewed from north and south elevations effectively break up the built form to provide a visual relief;

- The upper levels mainly along the east boundary have been articulated well with the variation in the setbacks, the use of materials and by incorporating windows to create a visual interest; and
- The proposal will have no unreasonable off-site amenity impacts on adjoining land. A detailed discussion is provided later in this report.

It is relevant to note a recent VCAT decision (*Wu v Yarra Ranges SC [2018] VCAT 2761* – Attachment 10) for a similar development within the same Residential Precinct of the MNAC at 86-90 Brice Avenue, Mooroolbark, VCAT set aside Council's refusal on grounds:

*“that the proposed intensity of the built form and the amount of landscaping provided is not respectful of the existing neighbourhood character, nor did it adequately respond to the preferred neighbourhood character aspirations articulated in Schedule 8 to the Design and Development Overlay, particularly given that Mooroolbark is identified as a lower order activity centre”.*

VCAT found that Schedule 1 to the General Residential Zone describes land where this schedule applies as being ‘lower order (neighbourhood) consolidation areas’. Furthermore, Schedule 8 to the Design and Development Overlay is titled ‘*Neighbourhood Centres and Rural Township Consolidation Areas*’. However, this does not mean that the proposal needs to necessarily be reduced in its built form intensity. In fact, there are several specific strategies in Clause 21.04 of the planning scheme which support the proposed design response given the subject site's location and size. These strategies are:

*“Ensure higher density residential housing in identified housing consolidation areas is within easy walking distance of shops, public transport, open space and schools and in locations where there is an absence of constraints such as significant vegetation, infrastructure requirements or steeper slopes.*

*Encourage higher densities in consolidation areas in the General Residential Zone which offer a choice of transportation options to reduce car dependency.*

*Provide opportunities for increased densities on aggregated lots within consolidation areas that have walkable access to shops, public transport and community facilities”.*

Additionally, VCAT considered that these strategies are also reflected in the Mooroolbark Activity Centre local policy at Clause 22.09 of the planning scheme which includes a key objective:

*“To provide additional and more diverse quality housing by increasing the dwelling density in the town centre and adjoining residential precincts within walking distance of the train station.”*

The local policy does not define the Mooroolbark Activity Centre as a ‘lower order’ centre, nor does it specifically seek a lesser intensity of development for this centre compared to the other identified activity centres within the municipality. The design objectives of Schedule 8 to the Design and Development Overlay also support higher density development on the subject site.

At Brice Avenue, where the development density of 147m<sup>2</sup> per dwelling is lower than this proposal's density of 228m<sup>2</sup> per dwelling, the Tribunal found that this level of development intensity is consistent with the relevant policy expectations.

The policy expectation for subdivision size in Mooroolbark in the Yarra Ranges Planning Scheme in the Subdivision provisions of DDO8 has no preferred subdivision size.

***Design and Development Overlay Schedule 8 (DDO8):***

**Building Height**

For a lot less than 1500m<sup>2</sup> the Schedule 8 to Design and Development Overlay prescribes a maximum building height of nine (9) metres above the natural ground level. The development has maximum building heights which range from approximately 7.42 metres to 8.99 metres from the natural ground level which is consistent with the requirements of the DDO8.

**Building Form, Siting and Layout**

The proposal provides an appropriate design response to the two adjoining sensitive interfaces through the provision of ample setbacks to adjoining properties; the development provides a setback ranging between 3.04 metres to 3.75 metres to the abutting residential property to the east of the site, setbacks ranging between one (1) metre to 2.71 metres to the west property boundary. All upper stories do not overhang into these side setbacks and instead are either parallel or recessed.

This ensures that the upper stories are sufficiently setback with ample separation between the building and boundary. This sense of space therefore ensures that the amenity of adjoining properties is not detrimentally impacted and visual bulk is avoided. Additionally, the proposal provides complete building breaks at between each dwelling on upper floor levels. These breaks in the built form offer visual relief from the continuous attached built form when viewed from the sensitive east and west properties.

The break in built form and spaces within setbacks provides an opportunity for the planting of a canopy tree, which in turn, also softens the appearance of the built form. The use of a mix of colours and materials enhances the articulation and reduces visual bulk.

