VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P503/2021  Permit Application no. M/2020/305 |
| CATCHWORDS | |
| Review of a failure to make a decision within the prescribed time under section 79 of the *Planning and Environment Act 1987 (Vic)*. Maroondah Planning Scheme. General Residential Zone. Heritage Overlay. Original dwelling and trees of heritage significance. Whether impact on heritage values acceptable. Whether garden area an element of heritage value. Whether design response to neighbourhood character acceptable. | |

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| **Applicant** | Wonga Road Properties Pty Ltd |

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| **Responsible Authority** | Maroondah City Council |
| **Respondents** | Linda Ellen Latimer |
|  | Roger Nicholas |
|  | Ronald Leslie Carpenter |
|  | Hai Jing Yu & Others |
|  | Anne Willcock & Others |
| **Referral Authority** | Head, Transport for Victoria |

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| SUBJECT LAND | 3-5 Wonga Road  RINGWOOD NORTH VIC 3134 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 20, 21, 22 and 23 September 2021 |
| DATE OF ORDER | 4 February 2022 |
| CITATION | Wonga Road Properties Pty Ltd v Maroondah CC [2022] VCAT 135 |

# Order

1. Pursuant to clause 64(2) of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act* *1998*, permit application M/2020/305 is amended by substituting for the permit application plans, the following plans filed with the Tribunal prepared by SGKS ARCH:
   1. TP00 to TP14, Revision H dated 5 August 2021, with the exception of the following plans;
   2. TP02-1 and TP07, Revision I, dated 20 August 2021; and
   3. TP02 Revision I and TP15 Revision A, dated 1 September 2021.
2. In application P503/2021 the decision of the Responsible Authority is affirmed.
3. In planning permit application M/2020/305 no permit is granted.

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| Ian Potts  **Senior Member** |  | Sarah McDonald  **Member** |

# Appearances

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| For Wonga Road Properties Pty Ltd | Ms Tania Cincotta, lawyer from Best Hooper Lawyers. She called the following expert witnesses:   * Ms Kate Gray, a heritage architect consultant from Lovell Chen. * Mr Mark Reynolds, an arborist from Arbor Survey. * Mr John Patrick, a landscape architect from John Patrick Landscape Architects Pty Ltd. * Mr Brett Young, a traffic engineer from Ratio Consultants Pty Ltd. * Mr Damien Iles, a town planner from Hansen Partnership. |
| For Maroondah City Council | Ms Irene Plakidis, town planner, from Refine Town Planning |
| For Head, Transport for Victoria | No appearance. |
| For Roger Nicholas and Hai Jing Yu & Others | Mr Roger Nicholas in person. |
| For Ronald Leslie Carpenter | Mr Ronald Carpenter in person on 20 and 21 September 2021. Mr Roger Nicholas on 22 to 23 September 2021. |
| For Anne Willock & Others | Ms Anne Willcock in person on 20 and 21 September 2021. Mr Roger Nicholas on 22 and 23 September 2021. |
| Ms Linda Ellen Latimer | Ms Linda Latimer in person on 20 and 21 September 2021. Mr Roger Nicholas on 22 and 23 September 2021. |

# Information

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| Description of proposal | It is proposed to remove previous alterations and additions to the existing heritage dwelling known as ‘*Thalloo*’ and make new alterations and additions. The alterations and additions are proposed in part to accommodate the construction of three dwellings that would front onto Warrandyte Road.  The three new double storey dwellings would face Wonga Road with under-croft/basement car parking accessed from a new Warrandyte Road cross over. Unit 1 would be separated from the attached Units 2 and 3. The new dwellings would have a contemporary typology incorporating flat and gabled roof forms, and face brick, Colorbond, timber and rendered wall cladding finishes.  A new access would be provided to *Thalloo* from Wonga Road by cutting into an embankment and constructing a ramped driveway. The access would rise to end at a proposed carport that would be located to the south of the existing dwelling.  Removal of some trees and other garden vegetation would be required to accommodate the proposed development. |
| Nature of proceeding | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time. |
| Planning scheme | Maroondah Planning Scheme. |
| Zone and overlays | General Residential Zone (clause 32.08 and schedule 1).  Significant Landscape Overlay (clause 42.03 and schedule 4).  Heritage Overlay (clause 43.01 and schedule 146 - *Thalloo House and mature specimen trees, 3-5 Wonga Road, Ringwood North*). |
| Permit requirements | Construction of two or more dwellings on a lot in a General Residential Zone (clause 32.08-6).  Part demolition and alterations to a building and construction of buildings (carport and dwellings) and works (access and a fence visible from a street) in a Heritage Overlay (clause 43.01-1).  Removal of vegetation in a Significant Landscape Overlay (clause 42.03-2 and schedule 4 - clause 3) |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 18, 19 and 22.02 of the Planning Policy Framework.  Clauses 52.06, 52.29 and 55 of the particular provisions and clause 65 and 65.01 of the general provisions. |
| Land description | The review site is an irregular shaped lot of 2,627 sqm with an eastern boundary (45.73 metres) to Wonga Road and western boundary (45.72 metres) to Warrandyte Road. To the north is a common boundary (68.89 metres) with two lots that are each developed with single dwellings. To the south is a common boundary (38.75 metres) with a single lot developed with one double storey dwelling.  The review site is elevated above Warrandyte and Wonga Roads by some 2 to 2.5 metres. The existing dwelling is located on a nominally level area in the northern central area from which the land falls to the east, west and south.  The surrounding context is shown in Figure A below.  Access to the review site is currently from a cross over on Warrandyte Road servicing two garages. Extensive, landscaped garden areas encompass the eastern and southern portions of the review site.  The review site and the two lots to the immediate north and the lot to the south mark the area that comprised a ‘pleasure garden park’ developed in the 1920s and 1930s and the former extent of the land containing the *Thalloo* dwelling that was constructed in 1942. The lots to the north and south were subdivided after the construction of *Thalloo*. |
| Land description (continued) | Figure A: Review site & surrounding context[[1]](#footnote-2) |
| Tribunal inspection | The Tribunal completed an inspection of the property and its surrounds after the hearing. |

# Reasons[[2]](#footnote-3)

## Introduction

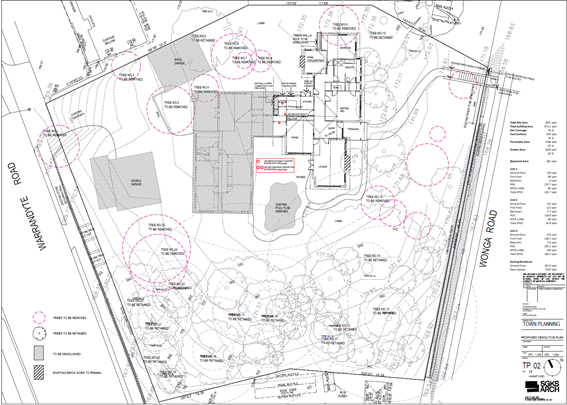
1. Wonga Road Properties Pty Ltd (**Wonga Road Properties**) seeks planning permissions that would allow three new dwellings to be constructed on the review site along with part demolition and alterations to an existing dwelling known as *Thalloo*, removal of vegetation and other works necessary to accommodate the new dwellings. The need for these planning permissions arises from the fact that the review site is subject to the General Residential Zone (**GRZ**), Significant Landscape Overlay (**SLO**) and Heritage Overlay (**HO**) under the Maroondah Planning Scheme (**planning** **scheme**).
2. As the Maroondah City Council (**Council**) did not make a decision about the permit application within the prescribed time, Wonga Road Property has sought a review at the Tribunal.[[3]](#footnote-4)
3. The Council has subsequently advised that if it could have made a decision, it would have refused to grant a permit on the grounds that the proposal would have unacceptable impacts on the heritage values of the review site, would be inconsistent with the neighbourhood character and have unacceptable landscape outcomes because certain trees would be lost.
4. Several residents (**the respondents**) have participated in this proceeding. They oppose the proposal on grounds similar to those raised by the Council. In addition, Mr Nicholas, who owns an adjoining property, is concerned about the impact of the proposal on his amenity, in part related to the matters of overlooking and in part from the presentation of the built form along his boundary. He and other residents express concern about the intensity of the development and its form not fitting in with the local character.
5. Wonga Road Properties argues that its proposal is responsive to the character and heritage values of the review site and makes efficient residential use of a large lot that is consistent with housing and development planning policies. On this basis it is argued that the proposal would result in acceptable planning outcomes.
6. Having considered the matters before us and the relevant matters under the planning scheme we have concluded that the proposal would not result in an acceptable planning outcome. Accordingly, we will not grant a planning permit. Our reasons for reaching this conclusion follow.

