

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P627/2106
PERMIT APPLICATION NO. PL15/025029

CATCHWORDS

Manningham Planning Scheme; Application under section 77 of *Planning and Environment Act 1987* to review decision to refuse a permit; General Residential Zone (GRZ2); Design and Development Overlay (DDO8-2); Construction of 12 dwellings; Response to strategic framework; Development intensity and scale; Neighbourhood character; Setbacks and landscaping; Internal amenity; Carparking.

APPLICANT	Anne Wang
RESPONSIBLE AUTHORITY	Manningham City Council
RESPONDENT	M & M Garvey
SUBJECT LAND	51-53 Beverley Street, Doncaster East
WHERE HELD	Melbourne
BEFORE	Mary-Anne Taranto, Member
HEARING TYPE	Hearing
DATE OF HEARING	12 September 2016
DATE OF ORDER	15 November 2016
CITATION	Wang v Manningham CC [2016] VCAT 1855

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: AD Design
- Drawing numbers: TP05 Revision 1, TP06 to TP15 inclusive
- Dated: 28 July 2016

- 2 In application P267/2106 the decision of the responsible authority is affirmed.
- 3 In planning permit application PL15/025029 no permit is granted.

Mary-Anne Taranto
Member

APPEARANCES

For Anne Wang	Mr John Joyner, town planning consultant of Melbourne Planning Outcomes.
For Manningham City Council	Mr Darren Wong, solicitor of Maddocks.
For Mary & Manson Garvey	Both in person.

INFORMATION

Description of Proposal	Twelve 3-storey dwellings with centrally accessed at-grade undercover carparking for 26 vehicles, including two visitor spaces.
Nature of Proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the decision to refuse a permit.
Zone and Overlays	<ul style="list-style-type: none"> ▪ General Residential Zone - Schedule 2 – (GRZ2). ▪ Design and Development Overlay – Schedule 8 (DDO8-2).
Permit Requirements	<ul style="list-style-type: none"> ▪ Clause 32.08-4 - Construction of two or more dwellings on a lot in GRZ2. ▪ Clause 43.03-2 - Buildings and works in a DDO8.
Relevant Scheme policies and provisions	Clauses 10, 11, 15, 16, 18, 21.03, 21.05, 22.08, 22.09, 52.06, 55 and 65.
Land Description	<p>Located on the north side of Beverley Street opposite Milan Street, this generally rectangular shaped site of 1527sqm has a frontage of 33.53m, maximum depth of 45.8m and slightly irregular configured rear boundary of 33.56m. The site slopes down to the frontage, with a cross-fall from the north-west to the south-east of approximately 3.8m, grading more steeply at the front, while also falling by about 1.8m across the frontage from west to east.</p> <p>The land is developed with a large, rendered 2-storey dwelling with a hipped roof, porte-cochere and gable end roof elements. A series of interconnected outbuildings occupy parts of the back yard. Dual cross-overs, two garages, a U-shaped driveway and an elevated front garden retained by a wall/fence along the frontage all feature in the streetscape.</p> <p>Surrounding use and development is residential.</p>
Tribunal Inspection	I undertook an unaccompanied inspection of the site and surrounds including a view from the rear courtyard of 1/55 Beverley Street on 19 October 2016.

REASONS¹

What is this proceeding about?

- 1 Manningham City Council has refused the grant of a permit for the development of 12 dwellings that are 3-storeys on a 1527sqm mid-block site in Beverley Street, Doncaster East.
- 2 Anne Wang ('the applicant') is now seeking a review of the Council's decision. In doing so, the applicant relies on amended plans which I substituted at the commencement of the hearing. The amended proposal is also for 12 dwellings and 26 car spaces in a similar layout to the proposal refused by the Council except for some refinements in relation to such matters as the type of building materials and finishes, screen details, an increase in the size of internal light courts and the location of roof top plant.
- 3 The Council maintains its opposition to the amended proposal on a number of grounds, including that the development would have a form and scale that is excessive and fails to respond in an acceptable way to the strategic context as well as the existing and preferred character. The internal layout and design of the dwellings is also said to provide poor levels of amenity for future residents and concerns were raised about the proposal's impacts on a number of neighbouring large trees at the rear.
- 4 These grounds are largely supported by Mr and Mrs Garvey, who live next door at No. 1/55 Beverley Street. They also expressed concerns about the adequacy of on-site carparking and thus the likelihood of increased demand for on-street parking, the proposal's impacts on the amenity of their rear courtyard (visually and in terms of sunlight access) and additional noise from the occupants of the proposed dwellings.
- 5 The applicant submits that the proposal adopts a scale and form that enjoys strong support under the strategic framework that applies to the site and surrounding land.
- 6 I consider that the determinative issues in this case relate to the following matters:
 - a The strategic direction offered by the planning scheme for residential development in this location;
 - b The appropriateness of the proposal's response to the planning and physical contexts including whether the scale and built form of the development is acceptable;
 - c Impacts on existing vegetation and the acceptability of landscaping opportunities;

¹ The submissions of the parties and any supporting exhibits given at the hearing, the evidence 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.

