# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL


# administrative DIVISION

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1791/2018Permit no. TPA/49110 |

|  |
| --- |
| CATCHWORDS |
| Section 80 of the *Planning & Environment Act* 1987; Monash Planning Scheme; Two dwellings: Off-site amenity impacts (visual bulk); GRZ7; Cls. 22.01, 22.14 & 55 |

|  |  |
| --- | --- |
| APPLICANT | Cedo & Ruza Visic; and Daniel & Natalija Visic |
| RESPONSIBLE AUTHORITY | Monash City Council |
| SUBJECT LAND | 7 Lisbon Street, Glen Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 5 March 2019 |
| DATE OF ORDER | 2 April 2019 |
| CITATION | Visic v Monash CC [2019] VCAT 470 |

# Order

1. Pursuant to section 127 of the *Victorian Civil and Administrative Tribunal Act* *1998* the application is amended by changing the name of the applicant to:

Cedo & Ruza Visic; and Daniel & Natalija Visic

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 changing the name of the permit applicant to:

Cedo & Ruza Visic; and Daniel & Natalija Visic

1. The decision of the Responsible Authority is varied.

1. The Tribunal directs that Permit No. TPA/49110 must contain the conditions set out in the permit issued by the Responsible Authority on 28 August 2018 with the following modification:
	1. Conditions 1(a), 1(b), 1(c), 1(d), 1(e) and 1(f) are deleted; and the balance of Condition 1 is re-lettered accordingly.
2. The Responsible Authority is directed to issue a modified permit in accordance with this order.

|  |  |  |
| --- | --- | --- |
| Tracy Watson**Member** |  |  |

**APPEARANCES**



|  |  |
| --- | --- |
| For Applicant | Robyn Gray, town planner |
| For Responsible Authority | David De Giovanni, town planner |

# INFORMATION

|  |  |
| --- | --- |
| Description of Proposal | It is proposed to construct two, double storey attached dwellings (with a basement) on the subject site.  |
| Nature of Proceeding | Application under Section 80 of the *Planning and Environment Act* 1987 – to review conditions 1(a)-(f) in the permit. |
| Zone and Overlays | Clause 32.08 – General Residential Zone, Schedule 7.No overlays apply to the subject site. |
| Permit Requirements | Clause 32.08-6 – Construct two or more dwellings. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.14, 32.08, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is a vacant rectangular shaped allotment with a frontage of 18.29 metres, a depth of 39.62 metres and a site area of 725m2. The subject site is located within an established residential area, and is within the Glen Waverley Major Activity Centre. |
| Tribunal Inspection | 7 March 2019 |

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


## What is this proceeding about?

1. Monash City Council issued a permit allowing the proposed development in August 2018. The planning permit includes a number of conditions, including Condition 1 which requires the submission of amended plans showing a number of modifications to the permit application plans.
2. The permit application was advertised by the Council and no objections were lodged with the Council in response to the notification period.
3. The permit applicant has lodged an application for review with the Tribunal seeking the deletion of Condition nos. 1(a) to 1(f) from the permit. These conditions relate to the rear, upper-level elements of each of the proposed dwellings.
4. Based on the hearing process and all the relevant associated documentation, I consider that the key issue relates to whether the conditions are required to reduce the visual impact of the dwellings on the abutting properties to the north and south (being nos. 5 and 9 Lisbon Street respectively) of the subject site.
5. The Tribunal must decide whether Conditions 1(a)-1(f) of the permit should be retained, modified or deleted. Having considered all submissions, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to delete each of these conditions. My reasons follow.

## Are Conditions 1(a)-(f) necessary to reduce the visual impact on 5 and 9 Lisbon Street?

1. The Council’s submission was that the proposed conditions are necessary in order to minimise the visual bulk impact of the proposed rear portion of the building and to generally provide for an increased degree of articulation. It was the Council’s position that these changes are required to appropriately respond to the subject site’s physical context, and to satisfy the applicable policy statements at Clause 22.01-3 of the planning scheme relating to built form outcomes.
2. The proposal meets, or exceeds, all of the quantitative Clause 55 standards (including the local variations forming part of Schedule 7 to the General Residential Zone) relating to its off-site amenity impacts.
3. The mandatory 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.” Because the subject site is located in a neighbourhood which is a designated housing diversity area (within the Glen Waverley Major Activity Centre) where robust double storey dwellings are commonplace, the contested conditions were not imposed for neighbourhood character reasons. Rather, their intent is to reduce the proposal’s visual impact on the abutting residential properties at nos. 5 and 9 Lisbon Street. The effect of the conditions is to increase the proposed upper level setbacks at the rear of the building.


