VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P2460/2019Permit Application no. TPA/50286 |
| CATCHWORDS |
| Monash Planning Scheme; built form arising from a side-by-side development; achievement of a garden city character. |
| APPLICANT | Johnson Chen |
| responsible authority | Monash City Council |
| SUBJECT LAND | 25 Walker Road, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Michael Deidun, Member |
| HEARING TYPE | Hearing  |
| DATE OF ORDER | 21 May 2020 |
| CITATION | Chen v Monash CC [2020] VCAT 576 |

# Order

1. The decision of the responsible authority is varied.
2. The Tribunal directs that planning permit TPA/50286 must contain the conditions set out in planning permit TPA/50286 issued by the responsible authority on 11 November 2019 with the following modifications:
	1. Conditions 1(c), (d) and (e) are deleted.
	2. Condition 1(a) is amended to read:

A minimum 1.5 metre wide gap be created between the ground floors of both dwellings, by reducing the width of the front ground floor habitable room in unit 1, with the subsequent internal rearrangement to the satisfaction of the Responsible Authority.

* 1. Conditions in the planning permit are renumbered accordingly.
1. The responsible authority is directed to issue a modified planning permit in accordance with this order.

|  |  |  |
| --- | --- | --- |
| **Michael Deidun** |  |  |
| **Member** |  |  |

# Information

|  |  |
| --- | --- |
| Description of proposal | Construction of two double storey dwellings in a side-by-side arrangement |
| Nature of proceeding | Application under section 80 of the *Planning and Environment Act 1987* – to review the conditions contained in the permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone 3Vegetation Protection Overlay 1 |
| Permit requirements | Clause 32.08-6 to construct two or more dwellings on a lot on land within the General Residential Zone |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21, 22.01, 32.08, 42.02, 52.06, 55, 65 and 71.02. |
| Land description | The land is a rectangular allotment with a frontage to Walker Road of 21.64 metres, a depth of 30.48 metres, and an overall area of 659 square metres. The land presently supports a single storey detached dwelling. |
| Tribunal inspection | The Tribunal inspected the site and surrounding area on 8 May 2020. |

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

## What is this proceeding about?

1. Johnson Chen (the ‘Applicant’) seeks to review the decision of the Monash City Council (the ‘Council’) to impose certain conditions on a planning permit for the construction of two dwellings on land at 25 Walker Road, Mt Waverley (the ‘review site’). The conditions under review are parts of an amended plans condition, where the Council seeks certain changes to the layout and design of the approved development.
2. The issue for determination is whether each of the conditions are required in order to achieve an acceptable or reasonable outcome on the land.
3. The Tribunal must decide whether the conditions as sought by Council, or a variation thereof, are appropriate. Having considered all submissions presented, and with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to support some of the conditions sought by Council, but also support the deletion of some of the conditions. My reasons follow, focussing on each of the conditions in dispute.

## relevant policy context

1. The review site falls within a part of the Monash City Council which is not within walking distance of an activity centre or the Principal Public Transport Network, but is in a suburban location accessible to a range of services and facilities. At the same time, the review site is not in a location where any overlays apply, and so is not identified as being located in a neighbourhood with any particular constraints. As such, this is a location where State policies relating to urban consolidation and respect for neighbourhood character would both apply in a fairly even balance.
2. Clause 21.04 of the Monash Planning Scheme contains the Council’s policies relating to Residential Development. This policy creates a hierarchy of locations in which different rates of housing change is to occur. This approach is set out in the following extract from the overview at Clause 21.04-1.

**Residential development framework**

Monash City Council adopted the Monash Housing Strategy 2014 to plan proactively and strategically for the future housing needs of its residents having regard to issues such as neighbourhood character, environmentally sustainable development, accessibility, diversity and affordability. The residential development framework within the strategy provides greater certainty for the community and the development industry regarding the location and type of future residential development. The residential framework plan comprises eight categories, classified according to their development potential, as follows.

