VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT DIVISION

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| planning and environment LIST | vcat reference No. P91/2020  Permit Application no. TPA50658 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone – Schedule 3; side by side dwellings; solar orientation; neighbourhood character; streetscape response; internal amenity; oral decision. | |

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| APPLICANT | Michael and Amal Cimino |
| responsible authority | Monash City Council |
| SUBJECT LAND | 33 Arthur Street  BURWOOD VIC 3125 |
| WHERE HELD | Melbourne |
| BEFORE | Frank Dawson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 12 August 2020 |
| DATE OF ORDER | 12 August 2020 |

# Order

1. Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* the application for review and the permit application are amended respectively by changing the name of the applicant of each to:

Michael and Amal Cimino

1. Pursuant to Section 127 and Schedule 1 clause 64(2) of the *Victorian Civil and Administrative Tribunal Act* 1998 the permit application is amended to substitute for the permit application plans the following plans filed with the Tribunal:

Plans prepared by ARB Design.

Townhouse Development - 33 Arthur Street Burwood.

Drawings TP01 to TP12 inclusive, all Revision 4, dated 24/6/2020.

1. In application P91//2020 the decision of the responsible authority is set aside.
2. In planning permit application number TPA50658 a permit is granted and directed to be issued for the land at 33 Arthur Street, Burwood. The permit allows the construction of two or more dwellings on a lot (*two dwellings)* in accordance with the endorsed plans and the conditions set out at Appendix A.

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| **Frank Dawson**  **Member** |  |  |

# APPEARANCES

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| For applicant  For responsible authority | Mr Chris McKenzie, town planner of Planning Appeals Pty Ltd.  Mr James Turner, town planner. |

**INFORMATION**

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| Description of proposal | Construction of two double storey side by side 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 (GRZ3). |
| Permit requirements | Clause 32.08-6 (a permit is required to construct two or more dwellings on a lot). |
| Land description | The land is located on the north side of Arthur Street, approximately 350 metres west of Huntingdale Road in Burwood.  The land is rectangular, with a southern street frontage of 17.98 metres, a depth of 40.65 metres and a land area of 731m2. The land is occupied by single storey detached brick dwelling, with a driveway along the western side boundary providing access to a rear garage.  Surrounding development consists of a single storey timber cottage to the west, single storey brick dwellings to the east and south and a double storey dwelling in Brockhoff Drive to the north. |

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

## What is this proceeding about?

1. In November 2019, the Monash City Council decided to refuse the grant of a permit for two dwellings at 33 Arthur Street, Burwood. The proposed dwellings are two side by side double storey dwellings, each with four bedrooms and separate garages at the front. The garage for dwelling 1 is a double garage and for dwelling 2, a single garage with a tandem driveway space. The form of the proposed dwellings at the front and the rear are illustrated below.

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1. Council’s reasons for refusing the application are summarised as follows:

* The proposal fails to achieve the “architectural and urban design outcomes” that meet the desired future character for the area.
* The proposal does not “adequately satisfy” the objectives and design standards of ResCode, specifically with regard to;
  + - * Neighbourhood character
      * Site layout
      * Visual amenity impacts
      * Landscaping
      * Car parking
      * Detailed design
* The proposal “would adversely affect the landscape character of the area.”
* The proposal would adversely affect the amenity of surrounding residents.

1. At the hearing, Mr Turner informed me that Council does not object to the substitution of amended plans but maintains that the amendments are minor and do not resolve Council’s concerns.
2. Mr McKenzie submits on behalf of the permit applicant that:

The site is included in Garden City Suburbs designation covering general suburban areas without special planning constraints which are intended for Incremental Change.

1. Mr McKenzie further submits the amended plans address the planning and design changes required by Schedule 3 to the General Residential Zone, particularly with regard to building setbacks, open space and landscaping.
2. The applicant submits the proposed ‘side by side’ design response is appropriate to the site and;

.. deliberately seeks a good balance between the 2-driveway access design, overall siting and massing and overall landscaping through the whole site.

