# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL


# administrative DIVISION

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| planning and environment LIST | vcat reference No. P1687/2018Permit Application no. TPA/48930 |

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| CATCHWORDS |
| Section 77 of the *Planning & Environment Act* 1987; Monash Planning Scheme; Two dwellings: Neighbourhood character (GRZ2; Cl. 22.01 – Character Type C; Cl. 55) |

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| APPLICANT | Rohit and Rajeev Sharma |
| RESPONSIBLE AUTHORITY | Monash City Council |
| RESPONDENT | Alastair Woodard |
| SUBJECT LAND | 5 Armstrong Street, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 5 March 2019 |
| DATE OF ORDER | 15 April 2019 |
| CITATION | Sharma v Monash CC [2019] VCAT 544 |

# Order

1. Pursuant to section 127 and 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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| * Prepared by:
 | Design Edge Associates |
| * Drawing numbers:
 | TP.200B; TP.201B; TP.202B; and TP.300B |
| * Dated:
 | 29/11/18 – VCAT Issue |

1. The decision of the Responsible Authority is affirmed.
2. In permit application TPA/48930 no permit is granted.

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| Tracy Watson**Member** |  |  |

**APPEARANCES**



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| For Applicant | Stephen O’Brien, town planner |
| For Responsible Authority | Sally Moser, town planner |
| For Respondent  | Alastair Woodard, in person |

# INFORMATION

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| Description of Proposal | It is proposed to construct two, double storey dwellings (with a basement) in a one-behind-the-other layout. |
| 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 | Clause 32.08 – General Residential Zone, Schedule 2 (Monash Residential Areas).Clause 42.02 – Vegetation Protection Overlay, Schedule 1. |
| Permit Requirements | Clause 32.08-6 – Construct two or more dwellings on a lot.There are no permit triggers under the Vegetation Protection Overlay provisions. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 22.01, 22.05, 32.08, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is located on the northern side of Armstrong Street, in an established residential area. The subject site is rectangular in shape, with a frontage of 17.68 metres, a depth of 45.72 metres and a site area of 808m2. The subject site is currently developed with a single dwelling.  |
| Tribunal Inspection | 3 April 2019 |

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


## What is this proceeding about?

1. The Monash City Council issued a Notice of Decision to Refuse to Grant a Permit for the proposed development in July 2018. The permit applicant is seeking a review of this decision by the Tribunal. Mr Woodard, who resides at no. 14 The Close, opposes the proposal and is also a party to this proceeding. Two non-party statements of grounds were also lodged with the Tribunal.
2. Based on the hearing process and all the relevant associated documentation, I consider that the key issue relates to the intensity of the development in respect of its impact on the neighbourhood character of the area.
3. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to affirm the decision of the Responsible Authority. My reasons follow.

## Is the proposal respectful of neighbourhood character?

1. Mr O’Brien submitted that the proposal is an acceptable planning outcome and is respectful of the existing and preferred garden city neighbourhood character of the area for the following key reasons:
* The existing character of the area features robust, larger two storey high buildings, and includes medium density housing.
* The existing character of the area does not feature a linear backyardscape ‘as there is a wide variation in building forms at the rear of sites’.
* The proposed one-behind-the-other layout allows for the preferred single crossover to the street, the desired absence of garaging directly fronting the street and a well landscaped front garden.
* The proposal was modified to accord with the advice provided in the urban design report prepared by Larry Parsons. This includes a reduction in the mass of proposed Dwelling 1 to provide an eight metres upper level building separation between the upper level forms of the dwellings.
1. Because the proposal meets the quantitative standards contained in the General Residential Zone and Clause 55 of the planning scheme, my decision comes down to a judgement-call regarding the subjective, neighbourhood character related Clause 55 objectives.

1. Ultimately, I find that the built form intensity of the proposal is such that it has not met the mandatory objectives at Clauses 55.02-1 and 55.04-1 of the planning scheme.
2. Clause 55.02-1 of the planning scheme has the following objectives and standards.

To ensure that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character. [Objective]

To ensure that development responds to the features of the site and the surrounding area. [Objective]

The design response must be appropriate to the neighbourhood and the site. [Standard B1]

The proposed design must respect the existing or preferred neighbourhood character and respond to the features of the site. [Standard B1]

1. Further direction regarding neighbourhood character outcomes is provided at Clause 22.01 (Residential Development and Character Policy) of the planning scheme. The municipal-wide policies which I consider are the key policy statements relevant to the shortcomings of the proposed design response, as contained in Clause 22.01-3 are:

Building spacings and setbacks off side boundaries maintain the spacing and rhythm of existing dwellings to respect the built form character of the streetscape.

A high degree of articulation and detailing be exhibited.

