

**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL**

**ADMINISTRATIVE DIVISION**

**PLANNING AND ENVIRONMENT LIST**

VCAT REFERENCE NO. P1269/2018  
PERMIT APPLICATION NO. TPA/48812

**CATCHWORDS**

Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone, three double storey dwellings; design response to neighbourhood character.

<b>APPLICANT</b>	Sylvia Mehael Garth
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	9 Paget Street, Hughesdale
<b>WHERE HELD</b>	Melbourne
<b>BEFORE</b>	Christina Fong, Member
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	17 December 2018
<b>DATE OF ORDER</b>	10 January 2019
<b>CITATION</b>	Garth v Monash CC [2019] VCAT 32

**ORDER**

- 1 In application P1269/2018 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/48812 a permit is granted and directed to be issued for the land at 9 Paget Street, Hughesdale in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Development of three double storey dwellings.

**Christina Fong**  
**Member**

**APPEARANCES**

For applicant	Sam Palma, town planner, David Lock Associates
For responsible authority	David De Giovanni, consultant planner



## INFORMATION

Description of proposal	Three double storey dwellings, with an attached pair facing the street and one at the rear. Each dwelling provides a minimum of three bedrooms and a single garage with a tandem car space.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone (GRZ2) and no overlay.
Permit requirements	Clause 32.08-6 for construction of two or more dwellings.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.01-1, 21.04, 21.08, 22.01, 22.04, 22.05, 52.06, 55 and 65.
Land description	<p>The land is located on the north side of Paget Street east of Poath Road, Hughesdale. It is regular in shape, with a frontage of 18.44 metres, a depth of 50.9 metres, and a site area of 939 square metres. It is occupied by a single storey brick dwelling.</p> <p>Adjoining the land to the east is a unit development of three double storey dwellings at 11 Paget Street, which is also the case for 13 Paget Street. Adjoining the land to the west is a single storey single dwelling at No. 7. To the north is a single storey single dwelling with a backyard at 555 Neerim Road.</p> <p>Paget Street is a dead end street and a residential street made up of single dwellings and villa unit and townhouse developments. The two lots at the western end, however, faces Poath Road, with one developed for a multi-storey apartment building.</p>
Tribunal inspection	18 December 2018, not accompanied by the parties.



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

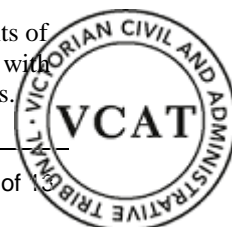
- 1 This is a review against council's refusal to grant a permit to develop the site for three double storey dwellings, with a pair facing the street and one at the rear. The grounds of refusal relate to the scale and bulk of the development which council said is contrary to neighbourhood character policies in clauses 21.04 and 22.01; not meeting clause 55 objectives in street setback, side and rear setback, private open space, and design details; detrimental impact on adjoining dwellings due to its scale and bulk; not complying with the minimum 4 metre internal radius required for driveways; and overdevelopment.
- 2 Prior to the hearing, the Tribunal and council received an 'independent traffic report' by EB Traffic Solutions dated 29 November 2018. This report shows swept paths and vehicular turning manoeuvres for the development and as a response to the ground of refusal relating to the inadequacy of turning circles. At the hearing, council advised that it and its traffic engineer have considered this report and agreed that the ground of refusal relating to vehicular access no longer stands.
- 3 I accept council's traffic engineer's revised opinion on the proposed car parking layout, which depends on a tandem space for each dwelling, that it by and large functions. The provision of parking, by providing two spaces for each dwelling and with the proposed layout, is now satisfactory.

