VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1602/2018  Permit Application no. TPA/48396 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*, Monash Planning Scheme, Neighbourhood Character, Two dwellings, Vehicle Crossover. | |

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| APPLICANT | Lioen Design Group |
| responsible authority | Monash City Council |
| SUBJECT LAND | 27 Mackellar Avenue, Wheelers Hill |
| WHERE HELD | Melbourne |
| BEFORE | Tracey Bilston-McGillen, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 20 February 2019 |
| DATE OF ORDER | 4 March 2019 |
| CITATION | Lioen Design Group v Monash CC [2019] VCT 293 |

# Order

1. In application P1602/2018 the decision of the responsible authority is set aside.
2. In planning permit application TPA/48396 a permit is granted and directed to be issued for the land at 27 Mackellar Avenue, Wheelers Hill in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of two, double storey dwellings.

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| **Tracey Bilston-McGillen**  **Member** |  |  |

# Appearances

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| For applicant | Mr Daniel Bowden, town planning consultant, SongBowden. |
| For responsible authority | Ms Sally Moser, town planning consultant. |

# Information

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| Description of proposal | Construction of two double storey dwellings. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Zone and overlays | General Residential Zone Schedule 2. |
| Permit requirements | Clause 32.08-6. A permit is required for the construction of two or more dwellings. |
| Key scheme policies and provisions | Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.05, 32.08, 55 and 65. |
| Land description | The review site is located on the north side of Mackellar Avenue, Wheelers Hill. The site has a frontage of 17 metres, a depth of 38 metres and an overall site area of 650 square metres. The land has a fall of approximately 2.8 metres form the north to the south. There is a 1.83 metre easement located inside the north and eastern boundaries.  The site is currently occupied by a detached single storey, brick dwelling and outbuildings. Surrounding development is characterised by single storey detached 1970s brick dwellings. |
| Tribunal inspection | I inspected the site and surrounds. |

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

## What is this proceeding about?

1. This is an application for review against the decision of the Monash Council (**Council**) to refuse to grant a planning permit for the construction of two attached, two storey dwellings at 27 Mackellar Avenue, Wheelers Hill.
2. Council refused the proposed development on grounds relating to overdevelopment of the site, contrary to policy at clause 21.04 and 22.01, failure to satisfy clause 55, detrimental impact on adjoining developments and failure to retain and enhance the preferred neighbourhood character of the Garden City Suburbs area.
3. The permit applicant submitted that the proposal represents a good design outcome, has no amenity impact on adjoining properties, achieves the overarching goal of urban consolidation and provides an appropriate character response.
4. The parties put to me that the key issues include:
5. Is the bulk and scale of the proposed development appropriate?
6. The appropriateness of two vehicle crossovers.
7. Are there adequate landscaping opportunities?
8. Both parties agreed that the site can be redeveloped. It was submitted that there is policy support for modest development of the site. Whilst Council described the site as being within the residential hinterland, it was acknowledged that the site is in an area that can accommodate modest growth. The site has access to a range of services and facilities associated with middle ring suburbs. Council’s local policy framework seeks to balance the competing objective of achieving housing diversity whilst maintaining the core value of ‘a garden city’.
9. Both parties referred to Amendment C125 part 2 but put to me that it should be ‘in the background’ as information. The existing planning controls are what the proposed development should be assessed against.
10. I agree with the submissions made regarding the application of policy insofar as planning policy calls for the provision of more housing, diverse housing in locations that are well served by infrastructure and services. This site is located in a middle ring suburb, which whilst may still be car based, it has access to public transport, shops, schools, roads and a range of services. The matters in dispute in this case were confined to the three issues identified above.
11. Having regard to the submissions, I have decided to set aside the decision of the Council and grant a planning permit. My reasons follow.

## KEY ISSUES

### Neighbourhood character

1. This area is reminiscent of the 1970s to the 1980s. There has been little housing development since then.
2. Council described the existing characteristics of the area as being:

* Dwellings in Mackellar Avenue were constructed in the 1970s and 1980s and exhibit similar characteristics.
* The landform is undulating.
* Front setbacks are larger than those generally found in the Monash municipality.
* Built form is currently single storey detached dwellings with a side setback on one side boundary and a garage on the other. The setbacks are generally 1-1.5 metres off one side boundary and 3 metres off the other side boundary. This larger setback generally accommodates a freestanding garage in the rear yard.
* Buildings are constructed of brick with a tiled pitched roofline.
* One vehicle crossing per lot.
* Backyards accommodate an outbuilding or shed.
* Front and rear yards are usually well planted with lawn, shrubs and trees. Front fences are low or absent.

