# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

# planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1587/2019  Permit Application no. TPA/49067 |

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| CATCHWORDS |
| Section 77 of the Planning & Environment Act 1987; Monash Planning Scheme;  Three dwellings: Neighbourhood character (GRZ2; Clause 22.01) |

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| APPLICANT | Yaakov Lerer |
| RESPONSIBLE AUTHORITY | Monash City Council |
| respondents | Wendy Jones; Melbourne Water |
| SUBJECT LAND | 36 Delia Street, Oakleigh |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 13 February 2020 |
| DATE OF ORDER | 19 March 2020 |
| CITATION | Lerer v Monash CC [2020] VCAT 315 |

# Order

1. Pursuant to 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:

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| * Prepared by: | Superdraft |
| * Drawing numbers: | TP01, TP02, TP03, TP04 & TP05 – all revision 04, VCAT Amended Plans |
| * Dated: | 11/11/2019 |

1. The decision of the Responsible Authority is set aside.
2. In permit application TPA/49067 a permit is granted and directed to be issued for the land at 36 Delia Street, Oakleigh in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:

* Construction of three dwellings on a lot.

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| Tracy Watson **Member** |  |  |

**APPEARANCES**

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| For Applicant | Stephen O’Brien, town planner. Mr O’Brien called expert evidence from Jim Holdsworth, architect. |
| For Responsible Authority | James Turner, town planner. |
| For Respondents | Wendy Jones, in person; Melbourne Water, no appearance. |

# INFORMATION

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| Description of Proposal | It is proposed to construct three, two storey high dwellings in a one-behind-the-other layout. |
| Nature of Proceeding | Application under Section 77 of the *Planning and Environment Act* 1987 – to review the refusal to grant a permit. |
| Zone and Overlays | Clause 32.08 – General Residential Zone, Schedule 2 (Monash Residential Areas). Schedule 2 contains local variations to B6, B28 and B32. No overlays apply to the subject site. |
| Permit Requirements | Clause 32.08-6 – To construct two or more dwellings on a lot. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 21.08, 22.01, 32.08, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is located on the southern side of Delia Street in Oakleigh. The subject site is a rectangular shaped allotment with a frontage of 15.85 metres and a depth of 49.85 metres, yielding a site area of 790m2. The subject site is currently developed with a single dwelling and is located in an established residential area. |
| Tribunal Inspection | 4 March 2020 |

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

## 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 July 2019, on grounds relating to neighbourhood character and vehicle access. The permit applicant has requested that the Tribunal review this decision.
2. Ms Jones who resides at no. 34 Delia Street, immediately to the west of the subject site, also opposes the proposed development.
3. Based on the hearing process and all the relevant associated documentation, I consider that the key issue relates to whether the proposal is respectful of 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, the expert evidence of Mr Holdsworth and all of the statements of grounds, 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?

1. The Council submitted that the proposed development is not in keeping with the existing or preferred future character of the area. The Council’s submission was particularly critical of the proposed: bulk and massing of the building forms, including the cantilevered elements; degree of upper level recession; depth of the development throughout the site; and an insufficient amount of landscaping contrary to Monash’s garden city character.
2. The Monash Planning Scheme seeks to maintain and enhance the garden city character of the municipality, whilst also increasing the overall supply and diversity of housing. Pursuant to Clause 21.04 of the planning scheme the subject site is located in both Category 2 (Accessible Areas) and Category 8 (Garden City Suburbs). Furthermore, the subject site is only just outside of the nominated Oakleigh South Activity and Neighbourhood Centre.
3. The identification of the subject site as being within an Accessible Area, and proximate to the Oakleigh South Activity Centre, supports the development of three dwellings on the land. Land to the south of the subject site at nos. 33-35 Pitt Street is owned and operated by Melbourne Water and land at nos. 1-7 Cameron Avenue is used and developed as a public open space area. A child care centre is located at nos. 117-119 Cameron Avenue, which abuts approximately two-thirds of the subject site’s eastern boundary. This range of existing non-residential, and thus non-sensitive, land uses also supports the development of three dwellings on the subject site. Moreover, the existing neighbourhood character includes a mix of both singe dwellings and medium density housing. The existing medium density housing on the southern side of Delia Street includes building footprints that extend deep into their respective allotments, with minimal rear setbacks. These existing developments are located at nos. 2, 4, 12, 14, 22, 24 and 30 Delia Street. In other words, the southern side of Delia Street does not have an existing landscape character where a ‘green’, spacious rear corridor predominates.
4. Pursuant to Clause 22.01 of the planning scheme, the subject site is located in the Garden City Suburbs (Southern) area. The preferred future character statement for this Southern area includes the following statements:

While the housing mix within this area will continue to evolve to meet the changing needs of the community, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous, spacious, open, landscaped character of the area.

