

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P358/2022
PERMIT APPLICATION NO.TPA/52905

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone, Schedule 2; Three dwellings; Daylight to existing windows; Overshadowing

APPLICANT	Chuang Kong Chong
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Clarke Planning Pty Ltd
SUBJECT LAND	87 Winmalee Drive GLEN WAVERLEY VIC 3150
HEARING TYPE	Hearing
DATE OF HEARING	9 December 2022
DATE OF INTERIM ORDERS	13 and 19 December 2022
DATE OF ORDER	13 February 2023
DATE OF CORRECTION ORDER	31 March 2023
CITATION	Chong v Monash (Corrected) [2023] VCAT 136

ORDER

Permit granted

- 1 In application P358/2022 the decision of the responsible authority is varied.
- 2 In planning permit application TPA/52905 a permit is granted and directed to be issued for the land at 87 Winmalee Drive, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of three, two-storey dwellings on a lot.

Juliette Halliday
Member



APPEARANCES

For Chuang Kong Chong	Mr Chong appeared in person
For Monash City Council	Ms Adrienne Kellock, town planner of Kellock Town Planning Pty Ltd
For Clarke Planning Pty Ltd	Mr Andrew Clarke, town planner of Clarke Planning Pty Ltd



INFORMATION

Description of proposal	Three double storey dwellings
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone, Schedule 2 (GRZ2)
Permit requirements	Clause 32.08-6 (Construction of two or more dwellings on a lot in the GRZ2)



Land description

The land is located on the north side of Winmalee Drive, west of the intersection with Millan Court. It is irregular in shape and has a frontage to Winmalee Drive of 19.22 metres and an overall area of 881 square metres. It is improved with a single storey brick dwelling. A crossover and driveway are located on the eastern boundary of the land. There is secluded private open space to the rear of the dwelling with no existing canopy trees. The land has a fall of approximately 1.66 metres from the south to the north. It abuts five properties.

To the west at No. 1/85 Winmalee Drive is a single-storey brick dwelling set back approximately between 1.8 to 7.8 metres from the front boundary with a double garage abutting the eastern boundary. To the west at No. 2/85 Winmalee Drive is a double storey brick dwelling with a garage accessed via the driveway on the western boundary.

To the east, No. 89 Winmalee Drive is improved with a double storey dwelling set back approximately 7.9 metres from the front boundary with a double garage accessed via a driveway along the eastern boundary.

To the north-east, No. 2 Jarrah Court is improved with a two-storey brick and weatherboard dwelling. Further to the north-east, No. 3 Jarrah Court is improved with a single storey brick dwelling with a shed located to the rear of the dwelling. To the north, No 4 Narla Court is improved with a single storey dwelling brick dwelling. Opposite the land, No. 9 Millan Court is improved with a single story brick house with a garage accessed via a crossover and driveway on the western side of the land.

The land is subject to a restrictive covenant which restricts the type of front and side fences that can be constructed (amongst other things).

Tribunal inspection

An unaccompanied inspection was carried out after the hearing.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The application is brought by Chuang Kong Chong (**applicant**) under s 82 of the *Planning and Environment Act 1987* (**Act**) seeking a review of the decision of the Monash City Council (**Council**) to grant a permit for the development of the land at 87 Winmalee Drive, Glen Waverley (**land**).
- 2 The proposal is for the construction of three dwellings. The applicant submits that the proposal will block the sunlight to existing windows at 2/85 Winmalee Drive; will cause overlooking and overshadowing of the adjoining properties at 1/85 and 2/85 Winmalee Drive; will detrimentally impact traffic and parking in Winmalee Drive and that the density of the proposal is too high.
- 3 In summary, the Council's position is that the proposal provides an acceptable design response with respect to amenity impacts on neighbouring land; that appropriate car parking is provided, and that the traffic generated by the proposal is reasonable.
- 4 Amongst other things, the respondent submits that the proposal complies with the provisions at clause 55 of the Monash Planning Scheme (**Scheme**) in relation to daylight to existing windows; that the new shadows cast by the proposal are acceptable, that the proposal complies with the requirements of the Scheme in relation to parking and that traffic generated from two extra dwellings on the land is acceptable.
- 5 Having considered the submissions of the parties, and having inspected the land and surrounds, I conclude that the proposal with some modifications achieves an acceptable outcome. My reasons follow.

