

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P338/2023  
PERMIT APPLICATION NO. TPA/54414

### CATCHWORDS

Section 82 of the *Planning & Environment Act 1987*; Monash Planning Scheme;  
Two dwellings: Off-site amenity impacts

|                              |  |
|------------------------------|--|
| <b>APPLICANT</b>             | Nin Lan                                    |
| <b>RESPONSIBLE AUTHORITY</b> | Monash City Council                        |
| <b>RESPONDENTS</b>           | Feng Zhou<br>Weili Gao                     |
| <b>SUBJECT LAND</b>          | 1/ 5 Rolls Court<br>GLEN WAVERLEY VIC 3150 |
| <b>HEARING TYPE</b>          | Hearing                                    |
| <b>DATE OF HEARING</b>       | 27 October 2023                            |
| <b>DATE OF ORDER</b>         | 4 January 2024                             |
| <b>CITATION</b>              | Lan v Monash CC [2024] VCAT 10             |

### ORDER

- 1 The decision of the Responsible Authority is varied.
- 2 In permit application TPA/54414 a permit is granted and directed to be issued for the land at 1/5 Rolls, Court Glen Waverley Vic 3150 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
  - The construction of two (2) double storey dwellings on a lot.

Tracy Watson  
**Member**



## APPEARANCES

|                           |  |
|---------------------------|--|
| For Applicant             | Ning Lan, in person.<br>Ellen So, Cantonese interpreter. |
| For Responsible Authority | Adrienne Kellock, town planner.                          |
| For Respondent            | Feng Zhou, in person.                                    |

## INFORMATION

|  |   |
|--|---|
| Description of Proposal                  | It is proposed to construct two dwellings on the subject site in a one-behind-the-other layout.   |
| Nature of Proceeding                     | Application under Section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.  |
| Planning Scheme                          | Monash.   |
| Zone and Overlay                         | Clause 32.09 – Neighbourhood Residential Zone, Schedule 4 (NRZ4).<br>Clause 42.02 – Vegetation Protection Overlay, Schedule 1 (VPO1).   |
| Permit Requirements                      | Clause 32.09-7 – To construct two dwellings.<br>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, 52.06, 55, 65 and 71.02.  |
| Land Description                         | The subject site is an irregular shaped allotment located on the western side of Rolls Court. The subject site is currently developed with a partially completed two-dwelling development. The subject site has a common property driveway which also provides access to the existing dwelling at 2/ 5 Rolls Court, which is on a separate title. |

## REASONS<sup>1</sup>

### What is this proceeding about?

- 1 The subject site is currently developed with a completed double storey dwelling located at its rear and a partially completed dwelling fronting Rolls Court (comprising the beginnings of the construction of the basement structure). The partially completed two-dwelling development on the subject site was approved by planning permit no. TPA/44496 which was issued on 15 April 2016, with the being permit amended (no. TPA/44496/A) on 7 February 2017. Construction of the development commenced under this planning permit, but has now ceased as the whole development was not completed before the permit's expiry on 15 April 2021. No permit extensions of time were sought by the owner of the subject site. Hence, a fresh planning permit process was required to be undertaken.
- 2 The Monash City Council assessed the proposed development anew and determined that it was still appropriate to issue a Notice of Decision to Grant a Permit (NOD) for the proposal. The NOD was issued by the Council on 20 February 2023. It is a decision that the owner/ occupier of the property at no. 1/ 7 Rolls Court has requested be reviewed by the Tribunal. The property at no. 1/ 7 Rolls Court is a single storey dwelling located at the front of a three-dwelling development, with the dwellings behind it being double storey. The northern side boundary of the applicant's property abuts a portion of the subject site.
- 3 The concerns raised by the applicant, that relate to planning matters, are confined to the off-site amenity impacts of the proposed development. The applicant also raised concerns regarding structural damage caused to his property by the partially completed development (specifically the basement structure). However, as I explained to the applicant at the hearing, this issue falls outside of the planning considerations that I can take into account as part of my deliberations. I also note that Council's submission confirms that the 1.0 metre southern side setback of the basement meets the side setback requirement of the local variation to Standard B17 contained in the NRZ4.
- 4 The Council's submission included an explanation of how the proposal respects the existing and preferred neighbourhood character of the area, and I agree with the Council's assessment and conclusions in regards to the development's acceptability from a neighbourhood character standpoint. These reasons are therefore confined to the off-site amenity impact concerns raised by the applicant.
- 5 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions,

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<sup>1</sup> 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.



together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to vary the decision of the Responsible Authority. My reasons follow.

