VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P448/2019Permit Application no. TPA/48468/A |
| CATCHWORDS |
| Section 77 of the *Planning and Environment Act (1987)*. Monash Planning Scheme. General Residential Zone Schedule 2 (GRZ2); Dwelling alteration. Front setback. Local policy; Streetscape character.  |

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| APPLICANT | Karl and Madeleine Vezis  |
| responsible authority | Monash City Council |
| SUBJECT LAND | 1/6 Dunoon Street, Mulgrave |
| WHERE HELD | Melbourne |
| BEFORE | Graeme David, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 13 August 2019 |
| DATE OF ORDER | 11 September 2019 |
| CITATION | Vezis v Monash CC [2019] VCAT 1346 |

# 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:

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| 1. Prepared by:
 | Natasha Levan, Residential Designer  |
| 1. Drawing numbers:
 | AO1, AO2 Revision no i  |
| 1. Dated:
 | 22 May 2019.  |

and (landscape plan)

|  |  |
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| 1. Prepared by:
 | Habitat Landscape and Design Consultants |
| 1. Drawing numbers:
 | Sheet 1 of 1  |
| 1. Dated:
 | May 2019. |

### Permit granted

1. In application P448/2019 the decision of the responsible authority is set aside.
2. In planning permit application TPA/48468/A a permit is granted and directed to be issued for the land at 1/6 Dunoon Street, Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Extension of a dwelling on a lot less than 500 square metres

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| **Graeme David****Member** |  |  |

# Appearances

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| For Monash City Council  | Mr James Turner, Town Planner. |
| For Karl and Madeleine Vezis  | Ms Eve-Marie Davie Town Planner, Taylors Urban Development and Infrastructure.  |

# Information

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| Description of proposal | Extension of a dwelling on a lot less than 300m2. |
| 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 | General Residential Zone - Schedule 2 (GRZ2 - *Monash Residential Areas*). |
| Permit requirements | Clause 32.08-5: To construct or extend one dwelling on a lot of less than 300m2 |
| Relevant scheme policies and provisions | Clauses 15.01-1S *Urban Design.* 15.01-2S *Building Design,* 15.01-5S *Neighbourhood Character,* 16.01-2S *Location of Residential Development.*Clause 22.01 *Residential Development and Character Policy* |
| Land description | The review site is on flat land fronting the eastern side of Dunoon Street about 50m north of Police Road. The parent site contains two single-storey, separately titled brick dwellings with tiled roofs, and a common driveway. The review dwelling is on the front (west) discrete title at the front of the property. It is single-storey brick veneer dwelling with flat roofed verandah at its front setback 5.9m from the front boundary. The main portion of the dwelling is setback 7.8m. A common driveway is on the north side of the dwelling. |
| Tribunal inspection | 23 August 2019. Unaccompanied. (Admitted onto property by owner.)  |

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

## What is this proceeding about?

1. This is an Application by Karl and Madeleine Vezis (the Applicant) for Review under Section 77 of the *Planning and Environment Act 1987* (the Act) against the Council’s decision to refuse an application to amend a permit to extend a dwelling on a lot less than 500m2 at 1/6 Dunoon Street Mulgrave, by reducing the (permitted but un-activated) front setback of the dwelling by 0.5m from 6.4m to 5.9m. Extension forward to 6.4m from the current 7.9m setback of the dwelling proper is currently approved under Planning Permit TPA/48468 issued by the Council in August 2018.
2. The review site is within the General Residential Zone - Schedule 2 (GRZ2 *Monash Residential Areas*)[[2]](#footnote-2). It is also within the Monash *Residential Character Area B: Clayton area, 1945-1965 development*. The character statement for *Area B* in part states the following:

The area is (mainly) characterised by the evenly distributed mix of consistently setback post-War single-storey weatherboard and brick houses of a common, functional architectural style. In many streets houses are arranged in groups of one type of material.

It also includes in part that the *Area* is characterised by flat topography and a grid subdivision pattern.

1. The Council refused the permit amendment application on the sole ground that:

The proposal fails to meet the policies of Clause 22.01 of the Monash Planning Scheme in regard to its adverse impact on the streetscape and general neighbourhood character.

