

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1293/2018
PERMIT APPLICATION NO. TPA/47967

CATCHWORDS

Section 77 of the Planning & Environment Act 1987; Monash Planning Scheme;
Neighbourhood character (NRZ4)

APPLICANT	Jitesh Singh
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	32 Olinda Street, Glen Waverley
WHERE HELD	Melbourne
BEFORE	Tracy Watson, Member
HEARING TYPE	Hearing
DATE OF HEARING	5 December 2018
DATE OF ORDER	15 January 2019
CITATION	Singh v Monash CC [2019] VCAT 60

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Archsign
 - Drawing numbers: TP1 to TP4, all revision B
 - Dated: March 2018
- 2 The decision of the Responsible Authority is set aside.



- 3 In permit application TPA/47967 a permit is granted and directed to be issued for the land at 32 Olinda Street, Glen Waverley in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
- Construction of two dwellings on a lot, and tree removal.

Tracy Watson
Member

APPEARANCES

For Applicant	Daniel Bowden, town planner
For Responsible Authority	David De Giovanni, town planner

INFORMATION

Description of Proposal	It is proposed to construct two, attached double storey dwellings on the subject site, with two basements.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Zone and Overlay	Clause 32.09 – Neighbourhood Residential Zone, Schedule 4 (NRZ4). Clause 42.02 – Vegetation Protection Overlay, Schedule 1 (VPO1).
Permit Requirements	Clause 32.09-6 – To construct two or more dwellings on a lot. Clause 42.02-2 – To remove one tree.
Relevant Scheme, policies and provisions	Includes Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.05, 32.09, 42.02, 52.06, 55 and 65.
Land Description	The subject site is an irregular-shaped allotment with a frontage of 27.4 metres, a maximum depth of 35.63 metres and a site area of 724m ² . The subject site is currently developed with a single dwelling, and is located in an established residential area.
Tribunal Inspection	31 December 2018

REASONS¹

What is this proceeding about?

- 1 The Monash City Council issued a Notice of Decision to Refuse to Grant a Permit for the proposed development in April 2018, primarily on neighbourhood character grounds. There are no third parties to this proceeding.
- 2 There is no dispute regarding the proposed tree removal under the provisions of the Vegetation Protection Overlay.
- 3 Based on the hearing process and all the relevant associated documentation, I consider that the key issue relates to whether the proposal respects the neighbourhood character of the area.
- 4 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

Is the proposal respectful of neighbourhood character?

- 5 The Council acknowledged that because of the atypical shape of the subject site, a side-by-side two-dwelling development is an acceptable planning outcome in this instance. However, it was the Council's position that the proposed side-by-side layout is only reasonable if there is a fully submerged basement accessed by a single crossover.
- 6 The Council argued that the current design response results in the provision of an inadequate garden setting due to the visual dominance of the two proposed driveways, combined with the appearance of the two, double garages, retaining walls and pedestrian paths. The Council also submitted that these features would result in an undesirably fragmented front garden area.
- 7 The existing neighbourhood character of the area includes many examples of robust two storey high built form, including directly abutting the subject site at nos. 30 Olinda Street and 42 Ralton Avenue, as well as further northwards along Olinda Street. There is also a three storey high building located proximate to the subject site at no. 35 Olinda Street. There are nearby examples of two-storey high two-dwelling developments at nos. 36 and 38 Ralton Avenue. The buildings located on the lower, western side of Olinda Street, however, are generally of a more modest scale. This existing character needs to be balanced against the preferred neighbourhood

¹ I have considered the written and oral submissions of the two parties along with all their tendered exhibits. I have also considered all of the statements of grounds. I do not recite or refer to all of the contents of those documents in these reasons.

character for the area, which effectively seeks a strengthening of the 'garden city' character.