## Background and key issues

### What is proposed?

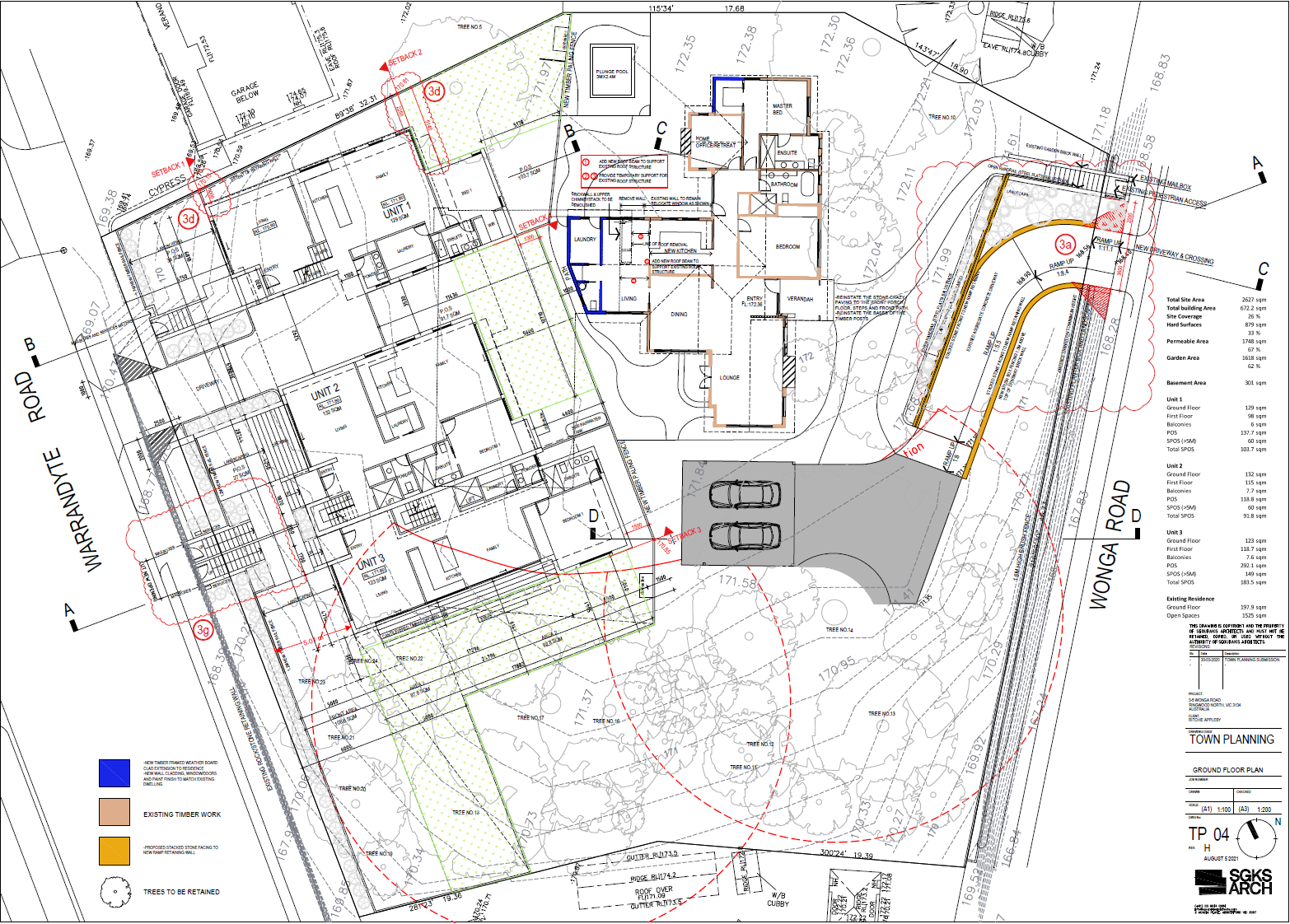
1. Below we set out two plans for the review site as amended at the commencement of the hearing. Figure 1 is the plan showing the extent of demolition works and removal of trees. The second shows the changes to *Thalloo*, the three new dwellings at ground floor level, and other works.

Figure 1: Proposed demolition & tree removal plan[[4]](#footnote-5)



1. The new dwellings would each be two storey, with a shared basement/under-croft car parking below. The entry to the car parking would be from Warrandyte Road, using a new cross over point. All dwellings would comprise of living, dining and one bedroom at ground floor with three bedrooms and a further living room at first floor.
2. Rear additions to the historic dwelling, *Thalloo,* would be demolished. As far as can be ascertained demolition would be back to the original building lines. [[5]](#footnote-6) A small addition to the rear would be constructed, principally to accommodate a laundry, new kitchen and a larger living area. An extension to the master bedroom would accommodate a walk-in robe. A carport is proposed in the existing garden area south of *Thalloo*, with access to be via Wonga Road. This would necessitate a cut into the Wonga Road embankment and construction of a ramped driveway across the front (eastern) garden.

Figure 2: Proposed site & ground floor layout[[6]](#footnote-7)



1. We address the detail of the proposal as necessary later in these reasons.

### The Determinative Issues

1. No party disputes that there is strategic planning policy support for a proposal to construct additional dwellings on the review site. All agree that a medium density development would contribute to the provision of additional housing and population growth in a location that has convenient access to jobs, services and infrastructure.[[7]](#footnote-8) For the following reasons we accept that this is true.
2. The review site is in an established urban area in proximity to the Ringwood Metropolitan Activity Centre (**MAC**), the Ringwood North Neighbourhood Activity Centre, schools and public open spaces. Public transport in the area includes bus routes along Wonga Road and Warrandyte Road, connecting this area to the Ringwood train station in the Ringwood MAC.
3. There is also strategic planning support for a proposal that would contribute to an increased diversity of housing,[[8]](#footnote-9) such as by providing housing in a townhouse typology on smaller lots than is typical in this area.
4. One purpose of the GRZ that applies to the review site and surrounding area, is to encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.[[9]](#footnote-10)
5. Given this strategic planning context and the above purpose of the GRZ, the review site is one that contextually is appropriate for some form of redevelopment.
6. However, the Planning Policy Framework (**PPF**) and a purpose of the GRZ also seek to ensure that development responds to an area’s context and respects the existing or preferred neighbourhood character.[[10]](#footnote-11) The PPF and the purposes of the HO seek the conservation of places of heritage significance.[[11]](#footnote-12)
7. In respect to these requirements of the planning scheme, the following issues were the focus of submissions from the Council, respondents, Wonga Road Properties and from the evidence:

* Would the proposal provide an acceptable response to the heritage objectives and values?
* Would the proposed new dwellings provide an acceptable response to the neighbourhood and landscape character?