**Does the proposal result in acceptable off-site amenity impacts to no. 1/ 7 Rolls Court?**

- 6 The applicant's submission raised concerns regarding the proposal's overshadowing and overlooking impacts, along with its effect on daylight access to existing north-facing windows.
- 7 The applicant rightly pointed out that the minimum setback of his dwelling from the shared side boundary with the subject site is 2.44 metres, and not the 2.7 metres which was originally shown in the proposed development plans. The respondent has now prepared updated plans, including a survey plan (showing the level differences between the subject site and the applicant's property), and updated shadow diagrams with the correct information regarding the abutting property at no. 1/ 7 Rolls Court.
- 8 The applicant prepared his own shadow diagrams, however, I am satisfied that the updated plans tabled by the respondent are accurate. I therefore rely on the respondent's plans (including the shadow diagrams) rather than the diagrams included as part of the applicant's submission.
- 9 The relevant objective of the planning scheme regarding overshadowing is at Clause 55.04-5 and is, "To ensure buildings do not significantly overshadow existing secluded private open space." Here, I highlight that the relevant consideration regarding the proposal's overshadowing impact is limited to the shadows cast onto the secluded private open space of no. 1/ 7 Rolls Court, and not to overshadowing of the existing north-facing windows of this property.
- 10 In deciding if the overshadowing open space objective (as reproduced above) has been met, I need to consider the following decision guidelines:
  - The design response.
  - The impact on the amenity of existing dwellings or small second dwellings.
  - Existing sunlight penetration to the secluded private open space of the existing dwelling or small second dwelling.
  - The time of day that sunlight will be available to the secluded private open space of the existing dwelling or small second dwelling.
  - The effect of a reduction in sunlight on the existing use of the existing secluded private open space.
- 11 In this case, the key considerations are the extent of overshadowing cast by the existing boundary fence, and the time of day that additional shadows are cast, along with the extent of additional shadows.

- 12 The shadow diagrams are provided at TP08 of the development plans. These shadow diagrams show that at 12pm and 3pm on 22 September the additional shadows cast by the proposed development (that is, excluding the shadows already cast by the existing boundary fence) are confined to minimal ‘slivers’ of new shadow. This means that the majority of the primary rear secluded private open space area of no. 1/ 7 Rolls Court is not impacted by any additional shadows at these times. The only time that the proposed development results in additional shadows beyond these minimal ‘slivers’ is at 9am. However, even at this time the vast majority of shadows cast onto the main secluded private open space area of no. 1/ 7 Rolls Court is caused by the boundary fence. I have also factored in that 9am is a relatively less sensitive time of the day compared to the midday/ lunchtime hours.
- 13 Overall, I concur with the Council’s assessment that ‘on the basis of these diagrams the extent of overshadowing is acceptable.’ I therefore find that the overshadowing open space objective at Clause 55.04-5 of the planning scheme has been met.
- 14 The relevant test regarding the acceptability of the proposal on the daylight access to the three north-facing windows of the property at no. 1/ 7 Rolls Court is at Clause 55.04-4 of the planning scheme. The north-facing windows objective of this clause is, “To allow adequate solar access to existing north-facing habitable room windows.”
- 15 Standard B20 at Clause 55.04-4 of the planning scheme includes Diagram B3 which shows the building setbacks required, relative to the building heights, to achieve compliance with Standard B20. A section plan has been provided at TP12 of the development plans which shows the correct 2.44 setback of the north-facing windows of the dwelling at no. 1/ 7 Rolls Court. I am satisfied that the section plan provided at TP12 (dated 13/09/2023) demonstrates that the siting and building envelope of proposed Dwelling 1 does meet Standard B20.
- 16 The ‘Requirements’ set out at Clause 55 specify that if a development meets Standard B20, it is deemed to meet the objective of that standard, and that, also, because Standard B20 is met the decision guidelines at Clause 55.04-4 do not apply. In other words, because I find that the proposal meets Standard B20, it therefore follows that it does allow adequate solar access to the three north-facing windows of the property at no. 1/ 7 Rolls Court.
- 17 Lastly, the applicant raised concerns regarding overlooking into his property from the south-facing bedroom window of Dwelling 1, and the east-facing bedroom window of Dwelling 2.
- 18 The Council also identified the south-facing bedroom window of Dwelling 1 as causing unreasonable overlooking and consequently it included a condition on the NOD to address this issue. At the hearing, the respondent

offered to remove the south-facing bedroom window of Dwelling 1, and this can be implemented through a condition of the permit.