PROPOSAL AND SITE CONTEXT

- 6 The land and surrounds are described on page 4 of this decision.
- 7 The key elements of the proposal are as follows:
 - (a) three, four bedroom dwellings, each having an open plan kitchen/family/meals area, a powder room, laundry and a bedroom with ensuite at ground floor level. At first floor level, each dwelling has three bedrooms (main with ensuite and walk-in-robe), a small open plan study area and a bathroom;
 - (b) secluded private open space (**SPOS**) for each dwelling is proposed as follows:
 - i Dwelling 1: 169.7 square metres;

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.



- ii Dwelling 2: 75.9 square metres;
 - iii Dwelling 3: 78.3 square metres.
- (c) each dwelling is provided with a double garage, accessed via a shared driveway running along the eastern boundary of the land;
- (d) the proposal has a front setback of between approximately 6.8 to 8.22 metres and the maximum height is approximately 7.8 metres;
- (e) a contemporary design is proposed with dwellings being attached at ground floor level. Materials and finishes proposed include off-white render; timber; fibre cement vertical panels and a hipped, tiled roof; and
- (f) no front fence is proposed.
- 8 Extracts from the Ground Floor Plan (with north being at the right hand side of the page) and the West Elevation (which is the interface with the applicant's property) are set out in Figures 1 and 2 below.