1. Further grounds were pursued by the respondents about the vehicle traffic impacts arising from proposed vehicle access arrangements. We would not have refused a permit for reasons related to these issues. Based on the evidence of Mr Young, we are satisfied that the proposed access would have been acceptable in respect to the access arrangements for vehicle and pedestrian safety.
2. Mr Nicholas’s objections also raised concerns about overlooking and the presentation of visual bulk to his property on the northwest common boundary. For completeness we have set out our findings in respect to these matters, noting here however that while concluding the proposal was acceptable along this interface, a revised proposal would need to consider this interface in any new design.

### The evidence of Ms Gray and Mr Patrick

1. Mr Patrick was called by Wonga Road Properties to give evidence about the trees and landscaping for the new dwellings. He assisted the Council and participated in the preparation of the Statement of Significance for the heritage place in so far as it involved the inclusion of the trees now referenced in that statement. We accept that Mr Patrick’s evidence, when confined to those aspects of the protection of trees is not in conflict with this previous role.
2. Ms Gray’s firm, Lovell Chen was contracted by Wonga Road Properties to review and provide advice about the draft Statement of Significance during its preparation. The firm’s role and Ms Gray’s involvement is set out in her evidence.[[12]](#footnote-13)
3. It is not our intention to revisit or look behind the merits of the Statement of Significance that ultimately has been incorporated into the planning scheme following review by an independent Planning Panel. We are however concerned about the perception that arises about the level of independence that Ms Gray could bring to this application given the involvement of a firm of which she is a director and her role and that of associated staff had in the preparation of Wonga Road Properties’ response to and advice about the draft and final versions of the Statement of Significance and the permit application that followed. The details provided by Ms Gray in her evidence statement and her responses to our questions demonstrate a high level of involvement by her and a Mr Stratham, another staff member of Lovell Chen. What is evident to us from this material and Ms Grays’s response to our questions is that in the preparation of the Statement of Significance, Wonga Park Properties and Council held differing views about the level of heritage value of the remnant garden areas. As we will come to, this is a central issue in our determination.
4. Further, Mr Latham went on to provide advice to Wonga Road Properties in the permit application process. Ms Gray advises that:

Other than for the occasional conversation with Mr Statham in relation to the development of the design, my involvement in the advice on heritage issues and assessment of the proposal and through the planning application phase was limited.

1. Having noted such concerns, we acknowledge that Ms Gray’s evidence was tested through cross examination by the Council and respondents and by questions from the Tribunal. It is important that we record here that we found Ms Gray’s evidence to be balanced and fairly responded to a number of points raised about the values of the heritage place. Although we did not accept all of Ms Gray’s evidence, we are satisfied that she fulfilled her duty to the Tribunal to provide independent evidence to assist in our deliberations on heritage matters.

## The response to the heritage objectives and values

1. The review site is subject to schedule 146 of the HO (**HO146**). HO146 indicates that the ‘Heritage Place’ is ‘*Former ‘Thalloo’ house and mature tree specimen trees*’ and refers to the State of Significance dated 18 November 2019. Under the HO146 tree controls apply to the Deodar Cedar (Tree 14), Cork Oak (Tree 16) and Coast Redwood (Tree 17).[[13]](#footnote-14) External paint and internal alteration controls do not apply to the HO146.
2. In this application, permission is required under the HO to:

* Demolish or remove parts of the existing house, including what is not contested to be non-original heritage fabric, but we note includes some original fabric of the 1942 house, being at least the rear chimney, roof form and side walls and window elements.
* Construct new fencing which is visible from the street.
* Externally alter the original *Thalloo* fabric on the west side of the building with a small new addition of a living area (roof and walls), addition of walls and a roof element to accommodate a walk-in robe to the main bedroom, and relocation or modifications to windows on original north facing walls (e.g. north bedroom, home office and kitchen).

1. The purposes of the HO[[14]](#footnote-15) include conserving and enhancing:

* heritage places of natural or cultural significance; and
* those elements which contribute to the significance of heritage places.

1. Other relevant purposes include implementing the Municipal Planning Strategy (**MPS**) and Planning Policy Framework (**PPF**) and ensuring ‘development does not adversely affect the significance of the heritage place’.
2. Decision guidelines[[15]](#footnote-16) direct attention to a range of matters of which we summarise those relevant to this application to be as follows:

* Relevant strategies and policies under the MPS[[16]](#footnote-17) and PPF.
* Any applicable statement of significance.
* Whether the significance of the heritage place will be adversely affected by the proposed development.
* Whether the location, bulk, form or appearance of proposed buildings will adversely affect the significance of the heritage place.
* Whether the location, bulk, form or appearance of proposed buildings is in keeping with the character and appearance of adjacent buildings and the heritage place.
* Whether the demolition, removal or external alteration will adversely affect the significance of the heritage place.
* Whether the proposed works will adversely affect the significance, character or appearance of the heritage place.

1. We set out below the elements of the scheme that are relevant to these decision guidelines.

### Relevant elements of the MPS and PPF

1. The objective of the State Heritage conservation policy at clause 15.03-1S of the PPF is:

To ensure the conservation of places of heritage significance.

1. This policy is supported by a range of strategies, which relevantly seek to:

Conserve and enhance places that are of aesthetic, architectural, cultural, or social significance.

Encourage appropriate development that respects places with identified heritage values.

Retain those elements that contribute to the importance of the heritage place.

Encourages the conservation and restoration of contributory elements of a heritage place.

Ensure an appropriate setting and context for heritage places is maintained or enhanced.

1. The local Heritage statement at clause 21.04 similarly seeks to ‘appropriately manage heritage resources in order to conserve their cultural heritage values and integrity’.[[17]](#footnote-18) Supporting strategies promote sympathetic design of development on the subject land or abutting natural and cultural heritage places.[[18]](#footnote-19)

### The Statement of Significance

1. The Statement of Significance for the HO146 is an ‘incorporated document’ within the planning scheme.[[19]](#footnote-20) The Statement of Significance sets out that *Thalloo* is architecturally, historically, and aesthetically significant in Maroondah municipality because:

Architecturally, the 1942 weatherboard house is an intact and rare example in Maroondah of an early modern design by notable architects Meldrum and Noad with an asymmetrical form, tiled intersecting roof gables. The principal, Wonga Road façade incorporates banks of floor-to-ceiling windows, with the living room connected to the outdoors via glazed double doors and a front porch arranged to take advantage of mountain views. (Criteria D and E).

Historically, the site is of interest for its associations with the once greatly more extensive 1.5 acre pleasure garden developed on this site in the 1920s and 30s by garden enthusiast and local councillor (and Mayor) F V Parker, albeit only fragmentary evidence of that garden survives on this site (Criterion A). The place retains three mature significant trees of aesthetic and historical significance, the Coast Redwood (Tree 17), Cork Oak (Tree 16) and Deodar (Tree 14) (Criteria A and E).