1. I consider that the proposed design response strikes an appropriate balance between the desired increase in housing diversity, on the one hand, and responding to the existing and preferred neighbourhood character of this area, on the other hand. The proposal also appropriately responds to the subject site’s existing physical context. The key elements of the proposal that result in an acceptable planning outcome are:

* Maintenance of the existing single crossover to the street and utilisation of a one-behind-the-other layout.
* This layout has the positives of: protecting the existing street tree and nature strip; maintaining the existing streetscape rhythm and building spacing; avoiding any garages fronting the street; and maximising the front garden area.
* The ground level front setback exceeds the locally varied Standard B6 requirement.
* The location of the side driveway along the western side of the subject site maximises the building setbacks to the sensitive residential interface of no. 34 Delia Street.
* The garage walls located on the eastern side boundary abut the non-sensitive child care centre use.
* The garage wall located on the western side boundary is less visually intrusive when compared to the impact of the existing dwelling’s western boundary wall.
* Each of the three upper level forms are well-modulated and provide for appropriate rear and side setbacks, as well as building breaks within the site.
* The main cantilevered section relates to the middle dwelling, and is acceptable given that it is setback 6.948 metres from the western side boundary. There is also a materially insignificant upper level overhang above the entry to the middle dwelling.
* All of the rear and side setbacks comply with Standard B17.
* The private open space areas, dimensions and locations for each of the dwellings comply with the local variation to Standard B28.
* A landscape plan has been prepared which demonstrates an appropriate landscaping response including: planting along most of the side driveway; and the planting of five new canopy trees, as well as one small tree. In this case, I consider it unnecessary to provide a rear building footprint which would allow for additional planting in this location. The main reason for this is that there are already a number of canopy trees with spreading crowns planted on the Melbourne Water land proximate to the rear boundary.

1. In summary, I am satisfied that the proposed scale, siting and building forms, in conjunction with the landscape plan prepared by Monarch Garden Design, ensures that the development is respectful of the existing and preferred neighbourhood character of the area (including the landscape character of the area) and makes an acceptable contribution to the desired spacious, open garden city character.

## Other Matters

1. Ms Jones was concerned about overlooking from the proposed development towards her property at no. 34 Delia Street, as well as its impact on on-street parking and traffic volumes.
2. The planning scheme only requires that overlooking into existing habitable room windows and secluded private open space, within a 9 metres range of the proposed windows, be limited. In other words, the planning scheme does not require the prevention of all overlooking, only what is deemed to be unreasonable overlooking. This is achieved by compliance with Standard B22. Compliance with Standard B22 can be achieved through the provision of new habitable room windows which have:

* sill heights of at least 1.7 metres above floor level; or
* fixed, obscure glazing in any part of the window below 1.7 metres above floor level; or
* permanently fixed external screens to at least 1.7 metres above floor level which are no more than 25 per cent transparent.