- d Design quality and internal amenity;
 - e Adequacy of carparking and access arrangements.
- 7 Assisted by my inspection of the site and surrounding area, I have found that while the proposal would respond well to the strategic framework for increased dwelling densities and housing diversity, there are a number of fundamental design elements that are poorly resolved and a permit must not be granted. My primary reasons for this conclusion relate to the proposal's extensive 3-storey form whose height, mass and bulk as well as the execution of its design would not produce an acceptable outcome in the streetscape and in respect of neighbouring residential properties. The site's prominent location only serves to emphasise the importance of achieving a high quality design response that also responds appropriately to the preferred built form and neighbourhood character outcomes envisaged for this location.
- 8 My detailed reasons follow.

What are the proposal's key features?

- 9 The proposed dwellings are to be attached and are configured in two rows of six, set over three storeys except above the shared double width driveway where a two-storey building form is proposed central to the site. The dwellings step up slightly with the slope of the land to the rear and various retaining walls are proposed throughout. Paths along the east and west boundary would provide shared pedestrian access to the front door of each dwelling except for the two front dwellings facing the street which have separate stair access to Beverley Street.
- 10 All of the dwellings are to have three bedrooms, would gain access to each level from their garage via separate internal stairs and are to be provided with balconies ranging in area from about 7sqm to 9.5sqm. In the case of the six dwellings in the eastern row, roof-top terraces are also proposed. Both are to have some form of privacy screens.
- 11 Two uncovered visitor parking spaces are proposed at the far northern end of the site and these will also be required as a turn-around space for garbage collection vehicles, as waste collection is to occur from within the site.
- 12 At ground and first floor levels, proposed building setbacks are almost identical.² The development is to be set back a minimum of 5.98m from the frontage, measured to the main façade at both levels with framed portico elements set back 4.35m. The second storey (third level) is recessed approximately 0.5m from the two lower levels. At the rear, the ground and first floor setbacks vary with the angled boundary from 4.7m to 5.6m increasing by 1m at the second storey.

² Most notably on the east side. The balconies proposed to the western row of dwellings have 1.7m high screened balustrades that follow the ground floor footprint and on the east side, similarly configured balconies are at the third level.

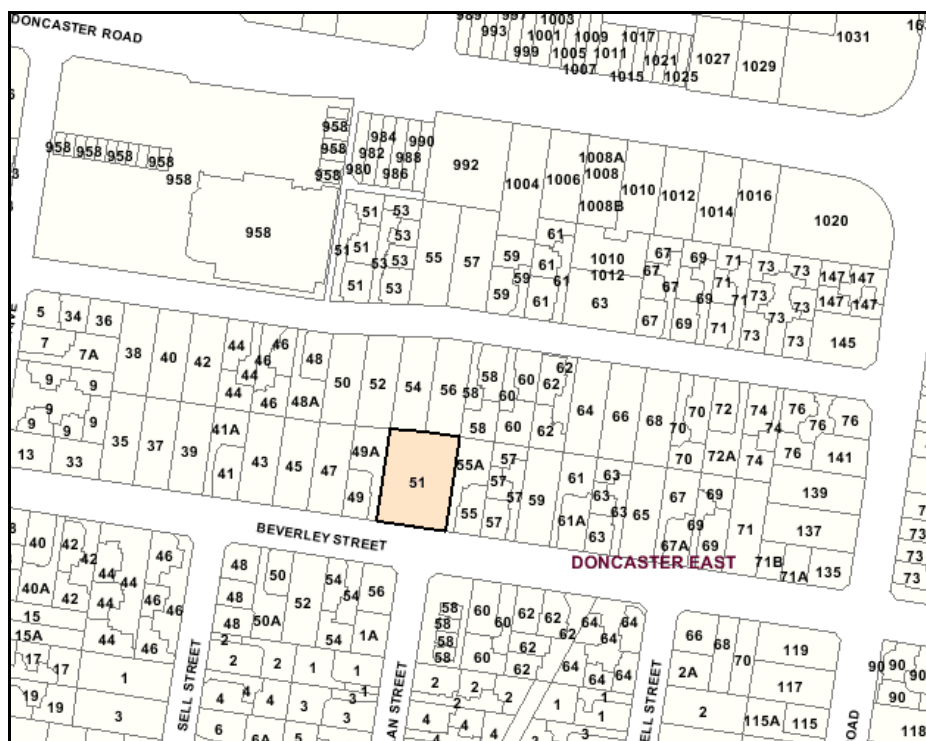
- 13 Along the east and west sides, setbacks generally range from about 3m to 4.3m at ground and first floor levels. Setbacks to the second floor range from 3m to balconies and 5.2m to walls on the east side and 4.4m to 5.5m on the west side. The roof top access hatches on the east row of dwellings commence on the eastern edge of the building and balconies are set in about 9m from the east boundary.
- 14 The maximum overall building height is approximately 9.78m excluding roof top balcony screens and plant.
- 15 The development adopts a rectilinear design form with flat roofs and parapet walls. External materials and finishes include concrete blockwork, render, feature lightweight cladding and horizontal aluminium privacy screens above balustrades constructed of obscure glass or cladding.