1. The Dunoon Street neighbourhood contains a mix of original single-storey detached dwellings and more recent double-storey multi-unit developments dating from the 1990’s through to now. Dunoon Street is a small street between Studley Street about 100m to the north, and the main east-west Police Road about 50m to the south. Only three residential properties historically front onto the street, being the review site and two sites to its north at numbers 2 and 4 Dunoon Street.
2. The east and west sides of the street differ markedly.
* The eastern side is wholly residential, with the three above-mentioned properties (2, 4 and 6 Dunoon Street) each having a front setback of 7.8m to ‘original’ conservative-styled single storey brick dwellings, that are each of cream brick common to the era. To the south and north of these three dwellings there are corner lots at 10 Studley Street (north) and 41 Police Road (south), with smaller subdivision lots to their rears that contain double-storey brick dwellings that front to Dunoon Street with short side-boundary type front setbacks of 3m. The width of the parent lots fronting Police and Studley Streets (and hence the depth of these smaller ‘rear’ subdivision lots) is 15m. Thus, along Dunoon Street, the dwellings fronting the east side of the street currently have setbacks of either 7.8m on lots that have historically fronted Dunoon Street, or 3m (the two dwellings on former corner lots).
* The western side of Dunoon Street contains a garden centre at the north-west corner of the Police Road / Dunoon Street intersection, and a small open public parkland named Dunoon Square. Further west opposite the parkland there is a small activity centre known as Dunoon Court Shopping Centre with about nine commercial premises. To the north of Dunoon Square there are two dwellings with setbacks of 5.1m and 6.1m off Dunoon Street that are on a ‘former corner lot’ that will have historically fronted to Studley Street
1. The review site is flat land fronting the eastern side of the street. It contains two single-storey, separately-titled brick dwellings with tiled roofs, and a common driveway. The review dwelling is at the front (west) of the property. It is a brick veneer dwelling of its era with (as described by the Council) a 1.9m wide non-original flat roofed timber verandah at its front, setback 5.9m from the front boundary, and with a clear corrugated ‘laserlight’ type roof. The Council stated that there is no known record of planning approval for the verandah. I was informed by the applicant that the *Registered Plan of Subdivision PS437849W* shows the building footprint on the review site to be setback 5.9m from Dunoon Street in 2002, which aligns with the front of the existing veranda, and is the setback now sought in the current application before the Tribunal.
2. Current planning permit TPA/48468 permits a narrower extension to the dwelling than that now proposed. It provides for the dwelling to be extended forward to a 6.4m front setback, which is 0.5m short of the front of the existing verandah. The permit has not yet been activated.
3. Post-August 2018, the current application to amend TPA/48468 was submitted to and refused by the Council. The application had been advertised to local owners and occupiers, with no objections received. Referral authorities were not consulted, pursuant to requirements of Clause 66 ‘*Referral and Notice Provisions’.*
4. The applicant then applied to the Tribunal for review of the Council’s refusal decision. Prior to the review hearing and in accordance with the Tribunal’s PNPE9[[3]](#footnote-3) practice note requirements, the applicant submitted further amended plans for substitution. Those plans propose minor detail changes but do not propose further change to the front setback of the dwelling. While the Council did not object to the substitution it continues to oppose the proposed further extension on the same basis, being that the substitution amendments do not address its principle concern regarding the front setback. I ordered the substitution of the plans on the basis of there being no objection, and because I considered the substitution plans to infer no detrimental amenity impact on any third party.
5. The Tribunal must decide if a permit should be granted, and if so, what conditions should be imposed, based on consideration against Victoria’s planning law and the relevant provisions of the Monash Planning Scheme. This includes that planning decisions seek to ensure a *reasonable* planning outcome as distinct from the *best* outcome, which is a subjective notion. In so doing, planning decisions also seek to achieve outcomes that are in the overall public interest under the above-mentioned planning criteria.
6. Having regard to the objectives of planning in Victoria[[4]](#footnote-4), the provisions of the Monash Planning Scheme, the submissions made at the hearing, and my observations from inspection of the site and surrounds, I have decided on balance that a permit is to be granted subject to conditions. This sets aside the decision of the Council.

