VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1836/2018  Permit Application no. TPA/48692 |
| CATCHWORDS | |
| Section 80 of the Planning & Environment Act 1987; Monash Planning Scheme; General Residential Zone 2; Conditions 1(a-g) 1(k) and 1(m), Front Setback; Storage. | |

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| APPLICANT | Charis Lu |
| Responsible Authority | Monash City Council |
| RESPONDENT | Robca Nominees Pty Ltd |
| SUBJECT LAND | 14 Woonah Street CHADSTONE VIC |
| WHERE HELD | Melbourne |
| BEFORE | Alison Slattery, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 25 March 2019 |
| DATE OF ORDER | 23 May 2019 |
| CITATION | Lu v Monash CC [2019] VCAT 781 |

# Order

### Permit amended

1. In application P1836/2018 the decision of the Responsible Authority is varied.
2. Planning permit TPA/48692 is amended and an amended permit is directed to be issued for the land at 14 Woonah Street, Chadstone. The permit is amended as follows.
3. Conditions in the permit are amended as follows:
   1. Conditions 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(k) and 1(m) are deleted.
   2. Conditions in the permit are re-lettered accordingly.

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| **Alison Slattery**  **Member** |  |  |



# Appearances

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| |  |  | | --- | --- | | For Review Applicant | Mr Mark Waldon, Town Planner of St Wise | | For Responsible Authority  For Respondent | Mr David De Giovanni, Town Planner of DD  Planning  Mr R Gunsberger | |  |

# Information

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| Description of proposal | Construction of three double storey dwellings down the length of the lot with vehicular access taken down one side of the lot to all three dwellings.  This is an application against the conditions requiring the front setback increased, changes to the garage and the relocation of the garden shed. |
| Nature of proceeding | Application under Section 80 of the *Planning and Environment Act 1987* – to review the decision to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 2 (GRZ2) |
| Permit requirements | Clause 32.08-6- construction of more than one dwelling on a lot. |
| Relevant scheme policies and provisions | 9, 11, 15.01, 15.02, 16.01, 18, 21.01, 21.04, 21.08, 22.01, 52.06, 55 and 65 |
| Land description | The review site is located on the southern side of Woonah Street, around 30 metres to the west of the intersection with Vision Street.  The site is rectilinear but not rectangular in shape with a frontage of 17.23 metres to Woonah Street and a maximum depth of 56 metres for a total area of 938 square metres. The land is presently occupied by a single storey rendered dwelling, with vehicular access taken from the eastern portion of the frontage. The site includes a fall from the rear to the front of the site of around 2 metres. The site contains vegetation in line with a garden setting, including some trees.  Surrounding sites generally include single and double storey dwellings of varied ages with multi unit development evident as the emerging infill (as seen to the west at 12 Woonah including three double storey dwellings). Vegetation in the area is varied  The area has good access to public transport with bus and train access within close proximity. |
| Tribunal inspection | The Tribunal conducted an unaccompanied site inspection of the area after the hearing. |

# Reasons[[1]](#footnote-1)

## What is this proceeding about?

1. Monash City Council issued a permit to develop the land at 14 Woonah Street, Chadstone for the construction of three double storey dwellings on the lot.
2. Conditions 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(k) and 1(m) were sought to be reviewed by the permit applicant.
3. The conditions in contention include:

*1a Foyer and staircase wall of dwelling 1 set back a further 2 m and master bedroom 1 wall of dwelling 1 further setback 1 m to achieve a greater front setback to the satisfaction of the Responsible Authority.*

*1b The front fence to the secluded private open-space of dwelling 1 re-aligned to the front foyer wall.*

*1c The southern boundary of the secluded private open-space of dwelling 1 to be moved south to achieve the required 35 m² to the satisfaction of the Responsible Authority.*

*1d Convert the double garage of dwelling 1 to a single garage to allow for the greater front setback reducing the dwelling to 2 bedrooms to the satisfaction of the Responsible Authority.*

*1e The north wall of bedroom 4 on the first floor of dwelling 1 located further south by 1.5 m to the satisfaction of the Responsible Authority.*

*1f First floor north wall of the stairwell and storage area of dwelling 1 to be set back a further 2 m to the satisfaction of the Responsible Authority.*

*1g North wall of first floor master bedroom 2 of dwelling 1 set back a further 1 m to the satisfaction of the Responsible Authority.*

*1k Driveway to be re-aligned to the garage of dwelling 1 to reflect the garage modifications including providing a larger landscaping area between the garage and dwelling 1 to the satisfaction of the Responsible Authority.*

*1m The shed for dwelling 3 located outside the 35 m² of secluded private open-space*

1. Mr R Gunsberger, a neighbour and a party to the review, held that the conditions were reasonable and should be retained.
2. The review grounds regarding the conditions relate to discrete matters:
   * 1. built form in the streetscape and garage changes;
     2. location of storage
3. The key issues for determination are:
   1. Are the conditions relating to setting back built form to the streetscape justified?
   2. Is the condition relating to storage location justified?
4. The Tribunal must decide whether the conditions should remain, be altered, or be removed. Having considered all submissions with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to vary Council’s decision and delete the reviewed conditions. My reasons follow.

