VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

planning and environment DIVISION

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| planning and environment LIST | vcat reference No P1674/2019.  Permit no.TPA/49895 |
| CATCHWORDS | |
| S80 of Planning and Environment Act 1987, review of condition, jurisdiction of Tribunal, condition redundant, not reflecting application plans | |

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| APPLICANT | Paul Delaney Pty Ltd Architects |
| responsible authority | Monash City Council |
| RESPONDENT | John and Margot Hillel, Helen Cecile Clements, The Friends of Damper Creek Reserve Inc. Mt Waverley (FODCR) |
| SUBJECT LAND | 28B Park Road MOUNT WAVERLEY VIC 3149 |
| WHERE HELD | Melbourne |
| BEFORE | Nicholas Hadjigeorgiou, Member |
| HEARING TYPE | Merits Hearing |
| DATE OF HEARING | 6 December 2019 |
| DATE OF ORDER | 6 December 2019 |
| CITATION |  |

# Order

1. The decision of the responsible authority is varied.
2. The Tribunal directs that planning permit TPA/49895 must contain the conditions set out in planning permit TPA/49895 issued by the responsible authority on 9 July 2019 with the following modifications:
   1. Condition 1a) is deleted.
   2. Conditions in the planning permit are renumbered accordingly.
3. The responsible authority is directed to issue a modified planning permit in accordance with this order.

Nicholas Hadjigeorgiou

Member



# Appearances

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| For applicant | Mr Daniel Bowden, Town Planner, Song Bowden Planning |
| For responsible authority | Mr Gerard Gilfedder, Town Planner, Currie & Brown |
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| For respondent | Professor Margot Hillel, and Helen Cecile Clements in person, and Mr Douglas Scott on behalf of The Friends of Damper Creek Reserve Inc. Mt Waverley (FODCR) |

# Information

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| Description of proposal | Extension to a dwelling on a lot less than 500sqm |
| Nature of proceeding | Application under section 80 of the *Planning and Environment Act 1987* – to review the conditions contained in the permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Neighbourhood Residential Zone Schedule 2(NRZ2), Vegetation Protection Overlay Schedule 1(VPO1) |
| Permit requirements | Clause 32.09 & schedule 2 |
| Relevant scheme policies and provisions | Clauses 21.01 - 04, 22.01,22.05, 32.09 & schedule 2, 54,65. |
| Land description | Existing Attached two storey dwelling. |
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# Reasons[[1]](#footnote-1)

1. This application is about seeking a review of condition 1 a) on the planning permit issued on 9 July by the responsible authority.
2. During the early part of the hearing I determined that I would decide this application without the necessity to consider all of the submissions of the parties to the proceeding other than the preliminary submissions of the responsible authority.
3. In its opening submissions the responsible authority took me to the background information relating to this application process prior to the responsible authority making its determination.
4. By letter dated 8 May 2019 the permit applicant/applicant for review sought to formally amend the application plans before the responsible authority pursuant to section 57A of the Planning and Environment Act 1987.
5. The amendment submitted plans dated 8 May 2019 revision 3. Those plans deleted amongst other things, the first floor terrace, new doors to the terrace on the east side, and the extension two bedroom one on the south and east side of the building.
6. The 8 May 2019 plans were confirmed by the responsible authority (by letter dated 10 May2019) that they would now be the application plans.
7. On 9 July 2019 the responsible authority issued a permit (having previously considered a planning report on 6 June and issued a notice of decision to grant a permit on 7 June 2019). That notice of decision and subsequent permit contained a redundant or unnecessarily condition referred to as condition 1a). That condition was redundant and/or unnecessary because it does not form part of the application plans.
8. Condition 1a read as follows:
9. A notation to specify all changes detailed in the amended plans submitted to Council dated 8 May 2019 (revision 3) providing for the deletion of all first for modifications including:  
   i. Deletion of first floor terrace.

ii Deletion of new doors to terrace on east side.

iii Deletion of extension two bedroom one on the south and east side

1. The 8 May 2019 Revision 3 plans had already removed those items referred to in condition 1 a above.



1. The tribunal standing in the shoes a responsible authority cannot include conditions that are no longer relevant to the plans before it. Neither can the tribunal consider an application to go back to something that has formally been withdrawn from the proceeding in a section 80 review application nor permit further amendments to the application plans..
2. There was no need for the responsible authority to impose condition 1a) given the 8 May 2019 plans were now the application plans.
3. To avoid any future confusion it is appropriate for the condition 1a) to be deleted.
4. The 8 May 2019 plans will be the basis for any plans endorsed under this permit.
5. This proceeding highlights the need for both applicants and responsible authorities to be clear about what application plans are before it, in its decision making capacity. It is also clear, and to avoid confusion, that conditions should only be imposed that are relevant to the plans under consideration and any changes that may be necessary to those application plans.
6. It was clear the intention of the applicants for review was, through the deletion of condition 1a, that there would be a possibility to revert to an earlier set of application plans. That cannot be done in a section 80 application. While the review in one way may be interpreted to be successful for the applicants for review, because of the deletion of condition 1a, the reality is that it just confirms the application plans of 8 May 2019.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions on the permit dated 9 July 2019 save that condition 1a) is deleted.

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| **Nicholas Hadjigeorgiou«RecipientName»** |  |  |
| **Member** |  |  |

1. The submissions and evidence 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. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons. [↑](#footnote-ref-1)