### What is proposed

1. The current application primarily proposes to increase the size of the kitchen/living/dining areas of the existing dwelling and to provide for an ensuite and walk-in robe off the master bedroom that would in turn be moved forward, to partially occupy the proposed further forward extension. Existing permit TPA/48468 essentially achieves the same, but with ‘compressed’ lounge room space and the master bedroom narrowed by 0.5m from what is now proposed. In both instances the existing verandah that extends across the full front of the dwelling would be reduced to a smaller porch at the northern front corner of the dwelling. In the substitution plans before the Tribunal, and as previously noted, the extension would come forward to the current front face of the existing verandah.
2. The proposed extension would have a rendered external finish on all elevations with charcoal coloured tiles on a pitched roof. The western (front) elevation to Dunoon Street is proposed to be 7.1m long (about two thirds of the dwelling’s width) with two aluminium framed windows. The southern elevation of the extension would be a 1.9m long blank wall joining to and extending forward from the existing south ern wall. The shared driveway for the two dwellings on the review site would remain as it is, and is not a consideration here.
3. The Council solely opposes the additional 0.5m forward projection of the dwelling proper into the site frontage, beyond that currently permitted.
4. More fully, the Council stated that the proposal fails the above test relevant to both existing and preferred future character. In short, the Council considers that the proposed 5.9m front setback would be at odds with the pattern of surrounding housing stock and the *Garden City Character* outcome sought by Clause 22.01 of the Monash Planning Scheme, and sought to be achieved through the variations to Standard A3 of Schedule 2 to the General Residential Zone.

## Procedural issues and rulings

1. I ordered the substitution of plans for the reasons I have previously identified.

## What are the key issues?

1. The single key issue is simply whether the proposed 5.9m front setback sought for the review dwelling is appropriate in its planning policy and site contexts. The existing permit that provides for the 6.4m front setback is not under review.

## Discussion

1. I generally agree with the Council that deviation from planning policy for residential planning proposals which seek a built form outcome that is inconsistent with prevailing local housing stock, should mainly occur only where current character policy encourages such change. However, it is also conceivable that there may be specific sites where allowable discretion can reasonably lead to an alternative outcome.
2. Clause 22.01 *Residential Development and Character Policy* is consistent with and consolidates wider planning framework policies and provisions into the local context. In broad summary, it states that Monash has diverse streetscape types that are valued by residents, and it intends to ensure that new development successfully integrates into existing residential environments, by seeking minimal streetscape or amenity impact, and design to achieve outcomes that enhance municipality’s *Garden City Character*. It applies to all residential land in Monash, except that under a Heritage Overlay, which does not apply here. Within the municipality the Council’s commitment to effectively manage ongoing change is under challenge by increasing demand for the otherwise encouraged greater variation in dwelling types, and consequences that follow from that. Without careful planning, encroachment can reduce canopy tree environments and landscaped areas, and hence capacity to retain the *Garden City Character*. The following are also relevant to the current matter:
* Clause 22.01 recognises that consistent building setbacks and well planted front gardens are contributory elements within *Residential Character Area B*.
* The desired future character statement in the clause also includes that as it develops, *Residential Character Area B* will retain its ‘modest unassuming character’ by ensuring developments are appropriate in scale and form to the existing dwellings and that the built-form will be unified by general consistency in building setbacks.
* Consistent with the above the desired future character statement for *Character Area B*. in part includes the following that most directly relate to the current proposal (in summary):
	+ New developments to be sympathetically designed, with complementary scale and form and ‘*unified by a general consistency in building setback*’ to adjacent buildings. This would include for example: low front fences of sympathetic design/construction to allow front gardens to soften the edge between development and street; use of native and exotic plants, and retention of existing mature vegetation in frontages to create a soft visually permeable buffer between the house and street; use of only one single crossover per lot frontage; and ensuring that buildings directly adjacent public open spaces are setback and buffered with planting that complements the species and size of vegetation used in such open space
1. The GRZ is a broad residential zone. Consistent with implementing the Municipal Planning Strategy (MSS) and the Planning Policy Framework (PPF) in the planning scheme (including the above Clause 22.01 content), it also includes but is not limited to, encouraging housing diversity and growth, and development that respects local neighbourhood character. Schedules to the zone may contain neighbourhood character objectives to be achieved for the area.
2. GRZ2 in part contains variations to various ResCode Standards at Clause 55 in the planning scheme. Importantly for the current matter the Schedule varies the Standards A3 and B6 minimum street setback to 7.6m. This is a primary consideration in this decision.
3. The Council states that the existing 7.8m front setbacks of the dwellings proper at numbers 2, 4 and 6 Dunoon Street create a uniform presentation to the street, and satisfy the above-stated 7.6m minimum, and that further non-uniform encroachments cannot be supported. The Council then proposed that:
* While the 6.4m setback permitted by TPA/48468 is forward of the stated minimum 7.6m front setback, this was permitted because the 6.4m will replace the existing verandah with no increase in footprint. Further encroachment to 5.9m is contextually different in that it would extend the dwelling footprint further forward of the verandah line to create a new built form in the streetscape.