1. The Statement of Significance identifies what is significant. *Thalloo* is described as significant ‘to the extent of its 1942 original fabric’, We hereafter refer to this original fabric as the **heritage house**. The existing rear additions, swimming pool, gazebo and garage outbuildings are explicitly identified as not being significant.
2. The Statement of Significance also records that the original garden setting to Thalloo is ‘*greatly diminished*’ following subdivision and development of residential lots to the north and south. Three specimen trees are identified as being ‘of significance and are likely survivors of the garden’.
3. This latter statement about the extent and significance of the garden setting is of some contention between the Council and Wonga Park Properties; a matter that we will return to shortly.
4. The extent of the existing house and that part that comprises the heritage house, as depicted in the Statement of Significance, is shown by the pink outline in Figure 3 below. We note that the definition of the original fabric along the western most wing of the heritage house was said by Ms Gray to be unclear because the more modern connection adopted the form and character of the original design.
5. The boundaries to the northern lots and southern lot that formed the original extent of the property and garden setting are also shown in this Figure3. The three trees of significance, numbers 14, 16 and 17, are shown in the southern garden area.

Figure 3: Existing buildings at 3-5 Wonga Road with extent of original building indicated[[20]](#footnote-21)



### The contentions for and against the proposal

1. The advice from the Council’s Heritage Advisors conveniently summaries its position:

…The application …. fails to preserve the significant garden setting of Thalloo, threatens the long-term health of Tree 14, diminishes the significant relationship of picture windows with the garden, and the bulk and close situation of the proposed townhouses will adversely affect the significance and long-term survival of the heritage house.[[21]](#footnote-22)

1. Submissions for the Council elaborated on this position, setting out that:

* The extent of demolition and alterations to original elements of the heritage house is unacceptable and would diminish, devalue, and adversely affect the heritage significance of the place. Specific elements that are said to be unacceptable are:
  + The loss of original fabric at the rear (western end) of the original heritage house.
  + The new rear wall being chamfered instead of maintaining 90 degree angled walls that are respectful of the original fabric and design.
  + The one metre setback of the new fence from the (proposed altered) rear wall further diminishes the garden setting of the original house, closing it in with a loss of the sense of space and garden setting. It is said that this arises from proposing too many dwellings and an overly intensive development on the western side of the review site that is not respectful or sympathetic to the garden setting, which although diminished remains of contributory value to the heritage place.
  + The proposed new driveway and carport for the retained heritage house intrude into the front and side garden settings. These elements would result in a loss in the relationship between the heritage house and the garden setting; a relationship which is informed in part by the retained spatial setting between the garden and historic building and in part from the (retained) uninterrupted views gained from the east and south facing windows of the heritage house across and into these garden areas.
  + The new cross over and driveway from Wonga Road will detrimentally alter the appearance and setting of the heritage place, which in Council’s view includes the remaining garden areas.
  + The potential impacts on two of the three significant trees included in the Statement of Significance and afforded protection under HO146. The concern about Tree 14 arises from the plans showing its tree protection zone (**TPZ**) would be encroached by the new driveway and carport to an unacceptable degree. Tree 17 is of concern to the Council because of an unacceptable encroachment by Dwelling 3 and its deck into this tree’s TPZ.

1. Wonga Road Property submits that the proposal is acceptable having regard to heritage considerations. Wonga Road Property relies on Ms Gray’s heritage evidence in support of these submissions. Ms Gray summaries her evidence as follows:

On balance the impact of the proposed new development and the works to the original residence and front setback will have negligible impact on the identified significance of the place and will support the ongoing residential use of ‘Thalloo’.[[22]](#footnote-23)

1. Overall, we are not persuaded by the submissions for Wonga Road Property or the evidence of Ms Gray that the proposal provides an acceptable response to the purpose and decision guidelines of the HO, or the Heritage conservation policy at clause 15.03-1.
2. Our reasons for arriving at this conclusion, which we set out below, arise from the impacts on heritage values from:

* the location and extent of the new dwellings;
* the location, form and appearance of the Wonga Road access, new driveway and carport;
* the risks posed to Tree 14 from the works; and
* the proposed alterations to the rear, western end of the heritage house.

### The impacts from the location and form of the new buildings and works

1. We noted earlier that the extent of the garden area and its heritage significance was an area of disagreement between Wonga Road Properties and the Council. This disagreement is central to their respective positions about the impact of the new dwellings’ location and associated boundary lines, and the carport and driveway arrangements off Wonga Road.
2. Ms Gray’s evidence is that the reference in the Statement of Significance about the garden setting is commentary, arising from a journal article, rather than a heritage analysis. Her evidence is that the ‘garden area’ per se is not nominated under the heading of ‘what is significant’ in the Statement of Significance.
3. We observe however that the content of what is significant refers to the garden setting as being original, but diminished. It does not discount the setting altogether. This is to be compared with the statement of how the rear additions to the heritage house are not significant. Further and most relevantly, the statement under the heading of ‘why is it significant’ establishes, that the garden setting Criterion A (historical interest) of the heritage guidelines because of the sites association with the ‘once greatly more extensive’ garden even though it is ‘fragmentary evidence’ of that garden. Together with the three trees, which are of aesthetic and historical significance, (Criteria A and E), the garden retains its connection with the historical linkage between the heritage house’s outlook from the living room glazed doors and windows and the garden. These are also elements of why the heritage house is significant, as set out in the statement.
4. Wonga Park Property argued that in terms of the garden, the heritage significance is confined to the three trees referenced in the Statement of Significance and protected under the HO. In its submissions it did not dispute that there may be a spatial relationship between the house and the garden, however it was submitted that we should attribute a lesser weight to that relationship.
5. In her oral evidence Ms Gray acknowledged that the location of the new dwellings and the fencing structure along the proposed boundary line would intrude into and diminish this connection. In response to questions of the Council and the Tribunal, Ms Gray agreed that it is appropriate to have a garden setting around the heritage house. Ms Gray acknowledged that the proposal would change the context of the heritage house and reduce the area of the garden, but she did not consider that this would lessen the significance of the heritage place, confined as it was in her opinion to the building and three trees.
6. In response to the Tribunal’s question about whether there is a broader intention regarding the relationship between the house and the garden, Ms Gray commented that all of the windows have that intent and that this is evident in the physical fabric of the building. Ms Gray further commented that when outside the house she thinks this relationship will be retained, but that she does not subscribe to the point that there are significant views from within the house out to the garden.
7. Even though the garden as a whole is not identified as a significant part of the heritage place, we cannot separate the house and specimen trees from the garden setting within which they sit, even in the garden’s diminished extent compared to its original area and form. Our view on this is informed by the reference in the Statement of Significance which identifies that one of the reasons the place is significant is because ‘The principal, Wonga Road façade incorporates banks of floor-to-ceiling windows, with the living room connected to the outdoors via glazed double doors …’.[[23]](#footnote-24) It is also reinforced by Ms Gray’s oral evidence about the relationship between the heritage house and the garden setting.
8. We therefore agree with Council that the garden setting of the heritage house is a contributory element to its heritage significance.
9. In a setting that is already considered to be greatly diminished, we find that further diminution to be unacceptable, undermining the relationship between the heritage house and the garden setting.
10. Wonga Road Property submits that because the internal fences are not visible from the road, they do not require a permit under the HO.[[24]](#footnote-25) It is submitted that their impact on heritage values is therefore not a relevant consideration.
11. It is true that an internal fence does not require permission. However the fence arises from the alignment of the proposed new dwellings, particularly units 2 and 3 and their rear yards. In the case of unit 3, the rear portion of the dwelling would extend across the garden space to the south of the heritage house. It is the combined impact of these building elements, that would create a physical and visual barrier between the heritage house and its garden setting to the south and south-west.
12. In addition to the intrusion into the southwest and southern vistas, the location of unit 2 would result in a side boundary of only 1.0m from the western wall of the new addition to the heritage house. It is the proximity of this boundary fence to the proposed addition to the western side of the heritage house that necessitates the chamfering of the south-western corner of the new addition. We agree with the Council’s heritage advice that, while the chamfering of this new wall may be acceptable, the need for it is an indication of an unacceptable loss of garden space around the heritage house. Such a loss of this space diminishes the understanding of this dwelling’s original garden setting.