### WHAT ARE THE KEY ISSUES?

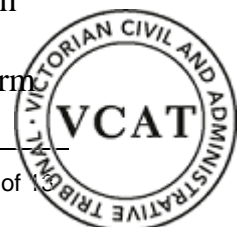
- 4 The main issue of the matter is the size, scale and bulk of the building mass, which council said is excessive and thus not appropriate for the neighbourhood character.
- 5 The site is in the General Residential Zone 2 (Monash Residential Areas). In the schedule to the zone, there are two relevant variations to clause 55 standards. One is street setback (standard B6) where the recommended minimum setback is 7.6 metres. The other is private open space (standard B28), where the recommended amount is an area of 75 sq m, with one part at the side or rear of the dwelling at with a minimum of 35 sq m and a minimum dimension of 5 metres, and conveniently accessed from a living room.
- 6 It is commonly accepted that the purpose of the General Residential Zone is for development to respect neighbourhood character, and for a diversity of housing types and housing growth for locations offering good access to services and transport.

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<sup>1</sup> 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.



- 7 The site is well located, and as council described it, “*well positioned within walking distance of the Hughesdale train station and Neighbourhood Activity Centre*”. The Hughesdale Neighbourhood Activity Centre is located at the western end of Paget Street. In the *Monash Housing Strategy 2014*, a reference document in the planning scheme, the site is designated as a Category 2 (Accessible) area. The site also falls into Category 1 (Activity and Neighbourhood Centres) area in this study where housing change and diversifications are encouraged. In the amendment to implement the housing strategy (Amendment C125), the site is proposed to be rezoned to Residential Growth Zone. This part of the amendment has not been approved yet. However, the point here is to demonstrate that the site is well located.
- 8 The development of the site for a medium density development is within Monash’s housing objectives. The appropriateness of the proposal then rests on the design of the development against the relevant neighbourhood character policy and the context of the site: that it is deemed to respect the neighbourhood character of the area.
- 9 In terms of neighbourhood character, clause 21.04 (Residential Development) and 22.01 (Residential Development and Neighbourhood Character Policy), the site is in the Residential Character Type A.
- 10 The nominated future character of this character type is:
- .....
- The built form will be unified by consistency in building setback. New dwellings will address the street and complement the scale and form of adjacent buildings. Development that is inappropriate and out of scale with adjoining dwellings will not be supported.
- ....
- Front fence will be low. This enables vegetation to be visible from the street, allows clear views of buildings and gives the street an open and transparent quality. Fencing will complement the architecture of the building in design, colour and materials.
- Existing mature trees and shrubs within properties will be retained and additional tree planting proposed to gradually create a tree canopy in the private domain.
- The soft quality of the street that is derived from the wide nature strips will be maintained by ensuring that there is only one crossover per lot frontage.
- .....
- 11 Clause 22.01-3 also sets out design guidelines in the areas of setbacks, vehicle crossing and driveways, built form and scale.
- 12 As for the context of the site, the land is in a typical suburban street with typical single dwellings and medium density development sprinkled throughout. The medium density development in the street are in the form



of townhouses and in a tandem configuration. Their scale, in the main, is a mixture of one and two storey heights. The more recent ones are two storeys, such as the recently constructed three unit development adjoining the land to the east at Nos. 11 and 13. One exception to the tandem arrangement is the development at No. 21, which is comprised of three double storey dwellings, with two facing the street and one at the rear, similar to the proposal before me. The design of that development, however, is for the two front dwellings to be detached. That site is also a wider lot.

- 13 Council's criticism of the design of the proposal is that it is:
- Of a side-by-side formation of the front portion of the development, which is out of character with the Paget Street streetscape. Acknowledging that there is a two dwelling presentation to the streetscape at No. 21, it maintains that the context of that site is different, given its wider frontage and its presentation as two detached houses. The proposed side-by-side configuration is dominant, presenting one large built form across the width of the site, with the first floor footprint large relative to the ground level;
  - The size of the development dwarfs the adjacent dwelling to the west at No. 7, which is a single storey dwelling from the original building stock;
  - Combined with the two crossovers/driveways and the size of the upper floors, the development is dominant in the area;
  - The 'box-like' side elevations with no variation in setbacks, with the only visual relief in downpipes and windows that are well setback from the street;
  - Although the front setback meets the 7.6 metre front setback in standard B6, there are encroachments in this setback area such as porches. Further, the setback of the first floor is 7.7 metres, which lacks a graduated recession above the ground floor.
- 14 Council thus argues that the design is contrary to design policy by being not articulated but dominant, and a lack of graduated elevations to avoid a 'box-like' design, notwithstanding the location of the site in an accessible area in the *Monash Housing Strategy*.
- 15 However, Mr. Palma offered a different view. In the area of setbacks, he submits that the setbacks meet standard B6 and is consistent with adjoining development, the design containing a 4 metre setback from the eastern boundary for Unit 2 and 3 and a 200mm setback from the other side boundary of the garage for the front dwelling increased to 1.8 metres, with the first floor set further in.
- 16 In the area of the number of crossovers, Mr. Palma argues that one additional crossovers and driveway are acceptable, given the existing