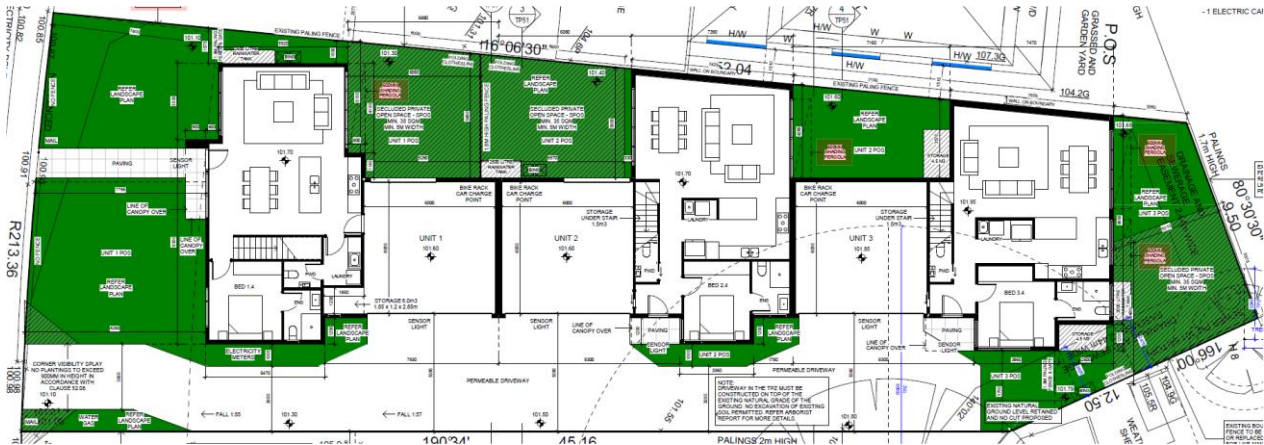


Figure 1 – extract from Ground Floor Plan

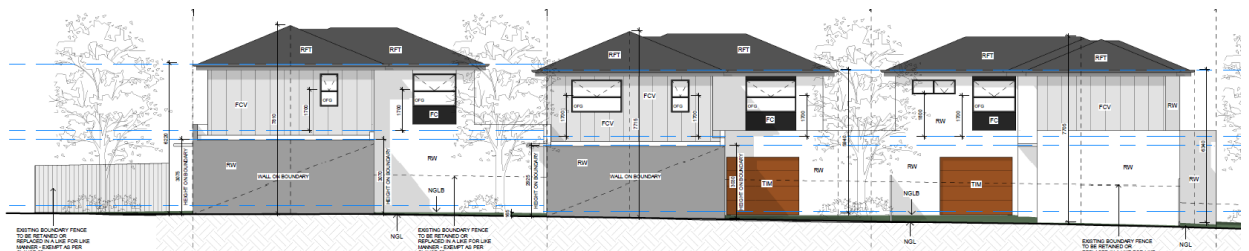


Figure 2 – extract from West Elevation

- 9 The land is located in a residential area comprised of detached dwellings and multi-unit developments. Generally the detached dwellings are single and double storey brick dwellings with hipped, tiled roofs as well as some very large scale two-storey detached dwellings which have been recently constructed.
- 10 Low (or no) front fences with open front garden settings are common, and these contribute to the open front garden settings within the area which



typically contain lawn and ornamental plantings. These are complemented by established street trees. There are some more recently constructed single and double-storey multi-unit developments, generally comprising two dwellings on a lot.

- 11 The area in which the land is located has reasonable access to transport, shopping and community facilities, including Glen Waverley South Primary School, Brentwood Secondary College, Brandon Park Reserve and Central Reserve, and bus routes 742, 850, 885 and 902. The Brandon Park Shopping Centre² is located approximately 530 metres to the north-west.

WHAT ARE THE KEY ISSUES?

- 12 Having regard to the submissions presented to the Tribunal at the hearing, the key issues for consideration are:
- (a) does the proposal provide an acceptable response to the provisions of the Scheme regarding overlooking, overshadowing and daylight to existing windows?
 - (b) will the proposal have an unacceptable impact in terms of car parking and traffic?

PROCEDURAL ISSUES & RULINGS

- 13 By way of interim orders, the respondent was required to provide information after the hearing regarding the overshadowing impacts of the proposal, and the other parties were provided with an opportunity to make submissions in relation to the additional information that was required. I have considered the material provided in response to the interim order in reaching my conclusions in this matter.

WHAT IS THE PLANNING AND POLICY CONTEXT?

Zoning

- 14 The land is located within the GRZ2, the purposes of which include the following:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To encourage development that respects the neighbourhood character of the area.

To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

...

² Identified as a major activity centre on the Strategic Framework Plan at clause 21.01-3 of the Scheme.



- 15 The schedule to the GRZ2 contains the following modifications to the requirements of clause 55 of the Scheme:
- (a) minimum street setback front setback: 7.6 metres;
 - (b) private open space (**POS**): a dwelling should have POS consisting of an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling with a minimum area of 35 square metres, a minimum width of 5 metres and convenient access from a living room (amongst other things); and
-
- (c) front fence height: a front fence within 3 metres of a street should not exceed 1.2 metres.

State and local planning policy

- 16 There are a range of State policies that are relevant to the application, including the following:
- (a) Clause 11.01-1S (Settlement) seeks to facilitate the sustainable growth and development of Victoria and deliver choice and opportunity for all Victorians through a network of settlements through strategies which include limiting urban sprawl, directing growth into existing settlements and promoting and capitalising on opportunities for urban renewal and infill redevelopment (amongst other things);
 - (b) Clause 15.01-2S (Building design) which (amongst other things) seeks to achieve building design and siting outcomes that contribute positively to the local context, enhance the public realm and support environmentally sustainable development through strategies including ensuring development responds and contributes to the strategic and cultural context of its location and encouraging development to provide landscaping that responds to its context and supports cooling and greening of urban areas;
 - (c) Clause 15.01-5S (Neighbourhood character) which (amongst other things) seeks to recognise, support and protect neighbourhood character and a sense of place through strategies such as supporting development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character;
 - (d) Clause 16.01-1S (Housing supply) which seeks to facilitate well-located, integrated and diverse housing that meets community needs through strategies such as encouraging higher density housing development on sites that are well-located in relation to jobs, services and public transport (amongst other things); and
 - (e) Clause 16.01-1R (Housing supply- Metropolitan Melbourne) which (amongst other things) seeks to facilitate increased housing in established areas to create a city of 20 minute neighbourhoods close to existing services, jobs and public transport.