**Are the conditions relating to setting back built form to the streetscape justified?**

1. Conditions 1(a) through to 1(k) (as reviewed) require the development to be set further back from the street between one and two metres resulting in reduction in the extent of accommodation to the frontage of the site and reduction in the number of bedrooms, changes to open space fencing resulting from the accommodation changes and a change in the garage of dwelling 1 from double to single garage (in order to allow increased setbacks and in response to the reduction of number of bedrooms from dwelling 1 from 3 to 2).
2. I do not consider it is appropriate to require these changes. I am satisfied that the proposal responds well to Clause 22.01 as required within the purposes of the zone and the decision guidelines of Clause 55 ResCode Standard B6 Front Setback. I am not persuaded that the street setback character to Woonah Street is sufficiently consistent to require such changes.
3. The 5.6 metres front setback exceeds the average of the two adjoining properties (7.631 metres + 3.551 metres = 11.182 metres of which the average is 5.591 metres). Whilst the schedule to the zone amends Standard B6 of ResCode and seeks a setback of 7.6 metres, this is not a mandatory requirement, and should not be assessed thus. An assessment of Standard B6 must be conducted in its entirety. Any new development must meet the objective of Standard B6 which seeks “*to ensure that the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.”* In assessing whether or not this objective is achieved, the decision guidelines are apposite. They include: *Any relevant neighbourhood character objective, policy or statement set out in this scheme; The design response; Whether a different setback would be more appropriate taking into account the prevailing setbacks of existing buildings on nearby lots; The visual impact of the building when viewed from the street and from adjoining properties; The value of retaining vegetation within the front setback.*
4. I am satisfied that the development meets the objective of Standard B6 and say this for the following reasons:
   1. As noted previously, the front setback represents an average of the setbacks at 1A Vision Street and 12 Woonah Street. I am satisfied that this will provide a stepped setback between these two dwellings, such that the development will provide graduation between the two adjoining front setbacks. Indeed I find setting the development back 7.6 metres would exacerbate the perception of the 3.5 metre setback to 1A Vision Street, a perception that is not in keeping with the wider character of reasonably well set back dwelling frontages.
   2. I am satisfied that the proposed dwelling 1 facing the street provides good stepping within its own façade, with the master bedroom set back from the porch and the kitchen area set back a further 7.672 metres from the frontage of the dwelling. This, in conjunction with the generous side setbacks (between 4.5 and 5 metres at ground level) will serve to minimise the appearance of bulk of dwelling 1 in line with the expectations for this area as enshrined in Clause 22.01 of the Monash Planning Scheme.
   3. At the first floor setbacks are similarly generous to adjoining properties and also recessive to the ground floor. Side setbacks of between 5.2 and 5.7 metres complement the front setback of 6.315 metres, ensuring the first floor is not a dominant element on the site or in the streetscape.
   4. The maximum height of dwelling 1 is 7.414 metres and is in line with similar development typology in the streetscape, most notably directly to the west at 12 Woonah Street.
   5. I am satisfied that the design has taken into account the prevailing setbacks of buildings on nearby lots by reflecting the setbacks of adjoining properties, including that at 1A Vision Street, and including those in the wider area where graduated approaches to lesser setbacks (particularly to corner lots) have been employed.
   6. I find that the 2 metre reduction in the front setback (having regard to the schedule to the zone) is not excessive.
   7. I am persuaded that the *perception* of the frontage setback is reduced through the angled nature of the road to dwellings, where there is an inconsistency of response to the streetscape. By this I mean that the frontage of the dwelling at 1A Vision Street is parallel to the street whereas dwellings at 12 and 14 Woonah are set at an angle to the street.
   8. Good landscaping opportunities are available throughout the site, due to reasonable side and rear setbacks, in order to appropriately screen the development. This ensures that the development responds sensitively to each residential interface and additionally responds to the streetscape, where policy expectations are for dwellings to be located within a garden setting. I am satisfied that the unimpeded frontage of the site being over 60 square metres in area, can accommodate the planting of large canopy trees and lower order shrubs in line with that expected in Clause 22.01. in addition to this frontage area the secluded private open space of dwelling 1 will provide opportunity for large canopy tree planting that will be readily visible in te streetscape.
5. I am satisfied that the proposed development responds well to the character of Woonah Street without need of the changes mooted in the reviewed conditions 1(a) to 1(k). For these reasons, I am satisfied that conditions 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), and 1(k) are not required. I order that these conditions are deleted.

**is the condition relating to storage location justified?**

1. Condition 1(m) required relocation of the storage shed from the primary open space area in the following manner:

*The shed for dwelling 3 located outside the 35 m² of secluded private open-space.*

1. I agree with Councils position that the 35 square metre primary open space area would be more usable if the shed was not located within it. However, I think the impact of the shed within this location is minor. I do not accept the argument that the location of the shed impedes the appropriate landscaping of the site. I am satisfied that the landscaping of the site to the rear in accordance with Garden City policy imperatives can be undertake with the shed in its current location. To this end, I order condition 1(m) will be deleted.

### Conclusion

1. For the reasons given above, the decision of the Responsible Authority is varied. A permit is granted subject to conditions in the Planning Permit dated 21 August 2018 but with Conditions 1(a), 1(b), 1(c), 1(d), 1(e), 1(f), 1(g), 1(k) and 1(m) deleted.

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| Alison Slattery  **Member** |

1. 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-1)