pattern of crossover separation of 10 metres found in the street, which is a characteristic of the area as reflected at the development at Nos. 12, 14, 16 and 18 Paget Street. As for development with two crossovers within a lot, he nominates the developments at No. 1, 5, 19 and 21 Paget Street as examples in the street. His submission is that the creation of a new crossover can still maintain the garden City Character of the area, that is by providing garden space of approximately 93 sq m at the front which can accommodate meaningful landscaping and canopy trees. He does not think that the design would cause a significant impact on or fragmentation of the streetscape. He advised the Tribunal that council has approved other two crossovers and driveway developments in Paget Street. He further submits that the amount of vehicular access along the street frontage meets standard B14, and the car parking structures and extent of hard paved area facing the street have been reduced by the single width garage and driveway for Dwelling 1.

- 17 As for the built form and scale of buildings, Mr. Palma disagreed with council that it is dominant, and therefore not respectful of the built form of the area because there are two dwellings facing the street, noting that council has approved the development at 21 Paget Street which also presents two dwellings to the street. He also notes that buildings in Paget Street have lots wider than standard width (from 16 metres to 23 metres), and that recent developments are wider than original buildings they replaced.
- 18 As for council's criticism that the design of the buildings lacking in articulation, he submits that the two storey built form provides generous upper level articulation and setbacks from boundaries, and that the avoidance of 'box-like' appearance has been achieved by increasing setback of the first floor from the ground floor.
- 19 My inspection of the site and nearby area confirms the existing development patterns as submitted by the parties. It is evident that the street has undergone redevelopment. The size and regular shapes of land in Paget Street, with a lack of heritage and neighbourhood character overlays planning controls, and its proximity to a neighbourhood activity centre and walkability to a train station, are attributes and incentives to redevelop land in the street.
- 20 The existing character of Paget Street as exhibited by the residential and domestic architecture is one of one and two storey dwellings, with a building rhythm that sees to setback from at least one side setback, and design of buildings in traditional styles. Two crossovers can be found in the street.
- 21 Bearing in mind clause 22.01 and the existing context of the site, there are features in the design that are consistent with policy and the existing character, namely:



- the height at 2 storeys is consistent with the height of development in the street;
- building rhythm is respected, despite the proposal is for two dwellings facing the street. These two dwellings are designed as one building, with a single hipped roof over the front rooms of Dwellings 1 and 2, and a main hipped roof for the balance of the two dwellings; and
- Despite two crossovers, both are single width and the presentation of a single garage for dwelling 1 is the only parking structure facing the street. There is no dominance of car parking access or structures. The garages of Dwellings 2 and 3 are at the rear of the front two dwellings and not visible from the street. Two crossovers and two driveways are found in Paget Street and the proposal is not an isolated deviation. Clause 22.01 is about discouraging two crossovers, depending on whether there will be loss of on-street parking and fragmentation of nature strip. The new crossover is for Dwelling 1. This crossover abuts the existing crossover for 7 Paget Street. There will be a widening of that crossover to merge with the proposed crossover. As for loss of kerbside parking, there is no lack of on-street parking and on-street parking does not seem to be a problem in the area.