- 8 A dominant theme of the local planning policy framework section of the planning scheme is the desire to enhance the garden city character of the municipality. Specifically, the subject site is located within Character Type 'C' pursuant to Clause 22.01 of the planning scheme. In this area, the importance of landscaping of front gardens is emphasized with new buildings generally being secondary in appearance to the landscape character. The general policies of Clause 22.01 also encourage well-articulated built forms which respect the height, spacing and design detail of existing buildings in the neighbourhood.
- 9 Pursuant to Clause 22.01-4 of the planning scheme, it is policy that the following desired future character statement be considered as part of the decision-making process:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees.

Architecture, including new buildings and extensions, will, in the majority of cases, be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated.

Setbacks will be generous and consistent within individual streets.

Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrasts between buildings.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Neighbourhoods that are influenced by the naturalistic landscape of the creek valleys or on highpoints and ridges will have a predominance of native trees in both the public and private realm. Trees within lots to be redeveloped will be retained wherever possible in order to maintain the established leafy character.

Streets which have a majority of gardens currently lacking fences will continue to do so. Walls and fences in other streets will be low to allow plants in the front garden to be visible from the street. Colours and materials will be sympathetic to the architecture of the house.

The soft quality of streets derived from the nature strips will be protected by ensuring that each lot frontage has only one single crossover. Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until horticulturally unstable.

The character of existing public open spaces within the Character Type, particularly those naturalistic corridors such as Damper Creek and Valley Reserve, will be protected by ensuring that buildings directly adjacent to such areas are set back and buffered with planting that complements that within the public open space.

- 10 The subject site is also located within Categories 6 and 8 (Dandenong Creek Escarpment and Garden City Suburbs respectively) of the Council-adopted *Monash Housing Strategy*.
- 11 The neighbourhood character outcomes sought by Clauses 21 and 22 of the planning scheme (and the *Monash Housing Strategy*), as applicable to the subject site and surrounds, are neatly encapsulated by the highly detailed Schedule 4 (Dandenong Valley Escarpment Areas) to the Neighbourhood Residential Zone. This Schedule includes three neighbourhood character objectives, seven Clause 55 local variations, and a series of expansive Decision guidelines.
- 12 The proposal currently meets or exceeds the Clause 55 local variations relating to front setback, site coverage, permeability, private open space and front fence height. The proposal also meets the Clause 55 quantitative standards relating to on-site and off-site amenity considerations.
- 13 Given the facts and circumstances of this proceeding, I consider that in order to achieve the Schedule 4 neighbourhood character objectives, each of the Clause 55 local variations needs to be met. The two key Schedule 4 neighbourhood character objectives are:
 - *To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.*
 - *To encourage open gardens to the street, and the planting and retention of significant trees.*
- 14 The landscaping local variation to Standard B13 requires the planting of five canopy trees with a minimum mature height equal to the height of the roof. The proposed landscape plan tabled at the hearing shows four ‘canopy’ trees with a mature height of 12 metres. I consider that the landscape plan can be readily modified to provide for one ‘tall canopy’ tree adjacent to the northern side of the proposed Dwelling 1 driveway. This would ensure that the varied Standard B13 is met. None of the proposed ‘canopy’ trees are located within the easements. Furthermore, the advantage of the central location of the proposed building is that each of the site’s edges can be generously landscaped.

- 15 I think that the visual and landscaping impact of the two proposed driveways is acceptable in this context. Because of the 27.43 metres long site frontage, even with two driveways, there is still substantial space remaining to create the desired ‘spacious and generous garden setting.’ I do not think it is determinative that the front garden is broken up into separate areas. Rather, it is the overall relationship between the proposed building, the front garden area and the street which is most relevant.
- 16 I do, however, support the Council’s position that the basements should be fully submerged. I consider that this is necessary to reduce the visual impact of the two, double garages to a sufficient degree. This also has the advantage of lowering the overall building height. A consequence of this, is that it further strengthens the visual impact of the site’s landscaping (as the trees grow to their mature heights) relative to its built form.
- 17 This change, in concert with the undisputed condition that the upper levels be setback a minimum of 2 metres from the ground level form, will result in an overall built form which is not visually dominant in its setting.
- 18 Currently, the proposed rear alfresco areas (which are roofed areas) are setback 3.5 metres from the eastern site boundary, with the ground level of the dwellings setback 7.4 metres (and the proposed upper levels further setback: with the minimum setback being 9.5 metres to the rear of Dwelling 2). The local variation to Standard B17 is that the rear setbacks should be 5 metres. The proposal complies with the local variation to the side setbacks. I have required the deletion of the alfresco areas because of the strong emphasis of Schedule 4 to the NRZ on an enhanced landscape response.
- 19 It is also noteworthy that this proposal has been designed to appear as two separate dwellings by providing: a proposed 1.5 metres ground level building break in the front half of the building; and a proposed 1.8 metres (reducing to 900mm) building break at the upper level. The visual appearance of the proposal being read as two dwellings is clearly demonstrated by the west elevation plan.
- 20 Overall, I find that the proposed design response (subject to the described modifications) is respectful of the existing and preferred neighbourhood character of the area.
- 21 I therefore find that the proposal meets the Clause 55 objectives of the planning scheme.

