# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

# planning and environment DIVISION

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| planning and environment LIST | vcat reference No. P16/2019Permit Application no. TPA/48344 |

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| CATCHWORDS |
| Section 77 of the *Planning & Environment Act* 1987; Monash Planning Scheme; Two dwellings: Neighbourhood character (GRZ2; VPO1; Cl. 22.01 – Character Type C; Cl. 55) |

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| APPLICANT | Strait-Line Builders & Drafters Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| SUBJECT LAND | 5 Wallabah Street, Mount Waverley |
| WHERE HELD | Melbourne |
| BEFORE | Tracy Watson, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 28 June 2019 |
| DATE OF ORDER | 7 August 2019 |
| CITATION | Strait-Line Builders & Drafters Pty Ltd v Monash CC [2019] VCAT 1184 |

# 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:
 | Strait-Line Builders & Drafters Pty Ltd |
| * Drawing numbers:
 | TP-03 to TP-08: All Revision 2 |
| * Dated:
 | April 2019 |

1. The decision of the Responsible Authority is set aside.
2. In permit application TPA/48344 a permit is granted and directed to be issued for the land at 5 Wallabah Street, Mount Waverley in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
* Development of two dwellings and tree removal.

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| Tracy Watson**Member** |  |  |

**APPEARANCES**

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| For Applicant | Tim Radisich, town planner. Mr Radisich called expert evidence from Damien Hancox, traffic engineer. |
| For Responsible Authority | Sally Moser, town planner. |

# INFORMATION

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| Description of Proposal | It is proposed to construct 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 | 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.Clause 42.02-2 – To remove any vegetation that has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level and higher than 10 metres. This means that a permit is required to remove Tree No. 12 (a Pin Oak located in the rear of the subject site proximate to the northern side boundary). |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 15, 16, 21.04, 22.01, 22.05, 32.08, 42.02, 52.06, 55, 65 and 71.02. |
| Land Description | The subject site is located on the western side of the court-bowl section of Wallabah Street, in an established residential area. The subject site features a 2.22 metres cross fall, is irregular in shape, with a curved frontage of 14.57 metres, a maximum depth of 42.41 metres, a rear boundary of 39.32 metres and an overall site area of 877m2. The subject site is currently developed with two, single storey dwellings. The Pinewood Shopping Centre is located some 420 metres from the subject site.  |
| Tribunal Inspection | 1 August 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 proposal in November 2018. The permit applicant is seeking a review of this decision by the Tribunal. A statement of grounds was lodged with the Tribunal by Rochelle and Charles Barber who are the owners/ occupiers of the single dwelling located at no. 7 Torroodun Street which abuts the majority of the rear boundary of the subject site.
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 built form and landscape character of the area. Mr and Mrs Barber’s concerns largely reflect the issues raised by Council in regards to neighbourhood character and tree removal. The Council also raised an issue regarding the unsuitability of the access/ egress to the proposed garages.
3. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, statement of grounds and traffic engineering expert evidence, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

