

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11481/2021
PERMIT APPLICATION NO. TPA/52568

CATCHWORDS

Section 77 *Planning and Environment Act 1987* – two double storey side by side dwellings - General Residential Zone Schedule 3

APPLICANTS	Wai Loon Lee & Vanezia Viona Yauw
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	7 Legon Road OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATE OF HEARING	3 May 2022
DATE OF ORDER	15 June 2022
CITATION	Lee v Monash CC [2022] VCAT 660

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:
 - Prepared by: Danny Sab Architects
 - Drawing numbers: TP03 Rev B, TP04 Rev D, TP05 Rev D, TP06 Rev D, TP07 Rev D, TP08 Rev C, TP09 Rev E
 - Dated: 3 March 2022

Permit granted

- 1 In application P11481/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52568 a permit is granted and directed to be issued for the land at 7 Legon Road, Oakleigh South in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:



- Construction of two double storey dwellings on a lot in a General Residential Zone.

Jeanette G Rickards
Senior Member

APPEARANCES

For applicant

Mr P Rygl, Town Planner, Connect Town
Planning

For responsible authority

Mr P English, Town Planner, Peter English &
Associates Pty Ltd



INFORMATION

Description of proposal	Construct two double storey side by side dwellings
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
Zone and overlays	General Residential Zone Schedule 3 (Garden City Suburbs)
Permit requirements	Clause 32.08-6 – construct two or more dwellings on a lot
Relevant scheme policies and provisions	Clauses 11.01, Clause 11.01-1S, 11.01-1R, 11.02-1S, 15, 15.01-1S, 15.01-1R, 15.01-2S, 15.01-4S, 15.01-4R, 15.01-5S, 16, 16.01-1S, 16.01-1R, 16.01-2S, 21.01-1, 21.04-1, 21.04-3, 22.01, 22.01-4, 22.05, 52.06, 55 and 65
Land description	<p>The land is rectangular in shape with a frontage width of 15.2 metres, and a depth of 40.69 metres. The overall area of the site is 620m².</p> <p>The area is relatively flat, with the site having a slope of 0.5 metres from the rear boundary down to the front. A 2.44 metre wide drainage easement runs along the rear or western property boundary. Vehicle access to the site is via a single crossing and driveway situated adjacent to the northern boundary.</p> <p>Immediately to the north and south are original post war single storey brick dwellings with vehicle crossings and driveways located adjacent to the northern boundary of the site.</p> <p>Development opposite the site is slightly more diverse containing a mix of one and two storey dwellings which comprise original single-storey post war dwellings and more contemporary infill development.</p> <p>Immediately to the west are a mix of single dwellings and medium density development. The secluded private open space of 4 Jason Street directly abuts the western boundary of the site.¹</p>

¹ Extract from submission on behalf of the Responsible Authority





REASONS²

- 1 The applicants seek review of the decision of Monash City Council (the Council) to refuse to grant a permit for the construction of two double storey dwellings on 7 Legon Road, Oakleigh South.
- 2 The grounds of refusal by the Council include inconsistency with the Residential Development Policy in relation to neighbourhood character; boundary to boundary built form; design detail; internal amenity of secluded private open space; and insufficient landscaping.

Proposal

- 3 Amended plans were substituted at the commencement of the hearing.
- 4 It is proposed to construct two double storey side by side dwellings. Vehicle access is to be provided to a single garage and tandem car space via two separate vehicle crossings adjacent to the northern and southern boundaries. The garage to dwelling 1 is setback 1.0m from the northern boundary, whilst the garage for dwelling 2 is located on the southern boundary.
- 5 Each dwelling is to have an identical internal layout consisting of an open kitchen, dining, and living area, guest bedroom and study on the ground floor with three additional bedrooms, an ensuite, bathroom and an open retreat on the first floor.
- 6 Private open space is located to the west/rear. Dwelling 1 has an area of 130m² of private open space and dwelling 2 an area of 168m². Secluded private open space of 74.4 m² with 5m minimum dimensions is provided for each dwelling.
- 7 The front façade and roof form of dwelling 2 is a pitched roof with overhanging eaves, whilst the roof form of dwelling 1 is a pitched roof with a flat roof between both dwellings.
- 8 Both dwellings are setback 7.6m from Legon Road.

Planning Scheme Provisions

- 9 The subject land is located within the General Residential Zone Schedule 3 (Garden City Suburbs) (GRZ3). Development that respects neighbourhood character is encouraged as well as a diversity of housing types in locations offering food access to services and transport.
- 10 Schedule 3 seeks:
 - To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

² The submissions and evidence 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.