- 17 In terms of local planning policies, the land is within ‘Category 2- Accessible Areas’³ which is amongst the ‘areas with future development potential’ in Monash referred to at clause 21.04-1 (Residential development). Relevant objectives and strategies at clause 21.04-3 include:
- (a) encouraging the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city;
 - (b) encouraging a high standard of architectural design in buildings and landscaping associated with residential development; and
 - (c) ensuring that new residential development enhances the character of the neighbourhood (having regard to clause 22.01).
- 18 Under the Monash Housing Strategy⁴ (**Strategy**) (which is a background document under clause 21.04-4) the land is located within a ‘Category 2 – Accessible Area’.⁵
- 19 Amongst other things, the objectives and strategies at clause 22.01 (Residential development and character policy) seek to ensure that development is consistent with the preferred future character statement at clause 22.01-4; to respect the character of surrounding development, including maintenance of consistent setbacks, and to minimise the impact of the scale and massing of development (clause 22.01-3).
- 20 The land is within the ‘Garden City Suburbs (Northern)’ area under clause 22.01-4. The preferred character statement for these areas (at clause 22.01-4) is as follows:

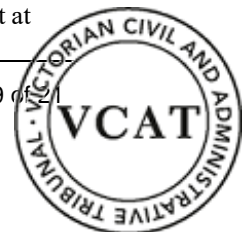
Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large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

³ Map 3 -Residential development framework map at clause 21.04-1.

⁴ Planisphere, Oct 2014.

⁵ I have considered the ‘future’ character’ sought for ‘Category 2 – Accessible Areas’ as set out at page 70 of the Strategy in reaching my conclusions in this matter, but I do not recite it here.



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 nonexistent 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.

- 21 Having regard to the policies referred to above (including clauses 11.01-1S; 16.01-1S; 16.01-1R; 21.04; 22.01 and the Strategy), and the proximity of the land to existing services and public transport (including the Brandon Park Shopping Centre), I am satisfied that there is policy support for the development of three, two-storey units on the land. I now turn to the key issues raised in this matter.

DOES THE PROPOSAL PROVIDE AN ACCEPTABLE RESPONSE TO THE PROVISIONS OF THE SCHEME REGARDING OVERLOOKING, OVERSHADOWING AND DAYLIGHT TO EXISTING WINDOWS?

- 22 In considering this matter, I am required to consider the relevant provisions of clause 55 of the Scheme, which deals with two or more dwellings on a lot. The provisions at clause 55 contain objectives which describe the desired outcome to be achieved in the completed development, and standards which contain the requirements to meet the objective. A standard should normally be met, but an alternative design solution may be considered if it meets the objective (see clause 55 - Two or more dwellings on a lot).

Overlooking

- 23 Amongst other things, the applicant submits that there should be no overlooking from the proposal into the adjoining properties at 1/85 and 2/85



Winmalee Drive, and that windows in the proposed development should be permanently closed to prevent overlooking.

- 24 The respondent made no substantive submissions regarding overlooking.
- 25 The Council's position is that the first floor windows have been appropriately screened to ensure that the rear yards and habitable room windows of 1/85 and 2/85 Winmalee Drive will not be subject to unreasonable overlooking.
- 26 The objective at clause 55.04-6 is to *limit* views into secluded private open space and habitable room windows (not to exclude views). I have considered the corresponding Standard B22 at clause 55.04-6, regarding overlooking which sets out how views into existing habitable room windows⁶ can be limited by methods such as having sill heights of at least 1.7 metres above floor level, and fixed obscure glazing in any part of the window below 1.7 metre above floor level.
- 27 The first floor habitable room windows along the west elevation of the proposal (facing the applicant's property) have sill heights of at least 1.7 metres above floor level, or fixed obscure glazing to the parts of the window that are below 1.7 metres above floor level, which satisfies the requirements of Standard B22. I am satisfied that the objective at clause 55.04-6 (to *limit* views into existing secluded private open space and habitable room windows) is achieved. On this basis, I do not consider that it is necessary to require the west-facing first floor habitable room windows to be permanently closed to prevent overlooking.