The slope of the site requires site excavation which range from 0.4 metres to two (2) metres across the site. The extent of cut and fill has been detailed on the elevation plans submitted. The elevations show efforts have been undertaken to balance the volume of cut and fill across the site. Any permit issued will be subject to a condition of the permit which requires all retaining walls over one (1) metre in height to be designed by a civil engineer. The built form of the dwellings has been designed to step down along with the contours of the site with reduced building height (when measured from the natural ground level); this is evident when viewing the north and south elevation plans.

The materials of construction and design details are respectful of the existing neighbourhood character. The dwellings are of high architectural standard and achieve architectural and urban design outcomes that contribute positively to the character of the area with no detrimental impact on neighbouring properties.

**Car Parking and Access**

The proposal includes car parking at grade to each dwelling and access is proposed via a crossover to Central. The proposed car parking and access arrangements have responded to the requirements of GRZ1, DDO8, and Clause 52.06 Car parking except for the access way gradient requirements under Clause 52.06-9 for *Design Standard - Access*.

Clause 52.06-9 for *Access ways* requires provision of a passing area at the entrance at least six (6) metres wide and seven (7) metres long if the access way serves ten or more car parking spaces and is either more than 50 metres long or connects to a road in a Road Zone. Whilst this is not a requirement given the proposal is only for six (6) dwellings; following the applicant's direct discussions with Council's Traffic Engineering department on 27 August 2019, a passing bay has also been provided for this development. It is considered the passing bay will also provide a safety mechanism to enable vehicles to enter and exit in a forward manner due to land topography.

Each three (3) bedroom dwelling has a double garage. Each two (2) bedroom dwelling has a single car garage to comply with the required car parking. Turning circles have been included on drawings to confirm that satisfactory turning movements can be made on-site. All vehicles are able to enter and exit the site in a forward direction from the designated parking locations, as a result of the 6.44m wide accessway which provides the required turn in area to each garage in accordance with Clause 52.06 (Car Parking).

Council's Traffic Engineering referral response raised concerns in relation to the accessway gradients. Following a review of the plans, Council's Traffic Engineering department has consented to the proposal with a condition of permit which will require the first five (5) metres of the accessway to be less than 10 per cent and that two (2) metre transition must be included along the accessway where the gradient transition change is greater than one (1) in eight (8) for a summit and one (1) in 6.7 for a sag change to ensure the development meets the requirements of Clause 52.06-9, *Design Standard 3: Gradients*.

The referral response from Council's Engineering department noted the road carries a moderate traffic volume which has increased at a greater rate than other nearby local roads in the last 10 years, due to the increase in high density developments occurring along this road. At the development driveway, a sharp bend exists which reduces traffic to a slow speed. A permanent 'No Stopping' parking restriction exists along either side of Central Avenue, between Summit Court and 26 Central Avenue, Mooroolbark.

Similar concerns have been raised in a number of objections; the following comments from VCAT decision (*QV Homes Pty Ltd v Yarra Ranges SC [2016] VCAT 1095*) for development application at 15 Summit Court, Mooroolbark is of relevance in relation to the car parking and traffic generated as a result of the proposed development: (see Attachment 11):

*"The proposal provides the level of parking required in Clause 52.06: one space for two bedrooms, two for three bedrooms and more, and 1 visitor space for every 5 dwellings. This is the provision in the development. The application cannot be refused on the ground of lack of car parking.*

*With regard to volume of traffic in Summit Court, it is a dead end street not subject to through traffic. Council's engineer has vetted the proposal and did not object on that ground. Of course, there will be a difference in the volume of traffic or perception of traffic congestion. This does not mean that the design capacity of the street is exceeded.*

*Without evidence to the contrary and in this case where this issue is not a ground of refusal, there is no reason to refuse the application on traffic ground".*

### ***Landscaping & Garden Area***

Pursuant to Clause 32.08-4, a lot with an area in excess of 650m<sup>2</sup> must have 35 per cent of the site set aside as garden area. The subject site comprises of 1368m<sup>2</sup> and the garden area proposed is 494m<sup>2</sup>, which is equivalent to 36.1 per cent. Thus, the proposal complies with the garden area requirements.

