VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P1690/2019Permit APPLication No. TPA50335 |

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| APPLICANT | Jacqueline MederiRiccardo Santomaggio |
| responsible authority | Monash City Council |
| SUBJECT LAND | 1/40 Hourigan AvenueCLAYTON VIC 3168 |
| WHERE HELD | Melbourne |
| BEFORE | Megan Carew, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 11 December 2019 |
| DATE OF ORDER | 13 December 2019 |

# Order

1. Pursuant to Clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act* 1998, the application for review is amended to include condition 1c).
2. The Tribunal directs that planning permit TPA50335must contain the conditions set out in planning permit TPA50335 issued by the responsible authority on 1 July 2019 with the following modifications:
	1. Condition 1b) is amended to read:

1b) Remove the roof sheeting from the verandah over the eastern side of the rear private open space from the eastern boundary to the second north-south aligned rafter/beam.

* 1. Condition 1c) is amended to read:

1c) Provide a minimum 1m wide garden bed (or alternatively a 1m wide planter with a minimum depth of 800mm) along the eastern boundary of the rear private open space. The garden bed or planter can commence 800mm south of the roller door to the garage and must run the remaining length of the eastern boundary. The species of shrubs or tees to be planted in the garden bed or planter and size at planting are to be specified on the plan. The species selected must be capable of achieving height above the eastern boundary fence.

1. The responsible authority is directed to issue a modified planning permit in accordance with this order.

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| Megan Carew**Member** |  |  |

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# APPEARAnces

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| For Applicant | Mr Riccardo SantomaggioMs Jacqueline Mederi |
| For Responsible Authority | Ms Adrianne Kellock, Town Planning Consultant, Kellock Town Planning |

# INFORMATION

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| Description of Proposal | To construct a carport in front of the existing garage and a verandah over the rear open space of a dwelling on a lot less than 300m2. |
| Nature of Application | Application under section 80 of the *Planning and Environment Act 1987* – to review the conditions contained in the permit. |

# ReASONS

1. The applicant seeks a review of Conditions 1a)- 1c) of the permit. Reasons for this decision were given orally at the conclusion of the hearing and are summarised below.
2. The applicant for review is no longer contesting the retention of Condition 1a) of the permit that requires the deletion of the carport within the front setback.
3. The planning scheme clearly sets out at Clause 22.01 that carports in the front setback are not supported. Even in a Residential Growth Zone and an area where change is anticipated, the front setbacks remain important to the preferred neighbourhood character specified in the planning scheme. The schedule to the zone varies the front setback standards, but still seeks a 4m front setback.
4. Whilst car spaces within the front setback are not uncommon, structures are not encouraged by the planning scheme. There are no other intrusions in this street at present.
5. I note that the carport dimensions are not compliance with Design Standard 2 of Clause 52.06.
6. Conditions 1b) and 1c) when read together seek reduction of the rear verandah to a third of the area and reinstatement of 1m garden beds on the eastern and southern boundaries.
7. Council says that the covering of all of the secluded private open space area is not supported by the Neighbourhood Character policy at 22.01 or the provisions of the zone. The zone schedule seeks larger areas of ground level secluded private open space that standard (35m2). The decision guidelines (even in a zone where apartments are encouraged) seek well -located open space to provide for large tree planting and a mixture of indigenous and exotic vegetation in front side and rear setbacks. Council also expressed concerns about the internal amenity of the dwelling and daylight access.
8. The proposed verandah does not meet the exemptions at Clause 62.02 as it scales higher than 3m on the plans. In any event, there are existing planning permits and a Section 173 Agreement on the title that may require Council consent for the verandah.
9. Council seeks the reduction in the extent of the verandah but could not provide a reason for the measure of one third over say one half or two thirds. Council also seeks the provision of garden beds, but fairly indicated that the southern garden bed did not need to extend to the sideway. Council also indicated that it would consider raised planters rather than gardens beds as an option.
10. The permit applicant did not want to remove the verandah but would consider replacing a section with laser-lite material or alternatively removing some of the roofing.
11. The photos of the rear courtyard provided by the Council with the owner’s consent were very helpful. I find that the suggestion to remove the roofing along the eastern boundary to the second rafter/beam (about 1.2m from the eastern boundary) together with a 1m wide planter (minimum 800mm deep) or garden bed would provide sufficient opportunity for planting within the courtyard. Plant species should be selected to grow above the boundary fence. I will provide for access to the rear roller door of the garage. To assist the parties, I have provided a diagram of the changes in figure 1 below as discussed at the hearing.
12. When balanced against the open space available for this dwelling within the front setback, I find that this will be acceptable and will contribute to the neighbourhood character. I am also satisfied that internal amenity will be acceptable considering the laser lite at the western side of the court yard.
13. I do not consider it necessary to fully cut back or remove the supporting structure that could remain as a pergola, but this would be subject to building regulations. The current use of the shade cloth is not before me and is a matter for Council.
14. For these reasons the decision of the responsible authority is varied.

Megan Carew

**Member**

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Figure 1: Changes to rear courtyard



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