What are the relevant physical and planning contexts?

Physical context

- 16 The review site is generally in the quadrant south of Doncaster Road west of Blackburn Road and east of Devon Drive, located directly opposite the T-intersection with Milan Street in which a roundabout has been recently installed. The site, surrounding lot pattern and its broader context are shown in Figure 1.

Figure 1



- 17 The broader landform is a notable contextual element that rises in both a northerly and westerly direction. Consequently, a feature of the site is its elevated position on approach from Blackburn Road (east) and Milan Street (south). The site also terminates northerly views from Milan Street.

- 18 Another notable feature is the size of the review site which is considerably larger than any surrounding parcel.
- 19 Neighbouring development includes:
- two double storey unit developments at both No. 55 Beverley Street to the east and No. 49 Beverley Street to the west. Both are constructed of brick with low pitched tiled roofs and have driveways adjacent to the respective side boundaries of the review site; and
 - two lots with detached dwellings to the north at No. 54 and No. 56 Franklin Road. Notable features are their large rear setbacks of 20m+ and presence of screen tree planting, including large Cypress trees adjacent to their rear boundaries in common with the review site.
- 20 Development immediately opposite includes:
- a 2-storey brick and weatherboard dwelling at No. 56 Beverley Street, and
 - four older style, low slung single storey flats under a common roofline at No. 58 Beverley Street. They have garaging/carports facing Beverley Street set behind a row of Cypress trees and otherwise front Milan Street.
- 21 Beverley Street contains a variety of dwellings that are variously one or two-storeys in scale. This includes a significant number of multi-dwelling developments built in the past 30 years or so, usually brick constructed with minor rendered elements and hipped tiled roofs, frequently without eaves. Aside from remnant Cypress trees along boundaries, vegetation generally comprises smaller exotic species. Built form generally has a dominant presence, particularly on the north (high) side of Beverley Street given the landform.
- 22 In terms of the broader area, Devon Plaza, one of ten neighbourhood activity centres in Manningham, is located about 330m to the north-west of the site. It contains a supermarket and various specialty shops. Bus services run along Doncaster and Blackburn Roads whose destinations variously include the Melbourne CBD, Warrandyte, The Pines, Airport West and Chelsea. Other services and facilities nearby include St. Peter's and St. Paul's primary school and Doncaster Reserve (440m and 620m to the west respectively).

Planning context

General Residential Zone (GRZ)

- 23 The site is within the GRZ and Schedule 2 applies. The GRZ purposes envisage a diversity of housing types and moderate housing growth in locations offering good access to services and transport. Development is to respect neighbourhood character and implement neighbourhood character guidelines and policies.

- 24 A planning permit is required for two or more dwellings in the GRZ and the provisions of clause 55, commonly known as ResCode, apply. Schedule 2 to the GRZ relates to 'Residential Areas surrounding activity centres and along Main Roads (Sub-precincts A & B)'. None of the clause 55 standards are varied by this schedule and no maximum building height, application requirements or decision guidelines are specified.