1. I largely agree with the observations above with the exception relating to landscaping. I agree with the permit applicant that this area is not particularly ‘green’. Landscaping is limited to predominantly shrubs within private lots and often the front gardens are grass and shrubs or sparsely planted. The largest trees within the street are either street trees or within the park located further east on Mackellar Avenue.
2. This case largely focussed on the impact of the proposed built form to the street and the impact of construction to the side boundaries (or within 1 metre). Council was concerned that impact of an attached form constructed across the width of the site, prevents views into the site which is a key element of the character of the area.
3. Council further put that the requirement for side setbacks is supported in policy at clause 22.01 where the Desired Future Character Statement ‘E’ reads (in part):

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.

1. Council submitted that in principle there is no objection to attached form but, in this context, it is inappropriate and is a poor fit having regard to the character of the area.
2. I am persuaded that the proposed attached form is appropriate and would respect the character of the area. Respecting neighbourhood character does not mean to replicate what exists. In a policy framework where Melbourne is growing and needs to accommodate an increase in housing and more diverse housing, it is an unreasonable expectation that this area will remain as is. Whilst this area remains largely untouched by development, suburbs and streets change. They need to, to accommodate the increase in housing the Melbourne requires to accommodate the growing population. This is a street that has reasonable sized lots with access to services and facilities. I find the attached form is appropriate for the following reasons.
3. This is a north facing lot. Having north facing rear yards is of benefit to the future occupants of the dwellings.
4. There is a backyard character within Mackellar Street that would be disrupted with a second dwelling in the rear of the site which would be the alternate form of development, one behind the other, a dwelling in the rear of the lot. The attached form maintains this rear backyard character.
5. Council emphasised the side setbacks of existing dwellings to allow for views into the site. The side setbacks provide a ‘breathing space’ between built form, but again I find that areas change and the newer development within the broader area is being constructed closer to the side boundaries. I agree with the observation of the permit applicant that the side boundaries do not ‘do the heavy lifting’ in terms of landscaping. The existing side setbacks are not well planted but serve largely as service areas and generally accommodate garages. The permit applicant offered to modify the design to improve the side setback or ‘breathing space’. Two options were presented.

* Option 1: Recess both garages to a setback of 9.5 metres (from the street frontage) and modify the garage of dwelling 1 to an open carport (maintaining the setback of 1 metre from the eastern boundary).
* Option 2: Increase the setbacks and modify the dwelling 1 garage to an open carport located on the eastern boundary and dwelling 2 set the garage 1 metre off the boundary.

1. I find that the garages should be setback to 9.5 metres from the southern (street) boundary. This increased setback recesses the garage further behind the front wall of development. I will further adopt the suggestion of the permit applicant and require that the garage of dwelling 1 be modified to an open carport located on the boundary and dwelling 2 to be set 1 metre of the western boundary. These modifications have the benefit of opening up the side boundaries. An open carport will allow for views to extend into the rear as will the increased setback of the garage from the western boundary. I consider that this change reduces the visual impact of the development to the street and respects the existing character of the area whilst acknowledging that the street will change over time.
2. Council raised a concern that the repetitive presentation of the proposed development to the street did not achieve what policy calls for ‘Architecture of contemporary excellence…’. I do not share Council’s concern. The proposed development is a contemporary design that I find appropriate. The first-floor element is setback 11.3 metres from the street boundary and will visually appear as a recessed element. The design uses materials that reflect the area.

### Two vehicle crossovers

1. The proposed development provides two vehicle crossovers located on the east and west boundaries of the site. Council put that the dominance of two vehicle crossovers and hard surface areas to the street is inconsistent with the open gardens that characterise the surrounding area and the rhythm of housing in the street. Clause 22.01 contains specific policies with regards to the number of crossovers and is as follows:

Vehicle crossings and location of garages, car ports and car spaces

* The Garden City Character of residential areas be retained by discouraging car parking and accessways that have a significant impact on or cause fragmentation of the streetscape.
* The number of vehicle crossings be minimised to maintain existing kerb side parking and green spaces in both front setback areas and in naturestrips.
* Hardening of the streetscape through the provision of additional crossovers is discouraged.
* Landscaping in the front setback areas of properties is to be maintained by minimising the number of crossovers provided on larger multi unit sites and placing vehicle parking to the rear on sites accommodating small to medium multi developments.
* Garages, carports and associated visitor spaces be designed so that they do not dominate or visually disrupt the streetscape

1. Under this policy, the number of vehicle crossovers is to be minimised to maintain the green spaces in the front setback area and naturestrips. The policy also discourages the ‘hardening’ of the streetscape through additional crossovers.
2. I agree with Council that this is a neighbourhood that is characterised by a single crossover per lot and long naturestrips. The question the permit applicant put was would an additional crossover erode the character of the area? In this instance, I am not persuaded by Council that an additional crossover would erode the character of the area. As I have stated above, the street and area will change over time. A core value of the Monash planning scheme is to maintain and further green the municipality. As I have made observations above, this street is not dominated by landscaping. The proposed development including the two crossovers has the ability to improve the landscape and ‘green’ outcome to the street. A landscape plan provided at the hearing demonstrates the ability of the proposed development to provide planting including a large canopy tree within the front setback of each proposed dwelling. This is not common currently and will contribute to the core ‘green’ values of the streetscape.
3. I find that the provision of two crossovers will achieve the desired outcomes in respect to neighbourhood character and the provision of garden spaces within the front setback.