Areas with future development potential:

* Category 1: Activity and neighbourhood centres
* Category 2: Accessible areas
* Category 3: Monash national employment cluster
* Category 4: Boulevards

Areas with limited development potential:

* Category 5: Heritage precincts
* Category 6: Dandenong Creek escarpment
* Category 7: Creek environs

Areas suitable for incremental change:

* Category 8: Garden city suburbs

The residential development framework translates the overall aims of the housing strategy into a location plan (Map 3) that broadly identifies the preferred location for different types of housing.

1. The review site is identified as being located within a Garden City Suburb. It is therefore an area identified for incremental change. In addition to this guidance, the strategies at Clause 21.04-3 contain the following.
* Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within Clause 22.01.
* Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.
* Maintain the predominantly single detached dwelling character in suburban areas by promoting low rise development as the preferred character for the majority of the residential areas within the city.
1. According to the Council’s submission, the key policy that guides decision making in this proceeding is the Residential Development and Character Policy at Clause 22.01. Indeed, it is the only policy referenced in the Council’s submission. This policy contains the following objectives.
* To build upon the important contribution that landscaping makes to the garden city character of Monash.
* To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.
1. These objectives lead to the following policies.
* Ensure development is consistent with the preferred future character statement identified in Clause 22.01-4.
* Respect the character of surrounding development, including the maintenance of consistent setbacks.
* Minimise the impact of the scale and massing of development.
* Respect the height, scale and massing of existing dwellings in the neighbourhood.
* Ensure taller buildings incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and the neighbourhood.
* Incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey.
* Retain human scale, and by the inclusion ofsignificant breaks and recessesin building massing, avoid large block like structures dominating the streetscape.
* Ensure buildings respect the built form, rhythm and proportions of existing dwellings in the neighbourhood.
* Discourage reproduction or mock-historic building styles incorporating superficial detailing whilst promoting contemporary designs of the present era.
1. The review site is located within the Garden City Suburbs Northern Area, which is provided with the following preferred future character statement.

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and non existent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

1. The final piece of key guidance from the Monash Planning Scheme comes from Schedule 3 to the General Residential Zone (GRZ3). This Schedule contains the following Neighbourhood Character Objectives.

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

To support new development that locates garages and carports behind the front walls of buildings.

1. And the following decision guidelines.
* Whether the development provides an appropriate transition to built form on adjoining sites.
* The robustness of proposed materials and finishes.
* The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
* The location and number of vehicle crossovers.
* The impact of the development on nature strips and street trees.
* The location, quantity and species of vegetation provided
1. The Schedule to the zone is used to vary many of the available standards to Clause 55. Relevant to the dispute that is before me, the Schedule varies the front setback standard to 7.6 metres, and does not vary the walls on boundary standard. Variations are also made to the site coverage, permeability and landscaping standards, to provide for the achievement of a greater contribution of garden space to the neighbourhood character.
2. This matrix of policies and provisions guides the analysis that follows.

## Condition 1(a)

1. Condition 1(a) seeks the following.

The garage for dwelling 1 to be setback 1m from the eastern boundary with the subsequent internal rearrangement to the satisfaction of the Responsible Authority.

1. In its submissions, the Council acknowledges that this condition needs to be amended, to correct the reference to the eastern boundary, to instead refer to the western boundary.
2. The Council submits that buildings in this neighbourhood are not typically constructed boundary to boundary, and as such the proposed dwellings on the review site are inconsistent with the siting pattern in this neighbourhood.
3. I am persuaded by the Council that the boundary to boundary nature of the development proposed for the review site is in contrast with the character of the surrounding area. I make this finding for the following reasons. The review site forms one of a row of properties on the northern side of Walker Road that have a generous frontage of 21.64 metres. These lots are much wider than many others in this neighbourhood, including those on the southern side of Walker Road, and those on the southern side of Pascall Street. While all lots in this neighbourhood rarely have buildings constructed boundary to boundary, the breaking of this common characteristic on one of the wider allotments, would introduce a very broad building form that would stand on contrast to the established rhythm and spacing of dwellings.
4. The proposed design response will be in contrast with one of the policy objectives from Clause 22.01-3:

Respect the character of surrounding development, including the maintenance of consistent setbacks.