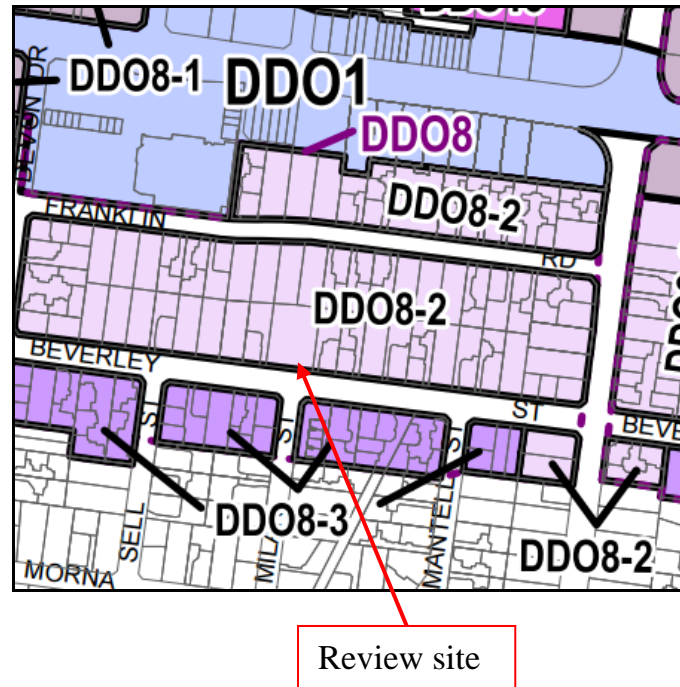
Policy and DDO8

- 25 Statewide policy objectives for housing support housing diversity, urban consolidation and the provision of affordable housing. There is a particular emphasis on encouraging a diversity of housing types at higher densities in and around activity centres, on strategic redevelopment sites and in locations well serviced by public transport and other infrastructure.
- 26 The State planning policy framework also requires development to respond to its physical context and to achieve good quality environments through good urban design. Design objectives ask for development that contributes positively to local urban character, enhances liveability and amenity, promotes attractiveness of towns and cities within broader strategic contexts and minimises detrimental impact on neighbouring properties.³
- 27 The local planning policy framework for Manningham builds on these broader policy objectives by seeking to support a range of housing types that meet the changing needs of the community, particularly around activity centres and designated main roads and by promoting high design standards. Residential policies at clause 21.05:
- identify four character precincts in the municipality;
 - include the site within 'Precinct 2: Residential Areas Surrounding Activity Centres and Along Main Roads';
 - explain that of the four character precincts, Precinct 2 is to accommodate a substantial level of change with the focus for the highest density developments and change in the municipality within the Doncaster Hill Activity Centre;
 - include the majority of Precinct 2 in DDO8;
 - identify three sub-precincts in Precinct 2, within which various height, scale and built form outcomes are specified. They are:
 - Sub-precinct 'Main Road' (shown on Manningham Planning Scheme maps as DDO8-1);
 - Sub-precinct 'A' (shown on Manningham Planning Scheme maps as DDO8-2); and
 - Sub-precinct 'B' (shown on Manningham Planning Scheme maps as DDO8-3).

³ See in particular Clauses 11, 15 and 16 of the State Planning Policy Framework.

- 28 The site and all abutting lots to the north, east and west are in Sub-precinct A (DDO8-2). Land on the south side of Beverley Street is in Sub-precinct B (DDO8-3) as shown in Figure 2.

Figure 2



- 29 Policy advises that in areas covered by DDO8-2 two storey units (9 metres) and three storey (11 metres) ‘apartment style’ developments are encouraged.⁴ However:

Three storey, contemporary developments should only occur on land with a minimum area of 1,800m.² Where the land comprises more than one lot, the lots must be consecutive lots which are side by side and have a shared frontage. The area of 1,800m² must be all in the same sub-precinct. In this sub-precinct, if a lot has an area less than 1,800m², a townhouse style development proposal only will be considered, but development should be a maximum of two storeys. All development in sub-precinct A should have a maximum site coverage of 60 percent. Higher developments on the perimeter of sub-precinct A should be designed so that the height and form are sufficiently stepped down, so that the scale and form complement the interface of sub-precinct B, or other adjoining zone.

- 30 In Sub-precinct B (that is, in DDO8-3), policy envisages only single and double storey dwellings with a maximum site coverage of 60%.⁵
- 31 Policy at Clause 21.05 also provides the following design guidance for development in Precinct 2, namely that development should:
- provide for contemporary architecture;
 - achieve high design standards;

⁴ Clause 21.05.

⁵ Ibid.

- provide visual interest and make a positive contribution to the streetscape;
- provide a graduated building line from side and rear boundaries;
- minimise adverse amenity impacts on adjoining properties;
- use varied and durable building materials;
- incorporate a landscape treatment that enhances the overall appearance of the development; and
- integrate car parking requirements into the design of buildings and landform.