### Landscaping

1. The landscaping objectives of clause 55.03-8 seek to encourage development that respects the landscape character of the neighbourhood and provide for adequate landscaping. Clause 22.01 Residential Development and Character Policy also seeks that ‘The Garden City Character be enhanced by preserving existing vegetation and providing new vegetation and landscape treatments sympathetic to the existing landscape character’. Council put that the setback of the buildings to their respective side boundaries limit landscaping opportunities and the plant species selected is questioned.
2. The permit applicant submitted that the landscape plan circulated is for information and the plant species for instance can be modified.
3. I do not share Council’s concerns regarding the ability of the front and rear spaces to accommodate a tall canopy tree. The built form in the front setback is setback 7.6 metres from the street, leaving an area I consider large enough to be able to plant a canopy tree and softer planting along the front boundary and driveway boundaries. As to the rear, the built form is setback 8 metres, again leaving an area available for planting.
4. The planning permit will contain a condition requiring the submission of a landscape plan to the satisfaction of Council. Therefore, Council can ensure that they are satisfied with the tree species selected.

## 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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| **Tracey Bilston-McGillen**  **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No | TPA/48396 |
| Land | 27 Mackellar Avenue, Wheelers Hill |

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| What the permit allowS |
| In accordance with the endorsed plans:   * Construction of two, double storey dwellings. |

## Conditions

1. Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application,but modified to show:
   1. Dwelling 1 garage is to be modified to an open carport, located on the eastern boundary and setback 9.5 metres from the southern (street) boundary. The works are to be in accordance with Build Over Easement approval.
   2. Dwelling 2 garage is to be setback 1 metre off the western boundary and setback 9.5 metres from the southern (street) boundary.
   3. The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes must be located at a distance from the street which is at or behind the setback alignment of buildings on site or in compliance with Council’s ‘Guide to Electricity Supply Meter Boxes in Monash’.
   4. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping 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) both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
   5. No excavation within 2.2 metres of the street tree measured from trunk face at ground level.

**No Alteration or Changes**

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

**Landscaping**

1. Before the commencement of buildings and works, 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 prior to the commencement of any works. The plan must show the proposed landscape treatment of the site including:-
   1. the location of all existing trees and other vegetation to be retained on site
   2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development (front setback and private secluded open space areas). Tree planting is to be kept clear of the drainage easement.
   3. screen planting is to be established along the sides of both dwellings
   4. planting to soften the appearance of hard surface areas such as driveways and other paved areas
   5. 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
   6. the location and details of all fencing
   7. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
   8. details of all proposed hard surface materials including pathways, patio or decked areas

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

**Landscaping Completed Prior to Occupation**

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 be maintained to the satisfaction of the Responsible Authority.

**Tree Protection**

1. The *Callistemon salignus* in the nature strip must be protected by temporary rectangular wire fencing as per Australian Standards, erected prior to commencement of works and retained until completion. The fence must extend out to at least 2.2 metres from the trunk face and be in accordance with Australian Standard 4970.

**Common Boundary Fences**

1. All common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line.

**Drainage**

1. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve. Such a system may include either:
   1. A trench grate (150mm minimum internal width) located within the property; and/or
   2. Shaping the driveway so that water is collected in a grated pit on the property; and/or
   3. Another Council approved equivalent.
2. All stormwater collected on the site is to be detained on-site to the predevelopment levels of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.
3. The nominated point of stormwater connection for the site is to the south-east corner 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 via a pipe to Council standards. If the point of discharge cannot be located then Council’s Engineering Department is to be notified immediately.
4. Any new drainage work within the road reserve or connection into a Council easement drain requires the approval of the Council Engineering Division prior to the works commencing.
5. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to the Council pits and these works are to be inspected by Council.
6. Build Over Easement approval is required for the sleeper retaining wall, storage shed and deck of Dwelling 1 (if cantilevered) located on the easement inside the eastern property boundary. Alternatively the Dwelling 1 deck may be removed off the easement. Requirements to be met.

**Traffic**

1. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.

**Completion of Buildings and Works**

1. Once the development has started it must be continued, completed and maintained to the satisfaction of the Responsible Authority.

**Permit Expiry**

1. This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
   1. The development is not started within two (2) years of the issue date of this permit.
   2. The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987,* an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**– 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)