- 19 The east facing bedroom window of Dwelling 2, referred to in the applicant's submission, currently features frosted glazing to the whole window to prevent overlooking. Nevertheless, this existing condition is not reflected in the development plans, and hence the plans will need to be updated. A condition of permit has been included to require this.
- 20 Subject to the changes required by the conditions of the permit, I am satisfied that Standard B22 of Clause 55.04-6 of the planning scheme is met. This therefore means that the development meets the associated overlooking objective, "To limit views into existing secluded private open space and habitable room windows."
- 21 Overall, I find that the proposal does not cause any unacceptable off-site amenity impacts and that it meets all of the Clause 55 objectives, subject to the changes required by the conditions of the permit.

### **Conclusion**

- 22 For the reasons explained above, the decision of the Responsible Authority is varied. A permit is issued subject to conditions.

Tracy Watson  
**Member**



## APPENDIX A – PERMIT CONDITIONS

|                              |   |
|------------------------------|---|
| <b>PERMIT APPLICATION NO</b> | TPA/54414                                 |
| <b>LAND</b>                  | 1/5 Rolls Court<br>GLEN WAVERLEY VIC 3150 |

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- the construction of two (2) double storey dwellings on a lot

## CONDITIONS

### Amended Plans

- 1 Before the development / use starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council prepared by Megarch Design Services, dated 10 October 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, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash".
  - (b) Provision of a fixed privacy screen, or obscure glazing, to at least 1.7 metres above finished floor level on the first floor west elevation bedroom (most northern bedroom) of Dwelling 1, and Dwelling 2 first floor east elevation bedroom (most northern bedroom). Any screens must be fixed, translucent glass or an external screen to the window which has a maximum of 25% transparency.
  - (c) Deletion of the south-facing bedroom window of Dwelling 1.
  - (d) Fully frosted/ obscure glazing to the east facing bedroom window (western most bedroom) of Dwelling 2.
  - (e) Number bedrooms of each dwelling.
  - (f) Written dimension of the 1 metre setback to the basement of Dwelling 1 from the southern side boundary.
  - (g) No windows to the basement of Dwelling 1.
  - (h) Notation of Finished Floor Levels to accord with the updated Survey Plan prepared by Stacey Surveying (198401A Layout1-FL plan).



- (i) North Facing Windows plan as per plan no. TP12 dated 13/09/2023 demonstrating compliance with Standard B20 at Clause 55.04-4 of the Monash Planning Scheme.
- (j) 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.
- (k) A Landscape Plan in accordance with condition 3 of this Permit.  
all to the satisfaction of the Responsible Authority.

### **Layout not to be Altered**

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

### **Landscape Plan**

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, 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. The Landscape Plan must show:
  - (a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
  - (b) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
  - (c) A minimum of four (4) canopy trees (minimum 1.5 metres tall when planted). The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, and be of indigenous or Australian native species, or as otherwise agreed by the Responsible Authority;
  - (d) the location of any boundary and internal fencing to the site;
  - (e) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
  - (f) planting to soften the appearance of hard surface areas such as driveways and other paved areas;



- (g) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (h) the location of any retaining walls associated with the landscape treatment of the site;
- (i) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (j) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (k) The location of external lighting (if any);
- (l) The location of electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash"; and
- (m) Landscaping and planting within all open areas of the site.

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

- 4 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

### **Tree Protection**

- 5 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
- 6 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

### **Landscaping Prior to Occupation**

- 7 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.



## **Drainage**

- 8 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 9 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on [www.monash.vic.gov.au](http://www.monash.vic.gov.au).
- 10 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 11 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 12 The full cost of reinstatement of any Council assets affected by the demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

## **Vehicle Crossovers**

- 13 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 14 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 15 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

## **Privacy Screens**

- 16 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

### **Boundary Walls**

- 17 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

### **Satisfactory Continuation and Completion**

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

### **Time for Starting and Completion**

- 19 In accordance with section 68 of the *Planning and Environment Act 1987*, this permit will expire if one of the following circumstances applies:
- (a) The development is not started before 2 years from the date of issue.
  - (b) The development is not completed before 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

- i within six (6) months afterwards if the development has not commenced; or
- ii within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**– End of conditions –**