##### Visual Impact on 5 Lisbon Street

1. Conditions 1(a)-(c) require changes to the western and northern sides of the proposed building, and relate to proposed Dwelling 2. These conditions require that:
2. *The retreat wall be setback to a minimum of 5m from the northern boundary.*
3. *The Ensuite to Bedroom 3 be deleted and the upper storey wall for bedroom 3 along the northern elevation be setback 5m from the northern boundary.*
4. *The upper storey wall for Bedroom 3 be setback a further 1m from the western boundary.*
5. The Council argued that these additional upper level setbacks are necessary to increase the building’s level of articulation generally, given the absence of side landscaping; to reduce its visual impact when viewed from the south facing habitable room windows and door of the dwelling at 5 Lisbon Street; and to better align the rear of the proposed upper level with the rear of the dwelling at 5 Lisbon Street to reduce its impact when viewed from the outdoor paved area of 5 Lisbon Street.
6. The side presentation of proposed Dwelling 2 is already well articulated, with a range of proposed side setbacks. Each of the proposed upper level rooms of Dwelling 2 feature a range of side setback (being: 2.27 metres to the master bedroom; 2.06 metres to ensuite 1; 3.05 metres to the retreat; 2.06 metres to bedroom 2; and 3.05 metres to ensuite 3).
7. The combined separation distance between the proposed upper level of Dwelling 2 and the south facing habitable room windows and door of 5 Lisbon Street is a minimum of 4.871 metres and a maximum of 5.861 metres. These existing windows and door have an interface with the side service yard of 5 Lisbon Street.
8. The proposed upper level setback of Dwelling 2 from the rear boundary is 9.909 metres. This proposed setback is greater than the existing rear setback of the roofed porch area of 5 Lisbon Street. The proposed rear upper level setback also sits well behind the western edge of the extensive outdoor paved area of 5 Lisbon Street.
9. The effect of Conditions 1(a)-(c) is to increase the maximum side boundary upper level setbacks from 3.05 metres to 5 metres, and to increase the rear boundary upper level setback from 9.909 metres to 10.909 metres.

1. Given the physical characteristics of the dwelling and outdoor space of 5 Lisbon Street, I consider that these additional setbacks are unwarranted. The proposed side and rear upper level setbacks already ensure that the visual impact of Dwelling 2 on the outlook from this property is appropriate.

##### Visual Impact on 9 Lisbon Street

1. Conditions 1(d)-(f) require changes to the western and southern sides of the proposed building, and relate to proposed Dwelling 1. These conditions require that:
2. *The upper storey Bedroom 3 wall on the western elevation be setback a further 2m from the western boundary.*
3. *The upper storey ensuite and Bedroom 2 wall be setback 5m from the southern boundary for a distance which is in line with the rear building line of the adjoining dwelling at No. 9 Lisbon Street.*
4. *The remainder of the bedroom 2 wall be setback to be in line with the setback of the retreat wall along the southern elevation.*
5. A plan was tabled at the hearing that showed the setbacks intended by Conditions 1(d)-(f). The effect of Conditions 1(d)-(f) is to increase the rear boundary upper level setback to 11.909 metres; and to increase the side boundary setbacks to either 5 metres or 3.23 metres where the building has a direct interface with the rear secluded private open space of 9 Lisbon Street.
6. The Council argued that these conditions are necessary to improve the building’s articulation and to decrease its visual bulk impact on the ‘main useable area of open space’ of 9 Lisbon Street. The Council contended this principal open space area was limited to the paved area visible in the aerial photograph tabled by Mr De Giovanni as part of his submission.
7. As with proposed Dwelling 2, the southern side presentation of proposed Dwelling 1 is already well articulated with a range of side setbacks provided as follows: 2.45 metres to the master bedroom; 2.24 metres to ensuite 1; 3.23 metres to the retreat; 2.24 metres to bedroom 2; and 3.23 metres to ensuite 3 and walk-in-robe 3. The proposed rear boundary setback is already generous at 9.909 metres.
8. Whilst the building at 5 Lisbon Street is a typical example of the newer, large robust two storey dwellings typical of this neighbourhood, the dwelling at 9 Lisbon Street is an original single storey building. The advantage of the relatively smaller building footprint of 9 Lisbon Street is that its rear secluded private open space is consequently relatively larger. The maximum depth of the rear secluded private open space of 9 Lisbon Street is 19.478 metres, and its width is 18.3 metres. I consider that the substantial size of this rear secluded private open space area mitigates any visual bulk impacts of the proposed building. I disagree with Council’s assertion that an assessment of the proposed building’s visual bulk impact should be limited to the outdoor paved area. In this instance, it is appropriate to consider the visual relationship of the proposed upper levels to the whole of the rear secluded private open space area.

1. I therefore find that the visual impact of proposed Dwelling 1 as viewed from the rear secluded private open space of 9 Lisbon Street is acceptable.

## Conclusion

1. Overall, I consider that the additional side and rear setbacks required by Conditions 1(a)-(f) are unnecessary as the proposed building is already sufficiently articulated and the proposed side and rear setbacks ensure that the visual impact on the abutting properties is acceptable.
2. In conclusion, I find that the objective at Clause 55.04-1 of the planning scheme is met, and that therefore Conditions 1(a)-(f) are unnecessary and will be deleted from the permit.

|  |  |  |
| --- | --- | --- |
| Tracy Watson**Member** |  |  |

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