VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P201/2020Permit Application no. TPA/50325 |

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| APPLICANT | Thanh Vu Nguyen |
| responsible authority | Monash City Council |
| SUBJECT LAND | 161 Wanda Street, Mulgrave |
| WHERE HELD | Melbourne |
| BEFORE | Michael Nelthorpe, Member |
| HEARING TYPE | Hearing  |
| DATE OF HEARING | 18 August 2020 |
| DATE OF ORDER | 26 August 2020 |

# Order

1. The applicant’s request to adjourn the hearing is refused.
2. In application P201/2020 the decision of the responsible authority is affirmed.
3. In planning permit application TPA/50325 no permit is granted.

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| **Michael Nelthorpe** |  |  |
| **Member** |  |  |

# Appearances

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| For applicant | Ms Helen Ho and Mr Callen Bray, building designers of Callen Bray Building Design & Drafting. |
| For responsible authority | Mr Peter English, town planner of Peter English & Associates. |

# Information

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| Description of proposal | Three two-storey 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 Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 3 |
| Permit requirements | Clause 32.08-6: to construct two or more dwellings on a lot. |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.02, 21.03, 21.04, 22.01, 32.08, 52.06, 55, 65 & 71.02. |
| Land description | This rectangular site is on the west side of Wanda Street near its intersection with Police Road. It has a 17.55 metre frontage, a 48.73 metre depth and an area of 854 square metres. A single-storey dwelling occupies the site. |

# Remarks

## What is this proceeding about?

1. Thanh Vu Nguyen **(‘the applicant’)** seeks a review of the decision of Monash City Council **(‘the council’)** to refuse to grant a permit for three two-storey dwellings at 161 Wanda Street, Mulgrave.

## Procedural issues & rulings

### Background

1. Five business days before the hearing, the parties filed and served their submissions in accordance with the Tribunal’s Orders.
2. The applicant’s submissions included, and were based on, a set of amended plans **(‘the amended plans’)** and an assessment of the revised plans by a traffic engineer. The council’s submissions were based on the plans it had made its decision on **(‘the decision plans’)**.
3. The following day, the council notified the Tribunal and the applicant that the applicant's submissions appear to be based on the amended plans and advised that it objects to the substitution of amended plans at this late stage.
4. One business day before the hearing, the applicant’s representatives foreshadowed that it would seek the Tribunal’s leave to adjourn the hearing. The formal request was made on the afternoon before the hearing.
5. In that request, they explained that they could not attend the hearing due to commitments to their full-time employer caused by the exceptional circumstances of the Stage 4 restrictions (Covid-19). They advised that they are essential support staff in the domestic building and construction industry.
6. The request for adjournment was accompanied by the council’s objection to the adjournment on grounds that it had filed its submissions and was available for the hearing while being affected by the Stage 4 restrictions (Covid-19) in a similar manner. It also contended that the parties were provided with sufficient notice of the hearing dates and restrictions affecting the conduct of the hearing.

### Submissions and findings

#### Request to adjourn

1. The applicant’s representatives attended the hearing and made their request to adjourn the proceeding. After confirming that that their submissions were based on the amended plans, they requested that the hearing was based on these plans.
2. I refused the request for adjournment on the basis that the applicant’s representatives had sufficient notice of the hearing date to ensure that the applicant was represented at the hearing. I found that the applicant’s representatives could have engaged another advocate if they thought that they may not be available at the time of the hearing.
3. In Attachment A to the Order of 20 February 2020, the parties were advised that:

All adjournment requests must be made immediately you become aware of the basis for a request.

Applications for adjournment of a hearing are not encouraged and you should not expect that an adjournment will be granted even if all parties consent. VCAT may refuse an adjournment if it considers that the adjournment is:

* Not in the public interest
* Prejudicial to the interests of one or more parties or the expeditious determination of the proceeding
* Contrary to efficient case management, or
* Otherwise not justified
1. In this instance, I found that the adjournment would be prejudicial to the expeditious determining of the proceeding.

#### Request to substitute amended plans

1. I refused to grant leave to substitute the amended plans on the basis that the council had not had sufficient time to respond to these plans.
2. I advised that the Tribunal’s Practice Note PNPE9 – Amendment of Planning Permit Applications and Plans requires an applicant to give notice of a request to amend plans at least 30 business days before the hearing along with several requirements regarding the information required at that time. In this instance, the request was made with only 5 business days notice.

#### Submissions on the decision plans

1. The applicant’s representatives advised that they no longer relied on the decision plans and would not make submissions on these plans.
2. On this basis, I affirmed the council’s decision for want of prosecution.

#### My observations of the decision plans

1. In further discussions, I advised the parties of my first impressions of the decision plans and the Delegate Report.
2. I said that the ground floor footprint appeared ‘tight’, and that the council may have had good reason to say that the upper floor levels were unduly large.
3. I also advised that the south-facing balconies and associated screening measures to avoid unreasonable overlooking were novel, and that the council may have had good reason to question this approach.



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| **Michael Nelthorpe** |  |  |
| **Member** |  |  |