1. The proposed first floor, west-facing habitable room windows are either highlight windows, feature obscure glazing or have external screens. Mr Holdsworth’s evidence was that the proposed external screens need to be modified by replacing the vertical slats with horizontal slats which would prevent downward views. Subject to this change, all of the proposed windows comply with Standard B22 at Clause 5504-6 of the planning scheme. Ms Jones expressed a preference for either highlight bedroom windows or south-facing bedroom windows, particularly for proposed Dwelling 3, however this change is not required in order to limit overlooking in accordance with Standard B22.
2. I am therefore satisfied that the proposal (subject to the above modifications to the external screens) meets the objective at Clause 55.04-6 of the planning scheme and appropriately limits the overlooking into Ms Jones’ property.
3. The number of required resident on-site car spaces is set out at Clause 52.06 of the planning scheme. Clause 52.06 of the planning scheme requires that each of the proposed dwellings provides two on-site car spaces, which can be in a tandem layout. The planning scheme (again at Clause 52.06) does not require the provision of any on-site visitor car spaces. Because the number of on-site car spaces complies with the number stipulated by the planning scheme, this aspect of the proposal does not require planning permission. This means that the issue of the proposal’s potential impact on the supply of on-street parking is not open for me to review.
4. The Council accepted that the additional traffic generated by the proposal can be accommodated by the existing road network, and I agree with its position in this regard. However, the Council did submit that the minimum aisle width of the proposed side driveway needs to be increased to 4.8 metres proximate to proposed Dwelling 1.
5. Swept path diagrams for each of the proposed on-site car spaces have been prepared by TTM traffic engineers. I am satisfied that these swept path diagrams demonstrate that the proposed garages and accessway comply with the requirements of Clause 52.06 of the planning scheme, as well as allowing for vehicles to exit the site in a forwards direction. There is also a condition of the permit requiring that the landscaping along the western side boundary opposite Dwelling 1 be reduced by 500mm.

## What conditions are appropriate?

1. The draft planning permit conditions were discussed at the hearing, and these discussions and my findings are reflected in the permit conditions contained in Appendix A.

## Conclusion

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

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| Tracy Watson **Member** |  |  |

# APPENDIX A

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| **PERMIT APPLICATION NO:** | TPA/49067 |
| **LAND:** | 36 Delia Street, Oakleigh |
| **WHAT THE PERMIT ALLOWS:** | |
| * Construction of three dwellings on a lot in accordance with the endorsed plans. | |

# conditions

1. Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans substituted by the Victorian Civil and Administrative Tribunal but modified to show:
2. A correct garden area plan.
3. The external louvre screens of the west-facing bedroom windows of Dwellings 2 and 3 to comply with Standard B22 of Clause 55.04-6 of the Monash Planning Scheme through the use of fixed horizontal slats which prevent any downward views to the property at no. 34 Delia Street.
4. The landscaping buffer along the western property boundary opposite Unit 1 is to be reduced by 500mm.
5. Where parking spaces are in a tandem arrangement, an additional 500mm in length must be provided between each space.
6. Garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport.
7. Provision of a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of the proposed vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road, to Council’s satisfaction.
8. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street, which is at or behind the setback alignment of buildings on the site or in compliance with Council’s “Guide to Electricity Supply Meter Boxes in Monash”.
9. Tree protection zones and relevant notes requiring appropriate tree protection barriers.

**No Alterations**

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

**Stormwater**

1. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
2. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:

* a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
* shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
* another Council approved equivalent.

1. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.
2. The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the naturestrip outside 115 Cameron Avenue via a 150 mm pipe and a 900 mm x 600 mm junction pit to be constructed to Council Standards. (A new pit is to be constructed to Council Standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
3. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council drains and these works are to be inspected by Council (telephone 9518 3555)

**Vehicle Crossovers**

1. The existing crossing is to be widened to at least 3m in width and be aligned with the proposed driveway.
2. Approval of each proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.

**Urban Design**

1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

**Completion of Buildings and Works**

1. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

**Landscaping**

1. Before the commencement of buildings and works, 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 be generally in accordance with the Landscape Plan prepared by Monarch Garden Design, dated 8-11-19 Issue A, and must show the proposed landscape treatment of the site including:-
2. modification of the planting along the western side boundary by reducing the width of this landscaped section by 500mm where it is located opposite Unit 1.
3. the location of all existing trees and other vegetation to be retained on site
4. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
5. planting to soften the appearance of hard surface areas such as driveways and other paved areas
6. 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
7. the location and details of all fencing
8. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
9. details of all proposed hard surface materials including pathways, patio or decked areas

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

1. 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.

**Permit Expiry**

1. This permit will expire in accordance with section 68 of the *Planning and Environment Act* 1987, if one of the following circumstances applies:
2. The development has not started before two (2) years from the date of issue.
3. The development is not completed before four (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** ---

1. I have considered the written and oral submissions of all the parties that appeared, the written and oral expert evidence, all the exhibits tendered by the parties, and all the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)