 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

 planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P1058/2019Permit Application no. TPA/49778 |
| CATCHWORDS |
| Section 80 of the *Planning and Environment Act 1987*, conditions requiring additional upper level articulation, neighbourhood character  |

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| APPLICANT | Lingli Zhou |
| responsible authority | Monash City Council |
| SUBJECT LAND | 14 Meadowbrook Drive, Wheelers Hill |
| WHERE HELD | Melbourne |
| BEFORE | K Birtwistle, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 22 October 2019  |
| DATE OF ORDER | 31 October 2019 |
| CITATION | Zhou v Monash CC [2019] VCAT 1708 |

# Order

1. The decision of the responsible authority is varied.
2. The Tribunal directs that Permit No. TPA/49778 must contain the conditions set out in the permit issued by the responsible authority on 29 May 2019 with the following modifications:
	1. Condition 1(j) is deleted; and
	2. Condition 1(k) is deleted.
3. The responsible authority is directed to issue a modified permit in accordance with this order.

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| **K Birtwistle** **Member** |  |  |



# Appearances

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| For Lingli Zhou | Mr M Waldon, town planner of St-Wise Planning Pty Ltd |
| For Monash City Council | Mr D De Giovanni, town planner of DDG Planning |

# Information

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| Description of proposal | Construction of two, two storey dwellings in a one behind the other format. Both dwellings comprise four bedrooms, and are provided with an attached two car garage accessed from a shared accessway along the southern property boundary. |
| 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 2 (GRZ2) |
| Permit requirements | Clause 32.08-6 – Construction of two or more dwellings on a lot |
| Land description | The review site is located on the eastern side of Meadowbrook Drive, south of the intersection with Farmington Court, Wheelers Hill. It has a width of 16.8 metres, a maximum depth of 44.5 metres and an overall area of 697 sq.m. It is currently developed with a single storey dwelling which is proposed to be demolished.  |
| Tribunal inspection | Unaccompanied subsequent to the hearing  |

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

## What is this proceeding about?

1. On 29 May 2019, Monash City Council (the Council) issued a planning permit for the construction of two, two storey dwellings at No. 14 Meadowbrook Drive, Wheelers Hill. The permit is subject to a number of conditions, including Condition’s 1(i), 1(j) and 1(k) which requires the submission of amended plans.
2. Specifically, the amendments sought by these conditions are:
* Condition 1(i), which requires the deletion of the study to Dwelling 1.
* Condition 1(j), which requires the deletion of the first floor bedroom 1, walk in robe and ensuite to Dwelling 1.
* Condition 1(k), which requires the deletion of bedroom 2 and ensuite of Dwelling 2.
1. The permit applicant has lodged an application for review with the Tribunal seeking the deletion of the conditions. This proceeding is therefore confined to deciding whether Conditions 1(i), 1(j) and 1(k) are necessary.
2. One Statement of Grounds has been lodged by an adjoining landowner however they have elected not to attend the hearing and are therefore not a party to the proceeding. I have taken their grounds into consideration in reaching a decision. Their concerns relate to privacy from the upper level windows.
3. The Council says that the first floor forms are large, comprise little articulation and dominate the site and context. They say that the built form proposed transforms the character rather than fitting in, and the conditions imposed are necessary to achieve a better balance.
4. Lingli Zhou, the permit applicant (applicant) says that the conditions are not necessary to improve the development and that they are not necessary for the protection of neighbourhood character or to produce a more favourable amenity for its neighbours.
5. Having considered the submissions of the parties, together with the applicable policies and provisions of the Monash Planning Scheme, and undertaken a site inspection, I have decided to vary the decision of the responsible authority.
6. My reasons follow.