32 Under the DDO8, the first design objective seeks to increase residential densities and provide a range of housing types around activity centres and along main roads. Objectives also call for development that:

- is contemporary in design that includes an articulated built form and incorporates a range of visually interesting building materials and façade treatments;
- is well-articulated and with upper storey elements are not unduly bulky or visually intrusive, taking into account the preferred neighbourhood character;
- is designed to minimise overlooking into adjoining properties;
- is designed and sited to have regard to the future development opportunities and future amenity of adjoining properties;
- provides for basement and undercroft car parks that complement the design of the building, eliminates unsightly projections of basement walls above natural ground level and are sited to allow for effective screen planting;
- is designed with spacing between developments to minimise a continuous building line when viewed from a street; and
- provides landscaping around buildings to enhance separation between buildings and soften built form.

33 Additional design guidance in relation to dwelling typology and scale by reference to the three different precincts is also provided in the design objectives at DDO8 and these:

- support three storey, ‘apartment style’, developments within the Main Road sub-precinct and in sub-precinct A, where the minimum land size of 1,800sqm *can* be achieved;
- support *two storey townhouse style dwellings with a higher yield within sub-precinct B* and sub-precinct A, where the minimum land size of 1,800sqm *cannot* be achieved; and
- ask for a sufficient stepping down of:

- developments of two or more storeys at the perimeter of the Main Road sub-precinct to provide an appropriate and attractive interface to sub-precinct A or B, or other adjoining zone; and
 - higher developments on the perimeter of sub-precinct A so that the scale and form complement the interface of sub-precinct B or other adjoining zone.
- 34 A permit is required for buildings and works under DDO8 and various height and setback requirements are specified at clause 2.0. Of relevance, are the requirements at Table 2 which stipulate:
- a maximum mandatory building height of 10m (for sloping sites like this one) which cannot be varied with a permit; and
 - a discretionary front setback of 6m or the setback specified in clause 55.03-1, whichever is the lesser.
- 35 Other requirements under clause 2.0 which include both quantitative and qualitative design guidance are grouped under the headings of Form, Car Parking and Access, Landscaping, and Fencing.
- 36 These include design outcomes such as maximum site coverage (60%); good levels of articulation and visual interest; limiting the extent of the third storey footprint relative to the level below (maximum 75%); a strong preference for site responsive designs that step with the slope of the land; minimising the height of finished floor levels as well as limiting overlooking and the need for screening.
- 37 I have previously commented that in the absence of any statement to the contrary under clause 2.0 of Schedule 8, these requirements may be varied with a permit.⁶ This is because the parent DDO buildings and works provision at clause 43.02-2 explains that a permit may be granted to construct a building or construct or carry out works which are not in accordance with any requirement in a schedule to this overlay, unless the schedule specifies otherwise.

What is the strategic direction offered by the planning scheme for residential development in this location?

- 38 Mr Joyner submitted that the form of development proposed is precisely aligned with the strategic direction embodied in planning scheme policies and the DDO8-2. He highlighted the absence of any definition of ‘townhouse’ in the planning scheme but contended that the proposal is nonetheless for townhouses. Although the development would have a three storey scale, he submitted that this is the preferred typology in the circumstances whose form still fits within the envisaged ‘envelope’ represented by the mandatory maximum height control of 10m.
- 39 He also sought to draw support for this proposal from the identical nature of controls that apply under DDO8 to both the Main Road Sub-precinct

⁶ *Jenkins v Manningham CC* [2016] VCAT 1532.

(DDO8-1) and Sub-precinct A (DDO8-2). In doing so, he referred to new and more intense development forms that are emerging throughout Manningham, particularly in DDO8-1, as representative of the preferred strategic outcomes now being realised that could also be reasonably expected on the review site. Mr Joyner made particular reference to a recently built 3-storey development on a 1485sqm lot at No. 282-284 Manningham Road which adopts a similar typology to this proposal before me. That development was the subject of a review to the Tribunal by objectors in December 2010 against Council's decision to grant a permit.⁷

40 Mr Wong for the Council submitted that the proposal has the physical appearance of an apartment development when viewed externally but accepts that from within the site it would have the feel and functional attributes of townhouses. He explained that in-principle, the Council does not oppose more intense residential development on this site but rather, its concerns stem in large part from the physical form and external appearance of this particular design response, particularly the extent of three-storey built-form.