## Is the proposal respectful of neighbourhood character?

1. It was submitted that the proposed development and tree removal is not respectful of the existing and preferred garden city, vegetated and spacious neighbourhood character of the area. The Council’s position was that the proposal: provides insufficient space for an appropriate landscaping outcome, including an inability to retain Tree 12 and an excessive amount of hard surfaces; and is visually dominant, including the two, double garages and insufficient spacing between the two dwellings.
2. There are only two trees on the subject site which trigger the need for a planning permit to allow their removal: these are identified as Trees 12 and 16 in the arboricultural report forming part of the permit application material. It is proposed to retain Tree 16 which is a 15 metres high Lemon Scented Gum located in the north west corner of the subject site. Tree 16, along with Tree 24, which is a 15 metres high Pin Oak located in the north-west corner of no. 3 Wallabah Street, are the two most visually prominent trees in the immediate private realm due to a combination of their height and canopy spread relative to other existing trees. Tree 24 will not be adversely impacted by the proposal. I consider that it is these two trees which have the most significant contribution to the existing treed canopy of the private realm in this immediate context. Tree 16 has a canopy spread of some 18 metres, whilst Tree 24 has a canopy spread of some 13.5 metres.
3. Schedule 1 to the Vegetation Protection Overlay (VPO1) seeks to protect significant treed environments, and states that canopy trees contribute to the Garden City Character of the municipality, which includes its valued leafy character. The Decision Guidelines of the VPO1 include the need to consider the reason for removing Tree 12 and the practicality of alternative options (including tree relocation), as well as the tree’s condition and quality.
4. The arborist’s report assesses Tree 12 as being in good health and of moderate significance/ retention value. In this case I do not consider it practical to either relocate or modify the proposed footprint of Dwelling 2 in order to retain Tree 12. I find that the removal of Tree 12 is on balance, acceptable as its removal will not unreasonably undermine the valued leafy, treed canopy character of the immediate locality. This is because Tree 12 is located adjacent to the more visually prominent Tree 16 which is being retained. By comparison Tree 12 is visually diminutive to Tree 16 due to its much smaller canopy spread of approximately 9 metres. There is also sufficient space for the planting of a large canopy tree in the mid-section of the rear boundary (outside of the rear easement) in the secluded private open space area of Dwelling 1. In other words, I disagree with Council’s contention that Tree 12 makes a significant contribution to the site and area. I find that it is Trees 16 and 24 that make the significant contribution to this locality.
5. I note that the internal referral to Council’s arborist did not provide an assessment of the permit applicant’s arborist report and did not provide any comments about any of the trees on the subject site or neighbouring properties. The proposal does not impact on the existing street tree located in front of the subject site.
6. I therefore find that it is acceptable to permit the removal of Tree 12 pursuant to Clause 42.02-2 of the planning scheme.
7. The proposal is located in a General Residential Zone which has purposes of both respecting neighbourhood character and providing a diversity of housing types and housing growth as this location offers good access to services and transport. The locational attributes of the subject site and surrounds are recognised in its designation as an ‘accessible area’ in the *Monash Housing Strategy 2014* which is a reference document to the planning scheme. This is in part due to the proximity of the Pinewood shopping centre (being within walking distance of the subject site) which is identified as a Neighbourhood Activity Centre.
8. The proposal meets all of the quantitative Clause 55 Standards, including the local variations contained in Schedule 2 to the General Residential Zone. These local variations relate to Standard B6 (street setback), Standard B28 (private open space) and Standard B32 (front fence).
9. As well as promoting housing diversity and growth, the local planning policy framework also seeks to protect the garden city character of the municipality.
10. Explicit direction regarding neighbourhood character outcomes is provided at Clause 22.01 (Residential Development and Character Policy) of the planning scheme. The relevant municipal-wide policies which I consider are the key policy statements relevant to the subject proposal as contained in Clause 22.01-3 are:

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.

Minimal pavement areas be provided within the front setback area to maximise landscaping to enhance the Garden City Character of the streetscape.

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.

Articulated and graduated elevations avoiding “box-like” designs to be provided.

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 following desired future character statement be considered as part of the decision-making process:

The neighbourhood character of this area will develop within a pleasant leafy framework of well-planted front gardens and large canopy trees.

Architecture, including new buildings and extensions, will, in the majority of cases, be secondary in visual significance to the landscape of the Character Type from the street. However, in neighbourhoods that currently have a large proportion of two storey houses, the architecture will gradually become more dominant, although it will always be buffered from the street by a well planted front garden that will ensure the soft leafy nature of the street will be perpetuated.

Setbacks will be generous and consistent within individual streets.

Building heights will vary between neighbourhoods. Those neighbourhoods where the diverse topography and well developed mature tree canopy provide a framework within which redevelopment can occur will have a larger proportion of two storey houses. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrasts between buildings.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Neighbourhoods that are influenced by the naturalistic landscape of the creek valleys or on highpoints and ridges will have a predominance of native trees in both the public and private realm. Trees within lots to be redeveloped will be retained wherever possible in order to maintain the established leafy character.