Overshadowing open space

- 28 Amongst other things, the applicant submits that the wall of Unit 3 will overshadow the existing unit and should be set back in the same manner as proposed Unit 1.
- 29 Council's submissions are that:
 - (a) the existing sunlight to the SPOS of 1/85 Winmalee Drive is less than the requirements of Standard B21 at clause 55.04-5 of the Scheme. The Council's position is that it considers that the plans should be modified so that there is no additional overshadowing to the SPOS of Unit 1/85 Winmalee Drive from 9am at the equinox, to maintain the amenity of this area of SPOS; and
 - (b) whilst the sunlight to the existing SPOS of 2/85 Winmalee Drive is reduced, the requirements of Standard B21 at clause 55.04-5 (Overshadowing open space objective) of the Scheme are satisfied.
- 30 The respondent submits (amongst other things):

⁶ Within a horizontal distance of 9 metres.



- (a) whilst it does not object to the modification of the plans in terms of the impact of overshadowing on the SPOS of Unit 1/85 Winmalee Drive, the requirement to modify the plans should be consistent with the requirements of Standard B21 to ensure that there is no new shadow to the SPOS by 10am at the equinox to ensure there is no loss of sunlight for a five hour period at the equinox; and
 - (b) the proposal is complaint with Standard B21 at clause 55.04-5 of the Scheme with respect to overshadowing to the SPOS of Unit 2/85 Winmalee Drive.
- 31 The objective at clause 55.04-5 regarding ‘overshadowing open space’ seeks ‘to ensure that buildings do not significantly overshadow existing secluded private open space’. Having regard to Standard B21, I am satisfied that the objective regarding overshadowing open space is achieved (subject to some modifications to the plans) met for the following reasons:
- (a) I am satisfied that the overshadowing impacts of the building on the existing SPOS at 1/85 Winmalee Drive will be acceptable, subject to a condition requiring modification of the plans to ensure that there is no additional shadow cast by the buildings to the SPOS of 1/85 Winmalee Drive at 9am and onwards at the equinox; and
 - (b) whilst the sunlight to the existing SPOS of 2/85 Winmalee Drive is reduced, the amounts of new shadow cast into the SPOS are very minor⁷. I am satisfied that that the proposed Unit 3 will not significantly overshadow the existing SPOS at 2/85 Winmalee Drive and that the overshadowing impacts of the building on the existing SPOS are acceptable.

Daylight to existing windows

- 32 The ground floor wall of 2/85 Winmalee Drive is set back approximately 1.5 metres from the common boundary with the subject land. The upper floor of the eastern wall of 2/85 Winmalee Drive is recessed from the ground floor below.⁸ The eastern façade of 2/85 Winmalee Drive contains three habitable room windows at ground floor level (all of which face the subject land) as follows:
- (a) a highlight window with a sill height of approximately 1800mm serving the main living/dining room, at the rear (northern) end of the dwelling (**Living Room Window**). About two-thirds of this highlight

⁷ At 22 September at 9am, there is approximately 1 square metre of new shadow cast by the proposal (with 43.44 square metres of SPOS not affected by shadow); at 10 am there is approximately 0.88 square metres of new shadow cast by the proposal (with 49.58 square metres of SPOS not under shadow) and 11am there is 0.36 square meters of new shadow cast by the proposal (with 55.38 square metres of SPOS not under shadow) and thereafter the proposal casts no new shadow over the rear SPOS of 2/85 Winmalee Drive.

⁸ Whilst there are existing windows at first floor level at 2/85 Winmalee Drive, they were not the subject of submissions in this matter.



