VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P452/2021  Permit Application no. TPA/51673 |
| CATCHWORDS | |
| Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit | |

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| **Applicants** | Yam Shui Yee Lau & Ken Chai-Keung Lau |

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| **Responsible Authority** | Monash City Council |
| **Respondent** | Nishadi Bomiriya |

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| SUBJECT LAND | 9 Berrima Street  OAKLEIGH EAST VIC 3166 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 11 October 2021 |
| DATE OF ORDER | 11 October 2021 |

# Order

1. In application P452/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/51673 a permit is granted and directed to be issued for the land at 9 Berrima Street, Oakleigh East in accordance with the endorsed plans and the conditions set out in the Notice of Decision issued by the Responsible Authority on 12 February 2021. The permit allows:

Construction of a three-storey building comprising a retail premises and four (4) apartment dwellings

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| Laurie Hewet  **Senior Member** |  |  |

# Appearances

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| For applicants | Yam Shui Yee Lau |
| For responsible authority | Ms S Moser, town planner |
| For respondent | Mr Prabakaran Ponnuthurai, town planner |



# Information

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| Description of proposal | Construction of a three-storey building comprising a retail premises and four (4) apartment dwellings. |
| Nature of proceeding | Application under section 82 of the *Planning and Environment Act 1987* – to review the decision to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Clause 34.01: Commercial 1 Zone. |
| Permit requirements | Clause 34.01-4: A permit is required to construct a building and to construct or carry out works. |
| Land description | The subject site is located on the northern side of Berrima Street between Clayton Road and Patrick Street in Oakleigh East. It is westernmost of several commercial properties on the north side of the street. The land is well located being close to both Clayton and Ferntree Gully Roads and Monash University.  The site is generally rectangular with a splay at its north-western corner. The land has an overall area of 181 square metres with a 7.62 metres wide frontage to Berrima Street, a depth of 24.38 metres along its eastern boundary and a depth of 21.33 along its western boundary  A single storey commercial building occupies the site.  The site abuts a right of way to its north and west. A double storey dwelling abuts the western side of the right of way. Dwellings abut the northern side of the right of way. |

# Reasons[[1]](#footnote-2)

1. This is an application to review the decision of the Responsible Authority to grant a permit for the construction of a three-storey mixed use building at 9 Berrima Street, Oakleigh East. The application is made on grounds that raise concerns about the proposal’s height and bulk, the lack of setbacks and the transition to the dwelling located to the west of the site.
2. The applicant for review submits the proposal is not respectful of the character of the neighbourhood and contributes to unacceptable amenity impacts in the form of visual bulk, overlooking and overshadowing.
3. The applicant for review refers to and relies on an earlier decision of the Tribunal[[2]](#footnote-3) that approved a three-storey building on the review site that incorporated greater setbacks from the front, rear and western side boundary.
4. The applicant for review submits that the current proposal should adopt a one metre setback at the upper level from the site’s western boundary.
5. At the end of the hearing, I provided oral reasons for my decision to affirm the Council’s decision and to grant a permit.

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| Laurie Hewet  **Senior Member** |  |  |

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. [↑](#footnote-ref-2)
2. VCAT Reference No. P515/2014 unreported. [↑](#footnote-ref-3)