22 The areas where the design is at odds with policy and existing character is the building massing of the first floors of the dwellings. Council identifies the problem as a lack of articulation, and the extent of the first floor is such that the development comes across as dominant.

23 I agree with council's sentiment to the extent that the shape and extent of the first floors of the development are not adequately articulated, even coming across as 'box-like'. For Dwellings 1 and 2, the side elevations of the first floors of the dwelling (east and west elevations) scales at 15.5 metres long, unbroken. The northern elevation of these two dwellings (combined length of 10.4 metres) is also unbroken. The setback of the upper floor at around 750mm from the ground floor walls of the dwellings (excepting the part above the garage and living room which is around 2 metres) is not visually articulated. It fits the description of a 'box' with only a marginal setback from the ground floor walls. The relative proportion of the first floor to the ground floor, plus a general lack of recesses of the upper floor are not features encouraged in policy, nor are they characteristic of the existing medium density development in Paget Street. The east and west elevation of the two front dwellings are highly visible when viewed from an oblique angle from Paget Street.

24 To reduce the bulkiness of the building and for it to be polite to the existing character of medium density development in the area, there must be further articulation of the east, west and northern elevations of Dwellings 1 and 2. The minimum articulation of these elevations will be a recess mid-point of the east, west and northern elevations. The recesses required will be a minimum of 1.5 metres long and a minimum of 750mm deep. The changes



to facilitate these recesses will call for an adjustment of the layout of these dwellings, which I am confident is achievable.

- 25 As for Dwelling 3, the first floor has a smaller footprint than the ground floor, and is setback from all elevations at various depths: ranging from zero for stairwell facing the common driveway and Bedroom 3 facing north. The interface of Dwelling 3 is against the three double storey development at No. 11 Paget Street, specifically the garage of the rearmost unit and the common driveway of that development. These are not a sensitive interface. Further, the first floor of Dwelling 3 is setback 6.24 metres from the common boundary, which not only meet standard B17, but also an appropriate graduation of built form.
- 26 The interface with the western elevation is the backyard of the single dwelling at 7 Paget Street where there is a single storey on-the-boundary brick garage opposite the first floor of Dwelling 3 in the development. The first floor of Dwelling 3 is setback 2.76 metres. Together with the width of the garage at No. 7, there is a separation between the development and the private open space of 7 Paget Street of 9.5 metres, which I consider as acceptable.
- 27 The interface with the north elevation is the backyard of the single dwelling at 555 Neerim Street. The residents of this dwelling submitted a statement of grounds, which opposed three double storey dwellings on the land, as they are of the view that these three will add to the other 3 double storey dwellings at Nos. 11 and 13, meaning they will be facing 9 units in their backyard. Dwelling 3 in the development is setback minimum of 5 metres from the common boundary with 555 Neerim Street. The first floor of Dwelling 3 is setback from the ground floor and from the rear boundary ranging from a minimum of 5.937 metres to 6.7 metres. These setbacks are more generous than the development approved and constructed for 11 Paget Street, and the width of this first floor is also less than 11 Paget Street. I do not have the approved plans for the development at 13 Paget Street and therefore cannot compare the proportion of two storey built form against the open backyards of dwellings in Neerim Street. However, I am satisfied that the proposed setbacks maintain a reasonable break from the backyard of 555 Neerim Street, and for a site that is well located and identified as an accessible area for increased housing.
- 28 In the aspect of neighbourhood character, I am not persuaded by council's argument that the proposal should be refused, given the zoning, housing and neighbourhood character of the area. It should, however, be modified, and hence the additional condition to provide recesses on the east, west and north elevations of the two front dwellings.

#### **ARE THERE ANY OTHER ISSUES?**

- 29 Another of council's concern is the size of the secluded private open space of Dwelling 1. The varied standard B28 for the GRZ2 is for the secluded





portion to be a minimum of 35 sq m. Council's concern is that the nominated 38 sq m of this area is effectively reduced by the use of this area for clothesline and bin storage.