1. The design response is also in contrast to the following component of the preferred future character statement.

Setbacks will be generous and consistent within individual streets.

1. Such an outcome could also stand in contrast to one of the objectives of GRZ3:

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

1. For these reasons I agree with the Council’s submissions that a break in the boundary to boundary form is appropriate. The Applicant does not disagree, but rather submits that a mid-block break between the two side-by-side dwellings is another alternative which would achieve a similar outcome. I agree with this submission, as the character ‘offense’ here is caused by the width of the building form, not the presence of garages built to boundaries, which is not uncommon in this neighbourhood. Further, a break between the two dwellings will provide a similar visual effect to the streetscape as a setback adjacent to the one of the existing side boundaries.
2. A 2.9 metre wide gap is already proposed between the dwellings at first floor. While the Applicant advocates for a 1.0 metre gap to be provided between the two dwellings at ground floor, it is appropriate that the gap be widened to 1.5 metres. This will provide a more meaningful and noticeable break in the building form, which is more consistent in width with the existing pattern of side boundary setbacks, while maintaining a usable sitting room at the front of unit 1, with an internal width of 4.3 metres.
3. I will direct that Condition 1(a) be amended accordingly.

## Condition 1(b)

1. Condition 1(b) seeks the following change to the plans:

The footpath leading to the porches for both dwellings to be deleted

1. The Applicant submits that the reduction in hard paving and increase in permeability sought by this permit condition is not appropriate as:
	1. A separate footpath entry from the driveway is preferred for safety reasons;
	2. A separate footpath entry provides for an improved sense of address;
	3. The proposal already exceeds the required permeability, by providing 41% as compared to the Standard of 30%; and,
	4. The front setback can already accommodate planting including canopy trees.
2. The Council’s garden city character objectives are an existing policy position that carries significant weight when balanced against competing objectives, given it has a central focus in many parts of the local planning policy framework. In a proposal such as this, this policy position encourages the review site to present to the public realm with a significant garden presentation. All reasonable efforts should be made to reduce the extent of hard paving, and maximise the amount of garden space that is visible to the public realm.
3. In this proceeding, the weighting provided to the garden city character policies outweighs the other considerations identified by the Applicant. In particular, given that the driveways each serve a single dwelling, and as each proposed dwelling has a front door that faces the street, I do not regard the important considerations of safety or sense of address as being unreasonably impacted by the removal of the separate footpaths. Both of these objectives can still be achieved through a shared use of the driveway to each garage by both pedestrians and vehicles. Further, while overall permeability is reasonable, and there are existing opportunities for a landscaped garden to be achieved, the policy basis set out above justifies a further reduction in the extent of hard paving within the front setback.
4. For these reasons, I support the retention of Condition 1(b) in its existing format.

## Condition 1(c)

1. Condition 1(c) seeks the following:

The Georgian elements to be deleted between the upper storey and the lower storey