The landscape plan proposed shows four (4) canopy trees within the front setback and one canopy tree within the secluded private open space of each dwelling along the rear boundary (see Attachment 7 - landscape plans). The proposed landscape plan incorporates 30 per cent of exotic trees and 70 per cent native trees. In addition a number of low scale plants is proposed along the driveway which will contribute towards softening the hard surface areas. This would contribute towards improving the character of the landscape.

The Council arborist has included two conditions in relation to tree removal; given the tree removal does not trigger a planning permit this has not been included. A second condition was included in relation to replanting which is reflected in the landscaping condition, therefore this has also not been included.

### ***Residential Design Guidelines***

The Yarra Ranges Multi-Unit Development Guidelines were adopted by Council on 23 July 2019. It is noted that the application was lodged in June 2019 prior to Council adopting the Residential Guidelines.

However, the applicant has made amendments to the design which should be taken into consideration, noting that the plans originally had continuous built form, three storey dwellings and two crossovers.

Following discussions, the applicant amended the proposal from seven (7) dwellings down to (6) dwellings to incorporate a break in the built form, as well as vehicle access to a single crossover. Whilst the application was lodged prior to the guidelines being adopted and therefore cannot be applied to the development, an assessment of the proposal has been undertaken for completeness.

- The non-compliances with the Guidelines are listed below. Refer to Attachments 8 and 9 for a full assessment against the Residential Guidelines. Side & Rear Setbacks – The guidelines recommend four (4) metre rear setback, no walls on the boundary; Though the proposal is not fully in compliance with a clear four (4) metre setback along the rear boundary, the development provides a rear setback which varies from 3 metres to 3.75 metres. The proposal does not include any wall on boundaries;
- Building Massing – Two storey townhouses should step down to single storey to the rear where located within five (5) m of the common boundary. Dwellings four (4), five (5) and six (6) to the rear are double storey and the upper level is setback 4.24m to 5.78m along the rear boundary. Though it does not meet the five (5) m requirement, the proposed setback of 4.24m to 5.78m is considered reasonable to reduce the appearance of sheer built form; and
- The Guidelines encourage private open space to be at ground floor level. The development proposed private open space at the upper floor level for Dwellings two

(2) and three (3) in the form of an outdoor deck area which is accessible from the living spaces in addition to balconies; which is common for this style of townhouse development.

### ***Waste Collection***

The plans show the location of the waste bins; Council's Traffic Engineer's response noted the sight distance would be reduced towards the south, when all 12 bins have been placed along the nature strip area, south of the development driveway.

One objection was also received in relation to the concerns in relation to the pedestrian safety. In response to the objection, the applicant is willing to organise a private collection for all the waste and recycle collection on-site to reduce congestion on Central Avenue during collection time.

Council's waste department has previously advised the preference is for Council collection, with a notation to the plan stating Council collection from the kerbside. Application documents include 'bin collection point' plan. A condition of permit will require this as a separate sheet for the purpose of clarity and will require this plan to include a note stating Council collection from kerbside in accordance with the waste department recommendation.

### ***Clause 52.02 – variation of an easement***

A portion of the drainage and sewer easement is proposed for removal and the remainder of the easement is altered to create an easement for outfall drain that is required to address stormwater requirements. Yarra Valley water has confirmed the portion of the easement to be removed does not contain any mains thus can be removed and to organise referral once the application is lodged through SPEAR.

Council's Stormwater Engineering department has reviewed the application and has consented to the proposal with a condition of permit which will require the applicant to lodge a plan of subdivision to create the easement for drainage of appropriate width over the outfall drainage and registered within the Titles Office prior to approval of engineering construction plans.

### ***Response to objector grounds***

#### Overdevelopment

- The subject site is located within a General Residential Zone, is located within the MNAC and within close proximity public transport as well community infrastructure which supports medium density development.
- The proposed development has lot density of 1:228m<sup>2</sup> which is considered an appropriate outcome in an area that encourages medium density developments. This has been further discussed in depth above; based on the assessment the proposed development is not considered to be an overdevelopment.

#### Car parking traffic and overflow car parking as result of overdevelopment of the area

- The development provides the required car parking spaces in line with the requirements of Clause 52.06. This has been addressed in detail under car parking



and access sub heading above. In additional, the proposal has been supported by Council's Traffic Engineers.

#### Devalue the property

- Previous decisions from VCAT have noted this is subjective and is not a valid planning concern, and therefore no further comments are provided.