What conditions are appropriate?

- 22 The draft planning permit conditions were discussed at the hearing.
- 23 Clause 32.09-10 of the planning scheme mandates that the maximum building height cannot be more than 9 metres and that the basement cannot extend above the natural ground level by more than 1200mm (to ensure that the development is no more than two storeys at any point). Whilst I accept Mr Bowden’s submissions that the proposal currently complies with these

restrictions I have, in any event, required the basements to be fully submerged on neighbourhood grounds.

Conclusion

- 24 For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

Tracy Watson
Member

APPENDIX A

PERMIT APPLICATION NO:	TPA/47967
LAND:	32 Olinda Street, Glen Waverley
WHAT THE PERMIT ALLOWS:	
<ul style="list-style-type: none">• Construction of two dwellings on a lot, and tree removal in accordance with the endorsed plans.	

CONDITIONS

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the plans prepared by Archsign dated March 2018, but modified to show:
 - (a) The car parking layout, grades and the setbacks of driveway(s) from retaining walls to accord with Clause 52.06 of the Monash Planning Scheme.
 - (b) Dwelling 2 constructed using alternative construction methods where it enters the TPZ of tree 5 to the south, with the nature of alternative construction methods to be determined by a qualified arborist and based on root investigation works.
 - (c) Dwelling 2 setback a further 100mm from the southern boundary so that its setback is a minimum 2.4m from the southern boundary (consistent with setbacks shown in the arborist report).
 - (d) Fully submerged basement car parks.
 - (e) The resulting reduction in overall building height as a result of 1 (d).
 - (f) The first floor footprint setback 2.0m from the western side of the ground level form.
 - (g) The deletion of each of the rear alfresco areas.
2. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and

dimensioned must be submitted to and approved by the Responsible Authority prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-

- the location of all existing trees and other vegetation to be retained on site.
- provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area. A minimum of five indigenous canopy trees must be planted which all have a mature height at least equal to the building's maximum roof height.
- planting to soften the appearance of hard surface areas such as driveways and other paved areas.
- a schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material (semi-mature plant species are to be provided).
- the location and details of all fencing.
- the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
- details of all proposed hard surface materials including pathways, patio or decked areas.
- coloured concrete, paving or the like is to be utilised in the driveways.

When approved the plan will be endorsed and will then form part of the permit.

4. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
5. The driveways and basement car parks are to be constructed to the satisfaction of the Responsible Authority.
6. Crossovers are to be in accordance with the City of Monash standards.
7. The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater drainage must be collected and free drained to the Council pit in the nature strip via

a 225mm pipe and 900mm x 600mm junction pit to be constructed to Council standards.

8. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from the driveway onto the footpath.
9. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
10. Any new drainage work within road reserve or connection into a Council easement requires the approval of the Council's Engineering Division prior to the works commencing.
11. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
12. The permit for development will expire in accordance with [section 68](#) of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - The development is not started before 2 years from the date of issue.
 - The development is not completed before 4 years from the date of issue.

In accordance with [section 69](#) of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

--- End of Conditions ---