### The access ramp off Wonga Road

1. Ms Gray’s evidence assessed the impact of the works along the Wonga Road frontage of the heritage place as follows:

When assessing the impact of the construction of the driveway and carport, it is relevant to consider the extent of change that has already occurred and the extent to which the interface of the site to Wonga Road has changed over the course of the later twentieth century.[[25]](#footnote-26)

1. In relation to the driveway within the front (eastern) setback between the heritage house and Wonga Road, Ms Gray’s evidence is that the driveway will result in a degree of change, but that change is acceptable because it is to altered fabric and a boundary treatment of no particular significance. It is Ms Gray’s expert opinion that the driveway will have a benefit in making the heritage house more visible by removing parts of the fencing along the Wonga Road frontage. Ms Gray also refers to the plan in the Statement of Significance which shows a historical access through this section of the garden.
2. We are not persuaded that the alignment and excavation of the proposed driveway retains an acceptable garden setting for the heritage house. Although the proposal will retain the living room’s connection to the outdoors, it will do so in the context of a substantially diminished garden area, due in no small part to the loss of ‘at grade’ garden area.
3. While there is historical evidence of a driveway extending across the front of the heritage house, this does not persuade us that the proposed driveway is acceptable. From the photographic evidence available in the submissions and evidence, the original driveway appears to be a simple two-wheel track at the same level as the house and surrounding garden. The proposed new driveway for the retained house is to be an excavated, ramped driveway sweeping up from Wonga Road in front of the house and across the front garden. A balustrade will extend along the side of the ramped driveway.[[26]](#footnote-27)
4. The proposed driveway would have the effect of cutting the Wonga Road frontage setback in half. This would leave only a modest area of garden between the east of the living room and the western side of the driveway, and a relatively narrow strip of land isolated between the driveway and the eastern boundary to Wonga Road. Notwithstanding Mr Patrick’s landscape plan for ground covers and rows of shrubs (along the western side of the driveway and the eastern boundary), and a single weeping cherry tree, the at grade garden context to the front of the heritage house would be lost.
5. The proposed driveway will also have the effect of creating an extensive void across the frontage of the heritage house and introduce a new fence (balustrade) structure across the front garden.
6. We find that these aspects of the proposed driveway will diminish the area available and the front garden setting to the heritage house that would be out of context and character with the heritage values we have described earlier.
7. We are not satisfied that the reinstatement of a ‘crazy paving’ porch and front path for the heritage house, to reflect the original paving, is sufficient to maintain an acceptable setting for the house. While they will be complementary to the original design detail of the house and garden, they are relatively minor elements compared to the substantial ramped driveway and its impact on the heritage house’s context.
8. We are also not persuaded by Ms Gray’s evidence that the benefit of the new driveway and removal of some fencing on opening up views to the heritage house from Wonga Road justifies or off-sets the negative impacts of the driveway. However, it was also Ms Gray’s evidence that this benefit is not the values of the heritage place, but rather its presentation. It follows from what we have said above about the heritage house’s setting that we agree with the Council that the heritage values here are not dependent on visibility from the public realm.

### The car park and carport to south of dwelling

1. At the top of the ramp the proposed driveway turns to the west and across the southern side of the heritage house with provision for car parking spaces under a free-standing carport. The carport would extend across the southern side of the house and be set back approximately 2.0 metres from the southern external wall of the living room. The southern wall of the living room features a large picture window. The area between this wall/window and the carport is to have a relatively narrow garden bed (approximately 0.8 metres) of groundcovers, and a paved pedestrian path.
2. The Council submits that such an arrangement is unacceptable because of the intrusion into the setting between the south facing windows and the garden; features it is submitted form part of the aesthetic heritage value of the heritage house.
3. Ms Gray’s evidence is that there will still be a sense that the heritage house is connected across this space to the southern garden. She says the carport is a modest, detached, open and visually light-weight element, that will be subordinate to the house in terms of scale and complementary in terms of its painted timber finish. Ms Gray also says that the carport will be largely concealed from Wonga Road views, but where visible it will have limited presence.
4. We find that the location of the driveway and carport would unacceptably diminish the relationship between the house and the garden to the south. We are of the view that the siting of the carport will adversely affect how the heritage house and tree 14 to its south will be viewed within their immediate settings.
5. We do not accept that the visibility of the carport from Wonga Road is the relevant test. It follows from what we have set out earlier about the garden setting and its relationship with views from the heritage house, that it is the internal setting and relationship between the dwelling and the garden and significant trees that is relevant to the significance of the heritage place.
6. Although the view or outlook from the interior of the house to the garden is not referred to in the Statement of Significance, the statement does refer to the original garden setting in the description of ‘What is significant’. The three significant tree specimens identified in the Statement of Significance are within the southern section of the garden, and within the view line from the picture window in the heritage house’s southern elevation.
7. We are not persuaded by Ms Gray’s evidence that there would not be a focus on this view or outlook if a photo of the window in the southern elevation had not been depicted in the Australian Home Beautiful magazine feature article[[27]](#footnote-28) that is included in the Statement of Significance. The fact that this window is not specifically mentioned in the Statement Significance does not persuade us that it is irrelevant or not a valued part of the original fabric of the heritage place and its setting. The picture window in the southern end of the living room is substantial and forms a clear design feature dominating the southern façade. Even though we accept the evidence of Ms Gray that this view is not of *primary* significance, it is obvious that this window provides connection between the heritage house and the garden to the south and the three significant trees that are remnants of the previous pleasure garden that occupied the site. This connection therefore is still contributing to an understanding of the heritage place and its setting.
8. We consider that the location and extent of the paved surface of the southern section of the driveway and the carport structure would physically divide and visually separate the heritage house from the garden area to the south. Even though the garden area will be accessible (by walking across the driveway or around the carport), we are not persuaded that this provides an appropriate setting or context for the heritage house.
9. We are also concerned about the proximity of the carport structure to the southern wall of the heritage house and the significant tree 14. The carport would be approximately 2.0m from the face of the picture window, and further forward of the line of the ‘front’ (eastern) façade of the living room. Although it is a slimline/lightweight design, we consider that the carport would obscure views of the heritage house from the south and the south-east. It would result in the house not being viewed within its immediate setting unobstructed. Had we determined that the proposal was otherwise acceptable and that a permit could be issued, we would have required the carport to be deleted from the plans.
10. We also consider the proximity of the driveway and carport to tree 14 has the potential to erode the garden setting within which this tree sits. This tree is a remnant of the original pleasure garden referred to in the Statement of Significance.
11. The paved surface of the turning area of the driveway and carport area would extend to a distance of approximately 2.5m around the north-eastern and northern aspects of tree 14. The carport is approximately 3.5m to the north-west of the tree. While this tree is proposed to be retained it will be retained in a setting that will no longer be that of a garden but of a paved surfaces and a building.
12. We conclude that any benefits of providing a separate vehicle access and covered car parking space for the heritage house would not off-set or warrant the negative impacts of these elements of the proposal on the heritage significance of the heritage place. This is particularly so in the context that the house already has vehicle access and car parking from the Warrandyte Road frontage.