*I alternatively note that the front of the verandah footprint is at 5.9m rather than 6.4m as stated by the Council.*

* The shallower development setbacks on corner sites of Dunoon Street cannot be used as rationale for shallower setbacks on other sites including the review site. As those setbacks align with historic side setbacks, they are conceptually different, and do not represent the prevailing character of the street.
1. The Applicant has counter argued that the proposal is consistent with State and regional policy, and other provisions in the planning scheme that I have identified above. The primary argument put to the Tribunal is that the proposed 5.9m front setback across 7.4m of the dwelling frontage is acceptable within Dunoon Street as the street does not display consistent street setbacks, common architectural style, or consistent low fences and walls. In that context, it is argued that the proposed 500mm extension forward of that currently permitted is minimal and would continue to reflect the spacing and rhythm of the streetscape. It was also argued that the proposed 5.9m setback would unify the streetscape and improve the *Garden City Character* by providing a staggered average setback of the properties on either side (average setback 5.4m).
2. Other elements argued by the Applicant in support of the above include the following[[5]](#footnote-5):
* The proposal is for a minor extension that will not cause unreasonable amenity impact on abutting properties.
* There are no significance overlays applied or other particular values attributed to the site.
* The proposal complies with the Clause 21.01 *Municipal Profile* and Monash’s *Garden City Character* policy. This is through no canopy tree removal, and the addition of 4 trees and 92 plants that would provide a ‘green’ setting and filter views of the review residence, and on approach from the north the mass of the two-storey dwelling to the south.
* The outcome will maintain the preferred/predominant local single detached dwelling style, and no change is proposed to the rear SPOS.
1. On balance, and with due respect for the Council’s substantiated reasons for refusal I am swayed by the Applicant’s position. This is for the following reasons.
2. From the descriptions I have provided I agree that the character of the Dunoon Street environs is not typical of the wider Mulgrave hinterland. I agree that the street’s character is influenced away from the typical situation by a combination of its short length, the varied range of land uses fronting the street, and the presentation of those uses, and development on them including dwelling heights and various high fences (including at the garden centre diagonally opposite the review site) within the street from north to south, and across its east and west sides. I find that while the three low-profile, single-storey dwellings (including the review site) at numbers 2, 4, and 6 Dunoon Street have consistent 7.9m setbacks to the dwellings proper, the relevance of this is somewhat ‘consumed’ by the cumulative character impact from the above features. In particular I note the following:
* About 63% of the length of the east side of Dunoon Street is frontage to the four lots that are, or are derived from, corner lots containing dwellings with front setbacks that do not exceed 3m. Also, the dwellings on those ‘corner lots’ abutting 2 and 6 Dunoon Street are double-storey dwellings that together are more dominant within the eastern side streetscape than are the three-low profile, and deeper setback dwellings at numbers 2, 4, and 6.
* As identified earlier in this decision, the western side streetscape of Dunoon Street varies across two dwellings at the northern end with 6.1m and 5.1m front setbacks, an open parkland a with commercial activities centre to its ‘rear’, and a garden centre with a high fence onto the street.
* In retaining a single-storey dwelling, it is probable that the outcome here will impact less on local character including building scale, ‘greenery’ and spaciousness generally, than would a reasonable alternative proposal for a double-storey extension or replacement dwelling.
1. Furthermore, I find that the existing verandah with its frontage being at the same setback from the front boundary as that proposed in the current application does not itself impact noticeably on the streetscape character of the review dwelling. I find that this assists in visualising the outcome of the proposed extension development, and I am satisfied that the proposed 0.5m forward projection of (part of) the dwelling frontage beyond that currently permitted will have a ‘reasonably’ modest to negligible additional visual impact. To the extent that any additional visual impact may occur, I consider that this can be countered through the implementation of a well-considered landscape plan approved by the responsible authority. This is important within this decision.
2. In concluding the above, I am acutely mindful of the GRZ2 seeking minimum front setbacks of 7.6m. My decision reflects the context of the site and cannot be considered to set a precedent for other applications in the wider neighbourhood under the same planning scenario. All proposals must be assessed solely on their own merits. The fact here is that the Council has already approved an addition to the existing dwelling with a front setback of 6.4m, that is considerably less than 7.6 m, and it is understandable that it does wish for further encroachment. My decision sets aside that of the Council, again solely in context of the specific site. I do not otherwise accept that a progressive stepping back of front setbacks along from a corner site is acceptable in a normal context.

