VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1401/2018  Permit Application no. TPA/48431 |
| CATCHWORDS | |
| Section 77 *Planning and Environment Act 1987* – Neighbourhood Residential Zone Schedule 3 – two double storey dwellings - neighbourhood character – built form - landscaping | |

|  |  |
| --- | --- |
| APPLICANT | Guruthevanamby Thillainadarajah |
| responsible authority | Monash City Council |
| SUBJECT LAND | 4 Turner Court GLEN WAVERLEY VIC 3150 |
| WHERE HELD | Melbourne |
| BEFORE | Jeanette G Rickards, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 8 February 2019 |
| DATE OF ORDER | 18 March 2019 |
| CITATION | Thillainadarajah v Monash CC [2019] VCAT 336 |

# Order

### Amend permit application

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and 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: | TGVK Pty Ltd |
| * Drawing numbers: | TP0051-17/A1, TP0051-17/A2, TP0051-17/A3, TP0051-17/A4, TP0051-17/A5, TP0051-17/A6, TP0051-17/A7, TP0051-17/A8, TP0051-17/A9, TP0051-17/A10, TP0051-17/A11 all Rev B |
| * Dated: | 13 December 2018 |

### Permit granted

1. In application P1401/2018 the decision of the responsible authority is set aside.
2. In planning permit application TPA/48431 a permit is granted and directed to be issued for the land at 4 Turner Court, Glen Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of two dwellings on a lot within a Neighbourhood Residential Zone, Schedule 3.

|  |  |  |
| --- | --- | --- |
| **Jeanette G Rickards, Senior Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For applicant | Mr P English, Town Planner, Peter English & Associates Pty Ltd  He called as a witness:   * Mr R Thomson, Landscape Architect |
| For responsible authority | Mr D De Giovanni, Town Planner |

# Information

|  |  |
| --- | --- |
| Description of proposal | Construction of two dwellings |
| 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 overlays | Neighbourhood Residential Zone, Schedule 3 (Creek Environs Area) (clause 32.09)  Vegetation Protection Overlay, Schedule 1 (Tree Protection Area) (clause 42.02) |
| Permit requirements | Clause 32.09-6 – construct two or more dwellings on a lot |
| Relevant scheme policies and provisions | Clauses 11.01-1S, 11.01-1R, 11.02-1S, 11.03-1S, 15.01-1S, 15.01-2S, 15.01-4R, 15.01-5S, 16.01-1R, 16.01-2S, 16.01-2R, 16.01-3S, 16.01-3R, 16.01-4S, 18.02-2S, 21.01-1, 21.04, 21.08, 22.01, 22.04, 22.05, 55 and 65 |
| Land description | The subject site is located on the northern side of Turner Court Glen Waverley. It is rectangular with an angled frontage and has a total site area of 654m². The site has a fall of approximately 7.23m from the north-western (rear) corner to the south-eastern (front) corner.  To the north is a relatively new dwelling at 32 Falconer Street. Its rear open space area abuts the boundary of the subject site.  To the west is a two storey dwelling at 3 Turner Court. This property has a well vegetated front garden.  To the east is a two storey dwelling at 5 Turner Court. A VPO protected tree (tree 7) is located within its frontage.  To the south and opposite the site are a series of single dwellings. Being on the lower side of the court these dwellings have a low scale presentation to the street. |
| Tribunal inspection | 7 March 2019 |

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

## what is this application about?

1. This is an application for review of the decision of Monash City Council (the council) to refuse to grant a planning permit for the construction of two dwellings on land at 4 Turner Court, Glen Waverley.
2. The grounds of refusal relate to neighbourhood character, built form and landscaping.
3. At the commencement of the hearing amended plans were substituted for the plans the subject of the permit application.

## What is proposed

1. It is proposed to develop two side by side, two storey dwellings over a basement with generally similar footprints. The basement is to extend above the natural ground level by more than 1.2m. A single car parking space is to be provided within a garage in the basement, as well as storage and steps to the living areas. An additional car parking space is to be provided in front of the garage.
2. Ground level is to contain a formal living room, bedroom, kitchen, dining and family area, laundry and bathroom. The first floor is to contain three bedrooms, one with an ensuite and walk in robe, a leisure area and bathroom.
3. Dwelling 1 is to have a rear private open space area of 71m² and dwelling 2 an area of 67m². The site coverage is 49% of which 43% is permeable area and a garden area of 43%.
4. Both dwellings are to be constructed of brick. The development has an overall height of 9.4m.