## consideration of submissions

1. The configuration of two dwellings side by side can be problematic if site orientation is not favourable. For example, a site with an east west orientation accentuates the contrast in solar access for the dwelling on the northern side compared to the attached dwelling on the southern side. In this case, the north/south long axis creates the opportunity for equitable solar access for both dwellings, with the advantage of the rear secluded open space facing north.
2. Given the circumstances of the subject land, it is relevant in my view to assess the benefit of equitable northern exposure as a factor in assessing the planning merit of this proposal.
3. I accept Mr McKenzie’s submission that the proposed development demonstrates an acceptable level of compliance and in fact exceedance of the Schedule 3 modifications to the design standards at Clause 55. I find there is much to recommend in this proposal, taking into consideration:

* The minimum front building setback of 7.35 metres.
* The location of the front garages behind the entry façade.
* The generous rear secluded private open space areas.
* The upper level setbacks (9.6 metres at the front, 11.3 and 13.6 metres at the rear, a minimum of 2.3 metres from the eastern side boundary and a minimum of 2.9 metres from the western side boundary).
* Equitable northern exposure for secluded private open space areas.
* Adequate space for landscaping at the front and rear.
* The avoidance of the need for a side driveway along a side boundary.
* Adequate site width to accommodate two driveways and retain street parking at the front.
* A roof construction using a single pitched roof form.
* External materiality of brick and rendered finishes consistent with the streetscape.

1. Although the use of a side by side configuration limits the extent of side boundary setbacks, I find the benefit of the spaces made available at the front and rear of the proposed development outweigh the constraint of restricted side setbacks. In this proposal, the side setbacks include a wider central courtyard on the western side and a garden space functioning as a light court for the guest bedroom on the eastern side; both of which I find ameliorate the constraint of a restricted side setback.

### Amenity comments

1. Given the extent of the rear setbacks, I consider the screening of the upper level north facing bedroom windows to 1.7 metres above finished floor level is unnecessary due to the separation distance between the proposed development and the backyard spaces to the north. The use of shade louvres may be an option to maintain the internal amenity of the north facing bedroom windows.

## Conclusion

1. Having heard the submissions and considered the applicable provisions of the Monash Planning Scheme, I gave an oral decision at the end of the hearing to set aside the Council’s refusal and grant a permit in accordance with the endorsed plans and subject to the conditions contained at Appendix A.

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| **Frank Dawson**  **Member** |  |  |

### Permit Notes

Although my order does not include the ‘Notes’ suggested by the Council, such advisory information may be included in the permit that the Council is directed to issue.

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# Permit Conditions

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| Permit Application No | TPA50658 |
| Land | 33 Arthur Street, Burwood. |

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| What the permit allowS  Construction of two or more dwellings on a lot (*two dwellings*) in accordance with the endorsed plans. |

## Conditions

**Amended Plans**

1. Before the development starts, 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, but modified to show:
2. Notation “not film” added to obscure glazing notation.
3. The clearance distance between the existing street tree and any vehicle crossing to be in accordance with required Tree Protection Zone of Australian Standard AS4970.
4. Width of vehicle crossing/s.

All the above to the satisfaction of the Responsible Authority.

**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.

**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.

**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:
2. the location of all existing trees and other vegetation to be retained on site
3. provision of two canopy trees with spreading crowns within the front building setback and two canopy trees within the rear building setback.
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 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 maintained to the satisfaction of the Responsible Authority.

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**Walls on Boundary**

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

**Traffic, Vehicle Crossovers and Access**

1. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
2. The vehicle crossing of Unit 2 will require reconstruction of the Council side entry put, to Council’s satisfaction.
3. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
4. All new crossings are to be no closer than 1.0 metre measured at the kerb to the edge of any sign, power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
5. All internal driveway/s is/are to be at least 3 metres wide.
6. The development must be provided with a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the vehicle crossing/s to provide a clear view of pedestrian on the footpath of the frontage road.

**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.
2. The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:

* a trenchgrate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
* shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
* another Council approved equivalent.

1. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council’s Engineering Department prior to drainage works commencing.
2. The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe Council pit in the nature strip to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.
3. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of $1,000 is to be paid prior to the drainage works commencing.

**Completion of Buildings and Works**

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

**Permit Expiry**

1. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:

* The development has not started before two (2) years from the date of issue.
* The development is not completed before four (4) years from the date of issue.

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. In supporting the Council position [↑](#footnote-ref-1)