## are the conditions reasonable and necessary?

### What do the parties say?

1. The Council says that the immediate locality is characterised by low scale and modest housing. They say that there is clear direction in policy to achieve tempered design outcomes in low scale character settings and that the large size of the proposed first floor footprints and their box-like forms with a lack of articulation is not consistent with the character outcomes sought.
2. The Council says that notwithstanding the presence of some larger two storey dwellings, the immediate area is generally comprised of original single storey dwellings. They say that policy calls for higher degrees of articulation to be provided where double storey development is sought in streets where the predominant built form is single storey[[2]](#footnote-2).
3. They say the three disputed conditions are inter-related and have been imposed on neighbourhood character grounds. They say that the first floor area of both dwellings are excessive, lack articulation and have minimal setbacks from the ground floor below, resulting in bulk, scale and mass impacts. They say that this design response is inconsistent with Clause 22.01 Residential Development and Character Policy, which seeks:
* The impact of bulk and scale of development, be minimised, where possible.
* The height and scale of existing dwellings in the neighbourhood be respected.
* A high degree of articulation and detailing be exhibited.
* Articulated and graduated elevations avoiding “box-like” designs be provided.
1. Conditions 1(i) and 1(j) apply to the front Dwelling 1. The Council say that the first floor footprint of Dwelling 1 is largely box-like in formation and is read as such from the street, at oblique angles and from adjacent interfaces. They say the intent of these conditions is to reduce the size of the first floor footprint as read from the streetscape and secondly to offer some visual relief to the property to the north that has windows looking onto this dwelling.
2. Condition 1(k) applies to the rear Dwelling 2. The Council says the intent of this condition is to reduce the perception of bulk as viewed from the streetscape and the abuttal to the south. They say that the design adds to the perception of large two storey elements dominating the site, with bedroom 2 being only setback 400mm from the ground level footprint below. They say that the removal of bedroom 2 from this dwelling will mean the dwelling will effectively read as being single storey when viewed from the street.
3. Finally, Council says the similar use of materials and same dark grey tones across both levels of each dwelling also contributes to the ground and first floor forms being read as one large mass.
4. The applicant says that the upper level of Dwelling 1 has sufficient articulation both from its side boundaries and from its frontage. He says that the 150mm inset from the ground level wall below and the use of different materiality between the ground and first floors means that the building will not present as a sheer two storey wall from the street.
5. With respect to Condition 1(j) the applicant says that the intent appears to be to create a greater separation between the upper levels of both dwellings. He says that the upper level separation of between 3.4 metres and 3.9 metres is sufficient, will not be visible from the street or offer any additional amenity benefits to adjoining residents.
6. With respect to Condition 1(k) the applicant says that the property most directly affected by the proposed bedroom 2 has limited sensitivity with respect to visual bulk as the built form is located adjacent the adjoining outbuilding and not near sensitive secluded private open space (spos).

### What are my findings?

1. The conditions seek to respond to two issues: the impact of the built form on the streetscape character and the impact of the built form on its neighbours. With respect to visual bulk to neighbours, I am satisfied that the design:
* Provides side setbacks that exceed Standard B17 Side and Rear Setbacks of Clause 55.04-1. The Standard requires an upper level setback of 1.5 metres to the northern side boundary (3.8 metres is shown) for Dwelling 1. The Standard requires an upper level setback of 1.5 metres to the southern side boundary (2.0 metres is shown) for Dwelling 2.
* Has a minimum 3.4 metre gap between the two upper levels of the dwellings which provides an appropriate separation of the built form.
* Sets back Dwelling 1 from its boundary with No. 12 Meadowbrook Drive (at 2 metres), which allows opportunity to establish landscaping at this interface to moderate the two storey form at this interface.
* Provides that the two storey built form for Dwelling 2 is located adjacent the large outbuilding and driveway to No. 16 Meadowbrook Drive, which has lesser sensitivity than had it been located its principle spos.
* Provides acceptable articulation of the upper level of Dwelling 2 as it faces No. 16 Meadowbrook Drive, having a wall length of only 5.8 metres, before stepping back to the retreat area.
* Provides overall building heights less than that allowable under the zone.
1. On this basis, I will delete Conditions 1(j) and 1(k).
2. With respect to how the design responds to neighbourhood character, the desired future character statement for Precinct E[[3]](#footnote-3) is:

The urban character of this area will evolve within a landscape that has a large number of native trees spread throughout both the public and private domain providing an overhead canopy visually unifying the diverse built-form of some neighbourhoods and providing a strong relationship with the semi-natural landscape of Dandenong Creek.