## neighbourhood character

1. The Monash municipal profile at clause 21.01-1 indicates the municipality is known for its ‘garden city character, consisting of leafy, low-rise suburbs with well vegetated private gardens and wide street with street trees’.
2. Clause 21.04 indicates the subject site is in Character Type C described as ‘Character derived from Post-War to 1965 development, undulating topography with a dominant N-S/E W grid with some diagonal distortion’.
3. The council considered the subject site fell within Category 7 – Creek Environs within an area of ‘limited redevelopment potential’ under the Monash Housing Strategy 2014.[[2]](#footnote-2) The future character for this area indicates that ‘in broad terms the Creek Environs will continue to provide lower scale residential development, with new development comprising a mix of single dwellings and medium density units and townhouses. Modest dwellings, with simple pitched rooflines and articulated facades, will continue the prevailing development themes’. Developments are encouraged to be well landscaped.
4. The applicant for review referred to Category 2 – Accessible Areas indicating areas with future redevelopment potential within the Monash Housing Strategy 2014. The future character for this area is as ‘a transition between the activity centres, which are intended to be areas for higher density development (residential and commercial) and the Garden City Suburbs (Category 7) which will continue to be occupied by more traditional forms of residential development’.
5. The area is identified within Figure 6A Residential Development Framework Map in the Housing Strategy. As with many such maps it is indicative and often difficult to ascertain specifically where a site is located within one of the categories referred to. It appears to sit within an area that is covered by both Category 2 and Category 7. Given the proximity to the (Creek Environs) (NRZ3), I will adopt the council’s view that the site is located within Category 7. I however acknowledge that it sits on the cusp of the ‘accessible area’ surrounding the Syndal Activity Centre. The site also sits within the Principal Public Transport Network area maps, indicating the site has a high level of accessibility.
6. Two of the purposes of NRZ3 are ‘to recognise areas of predominantly single and double storey residential development’; and ‘to manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics’.
7. Within Turner Court the topography of the area plays a significant role in the character of the streetscape with dwellings on the northern side being elevated, resulting in steep, generally concreted driveways that lead to garages. Steep stairs are also evident in providing access to front doors. The bowl of the court is low and a walkway between two dwellings allows for access to the creek. Dwellings on the southern side are generally invisible with often only the garage being visible within the streetscape. Apart from the driveways and garages the dwellings within the court are generally well screened by vegetation.

## built form

1. ‘A building may exceed the maximum building height by up to 1 metre if the slope of the natural ground level, measured at any cross section of the site of the building wider than 8 metres, is greater than 2.5 degrees.’ At 9.4m the overall height of the building meets the requirements of the scheme.
2. The council was critical of the side by side built form which in council’s view presented a level of built form massing which is excessive. Council submitted this was contributed to by the three storey height/scale combined with the presentation of the two dwellings side by side with limited recession between the ground and first floor, and a lack of articulation in the wall planes.
3. The council described Turner Court as ‘presently characterised by dwellings that are well set back from side boundaries, feature single crossovers/driveways and provide generous front garden areas that support layered planting and canopy tree planting’.
4. As I have referred to above and as described by the applicant for review, the dwellings within the court appear to respond to the topography of the land with dwellings on the northern side elevated, whilst dwellings on the southern side are almost invisible as they slope down and away from the court. I agree the built form on the northern side is substantial and a dominating element.
5. The proposal meets the minimum specified 7.6m setback from the front street. This setback is to the front porch and first floor balcony. The first floor level is set back 9.05m for dwelling 2 and 10.05m for dwelling 1.
6. At the rear the proposal is set back 7m at ground level for dwelling 2 and 7.5m for dwelling 1. This exceeds the minimum rear setback of 5 metres.
7. Consideration is required to be given to:

* A built form that is sufficiently recessed and articulated, as viewed from the creek reservation and neighbouring properties, to reduce visual bulk and ensure the vegetation provides the more dominant element as viewed from the creekland reserve, the street and adjoining properties.
* Housing that visually recedes into a continuous backdrop of canopy trees, avoiding dominant upper storeys and tall roof forms, resulting in visually intrusive built form and large, blank walls.
* The use of robust and low maintenance materials and finishes that blend with, rather than contrast with, the surrounding natural environment, will withstand weathering and create minimal adverse impacts (for instance, safe walking surfaces and limited reflective materials).
* Appropriate side and rear boundary fencing, in terms of heights and material choices.