- window sits opposite the ground floor boundary wall of proposed Unit 3;
- (b) a narrow, horizontal window with a sill height of approximately 900mm, located above the kitchen sink/bench (in the middle of the eastern wall of the existing dwelling). In terms of clause 55.04-3 (Daylight to existing windows objective) and Standard B19 this window is not impacted; and
 - (c) a wide window with three panes with a sill height of less than 900mm which serves an additional lounge area (at the southern end of the eastern wall) (**Lounge Room Window**). This window sits opposite the ground floor boundary wall of proposed Unit 2.
- 33 The windows are highlighted blue in the extract from the Ground Floor Plan at Figure 1 above.
- 34 Amongst other things, the applicant submits:
- (a) the boundary wall of proposed Unit 2 will substantially impact the sunlight entering the Lounge Room Window. By lunchtime there will be no sunlight penetrating the window of the living room;
 - (b) a solid wall should not be built on the boundary to overshadow No. 2/85 Winmalee Drive. The proposed wall on the boundary associated with proposed Unit 2 is too close to the adjoining dwelling. All new development should be moved away from the Lounge Room Window;
 - (c) at the very least, he submits that the wall should be in the same location as the wall of the existing garage at No 1/85 Winmalee Drive;
 - (d) he does not want to have to look out the Lounge Room Window at a brick wall;
 - (e) The proximity of the Unit 2 boundary wall to his property will reduce the morning sunlight to 2/85 Winmalee Drive.
- 35 Council's position is that the two walls proposed along the boundary are acceptable having regard to the objective at clause 55.04-3 which seeks to allow adequate daylight into existing habitable room windows.
- 36 With respect to the Lounge Room Window, the respondent submits as follows (in summary);
- (a) compliance with Standard B19 at clause 55.04-3 (Daylight to existing windows) is achieved;
 - (b) the proposed Unit 2 boundary wall can be 3.02 metres in height, on the basis that the distance between the existing wall opposite is 1.51 metres (or 3.16 metres based on a distance of between 1.58 metres to the window);
 - (c) the garage wall has a height of between 2.92 to 3.03 metres, with the taller parts of the wall (exceeding 3 metres in height) abutting the

existing garage on the neighbouring lot. The parts of the wall adjacent to the Lounge Room Windows would be less than 3.2 metres in height

- (d) even allowing for the eaves on the adjoining lot which project over their own window the Lounge Room Windows achieve 1m ‘clear to the sky’;
- (e) if the 13cm projection of the gutter beyond the eave above the Lounge Room Windows (to within 87 cm of the boundary) is taken into account, the proposal falls short of Standard B19 by 13cm, something a permit condition could easily resolve; and
- (f) if the gutter is included, then the Lounge Room Window was not designed to comply with Standard B27 at the time of construction.

Daylight to the Lounge Room Window

- 37 The Lounge Room Window is opposite the wall on the boundary associated with proposed Unit 2, being set back approximately 1.51 metres from the proposed wall.
- 38 Whilst the proposed Unit 2 wall complies with the required setback of 1.51 metres under Standard B19,⁹ it does not provide a light court to the Lounge Room Window with a minimum area of 3 square metres and a minimum dimension of 1 metre ‘clear to the sky’ as required under Standard B19 at clause 55.04-3, because the distance between the eave above the Lounge Room Window and the proposed wall opposite is approximately 0.87 metres.¹⁰
- 39 Whilst the deficiency is not large, the Lounge Room Window is the primary source of daylight for the lounge room, and in my view there should be compliance with Standard B19, to allow adequate daylight¹¹ into the Lounge Room Window, and I have required a condition on the permit to effect this change to the plans. This would require sections of the Unit 2 wall on the common boundary to be further set back to provide a light court with a minimum area of 3 square metres and a minimum dimension of 1 metre.

Daylight to the Living Room Window

- 40 Amongst other things, the applicant submits:
 - (a) all units should be set back off the boundary to allow light into 2/85 Winmalee Drive, and to reduce the impact of the proposal on the daylight to the windows;

⁹ Based on a conservative analysis, the height of the proposed Unit 2 wall opposite the Lounge Room Window is approximately 3.03 metres.

¹⁰ Noting that the area of the roof eave and attached guttering is not ‘clear to the sky’.

¹¹ As distinct from ‘sunlight’ which is not the subject of Clause 55.04-3.



(b) new buildings in the area are generally some distance from existing dwellings but this one is right on the boundary.