1. The subject site is located in Residential Character Type “C” pursuant to Clause 22.01-4 of the planning scheme. It is policy that the desired future character statement for Character Type “C” be considered as part of the decision-making process. In essence, this desired future character statement supports a one-behind-the-other layout to preserve the existing ‘garden city’ character of the streetscape.
2. Mr O’Brien referred to an earlier Tribunal’s description of the existing neighbourhood character of this immediate area. This previous Tribunal decision relates to the, now built, side-by-side development at no. 10 Armstrong Street. This Tribunal decision (*Be v Monash CC* [2012] VCAT 919) described the neighbourhood character as including robust buildings, particularly on the north side of Armstrong Street. I agree that the streetscapes of Armstrong Street and The Close include robust, visually prominent two storey high buildings and I endorse the previous Tribunal’s description of the area’s neighbourhood character.
3. However, my primary concern with the design response before me relates to the siting and massing of proposed Dwelling 2 rather than to the proposal’s streetscape presentation. It is also notable that the development at no. 10 Armstrong Street is located on the ‘low-side’ of the street, reducing its visual presence in the streetscape. Furthermore, the side-by-side layout of these dwellings mitigates their impact on the backyard-realm.

1. Within Armstrong Street and The Close there is only one allotment which features a dwelling sited at the rear. This existing rear, double storey dwelling is a much more modest built form outcome compared to proposed Dwelling 2.
2. I acknowledge that there are medium density developments at the corners of Armstrong Street and St Johns Wood Road, however, these corner sites are a very different context to a mid-block allotment such as the subject site. There is also a medium density housing development immediately to the north of the subject site which extends deep into the rear of the allotment. Importantly, these dwellings are all single storey buildings, thus maintaining a sense of openness in the backyardscape. Similarly, the existing single storey outbuildings referred to by Mr O’Brien do not justify the extent of the proposed upper level of Dwelling 2.
3. Based on the material presented to me at the hearing, and my site inspection, I find that the immediate context of the subject site does indeed feature a neighbourhood character with an open, backyardscape which includes a general absence of large double storey forms in the rear of sites. I find that the built form intensity of proposed Dwelling 2 has insufficiently responded to this existing character.
4. This is a challenging site as it has abuttals with two properties which front Armstrong Street, one property which fronts The Close and a further dwelling which has a St Johns Wood Road address. This means that proposed Dwelling 2 has a direct visual impact on the secluded private open spaces and outlooks of four existing residences. Arguably the siting and design of Dwelling 2 (including the 8 metres upper level building break between it and Dwelling 1) mitigates its visual impact when viewed from the rear secluded private open spaces of nos. 3 and 7 Armstrong Street. However, the other proposed setbacks, particularly from the western side boundary, are unacceptable.
5. The side and rear setbacks objective at Clause 55.04-1 of the planning scheme is, “To ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings.” In this case, having regard to the applicable Clause 55.04-1 decision guidelines, I find that this objective has not been met.
6. I confirmed during my site inspection that the property at no. 14 The Close has a direct outlook from a number of ground and first floor habitable room windows towards the rear of the subject site. Importantly, this property also has a key area of its secluded private open space directly interfacing with proposed Dwelling 2. This secluded private open space is developed with a jacuzzi and an area for casual seating. Currently there is an open treed aspect available from this sensitive secluded private open space area. This aspect is consistent with the existing backyardscape which forms part of the neighbourhood character of this immediate area.

1. The proposed breadth of the ground and upper level western walls of Dwelling 2 directly interfaces with this element of the rear secluded private open space of no. 14 The Close. The proposed ground level wall in this location is setback 1.2 metres from the shared boundary, and there is also a proposed retaining wall setback 860mm from the ground wall of Dwelling 2. These setbacks mean that there is no opportunity for any landscaping along this sensitive interface resulting in direct views of the western side of Dwelling 2 from no. 14 The Close. This proposed small side boundary setback contrasts to the modest rear double storey dwelling at no. 11 Armstrong Street. This existing dwelling has located its main secluded private open space area adjacent to its western shared side boundary.
2. Critically, the whole of the upper level (an unbroken length of some 12.3 metres to the edges of the roof form) on the western side of proposed Dwelling 2 is setback only 1.9 metres. This is unacceptable as it does not provide for a high degree of articulation, nor does it respect the existing spacing and rhythm of buildings in this neighbourhood. This aspect of the proposed design response has inappropriately responded to the secluded private open space area described above of no. 14 The Close.
3. Overall, given the particular physical context of the subject site, I consider that the siting, mass and bulk of proposed Dwelling 2 inadequately responds to its context.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is affirmed. No permit is to issue.

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| Tracy Watson**Member** |  |  |

1. I have considered the written and oral submissions of all the parties that appeared, including all the exhibits tendered by the parties, and the statements of grounds filed. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)