1. The Council submits that the Georgian style architecture of the two proposed dwellings is inconsistent with the existing neighbourhood character, which they say is typically modest and suburban in form. The Council’s position is supported by the following policy from Clause 22.01-3.
* Discourage reproduction or mock-historic building styles incorporating superficial detailing whilst promoting contemporary designs of the present era.
1. The concern I have with the Council’s position is that while its submission opposes the Georgian style architecture of both dwellings, Condition 1(c) only seeks the detailing between the upper and lower storeys to be deleted. This would still leave significant amounts of Georgian detailing in other parts of the front façade.
2. While most dwellings in this neighbourhood do have a more traditional suburban style of architecture, there already exists in this neighbourhood a number of dwellings with elements of a Georgian style. These include two dwellings that are relatively close to the review site, at 35 Walker Road, and 19 Leeds Road respectively. The Applicant’s submission also identifies other examples slightly further afield.
3. Having regard to the existing examples of mock Georgian style architecture in this immediate area, I am not persuaded that the proposal would be in contrast to the existing neighbourhood character. Further, the fact that the permit condition does not require all of the mock Georgian elements to be removed from the front façade, means that it cannot achieve the aim now stated by Council in its submission. For these reasons, I cannot support the permit condition that is drafted by Council. I also consider that as this is a residential neighbourhood that does not have recognised heritage buildings, that the policy desire to avoid mock-historic building styles is not as high an imperative in this neighbourhood, as it would be in other locations, noting that this is a policy position that applies across the municipality as a whole. For these reasons, I will require the deletion of Condition 1(c).

## Conditions 1(d) and 1(e)

1. Conditions 1(d) and 1(e) seeks the following changes.

d) The upper storey WIR robe, Master Bedroom 2 and Ensuite wall along the southern elevation of Dwelling 1 be setback an additional 600mm

e) The southern façade of the Master Bedroom wall for Dwelling 2 be setback a minimum of 9m from the front boundary and the WIR and Ensuite wall be setback a minimum of 9.6m from the front boundary to the satisfaction of the Responsible Authority

1. The Council submits that these permit conditions are appropriate as the proposed dwellings will result in a bulky upper storey presentation to the street, and overall a development that will be too dominant in the streetscape. It argues that the existing design response would fail to achieve the following policies from Clause 22.01-3.
* Minimise the impact of the scale and massing of development.
* Respect the height, scale and massing of existing dwellings in the neighbourhood.
1. The Council’s solution, as called for in the contested conditions, is to increase the first floor setbacks on both dwellings from the front boundary, so as to increase the setback between the ground and first floors, and reduce the visual bulk presented by each of the respective first floors.
2. I am not persuaded that these increased setbacks are required in order to achieve the policies set out by Council. This is a neighbourhood that one day would have had a consistent single storey character, but that has already been eroded by a mixture of single replacement dwellings and mutli-dwelling development. Today, this neighbourhood has a mixture of single and double storey dwellings, with many double storey dwellings occurring with minimal levels of articulation between the ground and first floors.
3. The proposed dwellings for the review site already provide an appropriate level of articulation for the proposed upper levels, through the following design techniques:
	1. The provision of first floor elements for each dwelling that are more narrow than their respective ground floors, that is with greater side boundary setbacks. As such, the respective first floors of each dwelling appear as a recessive element.
	2. Setbacks from the front boundaries that are varied, providing an appropriate level of articulation to the first floor façade as visible from the streetscape.
	3. Pitched roofs to each of the first floors, with a variety in the hipped roof forms, so as to provide a lightweight cap to the two dwellings.
	4. Further articulation through the placement of windows, the use of different window designs and widths, and the use of Juliet balconies to each of the first floor windows.
4. While setting back each of the first floors further from the street would provide a further level of articulation, in my view this is not necessary in this neighbourhood, in order to achieve the outcomes sought by the Monash Planning Scheme. I form this view having regard to the existing character which I have described above, and that the preferred future character statement for this Garden City Suburbs Northern Area does not seek upper levels of buildings to be further setback. I also form this view having regard to the manner in which the front setback standard is varied under the GRZ3, to 7.6 metres. The front setbacks to each of the proposed first floors exceeds this standard.
5. For these reasons I will require the deletion of Conditions 1(d) and 1(e).

## Conclusion

1. For the reasons given above, the decision of the responsible authority is varied, and some of the contested conditions are directed to either be deleted or amended.

|  |  |  |
| --- | --- | --- |
| **Michael Deidun** |  |  |
| **Member** |  |  |

1. The submissions 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)