1. The existing dwelling is well elevated and extends across the width of the site with minimal setbacks from its side boundaries. I do not consider that the proposed side by side development is inappropriate within the context of the area. It will present to the street as a single built form. Dwelling 1 with its flat roof form will sit considerably lower than the neighbouring dwelling at 3 Turner Court. Whilst it is generally two storeys in form, due to the topography, a portion of the garage at basement level will sit slightly above natural ground level. Steep steps provide access to the front door, but this is no different to the existing dwelling or the abutting dwelling at 5 Turner Court.
2. Dwelling 2 sits slightly lower on the site and has an angled skillion roof with its highest point towards the middle of the site. It is still lower in height than the dwelling at 3 Turner Court. The skillion roof matches the similar roof form of the dwelling at 5 Turner Court, although due to the topography, that dwelling sits lower than dwelling 2. Dwelling 2 also has a set of steep steps to the front door. The front of dwelling 2 is set slightly back from the front of dwelling 1 providing an element of articulation.
3. I agree with the description by the applicant for review that the two dwellings provide an asymmetrical design, within a single form that follows the topography of the land, and presents varying façade detail and roof forms.

## landscaping

1. The council referred to the properties in Turner Court having spacious front gardens. NRZ3 provides a variation to standard B13 requiring:

Retain or provide at least one canopy tree plus one canopy tree per 5 metres of site width with a minimum mature height equal to the height of the roof. The species of canopy trees should be native, preferably indigenous.

1. Further considerations under NRZ3 are whether the proposed development incorporates a well-considered landscape scheme that contributes to the ‘buildings in bushland setting’, the preferred future character for the creek interface areas. Specifically, whether the proposal:

* Provides sufficient and well located open space areas, not encumbered by an easement, to provide for a large tree to be planted or retained within the front, side and rear setbacks, and open space areas.
* Proposes the siting of buildings to minimise the need for the removal of significant trees and protect significant trees on the site and adjoining properties.
* Breaks up the appearance of building mass through the provision of space for trees and vegetation between dwellings on the same site.

1. Council was critical of the provision of two crossovers/driveways, enclosed by retaining walls on either side at a height of 2.2m. The council highlighted the NRZ3 decision guidelines which seek to:

* Minimises hard paving throughout the site including limiting driveway lengths and providing landscaping on both sides of driveways and restricting the extent of paving within open space areas.
* Maximises planting opportunities adjacent to the street by excluding hard paving such as car parking, turning circles and driveways.
* How vehicle crossovers are located and minimised in number to prevent traffic disruption and preserve nature strips and street trees.

1. The guidelines apply to a wide area encompassed by the NRZ. Not all that area has the topography that is found within Turner Court. The two garages will be visible, but this is not dissimilar to other garages within the court. The driveway for the existing dwelling, although accessed by one crossover curves across most of the front of the site providing access to two garages which appear to dominate the front of the dwelling. As indicated by the applicant for review the existing driveway occupies approximately 79m² within the frontage whereas the two separate driveways only occupy approximately 51m² of the frontage.
2. The proposal breaks up the existing expanse of concrete and whilst the proposal provides two separate crossovers with access to two garages, these garages will sit on either side of the site and not feature prominently within the middle as a dominant feature. This will allow, as shown on Mr Thomson’s landscape plan, the ability to plant large canopy trees within the front setback in front of each dwelling with understorey planting. This in my view will provide a better outcome and contribution to the streetscape than what currently exists.
3. I agree with Mr Thomson that ‘the front setback in particular allows for the planting of high canopy trees and a range of other vegetation that will provide a significant contribution to the streetscape and wider landscape character’.
4. Each garage is to be accessed via a 3m wide crossover. The driveways will sit below the level of the street and will therefore not be as dominant a feature as the driveways that rise from the court. I take no issue with the sides of the driveways requiring a retaining wall. The setback from the side boundaries allows for areas of planting that will assist in filtering views of the built form from the abutting properties. This boundary planting also includes appropriate planting that will sit well under the canopy of the Eucalyptus tree on the abutting property to the east.
5. Two existing trees are to be retained along the rear northern boundary. Additional planting of larger canopy trees and shrubs are also to be planted along the northern boundary to provide for a screening/filtering of views form the adjacent properties. As identified by Mr Thomson, 14 canopy trees taller than 6m in height and over 200 shrubs and tussocks are to be planted that will contribute to the garden character and environmental values of the site.
6. In my view Mr Thomson’s landscape plan responds well to the local variation to standard B13 which provides for 11 trees of between 8m and 16m in height at maturity that will rise above the highest point of the proposed development at 9.4m.

## what conditions are appropriate?

1. Draft conditions were provided to the Tribunal prior to the hearing and were discussed during the hearing.
2. It was acknowledged that the 10m height limit applied and therefore condition 1(d) is not required.
3. It was agreed that the recommendations of Mr Thomson be incorporated into the conditions and the landscape plan presented by Mr Thomson form the basis of the landscape condition.