### Demolition and alterations to the heritage house

1. We refer to the decision guidelines of the HO we have set out earlier and the strategies under the PPF at clause 15.03-1S that direct the decision maker to consider, amongst other matters, the impacts from demolition or other losses of heritage fabric, the impact of alterations and the conservation or restoration of contributory elements of a heritage place.
2. We take no issue with the proposed demolition of the western additions and intervening connecting structure to the heritage house. We are satisfied that the western addition and parts of the western connection to be demolished are not original fabric of the heritage house. We also accept Ms Gray’s evidence that the extent of the original fabric of the heritage house at the western connection cannot be established with certainty. However, we are not persuaded that the extent of the proposed demolition of the western end of the kitchen and consequential loss of a chimney within the western wing of the heritage house or the subsequent alterations/additions that are proposed are acceptable.
3. Ms Gray’s written evidence provides limited consideration of the impact of the proposed demolition works in her ‘Assessment of heritage impacts’.[[28]](#footnote-29) The focus of Ms Gray’s consideration is of the demolition of the non-original fabric, about which there is no dispute of the acceptability of its demolition. It is her evidence that:

* The demolition of the westernmost section of the original ‘rear’ wing is ‘minor’.
* The changes to the house are minor in nature and will be located in the least sensitive sections of the building, i.e. located out of sight from any public view points.
* Although there will be modest losses of original 1942 fabric, they will not impact on the understanding of the original form of the heritage house, its architectural style or any of the specific elements noted in the Statement of Significance.

1. In her oral evidence Ms Gray noted that the Council’s heritage advisor did not raise any concerns regarding the extent of demolition. In cross examination by the Council, Ms Gray commented that, in summary:

* Conservation is not just about retention of all fabric; it should be related to value.
* The changes will lessen the intactness (of the heritage house) but not heritage value.
* There is a difference between intactness and integrity.
* The changes do not undermine the integrity of the design.

1. In response to the Tribunal’s questions about the demolition of the chimney, Ms Gray commented that the chimney is original but because it is set well back from the main (front) elevations of the heritage house she does not see its demolition as particularly detrimental. On this basis Ms Gray considers the loss of chimney to be acceptable.
2. We are not persuaded by Ms Gray’s evidence.
3. The Statement of Significance identifies that the heritage house is ‘significant to the extent of its original 1942 fabric’. This indicates to us that all of the original fabric of the heritage house that has been retained to date has value in contributing to understanding of the architectural style and interpretation of the building and hence the significance of the heritage place. To us, the intactness of that original fabric does contribute to its value in understanding the original design style and intent.
4. Even though this chimney is not within a principal (eastern) façade of the heritage house, its retention assists in understanding the extent and form of the heritage house when viewed within the property. This much was clear to us from our inspection. The rear chimney provides a delineation of the end of the western wing of the heritage house, in a similar way as the chimney on the western wall of the home office/retreat of the northern wing of the heritage house. In our view, if this area were to be altered as proposed, the retention of the chimney would enable that delineation between the proposed addition and original fabric to be discerned. The demolition of this chimney would thus remove original fabric that provides context to the extent of the significant part of the heritage place.
5. We are of the view that the removal of the chimney would therefore diminish an understanding of the extent and form of the western wing of the heritage house.
6. The application plans also show various changes to windows and doors in the retained original house. The Council takes issue with the proposal to relocate an original window in the north elevation of the original house. Ms Gray recommends this window be retained in its current position. We are satisfied that this matter could be addressed by a permit condition and would not on its own warrant refusal of the application.
7. We also have concerns about the proposal to remove existing glazed doors within the northern external wall of the kitchen and relocated existing windows to that location. The glazed doors provide access to a terrace between the kitchen and the home office/retreat, and the garden area to the north. In response to the Tribunal’s questions, Ms Gray advised that she is not sure if these doors are original and that she has not looked at the details of the doors, but that they more than likely are not original. Given the lack of an assessment of the details of this part of the building, Ms Gray’s comments do not reassure us that these glazed doors are not part of the original fabric of the heritage house.
8. Overall we consider that the extent of demolition of the original fabric of the heritage house would adversely affect the significance of the heritage place.

### Conclusion

1. We consider the combined impacts of the proposed demolition works and proposed buildings and works will have an unacceptable impact on the significance of the heritage place for the reasons explained above.
2. Our findings are made in the context of the relevant ‘test’ under the decision guidelines at clause 65 being that of whether a proposal will produce ‘acceptable’ outcomes, rather than preferable or optimal outcomes.
3. We are not satisfied that this proposal will provide acceptable outcomes in relation to the conservation and enhancement of the significance of the HO146 heritage place.
4. We note that Wonga Road Properties also submits that:

…the exercise of discretion as to whether the proposal represents an acceptable planning outcome requires decision making to take into account broader matters than those just under the Heritage Overlay (see Court of Appeal decision in Boroondara City Council v 1045 Burke Road Pty Ltd & Ors [2015] VSCA 27 per Santamaria J) in considering the appropriateness of the proposal under the Heritage Overlay.[[29]](#footnote-30)

1. In having had regard to the principles of integrated decision-making, as set out in clause 71.02-3, we have had regard to ‘non-heritage’ factors in the State and local planning policy frameworks in reaching our findings.
2. In this regard we note the findings of the Tribunal in *Icon Co (Jessamine Avenue) Land Pty Ltd v Stonnington CC* (Red Dot)[[30]](#footnote-31)

…The ability to consider non-heritage factors when determining applications under the Heritage Overlay identified in the 1045 Burke Road case is not an excuse to downplay or override the purpose of the control in the Heritage Overlay in run-of-the-mill applications. There must be something about the circumstances of the site, the proposal or the strength of the broader policy framework that makes it relevant to give more weight to non-heritage objectives when exercising discretion under the Heritage Overlay.[[31]](#footnote-32)

1. We do not consider there is something about the circumstances of the review site, this proposal, or the PPF as it applies to this application, that justifies prioritising the non-heritage objectives that support increasing housing and housing diversity over the Heritage conservation policy that seeks ‘To ensure the conservation of places of heritage significance’.[[32]](#footnote-33)
2. Nor are we satisfied that the benefits of providing three additional dwellings on the review site outweigh the negative impacts of the siting of the proposed buildings and works on the significance of the heritage place.
3. We note that it is not the proposal to provide additional dwellings on the review site that is the issue with this proposal, but rather the detrimental impacts of the design response of this proposal on the heritage place.