#### Removal of asbestos from the existing dwelling

- A number of objections were made in relation to the removal of asbestos in the existing dwelling., This is not planning ground thus cannot be addressed as part of this application.

However, any future demolishing works involving asbestos removal from the subject site will require relevant permit under buildings regulations and WorkSafe. The applicant has provided a document from the builder confirming that removal of any asbestos will adhere to relevant regulations. At the applicant's request, this letter has been provided to the objectors.

#### Visual bulk

- The proposal complies with setback requirements as outlined in the Clause 55 assessment - see Attachment 8;
- The built form is well setback from all boundaries with a complete and also provides adequate separation between the dwellings and recessions at the upper floor level;
- Each elevation uses a variety of building colours, materials and finishes;
- Additionally, the first-floor balconies overhang the driveway area which provides visual interest; and
- Cumulatively, the above ensures that there is visual relief and articulation in the built form so as to avoid visual bulk.

#### Reduced front setback

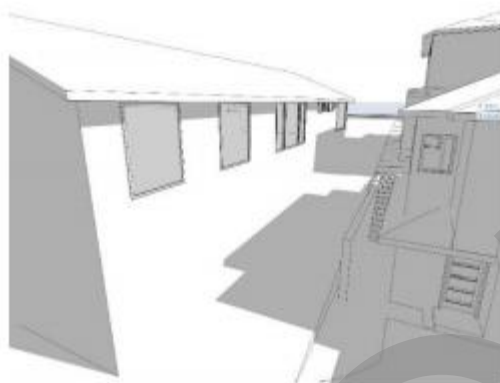
- Objections raised concerns in relation to the seven (7) metre reduced front. There are other examples within the area that have reduced front setbacks; also, given the land topography, this is considered an acceptable outcome. This has been addressed above.

### Amenity impacts: Privacy and impact on north facing windows

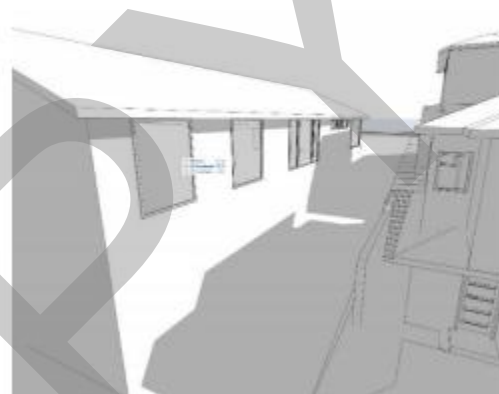
- The concerns raised in relation to overlooking are addressed through compliance with ResCode by means of fixed and obscure glazing on the proposed upper level habitable room windows up to 1.7 metres in height above the Finished Floor Level;
- The neighbouring habitable windows are north-west facing based on Standard B20 – North facing windows; this does not apply to the windows in question as they are not oriented within 20 degrees to west; and

The applicant has provided the following 3D shadow diagram to demonstrate that the development does not overshadow into any existing windows at 26 Central Avenue.

**2pm sun shadow**



**3pm sun shadow**



### Overshadowing

- One objection has been received in relation to the bulk of the development along the rear boundary. This component has been addressed above. The objection also raises concerns in relation to overshadowing into approved unit 4 at 17 Felix Road, Mooroolbark. The shadow diagrams demonstrate there is no overshadowing into this property.

The objective of the Standard B21 is to ensure buildings do not significantly overshadow existing secluded private open space; in this instance the dwellings are yet to be constructed. Whilst the objection is taken into account, the development at 17 Felix Grove has not been constructed therefore this objection ground does not have significant weight in relation Standard B21 which relates to the existing built form.

- Due to the site's orientation the proposal would not overshadow 30A Central Avenue, Mooroolbark, (see Attachment 7).
- The concerns raised in relation to the overshadowing into the neighbouring property to the south will result in a significant on private open space in the garden. As evidenced by the shadow diagrams the development will predominately shadow along the north western side of the property and meet the spatial requirements of Standard B21.

### Waste collection

- The submission noted the footpath does not have sufficient space for the waste bins and this will cause a hazard for foot traffic and vehicles corner concern/danger. This has been addressed above.

### Amenity impact as result of construction

- Objections were raised about construction noise, dust etc. These are natural components of development and are governed by Environmental Protection regulations and Council's Local Laws as appropriate.