## conlculsion

1. For the above reasons the decision of the responsible authority is set aside. A permit is granted subject to conditions.

|  |  |  |
| --- | --- | --- |
| **Jeanette G Rickards, Senior Member** |  |  |



# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No: | TPA/48431 |
| Land: | 4 Turner Court, Glen Waverley |

|  |
| --- |
| What the permit allows |
| In accordance with the endorsed plans:   * Construction of two dwellings on a lot within a Neighbourhood Residential Zone, Schedule 3. |

## Conditions:

1. Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the responsible authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the decision plans but modified to show:

(a) Corner splays or areas at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscape 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) on both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

(b) The details and location of tree protection fencing as recommended in the arborist report prepared by Tree Access Pty Ltd dated 30 January 2018.

(c) Dwelling 1 to have a maximum two storeys.

(d) Details of driveway grades and demonstration of compliance with clause 52.06 of the Monash Planning Scheme.

(e) Deletion of side paths adjacent to the driveways.

(f) Bin storage should be shown either within the garages or in a cut out alcove in the retaining walls adjacent to the driveway.

(g) Alignment of retaining walls along the east and west boundaries to be adjusted in accordance with the landscape plan to improve growing conditions.

(h) A Tree Management Plan in accordance with Condition 7.

1. The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
2. Tree protection fencing that accords with AS.4970 to be erected around the nature strip tree prior to the commencement of works. This fencing is not to be removed until completion of works to the satisfaction of the responsible authority.
3. Fence post locations are to be determined by a qualified arborist and noted on the endorsed plans to the satisfaction of the responsible authority.
4. Before the development starts, a landscape plan prepared to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. When approved, the plan will be endorsed and will then form part of the permit. The plan must be drawn to scale with dimensions and three copies must be provided. The landscape plan must be generally in accordance with the landscape plan prepared by Habitat, Landscape and Environmental Design Consultants Sheet 1 of 1 dated January 2019. 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. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.

(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 (semi-mature plant species are to be provided).

(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.

(h) Coloured concrete, paving or the like is to be utilised in the driveways.

(i) Front entry paths to be permeable.

(j) Provision of rainwater storage and use for irrigation.

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

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.
2. Prior to the endorsement of the plans referred to in Condition 1 of this permit, a Tree Management Plan must be submitted by a suitably qualified and experienced Arborist in relation to the management and maintenance (including, but not limited to, appropriate irrigation, pruning and other stabilising bracing methods) of trees on adjacent properties and to be retained on the land and must be approved by the responsible authority prior to the commencement of any works including demolition and levelling of the site. The Tree Management Planmust show:

(a) All tree protection zones and structural root zones.

(b) Fencing of tree protection areas and areas where ground protection systems will be used.

(c) The type of works (if any) within the tree protection zone.

(d) All services to be located within the tree protection zone and how such services will be constructed.

(e) A notation to refer to the Tree Management Planfor specific detail on what actions are required within the tree protection zone.

(f) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the project arborist.

(g) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority.

(h) All remedial pruning works that are required to be performed on the tree development of the site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved Tree Management Planmust be implemented to the satisfaction of the responsible authority.

1. The occupier of the site must ensure that, prior to their commencement of work on the site, all contractors and tradespersons undertaking work on the site that has the potential to damage any tree are advised in writing of the status of trees to be retained as detailed in the endorsed arborist report and of any obligations in relation to the protection of those trees.
2. Unless specified in the Tree Management Plan, no vehicular or pedestrian access, trenching or soil excavation is to occur within the Tree Protection Zone as detailed in the endorsed arborist report without the prior written consent of the responsible authority. No storage or dumping of tools, equipment or waste is to occur within the Tree Protection Zone.
3. The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the responsible authority.
4. The driveway and parking areas are to be constructed to the satisfaction of the responsible authority.
5. The new vehicle crossing must be a minimum 3.0m in width and constructed in accordance with Council standards.
6. All new vehicle crossings are to be no closer than 1.0 metres, measured at the kerb, to the edge of any power pole, drainage or service pit, or other service. Approval from affected service authorities is required as part of the vehicle crossing application process.
7. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
8. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
9. The nominated point of stormwater connection for the site is to the south-east of the property where the entire site’s stormwater must be collected and free drained via a pipe to the Council pit in the nature strip to Council standards.
10. Any new drainage work within a road reserve requires the approval of the Council’s Engineering Division prior to the works commencing.
11. Once the development has started it must be continued, completed and then be maintained to the satisfaction of the responsible authority.

(a) The permit for development will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:

(i) The development is not started before two (2) years from the date of issue.

(ii) 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. 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. [↑](#footnote-ref-1)
2. The Monash Housing Strategy 2014 is yet to be approved as a reference document within the planning scheme. [↑](#footnote-ref-2)