VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P5/2020  Permit Application no. TPA/50541 |
| CATCHWORDS | |

|  |  |
| --- | --- |
| APPLICANT | Yulin Zeng |
| responsible authority | Monash City Council |
| SUBJECT LAND | 3 and 5 Una Street, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Christopher Harty, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 17 June 2020 |
| DATE OF ORDER | 22 June 2020 |
| CITATION | Zeng v Monash CC [2020] VCAT 668 |

# Order

1. The decision of the responsible authority is varied.
2. The Tribunal directs that planning permit TPA/50541 must contain the conditions set out in planning permit TPA/50541 issued by the responsible authority on 18 December 2019 with the following modifications:
   1. Conditions 1(a), 1(c) and 1(e) are deleted.
   2. Condition 1(b) is amended to read:

1(b) Relocate the southern wall of Bed 2 of Dwelling 1 a minimum of 0.5 metres to the north with no consequential loss to any other setback to the satisfaction of the responsible authority.

* 1. Condition 1(d) is amended to read:

1(d) Relocate the eastern wall of Bed 2 of Dwelling 2 a minimum of 1 metre to the west with no consequential loss to any other setback to the satisfaction of the responsible authority.

* 1. Conditions 1(f) and 1(g) are combined and amended to read:

The Walk in Robes (WIRs) of both Dwellings 2 and 3 are to be deleted and the gap between these dwellings at the upper storey increased to 7.3 metres to the satisfaction of the responsible authority.

* 1. Conditions in Condition 1 of the planning permit are renumbered accordingly.

1. The responsible authority is directed to issue a modified planning permit in accordance with this order.

|  |  |  |
| --- | --- | --- |
| **Christopher Harty**  **Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For Yulin Zeng | Mr Mark Waldon, Town Planner from St - Wise Pty Ltd |
| For Monash City Council | Mr James Turner, Town Planner (Principal Planner – Appeals Advisor) |

# Information

|  |  |
| --- | --- |
| Description of proposal | Construction of three (3) double storey dwellings in addition to the retention of the existing double storey dwelling at 3 Una Street. |
| Nature of proceeding | Application under section 80 of the *Planning and Environment Act 1987* – to review the conditions contained in the permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 3 – *Garden City Suburbs* (**GRZ3**)  No overlays |
| Permit requirements | Clause 32.08-6 to construct two or more dwellings on a lot |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.04, 22.01, 32.08, 55, 65 and 71.02 |
| Land description | The land is located on north side of Una Street and includes 3 and 5 Una Street, Mount Waverley (**site**). The site is rectangular in shape with a combined frontage of 37.8 metres, a depth of 39.8 metres and overall area of 1,512.6 square metres. An existing double storey dwelling occupies the land at 3 Una Street and a single storey weatherboard dwelling occupies 5 Una Street. The site is moderately landscaped with a front garden to both dwellings and a large canopy tree to the rear of 5 Una Street. The surrounding area includes detached single dwellings with pitched roofs or new contemporary designed double storey houses. |
| Tribunal inspection | 16 June 2020 unaccompanied |

# reasons

# (summary of oral decision given at the hearing)

1. This is an application by Yulin Zeng (**applicant**) to review conditions on Planning Permit No. TPA/50541for construction of three (3) double storey dwellings in addition to the retention of the existing double storey dwelling at 3 and 5 Una Street, Mount Waverley (**site**).
2. Council granted the permit on 18 December 2019. The applicant contests the following parts of Condition 1 requiring amended plans:

* 1(a) Relocate the eastern wall of Bed 3 of Dwelling 1 to have a minimum eastern wall setback of 5.62m with no consequential loss to any other setback to the satisfaction of the Responsible Authority.
* 1(b) Relocate the southern wall of Bed 2 of Dwelling 1 a minimum of 1.5m to the north with no consequential loss to any other setback to the satisfaction of the Responsible Authority.
* 1(c) Deletion of the first floor area made available for the ensuite of Dwelling 1 with no consequential loss to any other setback to the satisfaction of the Responsible Authority.
* 1(d) Deletion of the first floor area made available to Bed 2 of Dwelling 2 with no consequential loss to any other setback to the satisfaction of the Responsible Authority.
* 1(e) Relocate the first floor southern wall to the Rumpus room of Dwelling 2 to have a minimum wall setback of 3.4m with no consequential loss to any other setback to the satisfaction of the Responsible Authority.
* 1(f) Deletion of the first floor area to Dwelling 2 proposed to be constructed over the associated garage to the satisfaction of the Responsible Authority.
* 1(g) Deletion of the first floor area to Dwelling 3 proposed to be constructed over the associated garage to the satisfaction of the Responsible Authority.