## Are there any other issues?

1. The Applicant has proposed within the body of its submission that the sought extension would improve the internal amenity of the dwelling and better provide for changing family needs, while also preserving private open space and tree canopy. I note that the internal amenity matter was not pursued as a primary issue for this planning decision. While many dwelling extension applications are tendered on this basis, planning decisions cannot give overriding weight to internal amenity of residents under the provisions of the Act, a purpose of which is to provide for the fair, orderly, economic and sustainable use, and [development](http://classic.austlii.edu.au/au/legis/vic/consol_act/paea1987254/s3.html#development) of [land](http://classic.austlii.edu.au/au/legis/vic/consol_act/paea1987254/s3.html#land) in the present and long-term interests of all Victorians.
2. I am satisfied that the design of the extension remains consistent with that of the existing dwelling and those beside it at numbers 4 and 6 Dunoon Road.
3. I am satisfied that the landscape plan of Habitat Landscape and Design Consultants can provide a suitable landscape outcome. Amendment of the plan to the satisfaction of the responsible authority could also be appropriate.

## What conditions are appropriate?

1. At the conclusion of the hearing the parties indicated that some collaboration had occurred over the Draft conditions submitted to the Tribunal as per the Tribunal’s requirements. Following brief discussion, I ordered orally that the Applicant may submit a suggested amended Draft Conditions for the Tribunal’s consideration without further correspondence being entered into. A submission was duly distributed from the Applicant’s delegate on 14 August 2019. On consideration of all matters before me, I consider the permit conditions at Appendix A to provide for a reasonable planning outcome.

## Conclusion

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

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| **Graeme David****Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/48468/A |
| Land | 1/6 Dunoon Street, Mulgrave |
| What the permit allowS |
| * Extension of a dwelling on a lot less than 500 square metres

in accordance with the endorsed plans. |

1. The plans to be endorsed and which will then form part of the permit are the plans identified as: A01 and A02, revision i, dated 22nd May 2019, prepared by Natasha Levan, and Landscape Plan, sheet 1 of 1, prepared by Habitat Landscape and Design Consultants, and dated May 2019.
2. The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.
3. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties.
4. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies
	1. The development is not started before 2 years from the date of issue.
	2. 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 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. Proposed *Planning Scheme Amendment C125* would rezone the area containing the review site to GRZ3 and implement the *Monash Housing Strategy 2015*. The Amendment is with the Minister for approval and at the time of this decision GRZ2 remains the relevant zone Schedule. [↑](#footnote-ref-2)
3. Practice Note - PNPE9 - *Amendment of Plans and Applications* [↑](#footnote-ref-3)
4. Section 4 of the *Planning and Environment Act* 1987. [↑](#footnote-ref-4)
5. Condensed from the full content in the Applicant’s Tribunal submission. [↑](#footnote-ref-5)