### Poor documentation

- An objection noted the application is incomprehensive due to poor documentation as there is reference to seven (7) dwellings as opposed to the six (6) dwellings, as well as to three (3) storey elements of the development.

As noted above, the original application lodged was for seven (7) dwellings which was reduced via an amendment to the proposal to six (6) units prior to public notice under Section 50 of the *Planning & Environment Act 1987*. The original planning report submitted included the Clause 55 assessment. However, an updated Clause 55 assessment was submitted to Council and this documentation is available on Council's website. Given that an updated planning report was not submitted to address the local policy the original planning report submitted was also made available on the Council's website. This appears to have led to some confusion. Apart from the original planning report, the plans and a Clause 55 assessment reflect the proposal as a six (6) dwelling application and is available on the Council website.

## **CONCLUSION**

The development application has been assessed in accordance with Section 60(1) of the Act and all relevant instruments and policies. The proposal is considered to be consistent with the objectives of state planning policies, local planning policies and the relevant zone and overlay provisions of the Planning Scheme. As such, approval is recommended subject to the conditions listed in Attachment 1.

## **ATTACHMENTS**

- 1 Conditions [↓](#)
- 2 Planning Scheme [↓](#)
- 3 Zoning Map [↓](#)
- 4 Locality and Aerial Map [↓](#)
- 5 Melway Map [↓](#)
- 6 Advertising and Objections Map [↓](#)
- 7 Plans for Consideration [↓](#)
- 8 Clause 55 Assessment [↓](#)

- 9 Assessment with Residential Guidelines [↓](#)
- 10 VCAT reference - Wu Vs Yarra Ranges SC [2018] [↓](#)
- 11 VCAT reference - QV Homes Pty Ltd v Yarra Ranges SC [2016] [↓](#)

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## PLANNING, DESIGN AND DEVELOPMENT

### 7.2 Planning Application YR-2019/418 - 28 Central Avenue Mooroolbark

#### APPLICATION DETAILS

<b>Site Address</b>	28 Central Avenue Mooroolbark
<b>Application No.</b>	YR-2019/418
<b>Proposal</b>	Buildings and works to construct six dwellings and variation of an easement under Clause 52.02
<b>Existing Use</b>	Dwelling
<b>Owner</b>	Azura Investments Pty Ltd
<b>Applicant</b>	Azura Investments Pty Ltd C/-Millar Merrigan
<b>Zone</b>	General Residential Zone Schedule 1 (GRZ1)
<b>Overlays</b>	Design and Development Overlay Schedule 8 (DDO8) Significant Landscape Overlay Schedule 23 (SLO23)
<b>Objections</b>	13 objections
<b>Reason for Council Decision</b>	More than ten (10) objections
<b>Ward</b>	Melba

#### SUMMARY

The application seeks permission to construct six (6) double storey dwellings. The site is currently developed with a single dwelling, which is proposed to be demolished to enable the proposed development.

The proposal include removal of total five (5) native and exotic trees, none of which require planning permission for removal.

The application has been advertised, and 13 objections have been received. The main grounds of objection relate to: an overdevelopment, car parking, traffic and overflow car parking as result of the overdevelopment of the area, devalue the property, removal of asbestos from the existing dwelling, visual bulk, overshadowing, privacy, waste collection, reduced front setback, amenity impact as result of construction, and poor documentation.

The subject site is located within the *Mooroolbark Neighbourhood Activity Centre (MNAC)* and is well serviced by infrastructure (including public transport) and community services. Moreover, the land is within a consolidation area where the proposed density is encouraged to enable efficient use of available infrastructure.

Overall, the proposed development is considered to be an appropriate design response and is satisfactory when assessed against the relevant policies and provisions of the Yarra Ranges Planning Scheme.

Accordingly, it is recommended that the application be approved.

**Moved: Cr Avery**  
**Seconded: Cr Child**

*That Council resolve to approve Planning Application YR-2019/418 for Buildings and works to construct six (6) dwellings and variation of an easement under Clause 52.02 at 28 Central Avenue, Mooroolbark and issue a Notice of Decision to Grant a Permit subject to the conditions in Attachment 1 to the report.*

**The motion was Carried unanimously.**

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