Streets which have a majority of gardens currently lacking fences will continue to do so. Walls and fences in other streets will be low to allow plants in the front garden to be visible from the street. Colours and materials will be sympathetic to the architecture of the house.

The soft quality of streets derived from the nature strips will be protected by ensuring that each lot frontage has only one single crossover. Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until horticulturally unstable.

The character of existing public open spaces within the Character Type, particularly those naturalistic corridors such as Damper Creek and Valley Reserve, will be protected by ensuring that buildings directly adjacent to such areas are set back and buffered with planting that complements that within the public open space. [I note that this last paragraph is not relevant to the subject site]

1. The local planning policy framework encourages the provision of one crossover per allotment. The proposal does not impact on the existing single crossover accessing the subject site. Interestingly, whilst the VPO1 does not distinguish between the value of native compared to exotic canopy trees, this local policy does seek a predominance of native trees on highpoints such as this one, as well as specifically seeking the retention of indigenous trees. I note that Tree 12 is not a native tree, whilst Tree 16 is a native tree.
2. The proposal provides a site coverage of 47%, a site permeability of 45%, a garden area of 43% and a total of approximately 290m2 private open space, which are all useful numerical indicators that the site is capable of being appropriately landscaped.
3. The subject site is an atypical one due to its configuration and its relatively narrow abuttal to the court bowl section of Wallabah Street. Because of this, and the site’s topography, it is comparatively ‘tucked-away’ in terms of its overall streetscape presence. Put another way, the subject site is not a part of the streetscape rhythm of the primary east-west aligned section of Wallabah Street. For this reason, I do not think that the Council’s criticism of the angled presentation of the proposed dwellings being ‘highly at odds with the existing area’ is a valid one.
4. I also consider that the subject site’s unique characteristics will reduce the visual impact of the proposed accessways and double garages. I find that the proposed accessways and double garages are not visually dominant within the streetscape as:
* Each of the proposed garages has a very different siting/ alignment, and are each recessed behind a front study.
* The garages sit 400-600mm below the streetscape.
* Currently there is an existing 55m2 hardstand area in the front of the subject site, and this is proposed to be replaced by a total hardstand area of approximately 75m2, spread across two separate areas.
* Proposed garage 1 is setback 9.02 metres from the street, and proposed garage 2 is setback well over 10 metres from the street.
* The only proposed boundary wall is the southern wall of garage 1 which abuts the existing carport of no. 3 Wallabah Street.
* The total front garden area that will be available for landscaping is approximately 62m2.
1. In addition to the criticisms of the neighbourhood character impacts of the proposed driveways and garages, the Council also submitted that they are inappropriate as the driveways do not meet Design Standard 1 pursuant to Clause 52.06-9 of the planning scheme.
2. Expert traffic engineering evidence was given at the hearing in relation to this issue as well as other parking and traffic related matters.
3. Pursuant to Clause 52.06-9 a car parking plan must be to the satisfaction of the decision maker. Clause 52.06-9 requires that the proposed car parking plan must meet the design standards of Clause 52.06-9, unless the decision maker agrees otherwise. In other words, the planning scheme allows the decision maker to agree to a variation of Design Standard 1.
4. Design Standard 1 contains seven requirements. The proposal does not meet one of these requirements which is to provide an accessway which allows cars to exit the site in a forwards direction.
5. Mr Hancox assessed the suitability of varying this requirement against five factors, being the existing level of pedestrian activity; road configuration; site access visibility; line of sight; and impact on on-street parking. Based on this assessment, Mr Hancox’s evidence was that reversing out of the proposed garages does not adversely impact on the safety and operation of Wallabah Street. I adopt Mr Hancox’s evidence, and find that it is particularly relevant that due to the configuration of the court bowl and its location relative to the balance of Wallabah Street, the vehicles reversing out of the subject site can complete the reversing manoeuvre within the court bowl before entering the through part of the carriageway in a forwards direction.
6. Mr Hancox’s evidence was that a small adjustment to the layout of the proposed driveway to garage 1 is necessary, and I have included this modification in Condition 1 of the permit. The impact of this change will have a negligible effect on the ability for an appropriate amount of landscaping to be provided in the front garden area. I note that my assessment of the suitability of the driveways and garages in the previous part of this decision has factored in the new driveway alignment to garage 1.
7. On the basis of the traffic engineering evidence, I find that the proposed layout of the accessways and the access/ egress to the garages will not adversely impact on the safety or functionality of Wallabah Street. I therefore agree to a variation of Design Standard 1, and am satisfied with the proposed parking layout.
8. Clause 22.01 focuses on built form being well articulated and sited to respect the existing spacing and rhythm of the streetscape. As I have already discussed the subject site has a unique presence within Wallabah Street. One of the predominant characteristics of Wallabah Street and other nearby streets is the intermingling/ juxtaposition of large, visually prominent two storey high contemporary buildings ‘cheek by jowl’ with the more modest original dwellings. I consider that the desired future character statement in fact supports an increasing proportion of two storey houses in this neighbourhood. As an aside, I also note that I observed during my site inspection that the original house at no. 9 Wallabah Street has just been demolished.
9. In this existing context, the proposed completely detached, double storey dwellings are entirely appropriate.
10. I find that the proposal is respectful of neighbourhood character and meets the neighbourhood character, landscaping and design detail objectives at Clauses 55.02-1, 55.03-8 and 55.06-1 of the planning scheme.