41 With respect to the Living Room Window, the respondent submits:

- (a) the Living Room Window is set back 1.51 metres (or 1.58 metres to its glazing) from the proposed Unit 3 wall on the common boundary;
- (b) the proposed boundary wall is 3.07 metres in height, which arguably does not comply with Standard B19 to the extent of 4.5 cm. However, the respondent submits that it does comply with Standard B19 if measured to the setback of the 'window' (which is the word used in the objective at clause 55.04-3 and in Standard B19); and
- (c) alternatively, the outcome is acceptable given that the Living Room Window is a highlight window; the degree of non-compliance is incredibly minor; the wall is only adjacent to part of these windows, and the windows are located in a dual aspect room and thus auxiliary to what would be acceptable daylight levels in that room.

42 The Lounge Room Window is opposite the wall on the boundary associated with proposed Unit 3. Whilst the 1.51m setback of the proposed Unit 3 wall from the Living Room Window does not comply with the setback of 1.55 metres required under Standard B19,¹² I am satisfied that the objective of clause 55.04-3 is achieved, and that adequate daylight will be allowed into the living room at 2/85 Winmalee Drive, given that the degree of variation from Standard B19 is minor, and the Living Room Window provides an auxiliary source of daylight to the north facing windows which serve as the primary source of daylight for the living room.

WILL THE PROPOSAL HAVE AN UNACCEPTABLE IMPACT IN TERMS OF CAR PARKING AND TRAFFIC?

43 Amongst other things, the applicant submits that he has concerns about the availability of parking and that new residents will park on the street rather than within the property, thus impacting visibility on Winmalee Drive, as the property is on the curve on the road, making visibility difficult when there are multiple cars parked on Winmalee Drive.

44 The applicant is also concerned about the impact of the proposed development on the traffic in Winmalee Drive.

45 Each dwelling is provided with two on-site car parking spaces, which satisfies the requirements at clause 52.06-5 of the Scheme.¹³ I am satisfied that an appropriate provision of car parking spaces has been made.

46 Whilst the proposed development can be expected to generate additional traffic, I have not been presented with any material which would indicate

¹² The height of the proposed Unit 3 wall opposite the Lounge Room Window is approximately 3.07 metres.

¹³ Number of car parking spaces required under Table 1.



that the additional traffic generated by the proposal will result in unreasonable impacts in terms of traffic on the surrounding streets.

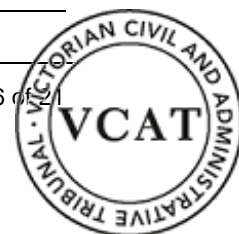
ARE THERE ANY OTHER ISSUES?

- 47 The applicant submits that the number of units is not in keeping with medium density housing in Monash, and the ratio of land and open space is not in proportion.
- 48 I have already indicated that I am satisfied that there is policy support for the development of three, two-storey units on the land, having regard to the relevant policies and strategies in the Scheme,¹⁴ and the proximity of the land to existing services and public transport (including the Brandon Park Shopping Centre).
- 49 Relevantly, the proposal is consistent with a number of the numerical standards and requirements in the Scheme, including the following:
- (a) the maximum height of the dwellings is 7.8 metres, which is below the maximum building height of 11 metres in the GRZ2;
 - (b) the site area covered by buildings is 42.5% which is below the maximum site coverage of 60% in Standard B8 at clause 55.03-3 (Site coverage objective);
 - (c) the site area covered by permeable surfaces is 34.8% which exceeds the minimum 20% permeability at Standard B9 at clause 55.03-4;
 - (d) private open space is provided in accordance with the modified Standard B28 at clause 55.05-4 (Private open space objective);
 - (e) the garden area provided is 36.2% which exceeds the mandatory minimum requirement of 35% in the GRZ2.
- 50 Having regard to the consistency of the proposal with several of the numerical standards and requirements in the Scheme, together with the policy support for three, two-storey units on the land, I have not been persuaded that the number of units is not in keeping with medium density housing in Monash, or that inadequate open space is provided.
- 51 Having regard to the plans submitted by the respondent in response to the Tribunal's interim order, I am satisfied that the proposal will not overshadow the existing rooftop solar energy system on the adjoining dwelling at 2/85 Winmalee Drive.