1. Council advised that following a review of the plans it no longer seeks to retain Condition 1(e).
2. Regarding the remainder of the contested conditions, Council considers the modifications to the development sought by them are necessary to ensure acceptable character and amenity outcomes are achieved.
3. The applicant considers the conditions are not necessary to protect neighbourhood character or amenity outcomes and are inconsistent with emerging larger built form occurring in the locality.
4. Reasons for this decision were given orally at the conclusion of the hearing and this summary is provided containing the reasons for the decision.
5. I do not detail the proposal, the site context and planning scheme provisions as these are identified in the various documents contained on the Tribunal file.
6. Based on balancing policies to achieve an acceptable outcome with respect to net community benefit and sustainable development, the site at 3 and 5 Una Street, Mount Waverley is now in the General Residential Zone Schedule 3 (**GRZ3**) with no overlays.
7. Schedule 3 to the GRZ and policies at Clause 15.01-5S – *Neighbourhood Character*, Clause 21.04 – *Residential Development* and Clause 22.01 – *Residential Development and Character Policy* all place a strong emphasis on respecting, enhancing and positively contributing to neighbourhood character and particularly to garden city character.
8. Regarding policy, Map 1 – *Residential character types* in Clause 22.01-3, shows the site located within *Garden City Suburbs Northern Areas*. This character type encourages incremental change subject to considering neighbourhood and garden city character.
9. Relevantly, the policy under Clause 21.04-1 with respect to neighbourhood character includes the statement that:

New development should be carefully designed and sited to satisfy the intent of the preferred future character statement for each residential character type as identified. Garden City character, within all residential areas should be maintained and enhanced.

1. The area within which the site is located is predominantly residential with single and double storey built form with single storey older housing stock detached and newer medium density housing stock double storey in form with separated upper levels, and much of it with pitched tiled roofing set within a garden setting.
2. Within this context, I make the following findings with regards to each of the conditions in dispute:

* Condition 1(a), I find this condition can be deleted. Council considers the upper floor setback from the eastern boundary is required to mitigate visual bulk. The applicant believes the design is not exceptional in the context of built form in the area including that evident with more recent built form design. I agree, Bed 3 is setback 2.2 metres from the eastern boundary and from the ground floor garage wall. Upper levels are evident over garages in the area and the upper level faces the driveway of the adjoining property to the east.
* Condition 1(b), I find this condition can be varied. Council considers the upper floor of Bed 2 facing the street should be setback to allow additional articulation. The applicant considers the southern wall of Bed 2 is already recessed 600mm from the ground level façade which provides suitable articulation. However, it was suggested a further recess of 0.5 metres could be provided to which Council agreed. I accept this agreement and a setback from the ground floor wall of 1.1 metres is acceptable and provides a more noticeable sense of articulation.
* Condition 1(c), I find this condition can be deleted. With the retention of Bed 3, I find it is no longer necessary to increase the setback of the rear ensuite to Bed 4 of Dwelling 1.
* Condition 1(d), I find this condition can be varied. Council is concerned the 5 metres separation between Dwellings 1 and 2 is insufficient to break up building mass and bulk to the east. The applicant has suggested a change to setback Bed 2 of Dwelling 2 a further 1 metre to the west to offer greater articulation. I support this suggestion and consider it will assist in providing articulation and building bulk relief to the east.
* Condition 1(e) is deleted based on Council’s changed position.
* Conditions 1(f) and 1(g), I find they can be varied and amalgamated. These conditions seek to increase the sense of upper floor separation between Dwellings 2 and 3. The applicant has suggested they be combined and to provide deletion of the walk-in robes of both dwellings to increase the separation at upper floor level to 7.3 metres. I accept this change. It will provide for greater separation of the upper levels and improve the sense of space when viewed from either the north or south.

## Conclusion

1. For the reasons given above, the proposal is an acceptable outcome in terms of the Monash Planning Scheme, the decision of the responsible authority is varied. A permit is granted subject to amended conditions.

|  |  |  |
| --- | --- | --- |
| **Christopher Harty**  **Member** |  |  |