## What conditions are appropriate?

1. The draft conditions were discussed at the hearing, and I have modified these draft conditions to accord with my findings.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

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| Tracy Watson**Member** |  |  |

# APPENDIX A

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| --- | --- |
| **PERMIT APPLICATION NO:** | TPA/48344 |
| **LAND:** | 5 Wallabah Street, Mount Waverley |
| **WHAT THE PERMIT ALLOWS:** |
| * Development of two dwellings and tree removal in accordance with the endorsed plans.
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# conditions

**Amended Plans**

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:
2. 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’.
3. Reference to any tree protection measures of the project arborist required in Condition 5 of the permit.
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. Realignment of the driveway to the garage of Dwelling 1 in accordance with the Accessway Alignment Plan contained in Appendix B of the Traffic Engineering Statement of Evidence of Damien Hancox.
6. Site lines from the rear deck of Dwellings 1 and 2 to demonstrate how Standard B22 at Clause 55.04-6 of the Monash Planning Scheme is met.

**No Alteration or Changes**

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

**Landscaping**

3. 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).
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. treatment of the basement carpark ramp walls with planting.
6. 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.
7. the location and details of all fencing.
8. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
9. 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 be maintained to the satisfaction of the Responsible Authority.

**Tree Protection**

1. Prior to works commencing an arboricultural report is to be prepared and provided to the satisfaction of the Responsible Authority specifically detailing for each tree, protection measures required to ensure no damage to the trees retained on site and on abutting land proximate to the property boundary that may be impacted.
2.  The Council street tree is to be protected by temporary rectangular wire fencing erected prior to the commencement of works and maintained until completion in accordance with Australia Standard AS4970-2009. The fencing is to extend out to at least 2.2 metres from the trunk face of the street tree at ground level.
3. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree retained on-site, or impacted by the development on abutting properties, during the construction period of the development hereby permitted.
4. Written confirmation is to be provided to Council by the project arborist that all tree protection measures were undertaken in accordance with his/her direction.

**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.
2. 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.
3. 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 to the Council pit in the rear easement of the property to Council Standards. (A new pit is to be constructed to Council Standards if a pit does not exist, is in poor condition or is not a Council standard pit). Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

**Traffic**

1. Existing vehicle crossings shall be repaired/reconstructed in accordance with Council Standards.

**Engineering**

1. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to Council drains/pits and these works are to be inspected by Council's Engineering Department.

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

(a) The development has not started before two (2) years from the date of issue.

(b) 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, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

**---** **End of Conditions** ---

1. I have considered the written and oral submissions of all the parties that appeared, the expert traffic engineering evidence, all the exhibits tendered at the hearing, and the statement of grounds filed from Rochelle & Charles Barber. I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)