41 I begin by noting that a number of refinements to DDO8 and policy at clause 21.05 derived from Amendment C96 to the Manningham Planning Scheme, which was gazetted on 13 February 2014. Submissions on the amendment were referred to an independent panel whose report was referred to in submissions by the parties before me in this proceeding.⁸

42 I also affirm the accepted position of the parties that the planning scheme policies together with the DDO8-2 provisions that apply to the land envisage a substantial level of change with residential development at higher densities than that which has traditionally occurred.

43 It is also relevant to observe that:

- although mandatory height controls exist, there is no mandatory limit on the number of storeys that a building may adopt; and
- an apartment development is not a prohibited typology on a lot with an area of less than 1800sqm in DDO8-2.

44 In relation to building height, the proposal appears to comply with the mandatory 10m maximum, apart from some roof-top balcony screens which may not, but could conceivably, be amended to comply.

45 On the issue of the proposed typology, I agree that this proposal has many functional elements of townhouses (such as the attached form of the proposed dwellings over multiple levels and separate dwelling entries as distinct from a common lobby arrangement). However, I agree with the Council's submission that to the casual observer in the street, this proposal will read as an apartment development given its overall massing, scale, form and design detailing.

⁷ Application P2740/2010 (25 January 2011) unreported. A decision of Member Dawson and Senior Member Rickards.

⁸ The panel was constituted by Lester Townsend.

- 46 The policy framework and non-mandatory provisions under the overlay controls all have an important role to play in articulating preferred development outcomes. Thus, the achievement of maximum building height and preferred typology is not the end of the assessment story.
- 47 On this point, I find the following observations made by the panel in relation to Amendment C96 particularly instructive in understanding the relationship between the various controls and policies that underpin the strategic framework adopted by the Council:
- I agree with Council that one cannot simply look at the maximum allowable under a control and presume that can be achieved on all land. ... What Council has done is set a clear policy direction for where it wants to see higher density development and then set some parameters round that development. One can't look at just half the picture; it makes no sense to look at the controls in absence of the policy, or look at the policy and presume development should be open slather.⁹ [My underlining]
- 48 The strategic direction for housing change in areas subject to DDO8 is not one that envisages uniform outcomes. Rather, a more nuanced strategic approach has been adopted through the nomination of three different sub-precincts. This hierarchical approach envisages different height, scale and built form outcomes for each precinct and a transition between each to varying degrees as further articulated by and integrated with policy. Different zones also apply to some precincts. Importantly, along main roads where the DDO8-1 applies, land is typically within a Residential Growth Zone – a zone whose purposes make no reference to neighbourhood character unlike the GRZ that also applies to land in the DDO8-2 in this case.
- 49 Where land has an area of less than 1800sqm, both clause 21.05 and the design objectives under Schedule 8 to the DDO explicitly encourage two storey townhouse style developments in preference to what is termed 'apartment style developments'.
- 50 Reference to the townhouse typology is one that suggests a preference for built form that has the attributes of more conventionally understood dwelling forms as distinct from the larger massing and forms that are typically associated with apartments. On this I agree with Mr Wong's submission that larger land parcels of at least 1800sqm is preferred for apartments to allow, for example, the provision of larger setbacks to assist in ameliorating the impacts of built form and bulk that come with this typology.
- 51 It is also relevant to observe that the preferred 2-storey development scale would not depart substantially from that which has been historically established but this appears to be a deliberate strategic intent. Notwithstanding its preference for 2-storey scaled townhouses, the strategic

⁹ *Panel Report Manningham Planning Scheme Amendment C96 Review of DDO8 Controls (12 April 2013)*, 16.

framework is not seeking to maintain the same intensity of development. It calls for 2-storey townhouse development at a higher yield—which I take to mean a higher yield relative to traditional townhouse development such as the two dwellings on either side of the review site.

