VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P1575/2020  Permit Application no. TPA/51009 |
| CATCHWORDS | |
| Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. | |

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| APPLICANT | Paul Lay |
| responsible authority | Monash City Council |
| SUBJECT LAND | 11 Stephens Street BURWOOD VIC 3125 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 8 February 2021 |
| DATE OF ORDER | 9 February 2020 |

# Order

1. In application P1575/2020 the decision of the responsible authority is set aside.
2. In planning permit application TPA/51009 a permit is granted and directed to be issued for the land at 11 Stephens Street, Burwood in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Construction of three double storey dwellings.

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| **Laurie Hewet**  **Senior Member** |  |  |

# Appearances

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| For applicant | Mr R Hocking. Town planner |
| For responsible authority | Mr J Turner, town planner |



# Information

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| Description of proposal | Construction of three 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. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Clause 32.08: General Residential Zone (GRZ3) |
| Permit requirements | Clause 32.08.6: A permit is required to construct two or more dwellings on a lot. A development must meet the requirements of Clause 55. |
| Land description | The review site is located on the western side of Stephens Street, Burwood. The land has a regular configuration with a frontage dimension of 15.85m, a depth of 47.77 metres, and an area of 773 square metres. |

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

1. This is an application to review the decision of the Responsible Authority to refuse permission for the construction of three double storey dwellings at 11 Stephens Street, Burwood. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:

The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the area.

The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to neighbourhood character, site layout and building massing, visual amenity impacts, and detailed design.

The proposed development does not provide an adequate level of internal amenity for the future occupants.

The proposal would result in an adverse impact on the amenity of surrounding properties.

1. Reasons were provided orally at the end of the hearing for my decision to set aside the Council’s decision and issue a permit

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| **Laurie Hewet**  **Senior Member** |  |  |

# Appendix A

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| Permit Application No: | TPA/51009 |
| Land: | 11 Stephens Street BURWOOD VIC 3125 |

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| What the permit allows |
| In accordance with the endorsed plans:   * Construction of three double storey dwellings. |

## Conditions:

1. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
2. 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 be generally in accordance with the landscape concept plan prepared by Eminent Designs (Project 19-026 Drawing 8 Rev. D, dated September 2019) and show the proposed landscape treatment of the site including: -

* the location of all existing trees and other vegetation to be retained on site
* provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development
* planting to soften the appearance of hard surface areas such as driveways and other paved areas
* 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
* the location and details of all fencing
* the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site
* details of all proposed hard surface materials including pathways, patio or decked areas.
* the final location and dimensions of the bin enclosure, mailboxes and services in accordance with the endorsed plans.

When approved the plan will be endorsed and will then form part of the permit.



1. Before the occupation of the buildings allowed by this permit, the landscaping works as shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority. Landscaping must then be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.
2. Concurrent with the endorsement of any plans, a Sustainable Design Assessment **(SDA)** must be submitted to and approved by the Responsible Authority. Upon approval the SDA will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SDA to the satisfaction of the Responsible Authority.  The report must include, but is not limited to, the following:

* Demonstration of how ‘best practice’ sustainability measures have been addressed, having regard to the relevant aspects of Clause 21.13 of the Monash Planning Scheme.
* Identify relevant statutory obligations, strategic or other documented sustainability targets or performance standards.
* Document the means by which the appropriate target or performance is to be achieved.
* Identify responsibilities and a schedule for implementation, and ongoing management, maintenance and monitoring.
* Demonstrate that the design elements, technologies and operational practices that comprise the SMP can be maintained over time.

All works must be undertaken in accordance with the endorsed Sustainability Design Assessment to the satisfaction of the Responsible Authority. No alterations to the endorsed Sustainable Design Assessment may occur without written consent of the Responsible Authority and (to the extent material and necessary) any relevant flow-on changes to the design response must be also incorporated into the endorsed architectural plans.

1. Prior to the occupation of any of the dwellings approved under this permit, a report from the author of the endorsed Sustainable Design Assessment (or similarly qualified person or company) must be submitted to the Responsible Authority. The report must be to the satisfaction of the Responsible Authority and must confirm that (in relation to those relevant completed dwellings ready for occupation) all measures specified in the Sustainable Design Assessment have been implemented in accordance with the approved plan.
2. All stormwater collected from the site from all hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
3. Stormwater discharge is to be detained on-site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required from Council prior to works commencing.



1. The nominated point of stormwater connection for the site is to the north-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 to be constructed 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.
2. 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 or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
3. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
4. All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
5. The existing redundant crossing is to be removed and replaced with kerb and channel to the Council Standards.
6. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
7. 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.
8. 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.
9. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
10. 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, 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. The submissions 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. [↑](#footnote-ref-1)