- To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks landscaping in the front setback and breaks and recesses in the built form.
 - To support new development that locates garages and carports behind the front walls of buildings.
- 11 The provisions of clause 55 ResCode apply to the application. There are several variations in GRZ3 to the standards. These include a 7.6m front setback; 50% site coverage; 30% permeability; one canopy tree, plus one canopy tree per 5m of site width; a new wall not on a rear boundary to be setback at least 5m; a minimum of 75m of private open space with one part a minimum area of 35m and a minimum width of 5m and a front fence should not exceed 1.2m in height.
 - 12 The subject land is within Category 8 - Garden City Suburbs under the Residential Development Framework Map at clause 21.04-1 which is consistent with GRZ3. In relation to future character, it is envisaged that ‘Garden City Suburbs will continue to provide lower scale residential development, with new development comprising a mix of single dwellings and medium density units and townhouses’. ‘The character of the area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary’.
 - 13 The Monash Housing Strategy 2014 sits behind the Residential Development Framework Map. The objective of Category 8 in the housing strategy is:

Provision of opportunities for modest housing growth and diversification with emphasis on preserving and enhancing Monash’s Garden City Character.
 - 14 The Council says the development does not provide an appropriate transition to built form on adjoining sites and any change in built form should minimise building bulk and massing in the streetscape and provide appropriate transition to adjoining buildings. The Council also does not consider it appropriate to have two vehicle crossovers accessing the site.
 - 15 To the north and south of the subject land both dwellings are post war 1950/60s single storey brick dwellings. Directly opposite the site is an interwar era single storey weatherboard dwelling as well as a contemporary double storey rendered brick dwelling with an attached double garage. A common feature of the area are the hipped tiled roof forms. Modest landscaping is found within the front setback of the nearby dwellings.
 - 16 The preferred character statement for the Garden City Suburbs (Southern) character type recognises the housing mix within the area will continue to evolve to meet the changing needs of the community:

The character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New



dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.

- 17 The GRZ3 zoning of the land suggests there is an expectation that there will be change occurring. The age of the dwellings within the area also suggests that there is an opportunity for new development to occur and this development is already seen in the form of recent double storey townhouses. The site has excellent accessibility to transport and services.

Neighbourhood character

- 18 The Council was critical of the side by side layout of the proposed development submitting this form is inconsistent with development in the street. Council considered a duplex style would be more appropriate and integrate better with the surrounding built form. Although the policy suggests new dwellings should front the street.
- 19 The Council was critical of the built form extending across the street frontage with only a 1.0m setback from the northern boundary. Policy recognises that built form can extend to one boundary provided there is a setback from at least one boundary.
- 20 The Council considered the provision of two vehicle crossovers results in a domination of garages.
- 21 Whilst two crossovers are provided, the crossovers will occupy 39% of the frontage. This complies with clause 55.03-9 Standard B14 which seeks to ensure the number and design of vehicle crossovers respects the neighbourhood character.
- 22 The single width garages are set back behind the front façade of each dwelling by 1.08m to the front wall and 2.28m to the porch. These setbacks will ensure that the garages will not have a dominating impact on the streetscape.
- 23 In relation to the built form, the Council considered the upper level does not provide sufficient setback from the ground floor resulting in a dominant built form which does not reflect the prevailing pattern or rhythm of residential development.
- 24 The subject site sits towards the northern end of Legon Road near Valley Street which runs in an east-west direction. At the end of Legon Road and opposite in Valley Street is a large industrial building that contributes to the immediate character of the area. Legon Road also contains a variety of built forms.
- 25 It is considered the maximum building height of 7.93m provides a suitable transition to the single storey dwellings to the north and south. It is noted that a height of 11m is permissible within the GRZ3. The proposal falls well below this height and a transition from single to double storey built form is not unreasonable.



- 26 The dwellings are set back from the street frontage the required 7.6m at ground floor level with a setback of 9.3m to the first floor. It is noted the upper levels of the dwellings are set back approximately 2.19m from the northern and southern boundaries which will not overpower the dwellings on the adjoining lots.
- 27 As noted above, a feature of the area is the hipped roof forms on a number of dwellings. The proposal incorporates these predominant roof types in the form of a pitched and gable roof reflecting the character of the area.
- 28 The rear of each dwelling is set back 6.7m to the alfresco and 9.76m to the living rooms. This complies with the GRZ3 variation of a 5m minimum setback.