- 52 It is true that as this proposal demonstrates, a 3-storey building can still conceivably be accommodated within the 10m maximum allowable height. However, I consider that when read together, the intent of the strategic framework is not to adopt the maximum allowable building height as the starting point for any design response.
- 53 Rather, the reference to 2-storey townhouses underscores the strategic intent which I also read to be an expression of the preferred character. This should be adopted as the starting point. As the panel on Amendment C96 commented, the use of storeys is a helpful way of giving the community and designers a visual impression of preferred outcomes for each sub-precinct,¹⁰ notwithstanding the reference to an allowable height of up to 10m. Reference to height in metres recognises the desirability of providing some flexibility for design outcomes that might include, for example, the need to accommodate varied topographical conditions that are a characteristic feature in Manningham, pitched roof forms, architectural features or even a recessive third storey element.
- 54 Thus, I consider that the approach advocated for the applicant, said to derive from a strategic imperative to fill the building envelope by reference to its maximum height, is a flawed yardstick with which to measure the acceptability of this proposal.
- 55 Moreover, in many respects, the applicant's strong focus on demonstrating that this proposal is in fact for townhouses rather than apartments also misses the point in terms of other fundamental strategic outcomes sought by the planning scheme. This is because the physical form, scale and appearance of this proposal will be read as a three storey apartment development in a strategic context where this typology's *functional* attributes are of lesser relevance than the *built form and neighbourhood character* outcomes sought to be achieved. Amongst other things, policy also asks for built form that provides for contemporary architecture, achieves high design standards, provides a graduated building line from side and rear boundaries and incorporates landscaping that enhances the overall appearance of the development.¹¹
- 56 Ultimately, in addition to responding appropriately to the strategic framework, proposals also need to be responsive to their context and neighbourhood character and not cause unreasonable amenity impacts. This is a commonly understood principle that is frequently observed by the Tribunal, particularly in multi-dwelling cases, and which permeates various planning scheme policies, objectives, controls and decision guidelines.

¹⁰ Ibid, 23.

¹¹ See Clause 21.05-1 under the heading 'Built form and neighbourhood character'.

- 57 At the same time, this also means that there could be circumstances where a departure from policy in respect of the preferred two storey building scale may be acceptable and even desirable. However, as a matter of good planning practice there would need to be sound reasons for a departure from policy to avoid undermining its strategic intent on an ad-hoc and incremental basis.
- 58 In this case, the predominance of this three-storey scaled building form does not respond in an acceptable way to the strategic framework on its face but perhaps most importantly, nor does it respond in an acceptable way to the physical context for reasons to which I now turn.

Does the proposal, including the proposed scale and built form, respond appropriately to the physical context?

- 59 I agree with Mr Joyner that the character of this area is typified by large 2-storey dwellings some with sheer brick walls as is the case with the dwellings on either side of the review site in Beverley Street. Built form rather than landscaping also predominates although this is an observation that applies more so to development on the north side of the street than on its south side. Multi-dwelling development is also commonplace. The land has abutments on three sides with lots that are similarly subject to DDO8-2 and this site with its 1527sqm lot size, being roughly equivalent to two standard sized lots, is a suitable candidate for redevelopment.
- 60 There are however a number of other important features of the site and its context that are relevant to my assessment and which inform in large part the acceptability of the proposal's response to it. In summary they are:
- the site's position in the local land form. The site has a relatively high degree of prominence on mid-range and closer range views from the east along Beverley Street, given the site's height above lower lying land in the foreground; and
 - the site's location at the T-intersection with Milan Street. The site terminates northerly views from the lower lying landform to the south, which also adds to its prominence from this direction.
- 61 I consider that while this is a robust context that is capable of readily absorbing new and more intense multi-dwelling development, the site's prominence from the east and south is uncharacteristic of most other lots nearby and is a matter that demands careful consideration. In saying this, I am also mindful that land on the south side of Beverley Street is in DDO8-3 which is a lower order sub-precinct in which a lesser level of change is anticipated with one and two storey scaled buildings. Land to the south again in Milan Street from which the site is highly exposed is outside the area covered by DDO8. It is within 'Precinct 1: Residential Areas Removed from Activity Centres and Main Roads' on the Residential Character Precinct Maps at clause 21.05. In this perimeter location, design objectives under DDO8 ask for the stepping down of height and form to

complement this different strategic interface condition. The proposal does not do this.

