VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P2144/2019Permit Application no. TPA/49876 |

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| APPLICANT | Peter Meseha |
| responsible authority | Monash City Council |
| SUBJECT LAND | 4 Gordon Avenue, Oakleigh East |
| WHERE HELD | Melbourne |
| BEFORE | Sarah McDonald, Member |
| DATE OF HEARING | 18 September 2020 |
| DATE OF ORDER | 28 September 2020 |
| CITATION | Meseha v Monash CC [2020] VCAT 1084 |

# Order

### Amend permit application

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:
 | Archiphor Architects. |
| * Drawing numbers:
 | TPA01 – TPA08 |
| * Revision:
 | A, VCAT Circulation Issue |
| * Dated:
 | 17/03/2020 |

### Permit granted

1. In application P2144/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/49876 a permit is granted and directed to be issued for the land at 4 Gordon Avenue, Oakleigh East, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of three dwellings on a lot in the General Residential Zone – Schedule 3.



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| **Sarah McDonald****Member** |  |  |

# Appearances

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| For Applicant | Mr John Glossop, Glossop Planning |
| For Responsible Authority | Mr James Turner, Monash City Council |

# Information

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| Land Description | The subject land is located on the eastern side of Gordon Avenue, in the residential area of Oakleigh East. The land is rectangular with a frontage of 16.76 metres, a maximum depth of 45.72 metres, and an area of 763 square metres.The housing stock in the surrounding area consists predominantly of single storey dwellings, with some double storey dwellings and multi-dwelling infill development.The two adjoining properties to the north (2 Gordon Avenue and 2 Albany Road) each contain a single-storey detached house. The adjoining property to the south (6 Gordon Avenue) is also occupied by a single-storey detached house. |
| Description of Proposal | Construction of three double-storey dwellings. The dwellings are arranged one behind the other down the length of the land, on the northern side of a communal accessway. The dwellings are attached at ground floor level. |
| Nature of Application | Application under section 79 of the *Planning and Environment Act 1987* – to review the failure to grant a permit within the prescribed time.[[1]](#footnote-1) |
| Zone and Overlays | General Residential Zone – Schedule 3 (**GRZ3**). |
| Reason(s) Permit Required | Clause 32.08-6 – Construct two or more dwellings on a lot in the GRZ3. |

# Remarks

1. This is an application under section 79 of the *Planning and Environment Act 1987* to review the failure of Monash City Council (the responsible authority) to grant a permit within the prescribed time for the construction of three dwellings on the land at 4 Gordon Avenue, Oakleigh East (the subject land).
2. The responsible authority subsequently indicated that it would have refused the application. Its grounds for refusal relate to inconsistency with the Residential Development Policy at Clauses 21.04 and 22.01, the objectives and standards of clause 55 relating to neighbourhood character, residential policy, safety, landscaping, setbacks, dwelling entry and design detail, car parking design standards of clause 52.06, impact on streetscape and adjoining properties, and the proposal being an inappropriate design response.
3. The key issues in this matter are:
* Is the scale of the development an acceptable response to the neighbourhood character?
* Is the proposed landscaping an acceptable response the garden city character sought for this area?
* Does the proposal provide acceptable dwelling entries and surveillance of the driveway?
* Is the arrangement of private open space for dwelling 2 acceptable?
* Does the orientation and layout of the proposal make appropriate use of daylight and solar energy?
1. Reasons for this decision were given orally at the conclusion of the hearing. My decision included that the permit conditions are to be in accordance with the draft permit conditions provided by the responsible authority subject to changes relating to the following:
* opportunities for this landscaping to be increased and improved through minor variations to the layout of parts of the building and fences and the landscaping proposal;
* improved passive surveillance by provision of some additional windows;
* the siting of the fence between the open space areas of dwellings 2 and 3;
* provision of a north facing window to the living room of dwelling 3; and
* deletion of draft conditions 1a), 1b), 3, 6, 11, and 14.
1. At the hearing I reserved my decision with respect to the detailed drafting of the permit conditions. The permit conditions contained in this Order are consistent with the discussions at the hearing and my oral reasons.

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| **Sarah McDonald****Member** |  |  |

# APPENDIX A

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| PERMIT APPLICATION NO: | TPA/49876 |
| LAND: | 4 Gordon Avenue, Oakleigh East |
| WHAT THE PERMIT ALLOWS: |
| In accordance with the endorsed plans:* Construction of three dwellings on a lot in the General Residential Zone – Schedule 3.
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# Conditions

### Amended plans

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 prepared by Archiphor Architects (Revision A, VCAT Circulation Issue, dated 17/03/2020) but modified to show:
	1. The walk-in-pantry on the southern side of dwelling 1 reduced in size so that the setback of its external walls from the edge of the common accessway are increased to enable the planting of a small tree or large shrub at the south-east corner of dwelling 1.
	2. Landscaping generally in accordance with the landscape concept plan prepared by Justin Hutchison Landscape Design, (Revision A dated 13.03.20) but modified to show:
		1. any fence on the northern side of the common accessway between the front boundary and the western facade of dwelling 1 to be located to the northern side of the proposed *Choisya ternata* (Mexican orange blossoms) hedge;
		2. the provision of a small tree or large shrub at the south-east corner of dwelling 1; and
		3. the provision of climbing plants/creepers in the garden bed along the southern side of the common accessway. The climbing plants/creepers must be supported by a frame or structure other than the boundary fence.
	3. The fence dividing the secluded private open spaces of dwelling 2 and dwelling 3 relocated 3.0 metres to the west of the north-east corner of dwelling 3 to be approximately midway along the northern wall of the living room of dwelling 3.
	4. Provision of a north facing window to the living room of dwelling 3 (positioned to the east of the fence dividing the secluded private open spaces of dwelling 2 and dwelling 3).
	5. The entry doors to dwellings 2 and 3 to include clear glazed panels sufficient to enable observation of the entry porches and common accessway from the interiors of each dwelling.
	6. Provision of a window in the southern wall of the dwelling 1 kitchen to enable observation of the common accessway from the interior of the dwelling.
	7. The west facing window to bedroom 2 of dwelling 3 to be clear glazed to enable observation of the common accessway from the interior of the dwelling, with a vertical screen to its southern edge or other technique to limit views into the secluded private open space of the adjoining property to the south in accordance with standard B22 at cluse 55.04-6 of the planning scheme.
	8. A notation that the existing vehicle crossing is to be reconstructed and align with the driveway to Council standards.
	9. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the facade of buildings on the site.

All to the satisfaction of the Responsible Authority.

### No Alteration or Changes

1. The development as shown on the endorsed plans must not be altered without the prior written consent 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 show the proposed landscape treatment of the site including:
	1. the location of all existing trees and other vegetation to be retained on site
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas
	4. 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
	5. the location and details of all fencing
	6. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
	7. 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.

### Landscaping Prior to Occupation

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.

### Drainage

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:
	1. a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
	2. shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
	3. another Council approved equivalent.
3. 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.
4. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the naturestrip via a Council approved kerb adaptor to be constructed to Council Standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

### Road Infrastructure

1. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
2. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.

### Traffic

1. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

### Completion of Buildings and Works

1. Once the development has started it must be continued and completed 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:
	1. The development has not started before two (2) years from the date of issue.
	2. 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. Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision. [↑](#footnote-ref-1)