Dwellings will be designed to sympathetically integrate with any existing native trees and shrubs on, or adjacent to, the development site and relate in form and siting to the topography of the Character Type. Architecture of contemporary excellence that is energy efficient and sustainable will be encouraged. Building scale, height and bulk will be generally similar within neighbourhoods. Large scale contrasts between buildings will be discouraged except where existing trees and shrubs soften the junction between buildings or where there is a gradated change in scale.

Setbacks will be varied in many neighbourhoods but will be consistent within individual streets and will be sufficiently generous to enable the development of significant native tree canopy and vegetation. The main unifying element will be the canopy of native trees in both the public and private domain. Most gardens will be open to the street with no walls or fences, allowing the soft naturalistic qualities of most neighbourhoods to be retained. Large walls and fences will be discouraged except where they are already a visually dominant streetscape element.

The soft quality of the street that is derived in part from the nature strips will be maintained by ensuring that there is only one single crossover per lot frontage.

Planting will generally enable filtered views of the architecture and engender a sense of visual continuity with the street and adjacent properties.

1. My reading of this character statement with respect to built form, is that new buildings should have a scale, height and bulk that is generally similar within neighbourhoods, and that large scale contrasts between buildings will be discouraged.
2. Council has been satisfied that the scale of the development is appropriate as it has issued a planning permit for the proposal. I agree that two storey dwellings in the context of a generally single storey neighbourhood are not inconsistent with the preferred character statement provided that their bulk is generally similar within neighbourhoods.
3. Council was particularly critical of how the upper level of Dwelling 1 as it faces the street has been resolved. This is because the upper floor study at the front of this dwelling has a sheer wall to the entry/powder room at ground level below.
4. On balance, and having inspected the immediate neighbourhood, I agree that this element of the design will result in a bulky appearance to the street. In my view it is the combination of the lack of articulation across the vertical and horizontal planes that presents an overly bulky appearance to the street. The entire upper level façade has no articulation across the vertical plane (for bedroom 2 and the study). Condition 1(i) seeks the deletion of the study to improve this articulation. I agree that this is necessary. Having viewed a number of two storey dwellings in the immediate neighbourhood[[4]](#footnote-4) that have flat faced facades, I agree that they are unreasonably dominating and bulky when viewed from the street.
5. On that basis, Condition 1(i) is to be retained.

## conclusion

1. Conditions 1(j) and 1(k) are not justified on neighbourhood character or off-site amenity grounds. The plans as proposed provide a balanced response with respect to bedroom 1, ensuite and walk-in-robe to Dwelling 1 and Bedroom 2 and ensuite to Dwelling 2. Condition 1(i) is appropriate to reduce the visual bulk of part of the upper level façade as presents to the street, consistent with the outcomes sought by policy.
2. While not in dispute, the proposed materials schedule has not assisted in informing a position about the level of visual articulation this may offer. For example, the front elevation to Dwelling 1 shows the use of ‘Surfmist’ colour render at ground level and at the upper level two different arrows showing both ‘Surfmist” and ‘Shale grey” colour render. There are other examples on the plans. Aside from these discrepancies, the colour palette chosen is also very similar (and the darker colours are sometimes shown to be used above the lighter colours at ground level). These are all matters that can resolved when Council comes to endorse the plans.

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| **K Birtwistle** **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-1)
2. At Clause 22.01-3 [↑](#footnote-ref-2)
3. At Clause 22.01 [↑](#footnote-ref-3)
4. I concede that most were single dwellings but the built form outcome is the same [↑](#footnote-ref-4)