30 I am less concerned than council that the proposal fails the private open space objective of clause 55. The proposed area of 6.067 x 6.27 metres, not including the passageway from the garage to the rear of the dwelling, provides an area of 36.56 sq m of area, meeting the minimum of 35 sq m and 5 metre minimum dimension in the varied standard in the zone.

31 The objective of clause 55.05-4 is clear on the intention of secluded private open space, and that is to:

To provide for adequate private open space for the reasonable recreation and service needs of residents.

(Underlining my emphasis.)

32 The objective of private open space is thus for recreation and service needs of residents. The taking up of part of this area by clothes line is consistent with the objective of clause 55.05-4.

33 The residents of 555 Neerim Street are not parties to the proceeding. They have lodged a statement of grounds which outlined their concerns with the proposal. Apart from their wish that there should only be two units on the land, they also expressed concern about the impact of the development on their Spotted gum tree in their backyard.

34 Impact on this tree was not a ground of refusal and council did not make a submission about this tree. The residents of 555 Neerim Street also decided not to be a party to the proceeding and make a submission about this tree and the other design issues they have.

35 The only information on this tree is from the arborist report submitted with the application<sup>2</sup>. The tree concerned is a 19 metre high Spotted gum (*Corymbia maculata*). The report surveys the location of this tree at 1.3 metres north of the northern boundary. It has a Tree Protection Zone of 8.6 metres and Structural Root Zone of 3.5 metres. This report estimates that there will be a minor encroachment of 7.9% on the TPZ of this tree. This report states that the health of the tree should not be impacted, provided the original soil grade is maintained and soft landscaping used in the space between Dwelling 3 and the boundary of the site. It recommends that root exploration be undertaken to determine the presence and location of any significant roots if excavation or heavy compaction for underground services or landscaping work is required within the TPZ encroachment area, and a Tree Protection Fence to be erected at a radial distance of 8.6 metres from the base of the tree where the TPZ encroaches the site.

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<sup>2</sup> Arboricultural Assessment and Tree Issues Resolution Plan by Aaron Richardson of McLeod Trees, dated 7 September 2017.



- 36 There will be a permit condition requiring protection of this tree and in accordance with the McLeod Tree report.

**WHAT CONDITIONS ARE APPROPRIATE?**

- 37 Council's submitted 'without prejudice' permit conditions formed the basis of discussion. All have been adopted, and there will be additional ones relating to the reduction of the first floors of Dwellings 1 and 2, and protection of the spotted gum at the neighbouring property.

**CONCLUSION**

- 38 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

**Christina Fong**  
**Member**



## APPENDIX A – PERMIT CONDITIONS

<b>PERMIT APPLICATION NO</b>	TPA/48812
<b>LAND</b>	9 Paget Street, Hughesdale

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Development of three double storey dwellings.

### 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 dated 4.1.2018, but modified to show:
  - (a) The east and west elevations of Dwellings 1 and 2 to contain a recess of 1.5 metres (wide) and 750mm deep at the mid points of these respective elevations.
  - (b) The north elevations of Dwellings 1 and 2 to contain a similar recess, that is 1.5 metres wide and 750mm deep and mid-way along this elevation.
  - (c) Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2m), which may include adjacent landscape areas with a height of less than 0.9m, extending at least 2.0m long x 2.5m deep (within the property) to both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
  - (d) Tree protection fencing around the street tree, with the fencing location to accord with AS.4970 as established by the project arborist.
  - (e) The provision of a double door at the end of the reversing bay to allow for drainage maintenance requests.
  - (f) A 1.83m wide drainage easement along the northern boundary.
  - (g) Details of finished floor level of Dwellings' courtyards.
  - (h) Dwelling 3 courtyard to maintain the current soil grades.
  - (i) Tree Protection Zone of Tree 16 within 555 Neerim Street and details of Tree Protection measures in accordance with the Arboricultural report prepared by McLeod Trees dated 7 September 2017.
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.
- 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 driveway and parking area is to be constructed to the satisfaction of the responsible authority.
6. 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.
7. 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.
8. 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.



9. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.
10. 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 –**