WHAT CONDITIONS ARE APPROPRIATE?

- 52 Draft permit conditions were circulated by the Council prior to the hearing on a 'without prejudice' basis. I have modified the conditions, having

¹⁴ Including clauses 11.01-1S; 16.01-1S; 16.01-1R; 21.04; 22.01 and the Strategy.



regard to my findings and the submissions made by the parties at the hearing.

CONCLUSION

53 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Juliette Halliday
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52905
LAND	87 Winmalee Drive GLEN WAVERLEY VIC 3150

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of three, two-storey dwellings on a lot.

CONDITIONS

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council by +add.projects dated 18 October 2021 (being TP22, TP24; TP26, TP31 – TP35; TP41, TP51, TP61-TP67) but modified to show:
 - (a) No additional shadow caused by the development to the secluded private open space of Unit 1/85 Winmalee Drive at 9am and onwards at the equinox. Amended shadow diagrams must be provided to show compliance with Standard B21 at clause 55.04-5 of the Monash Planning Scheme.
 - (b) The northern ground floor habitable room windows of Dwelling 3 to be screened to 1.7 metres above finished floor level with a freestanding screen located adjacent to the rear northern boundary.
 - (c) A notation that the adjoining trees must be protected in accordance with the Tree Management Plan in the arboricultural report prepared by Richard Warren-Smith of Melbourne Arboricultural Services Pty Ltd dated 19 April 2021.
 - (d) The location of Tree Protection Zones and Tree Protection Fencing as outlined within the Arborist Report prepared by Richard Warren-Smith of Melbourne Arboricultural Services Pty Ltd dated 19 April 2021.
 - (e) A minimum 6 cubic metre storage shed provided for Dwelling 2.
 - (f) All clotheslines to be freestanding.
 - (g) A Landscape Plan in accordance with condition 3 of this Permit.



- (h) Deletion of the notations on the plans regarding the ‘retention or replacement’ of the existing boundary fence on the eastern boundary of the land.
- (i) The part of the Unit 2 wall opposite the east-facing lounge room window at 2/85 Winmalee Drive (at the southern end of the eastern wall) compliant with Standard B19 at clause 55.04-3 of the Monash Planning Scheme.

All to the satisfaction of the Responsible Authority.

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, 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. The Landscape Plan must be generally in accordance with the Landscape Plan submitted by +add.projects dated 18 October 2021 but modified to show:
 - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
 - (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
 - (c) A minimum of (6) suitable canopy trees (minimum 1.5 metres tall when planted) located throughout the site. The canopy trees must have a minimum height of 6-7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
 - (d) The canopy tree shown in the easement to be located out of the easement;
 - (e) The location of any fencing internal to the site;
 - (f) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
 - (g) The location of any retaining walls associated with the landscape treatment of the site;
 - (h) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
 - (i) The location of Tree Protection Zones and Tree Protection Fencing as outlined within the Arborist Report prepared by Richard Warren-



Smith of Melbourne Arboricultural Services Pty Ltd dated 19 April 2021;

- (j) The location of external lighting (if any);
- (k) Any applicable requirements/notations required by condition 1 of this permit; and
- (l) Landscaping and planting within all open areas of the site.

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

- 4 The tree protection measures outlined in the Tree Management Plan within the arboricultural report prepared by Richard Warren-Smith of Melbourne Arboricultural Services Pty Ltd dated 19 April 2021 shall be adopted. The report will be endorsed as part of the permit and recommendations contained in the tree management plan must be implemented to the satisfaction of the Responsible Authority.
- 5 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area. The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
- 6 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.
- 7 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.
- 8 The site must be drained to the satisfaction of the Responsible Authority.
- 9 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
- 10 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing (or any alternate system).
- 11 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.



- 12 The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.
- 13 All disused or redundant vehicle crossovers must be removed, and the area reinstated with footpath, nature strip, kerb and channel to the satisfaction of the Responsible Authority.
- 14 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 15 The development must be provided with 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 each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- 16 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
- 17 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Expiry of permit for development

- 18 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –