# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P915/2021Permit Application no. TPA/51652 |

|  |
| --- |
| CATCHWORDS |
| Section 77 of the *Planning & Environment Act 1987*; Monash Planning Scheme; Existing dwelling alterations: Neighbourhood character & visual impact (NRZ4) |

|  |  |
| --- | --- |
| APPLICANT | Quan Zhou |
| RESPONSIBLE AUTHORITY | Monash City Council |
| SUBJECT LAND | 2/ 13 Landridge Street, Glen Waverley |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 30 November 2021 |
| DATE OF ORDER | 5 January 2022 |
| CITATION | Zhou v Monash CC [2022] VCAT 2 |

# 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:

|  |  |
| --- | --- |
| * Prepared by:
 | Justin Hutchison (Landscape Plan) |
| * Drawing numbers:
 | TP5 to TP11, all revision D (Development Plans) |
| * Dated:
 | 7/10/2021 (Development Plans); and 08/10/21 (Landscape Plan) |

1. The decision of the Responsible Authority is set aside.
2. In permit application TPA/51652 a permit is granted and directed to be issued for the land at 2/ 13 Landridge Street, Glen Waverley in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
* Alterations and additions to the existing dwelling on a lot less than 500sqm.

|  |  |  |
| --- | --- | --- |
| Tracy Watson**Member** |  |  |

**APPEARANCES**

|  |  |
| --- | --- |
| For Applicant | Mark Waldon, town planner. |
| For Responsible Authority | Gareth Gale, town planner. |

# INFORMATION

|  |  |
| --- | --- |
| Description of Proposal | It is proposed to alter an existing dwelling, including adding a second storey.  |
| Nature of Proceeding | Application under Section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning Scheme | Monash. |
| Zone and Overlay | Clause 32.09 – Neighbourhood Residential Zone, Schedule 4 (NRZ4).Clause 42.02 – Vegetation Protection Overlay, Schedule 1 (VPO1). |
| Permit Requirements | Clause 32.09-6 – To extend a dwelling on a lot less than 500m2.There are no permit triggers under the VPO1 provisions. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 22.01, 32.09, 54, 65 and 71.02. |
| Land Description | The subject site is a battle-axe shaped allotment located at the rear of an existing two-storey high dwelling. The subject site is currently developed with a single storey dwelling with vehicular access provided by a driveway from Landridge Street. Excluding the driveway, the subject site has a width of 18.29 metres and a depth of some 14 metres. The total area of the subject site is 373m2.  |
| Tribunal Inspection | 21 December 2021. |

# 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 May 2021, primarily on neighbourhood character grounds.
2. The Tribunal has not received any non-party statements of grounds in response to the notification of the amended plans, which have now been formally substituted.
3. Based on the hearing process and all the relevant associated documentation, I consider that the key issue relates to whether the proposal respects the neighbourhood character of the area.
4. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

## Is the proposal respectful of neighbourhood character?

1. The Council submitted that the proposal is too visually dominant/ bulky given its existing rear yard setting.
2. The Council argued that the proposal causes unacceptable visual bulk impacts to each of the abutting interfaces and provides for insufficient landscaping opportunities.
3. In general terms, the planning scheme’s local planning policy framework has a consistent theme of strengthening the overall ‘garden city’ character of the municipality. Specifically, the subject site and surrounds are located within the ‘Dandenong Valley Escarpment Area’ pursuant to Clause 22.01-4 of the planning scheme. The Dandenong Valley Escarpment Area has a preferred neighbourhood character statement which is essentially structured around the existing character features. In other words, the preferred neighbourhood character is not seeking something markedly different from the existing character of the environs of the subject site.
4. In relation to built form and landscaping outcomes, the key preferred character statement for the Dandenong Valley Escarpment (as it relates to the main issue under dispute) includes the following:

Building scale, height and bulk will continue to enhance and reinforce the existing landscape and built form character and will generally be similar within neighbourhoods. Large scale contrasts between buildings will be discouraged except where existing trees and shrubs soften the junction between buildings or where there is a graduated change in scale.

1. The Council’s submission also highlighted the primary applicable policy outcomes of Clause 22.01-3 of the planning scheme which seek to: minimise visual bulk impacts on neighbouring properties; provide separation to the existing dwelling fronting Landridge Street; and to provide recessive and articulated upper levels.
2. As the proposal is essentially confined to an upper level extension to an existing dwelling, the Council’s submission rightly did not raise any issues in regards to the three NRZ4 neighbourhood character objectives. Also, the Council did not raise any specific concerns in relation to the Clause 54 local variations or decision guidelines included in the NRZ4.
3. The proposal has a minimal impact on the public realm given:
* It is sited to the rear of an existing two-storey high dwelling;
* It does not alter the existing single crossover to the street;
* It does not alter the siting of the driveway; and
* The carport is sited such that it is not visible from the street.
1. Moreover, the proposal has a negligible impact on the amount of space available for landscaping as it largely retains the existing building’s footprint. The proposal also has no impact on views to the Dandenong Ranges.
2. Single and double storey dwellings sited in the rear of allotments is a common feature of this neighbourhood, and consequently neither a landscaped backyard corridor, nor a backdrop of canopy trees, are a feature of this immediate area. The existing vegetation on the subject site is very modest and is limited to low-scale planting, and is devoid of any canopy trees. In addition, there is an existing ‘rearyard’ double storey dwelling located directly to the north of the subject site.
3. The proposed landscape plan is a considerable enhancement of the existing conditions on the subject site. The landscape plan includes the planting of tussock grasses along both sides of the existing driveway, perimeter screen vegetation (either Portuguese Laurel or Slender Weavers Bamboo), interspersed with Lilly Pilly shrubs, and one new canopy tree to be planted in the south east corner of the subject site. In the context of the existing landscape character of this immediate area, I consider that the proposed landscape response is an appropriate one.
4. The only significant material change to the ground level footprint of the existing dwelling is an approximately 3.8 metres long section of new wall proposed to be constructed near the western side boundary. The Council was critical of this, as it is located adjacent to the pergola of the abutting property at no. 11 Landridge Street. However, more than half of this pergola retains an open aspect towards the existing driveway area on the subject site. I therefore consider that the proposed walk-in-robe constructed near the western side boundary is acceptable.
5. The other material change at the ground floor level is the proposed extension of the carport structure to approximately 11 metres in length, to be constructed along the southern boundary of the subject site. The Council said this was problematic given the extent of its visibility above the boundary fence, and its direct interface with the rear secluded private open space and north facing living room windows of the property at no. 1/ 13 Landridge Street. This visual impact is amplified by the proximity of this existing dwelling which is only setback 2.0 metres from the shared boundary.
6. I agree with the Council’s criticisms in this regard, and consider it reasonable to require a reduction in the footprint of the carport structure such that it maintains its existing footprint. I note that as the proposal is exempt from the requirements of Clause 52.06, the maintenance of only one on-site car space does not trigger any planning permission.
7. I do not share the Council’s concerns regarding the visual impact of the upper floor level on any of the abutting interfaces. I have formed this view because of the extent of the setbacks provided, the fact that the building is modulated along each of its upper level sides, and because screen planting has been provided along the northern, western and eastern site boundaries. The elevation plans include an outline showing the differences in scale/ form of the upper floor addition compared to the existing building, and this usefully demonstrates that the degree of change is relatively modest.
8. Overall, the proposed upper level has a sympathetic visual relationship with the upper floor setbacks of the abutting properties at nos. 1/ 13 Landridge Street and 2/ 18 Lindwall Street. The minimum separation distance between the proposed upper level and the existing upper level form to the south is 6.4 metres, while the minimum separation distance to the upper level form to the north is approximately 8 metres. Further, the proposed upper level has been sited to reasonably maintain the open eastern outlook as viewed from the rear secluded private open space at no. 11 Landridge Street. This has been achieved by the upper level’s proposed 3.588 metres setback from the northern boundary of the subject site. On the eastern side, the proposed upper level form has a minimum setback of 4.853 metres which is a generous setback relative to the large secluded private open space area of no. 15 Landridge Street.
9. Overall, I find that the proposed design response (subject to decreasing the footprint of the proposed carport structure) is respectful of the existing and preferred neighbourhood character of the area, and does not result in any unacceptable off-site visual bulk impacts.

## What conditions are appropriate?

1. The draft planning permit conditions were discussed at the hearing.
2. I agree with the Council’s submission that the south facing Bedroom 3 window requires screening as it does not currently meet Standard A15 of the planning scheme. Subject to this change, and the reduction in the size of the carport, I am satisfied that the proposal meets all of the Clause 54 objectives.

## Conclusion

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

|  |  |  |
| --- | --- | --- |
| Tracy Watson**Member** |  |  |

**APPENDIX A**

|  |  |
| --- | --- |
| **PERMIT APPLICATION NO:** | TPA/51652 |
| **LAND:** | 2/ 13 Landridge Street, Glen Waverley |
| **WHAT THE PERMIT ALLOWS:** |
| * Alterations and additions to the existing dwelling on a lot less than 500sqm.
 |

# 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 submitted with the plans dated 7 October 2021 (revision D) but modified to show:
2. The size of the carport footprint reduced to match the existing carport footprint.
3. Screening measures to the south facing Bedroom 3 window to meet Standard A15 of Clause 54.04-6 of the Monash Planning Scheme.
4. A landscape plan in accordance with condition 4.

**No Alterations**

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

**Common Boundary Fences**

1. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

**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 Concept Plan prepared by Justin Hutchison dated 08.10.21, and show the proposed landscape treatment of the site including:-
2. the location of all existing trees and other vegetation to be retained on site;
3. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
4. planting to soften the appearance of hard surface areas such as driveways and other paved areas;
5. 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;
6. the location and details of all fencing;
7. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site; and
8. 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.

**Tree Protection**

1. Prior to the commencement of any works that are permitted by this permit, all trees that are to be retained, or are located within or adjacent to any works area, shall be marked and provided with a protective barricade and verified by an authorised officer of the Responsible Authority.
2. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained during the construction period of the development hereby permitted.

**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.

**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.

**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:
* The development has not started before two (2) years from the date of issue.
* 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 the two parties along with all their tendered exhibits. In accordance with the Tribunal’s practice, I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)