## response to the neighbourhood and landscape character?

1. Various policies and provisions of the planning scheme seek to ensure development responds to its context and neighbourhood character. These include clause 15 (Built environment and heritage), [[33]](#footnote-34) the purpose of the GRZ1 at clause 32.08, and the neighbourhood character objectives and Standard B1 at Clause 55.02-1.
2. These are echoed in the local planning policy framework. The ‘Built Form and Urban Design’ strategic statement at clause 21.06 outlines local expectations to achieve appropriate built form and urban design outcomes. Of particular relevance is Objective 3, which seeks ‘To encourage development that provides and creates high quality urban places’. Supporting strategies include those that seek to ‘Ensure new residential development contributes to achieving the preferred neighbourhood character of the neighbourhood area’, and ‘Require all new development to incorporate the highest standards of urban image, landscape design and building design innovation’.
3. The local ‘Residential Neighbourhood Character Policy’ at clause 22.02 builds on the Built Form and Urban Design statement at clause 21.06, as well as Housing and Residential Land Use statement at clause 21.07 and the Natural Resources statement at clause 21.10. The policy objectives of the Residential Neighbourhood Character Policy include, among others:

* To ensure that all new residential development contributes to the maintenance and enhancement of the canopy vegetation of Maroondah.
* To provide policy guidance to ensure that new development occurs in a manner that contributes to the preferred neighbourhood character of Maroondah.
* To ensure that new dwellings are sited and constructed in a manner that contributes to and enhances the preferred neighbourhood character of Maroondah.[[34]](#footnote-35)

1. The policy includes a range of policy statements regarding general matters, landscaping, and preferred future character, among other things.
2. Under this policy the review site is within Neighbourhood Character Area 1 (Mullum Mullum Creek) character area. As relevant to the circumstances of the review site and issues in dispute, the preferred future character of this area is to be achieved by:

* Ensuring well articulated and site responsive buildings that relate to the streetscape.
* Ensuring building setbacks allow space between dwellings for vegetation.
* Ensuring that driveways or car parking structures do not dominate the front setbacks.
* Encouraging low front fence treatments.
* Encouraging the retention of the tree canopy by actively retaining or replacing established trees.[[35]](#footnote-36)

1. As relevant to matters of neighbourhood character, schedule 1 to the GRZ varies the ‘Side and rear setbacks’ standard B17 at clause 55.04-1 and the ‘Front fence height’ standard B32 at clause 55.06-2.
2. In addition to these neighbourhood character policies and provisions, the SLO4 identifies the review site and surrounding area as an area of ‘Landscape canopy protection’. The ‘Statement of nature and key elements of landscape’ for the SLO4 is informative of the landscape character of this area, as follows:

The combination of canopy trees and steep to undulating topography contribute to major elements of the urban character of Maroondah. Canopy trees in particular soften the impact of buildings in the environment and provide a distinct leafy character to Maroondah.

The continuous nature of the canopy vegetation throughout Maroondah provides a strong character element and is valued by the community. The canopy vegetation is a defining element of the urban character of Maroondah.[[36]](#footnote-37)

1. The key issues raised in relation to neighbourhood character and this proposal are about the development’s presentation to Warrandyte Road.
2. The Council submits that in both a physical and strategic sense the proposal is of a scale that is too large for its context. They say the proposed buildings will be visually obtrusive when viewed from Warrandyte Road, and the proposal fails to provide appropriate ‘breathing space’ around the buildings.
3. Wonga Park Property submits that the proposal is acceptable having regard to built form character considerations, will result in a comfortable fit along Warrandyte Road and responds appropriately to the preferred character aspirations for the area.
4. They submit that in considering the preferred neighbourhood character it is relevant that Neighbourhood Area 1 (Mullum Mullum Creek):

* covers a broad area, where the existing character varies, including in relation to the extent of medium density development and landscape character;
* includes land in the residential hinterland, on local streets and on main roads;
* includes land within both the GRZ and Neighbourhood Residential Zone (**NRZ**) where the strategic context differs and where the majority of the residential land in the precinct is in the NRZ; and
* includes more sensitive locations proximate to the Mullum Mullum Creek and its environs.

1. Wonga Park Properties also submits that the purposes of the GRZ seek to respect rather than replicate existing character, and that neighbourhood character needs to be assessed in the context of broader urban consolidation and housing growth considerations where change is anticipated and encouraged in the GRZ.
2. Wonga Park Properties argues that the design proposal

…successfully seeks to retain and conserve the heritage dwelling, protect and retain a number of established trees onsite, respond to the slope of the land and seeks to introduce new dwellings along the Warrandyte Road streetscape that will result in a comfortable fit in the neighbourhood responding positively to the strategic location of the site.[[37]](#footnote-38)

1. It says the two storey scale of the proposal is modest in the context of the GRZ1, which contemplates building heights of three storeys, with the maximum heights for the proposed dwellings being less than what is contemplated in the NRZ, let alone the GRZ. It also argues that the proposal is at a scale that is consistent with other development in the area.[[38]](#footnote-39)
2. Wonga Park Property submit that from a character perspective, it is relevant that no permit trigger arises for the proposed buildings and works under the SLO4.
3. Mr Iles planning evidence in response to the policy statements at clause 22.02-3 is that:

* The proposed development would make a positive contribution to the preferred neighbourhood character for Area 1……
* The proposed development responds well to site constraints, including its irregular shape, difference in levels along each frontage, existing significant vegetation, and heritage values. This is demonstrated by the retention and protection of significant vegetation, an appropriate response to the heritage values of the site, compliance with Clause 55 standards and objectives, and absence of any unreasonable off-site amenity impacts such as overshadowing, or visual bulk.
* Given the extent of vegetation being retained on the site, and new planting proposed, the proposed development will ensure that it contributes to the maintenance and enhancement of canopy vegetation.

1. Mr Iles considers the proposed built form represents an appropriate and respectful response to the site constraints, adjoining properties, and character of the area.
2. Notwithstanding Mr Iles evidence, we find that the proposed dwellings would not provide an acceptable response to the neighbourhood and landscape character.
3. Having regard to the broad nature of the Neighbourhood Area 1 and its varied context, we have placed greater emphasis on the character of the site’s immediate context and Warrandyte Road streetscape, rather than the broader character area and those areas closer to the Mullum Mullum Creek.
4. Although Warrandyte Road is a ‘main road’ we are not so persuaded by the submissions for Wonga Park Property that it provides a “robust environment”. Our observations are that Warrandyte Road has a distinct character of vegetated frontages to properties, including a mix of hedges, shrubs and canopy trees of varying sizes, rather than robust building forms. While there are individual properties with more open frontages with limited landscaping, the overall sense of the streetscape is of a vegetated interface between properties and the public realm (footpath and road). This vegetated character is unsurprising in the context of the SLO4 that applies to the review site and surrounding area.
5. We are not satisfied that the proposal provides an acceptable design response to this vegetated character along this portion of the Warrandyte Road streetscape.
6. We are of the view that the proposal results in too much building form and bulk within the streetscape. This arises from a combination of the siting of the proposed dwellings along the Warrandyte Road frontage, the ‘blocky’, rectilinear form of the proposed dwellings with minimal variations in the setbacks of the upper storeys from the lower storeys below, the elevated level of the review site relative to the road and surrounding properties.
7. Although the two-storey building height is less than the maximum building height achievable under the GRZ1, and consistent with the building heights of other development in the area, the circumstances of the review site are different to most of the other properties due to the review site’s considerable elevation relative to surrounding land. The proposed dwellings will appear taller than Mr Nicholas’s two storey dwelling on the adjoining property to the north, and substantially taller than the dwellings on the western side of Warrandyte Road, where the land falls away from the road level.
8. The landscape plan prepared for the proposal by Mr Patrick includes hedge planting and several new trees, some with heights of 8-10m, within the front setbacks of the proposed dwellings. The new planting would be in addition to the proposal to retain some of the existing trees in the southern portion of the Warrandyte Road frontage of the site. We accept that this landscaping would contribute to the vegetated character of the Warrandyte Road streetscape. However, we are of the view that the proposal is heavily reliant on the landscaping to off-set the impact of the building form within the Warrandyte Road streetscape, rather than providing an acceptable building form.
9. The issue of the siting and design of the proposed dwellings is compounded by the constrained frontage setback areas of the proposed dwellings. This is due to the combination of the building setbacks, retaining walls, stairs, landings, and decking within the front setback areas of the proposed dwellings. It is also impacted by squeezing the dwellings between this boundary and the heritage house to the rear of the proposed dwellings. This indicates to us that the proposal seeks too much development on the review site.
10. Overall, we consider the proposed dwellings will appear too intensive and over developed within the building form and streetscape character of Warrandyte Road.
11. For these reasons we consider that the proposal does not provide an appropriate response to the preferred neighbourhood character for the Neighbourhood Area 1 (Mullum Mullum Creek) area.