Landscaping

- 29 The landscape plan shows two canopy trees are to be located within the front setback which will reach a maturity of between 8m – 10m. Two similar canopy trees are also proposed to be planted in the rear private open space of each dwelling. This results in a contribution of four canopy trees to the Garden Suburban Southern area. It is noted that there is at present an absence of canopy trees in the front setbacks of dwellings within Legon Road.
- 30 The Council was critical that there was a lack of canopy trees planted within the side setbacks. Within the area it does not appear to be common that canopy trees are planted within side setbacks. Rather, to contribute to the streetscape the canopy trees (if any) are found within front setbacks and in rear setbacks to provide some form of summer shading.
- 31 The landscaping plan provides for shrubs along the side boundaries to provide a form of screening to neighbouring properties. Side setbacks are generally used for the location of services and in this respect the setbacks of 1.37m will enable services including clotheslines, hot water services and bins to be located without the need to store them in the rear secluded private open space.
- 32 The front setback, whilst accommodating two driveways, still provides an area of 49m² across the front of each dwelling for sufficient landscaping to contribute to the streetscape, as well as landscape strips along the northern and southern boundary of the driveways.

Private open space

- 33 Whilst each dwelling extends further towards the rear than the adjoining dwellings a sufficient area of secluded private open space is provided. Facing west these areas will have good solar access.
- 34 A brick garage is located on the common boundary with the dwelling to the south whilst there is a reasonable setback to the boundary to the dwelling to the north.



- 35 Shadow diagrams indicate the rear private open space areas will not be impacted, nor will the rear of the dwelling to the north. Shadows will fall mainly on the garage and driveway of the dwelling to the south.

Conditions

- 36 The Council provided a set of draft conditions that were discussed at the conclusion of the hearing. In this respect I have considered the submissions made regarding the conditions and where I have considered appropriate have either deleted, added or amended conditions.
- 37 Proposed conditions 1(a), (b), (c) and (d) sought additional setbacks. I do not agree as proposed in the conditions that additional setbacks are required from the kitchen and living room of each dwelling, or the setback for the first floor bedroom for each dwelling to the rear, nor do I agree the first floor bedroom to the northern and southern boundaries be 2.6m when 2.45m is proposed.
- 38 I also consider the front facades of the two dwellings is sufficiently varied without the need for further variation.

Conclusion

- 39 I am unable to conclude the proposed development is unreasonable. I consider it will contribute to the housing diversity within the area; will provide a contemporary built form in an area that is expected to change; provides a reasonable transition in built form from the single storey dwellings to the north and south to the proposed double storey built form.
- 40 I do not consider the side by side development to be inappropriate within the streetscape. Both proposed dwellings will, as do other dwellings within the street, address the street and there is sufficient setback to both dwellings to accommodate not only landscaping with two canopy trees within the front setback, but also two driveways providing vehicle access to single garages.
- 41 The decision of the responsible authority is set aside. A permit is directed to be issued subject to conditions.

Jeanette G Rickards
Senior Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	TPA/52568
LAND:	7 Legon Road, Oakleigh South

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two double storey dwellings on a lot in a General Residential Zone.

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 Danny Sab Architects dated 3 March 2022 but modified to show:
 - (a) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site. Alternatively, it must be set back a minimum of 3 metres from the front title boundary, no greater than 1.4 metres in height and must be adjacent to the side boundary fence.
 - (b) A corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
 - (c) A Landscape Plan in accordance with condition 4 of this Permit.
All to the satisfaction of the Responsible Authority.

No Alteration or Changes

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



Common Boundary Fences

- 3 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

- 4 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: -

- (a) the location of all existing trees and other vegetation to be retained on site;
- (b) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (c) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (d) 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;
- (e) the location and details of all fencing;
- (f) the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site;
- (g) 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

- 5 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

- 6 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



- 7 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.
- 8 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
 - shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
 - another Council approved equivalent.
- 9 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.
- 10 The nominated point of stormwater connection for the site is to the north-east 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 nature strip 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

- 11 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 12 All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 13 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 14 Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.

Traffic

- 15 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.



- 16 The visitor parking space in front of each garage is to have a minimum length of 5.4metres from the property boundary.

Permits

- 17 Engineering permits must be obtained for new or altered vehicle crossings and new connections to kerb and channel and these works are to be inspected by Council's Engineering Department. A refundable security deposit of \$1,500 is to be paid prior to the drainage works commencing.

Completion of Buildings and Works

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

Permit Expiry

- 19 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 -