- 62 The design response would have a dominating impact in the streetscape, particularly from the south and east given the physical characteristics that apply to the site and its context. I consider that the design response has not been sufficiently cognisant of and responsive to the surrounding context in a way that is consistent with the strategic direction sought for this location.
- 63 On its east side in particular, the development's relationship with the dwellings at No. 55 Beverley Street would be overly dominant on oblique views from Beverley Street and from within this neighbouring site, including from within the secluded private open space of No. 1/55 Beverley Street.
- 64 To illustrate, in relative terms, at a height of RL117.95 the third storey wall of Unit 7 (excluding roof-top screens above) would have a height of approximately 3.2m greater than the neighbouring 2-storey wall of No. 1/55 Beverley Street. This proposed 3-storey wall would have a similar front street setback as the main façade of No. 1/55 Beverley Street (approximately 6.5m) and is recessed by only 0.5m from the 2-storey scaled front façade.
- 65 Two storey walls largely follow the footprint of single storey walls on the east side. A limited degree of recession to the third storey wall is proposed above the paired dwelling entries and balconies which are to be screened to 1.7m at the edge of the two-storey footprint little more than 3m from the east boundary. The continuous rectilinear built form and sheerness of these elements along this elevation of the development would not in my view be sufficiently ameliorated by the different materials proposed. Nor can landscaping be relied upon to soften the built form given the limited space available in the side setback which also accommodates pedestrian paths to the dwellings, notwithstanding the need for the built form to be acceptable in its own right.
- 66 The design detailing, such as the two-storey scaled vertical windows to the front façade, portico elements that extend forward of Units 1 and 7 and roof-top screens between and around terraces, some up to 1.7m in height, are all features that would add to the mass and dominance of the development on this prominently located site.
- 67 While the proposal provides a more complementary transition in height to its western neighbours, my concerns remain with the proposed mass and built form expression on this side.
- 68 Landscaping opportunities within the front setback are also constrained and fragmented by the provision of four separate pedestrian paths (two with stairs) and the 6m wide driveway pavement central to the site.
- 69 I conclude that overall, the mass, form, height and appearance of the development would have a visually jarring impact that would not make a positive contribution to the streetscape. It would also have adverse impacts

on neighbouring properties, primarily to the east by way of excessive visual bulk. These are outcomes that run counter to the design objectives under DDO8, policy at clause 21.05 and the design guidance provided under clause 2.0 of DDO8.

- 70 It is primarily for these reasons that I conclude that a permit must not be granted.
- 71 In light of these findings there is little benefit in providing a detailed assessment of other issues raised at the hearing specific to this proposal. I do however provide brief findings on matters that may be of relevance in the preparation of any revised future proposal.

What other issues are of particular relevance?

- 72 I share the Council's concerns with the extent of works upon the root system of the neighbouring trees to the north which include some large cypress trees. These works, which are associated with excavation and retaining walls to facilitate pathways, the driveway and visitor car spaces at the rear of the site, extend by up to 34% into identified Tree Protection Zones.¹² I consider that the proposal has failed to respond to this surrounding condition in an acceptable way.
- 73 While the at-grade covered carpark arrangement is not fatal to this proposal's acceptability, I consider that the overall layout and design of the parking spaces, driveway access and storage arrangements are at best tight and would not promote convenient use. I also consider that reliance upon the visitor parking spaces for garbage truck turning movements is a poor response given the need to ensure these spaces are not occupied during collection times. The issue has a sharper focus given the constraints posed by the roundabout in respect of on-street parking opportunities and waste collection along the site frontage in Beverley Street.
- 74 While I accept Mr Garvey's submission that bus commuters frequently park their cars kerbside in Beverley Street further east and through traffic may at times cause congestion, the functioning and amenity of the local street network is unlikely to be unreasonably impacted upon by this proposal such as to warrant a refusal.
- 75 I agree with the Council's observations that the site's prominence creates a higher imperative to achieve a design that is of a high quality architectural standard notwithstanding the need for development to do so on any site as an underlying strategic objective. There are many design elements about this proposal that I regard as mediocre which are manifest in the bulk, mass and rectilinear building form. Moreover, no information is available in relation to some proposed construction materials, such as the walls to be rendered and projecting fin elements above some windows. I also question the acceptability of blockwork as a suitable material in the particular built form context.

¹² See Arborist report dated 7 April 2015 prepared for applicant by Paul Jameson, consultant arborist.

- 76 Other design elements that also do not appear to be well resolved include the intended floor to ceiling heights, the reliance upon eaves at dwelling entries as the only form of shelter, the compact size of some master bedrooms whose dimensions are just 2.5m by 3.1m excluding the robe, the need for extensive screening of balconies and habitable room windows to limit overlooking, the limited capture of northern sunlight and workability of finished site levels.
- 77 It seems to me that many of these matters are indeed reflective of the approach advocated by Mr Joyner of filling the 10m envelope. It is an approach that appears to be based on maximising dwelling yield in response to the strategic direction of increased dwelling densities and more diverse housing. While the achievement of increased housing densities and dwelling diversity are legitimate strategic expectations, their realisation in this case would unfortunately come at the expense of many other fundamental objectives of the strategic framework that relate to preferred character, design and built form outcomes. These matters will require a more sophisticated level of design resolution in any revised proposal.

CONCLUSION

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

Mary-Anne Taranto
Member