## Are there any other issues?

1. As we have found that the application should be refused for reasons relating to heritage and neighbourhood character impact, it is not necessary for us to make findings on the other issues raised in response to this proposal. However, for the assistance of the parties we make the following comments on some matters raised in submissions.

### Overlooking and building bulk impacts on the adjoining properties

1. We are satisfied that any impact of the visual bulk of the proposed new dwellings as viewed from Mr Nicholas’s property to the north would have been acceptable.
2. As viewed from Mr Nicholas’s property unit 1 would appear as a two storey building, with the northern side elevation articulated through variations in the building setbacks between the lower and upper storeys (to both the north and east), and a variety of building materials and finishes. Although part of the building setback from the northern side boundary with Mr Nicholas’s property would be less than the minimum required by the local variation to standard B17 at clause 55.04-1, that part of the building would be adjacent to the front proportion of Mr Nicholas’s property and his driveway. The reduced building setback is not adjacent to the more sensitive secluded private open space area along the southern side of Mr Nicholas’s property.

### Will any impacts on the significant trees be acceptable?

1. Although the arboricultural evidence of Mr Reynolds is that the impact of the proposed buildings and works on the three trees of heritage significance (trees 14, 16 and 17) is either acceptable or able to be managed, we have concerns that the siting and design of the proposal has not responded to the structural root zones and tree protection zones of these trees.
2. In this regard we note that the structural root zones and tree protection zones of these trees are variously encroached by the proposed driveway and carport for the heritage house, the proposed boundary fencing around proposed unit 3, and the building footprint of unit 3 and its associated decking.
3. We are also concerned that, while these trees are to be retained within the boundary of the heritage house property, portions of the tree protection zones of all three of these trees and part of the structural root zone of tree 17 fall within the envelope of the proposed unit 3 lot. We are concerned that this would unnecessarily complicate the ongoing management and protection of these significant trees, which will require the good management and cooperation of two property owners and occupiers.
4. We are of the view that any future proposal should seek to avoid such outcomes.

## Conclusion

1. We have found that despite the strategic support for the proposed increase in housing and housing diversity, the proposal would not result in an acceptable planning outcome because of the impacts on the heritage values of the heritage place and the failure to be sufficiently respectful of the neighbourhood character. Our reasons have set out why we have made such findings.
2. We therefore conclude that a permit should not be granted and have framed our order accordingly.

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| --- | --- | --- |
| Ian Potts  **Senior Member** |  | Sarah McDonald  **Member** |

1. Source: Aerial photograph from item 4 of the Council’s bundle of materials. [↑](#footnote-ref-2)
2. 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. [↑](#footnote-ref-3)
3. Section 79 of the *Planning and Environment Act 1987*. [↑](#footnote-ref-4)
4. Source: Plans prepared by SGKS Arch, plan TP02, Revision H, dated August 5 2021. [↑](#footnote-ref-5)
5. We explain the reasons for this uncertainty later. [↑](#footnote-ref-6)
6. Source: Plans prepared by SGKS Arch, plan TP04, Revision H, dated August 5 2021. [↑](#footnote-ref-7)
7. For example, as sought by clauses 11.01-1S, 11.01-1R, 16.01-1S, 16.01-1R, and 16.01-2S. [↑](#footnote-ref-8)
8. For example, as sought be clauses 16.01-2S and 21.07. [↑](#footnote-ref-9)
9. Clause 32.08. [↑](#footnote-ref-10)
10. For example, as sought by clauses 15.01-1S (Urban design), 15.01-2S (Building design) and 15.01-5S (Neighbourhood character). [↑](#footnote-ref-11)
11. Clause 15.03-1S. [↑](#footnote-ref-12)
12. Kate Gray’s statement of heritage evidence, September 2021, [4] to [10]. [↑](#footnote-ref-13)
13. The Tree numbers being those referenced in the Statement of Significance HO146 plan. [↑](#footnote-ref-14)
14. Clause 43.01. [↑](#footnote-ref-15)
15. Clause 43.01-8. [↑](#footnote-ref-16)
16. Or if no MPS is contained in the planning scheme, the Municipal Strategic Statement and Local Planning Policy Framework: see clauses 71.01, 23.01 and 23.02 of the planning scheme. [↑](#footnote-ref-17)
17. Clause 21.04-2; Objective 2. [↑](#footnote-ref-18)
18. Ibid. [↑](#footnote-ref-19)
19. At clause 72.04 and clause 1.0 of the schedule to clause 72.04. [↑](#footnote-ref-20)
20. Source: Statement of Significance HO146, 3-5 Wonga Road, Ringwood North; Map 1. The extent of the 1942 building form is identified within the pink border. [↑](#footnote-ref-21)
21. Memorandum from Council’s heritage advisor dated 5 October 2020. [↑](#footnote-ref-22)
22. Kate Gray’s statement of heritage evidence, September 2021, [107]. [↑](#footnote-ref-23)
23. Statement of Significance HO146, page 2 ‘Why is it significant?’. [↑](#footnote-ref-24)
24. The requirement for a permit for a fence under clause 43.01-1 of the HO applies if the fence is visible from a street (other than a lane) or public park. Wonga Park Properties rely on the evidence of Ms Gray and their planning witness Damian Iles that the internal fencing will not be visible from a street. [↑](#footnote-ref-25)
25. Ms Gray’s statement of heritage evidence, [67]. [↑](#footnote-ref-26)
26. The plans show the balustrade to extend along only the western side of the driveway and not the eastern side. [↑](#footnote-ref-27)
27. May 1942. [↑](#footnote-ref-28)
28. Ms Gray’s Statement of heritage evidence, September 2021, 23. [↑](#footnote-ref-29)
29. Written submission for the Wonga Road Properties, [13]. [↑](#footnote-ref-30)
30. [2018] VCAT 1134. [↑](#footnote-ref-31)
31. Ibid; at [72]. [↑](#footnote-ref-32)
32. Clause 15.03-1S. [↑](#footnote-ref-33)
33. For example, at clauses 15.01-1S (Urban design), 15.01-2S (Building design) and 15.01-5S (Neighbourhood character). [↑](#footnote-ref-34)
34. Clause 22.02-2. [↑](#footnote-ref-35)
35. Clause 22.02-3. [↑](#footnote-ref-36)
36. Clause 1.0 of Schedule 4 to the SLO. [↑](#footnote-ref-37)
37. Written submission for Wonga Park Properties, [72]. [↑](#footnote-ref-38)
38. For example, at 154, 156, 158 and 160 Warrandyte Road. [↑](#footnote-ref-39)