VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P967/2021  Permit Application no. TPA/47057/A |
| CATCHWORDS | |
| Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to amend a permit. | |

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| **Applicant** | Kevin Xu |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 15 Kay Street MOUNT WAVERLEY VIC 3149 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 26 November 2021 |
| DATE OF ORDER | 26 November 2021 |

# Order

**Amend permit application**

1. Pursuant to 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: | Reve Design |
| Drawing numbers: | 0728 A00 to A11 inclusive all Rev F |
| Dated: | September 2021 |

1. In application P967/2021 the decision of the responsible authority is set aside.
2. Planning permit TPA/47057/A is amended and an amended permit is directed to be issued for the land at 15 Kay Street Mount Waverley.
3. Plans endorsed under the permit are amended and the responsible authority is directed to endorse amended plans prepared by Reve Design, Drawing numbers 0728 A00 to A11 inclusive all Rev. F, dated September 2021, titled 15 Kay Street Mount Waverley.
4. Conditions in the permit are amended in accordance with the conditions included in Appendix A.



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

# Appearances

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| For applicant | Ms E Tangalakis, town planner |
| For responsible authority | Mr G Gilfedder, town planner |



# Information

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| Description of proposal | Permit TPA/47057/A allows the construction of three dwellings on 15 Kay Street, Mount Waverley. It is proposed to amend the permit by amending the original application plans. The amended plans provide for detailed layout changes. The amended plans continue to provide for the 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 amend the permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | Clause 32.09: Neighbourhood Residential Zone (NRZ3).  Clause 42.02: Vegetation Protection Overlay (VPO1). |
| Permit requirements | Clause 32.09-6: 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 site is located on the western side of Kay Street and is approximately 60 metres south-west of Riviera Street. The land is a regularly shaped allotment with a frontage of approximately 18.3 metres, a northern boundary of 56 metres, a southern boundary of 48 metres and a rear boundary of 16 metres. The site has a total area of 878 square metres.  The land slopes towards the front boundary.  The site currently contains a double storey brick and weatherboard dwelling. There is a swimming pool and fence within the frontage.  Vehicle access is provided by a crossover along the northern boundary of the site. The secluded private open space is located at the rear of the dwelling with a swimming pool at the front. There is a solid retaining wall adjacent to the frontage. | |

# Reasons[[1]](#footnote-2)

1. This is an application to review the decision of the responsible authority to refuse to amend a permit for the construction of three double storey dwellings at 15 Kay Street, Mount Waverley.
2. The Council refused to amend the permit on the following grounds:

The proposal is inconsistent with the Residential Development Policy at Clause 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 regard to the desired future character of the area.

The proposal is inconsistent with the purposes of the Neighbourhood Residential Zone – Schedule 3 specifically to encourage open gardens to the street, and the planting and retention of significant vegetation in the streetscape.

The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regards to B1 Neighbourhood Character.

1. At the end of the hearing, I provided oral reasons for my decision to amend the permit.

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

# Appendix A – Permit Conditions

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| Permit Application No: | TPA/47057/A |
| Land: | 15 Kay Street MOUNT WAVERLEY VIC 3149 |

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

## Conditions:

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 tabled at VCAT on 26 November 2021 and titled (Project No. 0728 Drawing Nos. A00 Issue F, A01 Issue F, A02 Issue F, A03 Issue F, A04 Issue F, A05 Issue F, A06 Issue F, A07 Issue F, A08 Issue F, A09 Issue F, A10 Issue F, A11 Issue F, A12 Issue F and A13 Issue F by Reve Design) but modified to show:
   1. A landscaping bed with a minimum width of 500mm on the southern side of the Dwelling 1 driveway.
   2. Landscaping beds with a minimum width of 500mm of landscaping area both sides of the driveway serving Dwellings 2 and 3. A flared landscaping bed opposite the Dwelling 2 garage whilst allowing for the reversing of vehicles from both dwellings.
   3. All habitable ground level habitable room windows within 1 metre of the driveway shown as double glazed.
   4. The first retaining wall on the north side of Dwelling 1 constructed in naturalistic materials.
   5. The height of all retaining walls (finished levels) above existing surface levels identified.
   6. The average eight of the retaining wall along the front boundary to be no greater than 1.2 metres in height above the existing footpath level.
   7. The storage shed, clothesline and water tank of Dwelling 3 relocated to a position outside of the Tree No. 8 Tree Protection Zone.
   8. Existing surface levels in the rear yard of Dwelling 3 clearly identified across the area to accord with the requirements of the Tree Management Plan (TMP) required in Condition 6.
   9. 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) at both sides of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
   10. A landscaping plan in accordance with Condition 3.
   11. The TMP required in Condition 6.
   12. A notation referring to implementation of the recommendations of the Tree Protection Management Plan Tree Protection required pursuant to Condition 6.

**No Alteration or Changes**

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

**Landscaping**

1. Concurrent with the submission of amended plans required by Condition 1, 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 including associated tree protection zones;
   2. provision of a minimum of 4 indigenous canopy trees with spreading crowns (with at least 2 in the front setback area) with a minimum mature height at least equal to the height of the roof located throughout the site including the major open space areas of the development. The trees must be at least 1.5 metres at the time of planting;
   3. the provision of medium height trees elsewhere on-site;
   4. treatment of all retaining walls to produce a naturalistic appearance;
   5. screen landscaping forward of all retaining wall elements visible from the street;
   6. planting to soften the appearance of hard surface areas such as driveways and other paved areas;
   7. 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 materials;
   8. the location and details of all fencing;
   9. the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site including finished levels;
   10. details of all proposed hard surface materials including pathways, patio or decked areas; and
   11. reference to tree protection requirements contained in the TMP.

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 maintained to the satisfaction of the Responsible Authority.
2. Landscaping of the site must be completed and maintained to the satisfaction of the Responsible Authority.

**Tree Protection**

1. Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 1, 2, 3, 13, 14, 11, 15 and 16 (as identified in the Arborist Report submitted with the application, in the ‘*Arborist Report’* prepared by Mr Paul Jameson of *Bluegum* , dated 11 November 2020).
2. The TMP must be approved by the Responsible Authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detail the following to the satisfaction of the Responsible Authority ensuring the trees to be protected on the adjoin properties remain healthy and viable during construction:
   1. A Tree Protection Plan drawn to scale that shows:
      1. Tree protection zones and structural root zones of all trees to be retained,
      2. All tree protection fenced off areas and areas where ground protection systems will be used;
      3. The type of footings within any tree protection zones along with specific construction measures required including paving, excavation and other works ;
      4. Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
      5. A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
   2. Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
   3. Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority.
3. The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.
4. Before any development, including demolition, starts on the land, tree protection fencing must be erected around the TPZ of any trees retained onsite and adjoining land. The fence must be constructed as specified in the endorsed TMP and must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
5. The owner and occupier of the site must ensure that, prior to the commencement of buildings and works including demolition, all contractors and tradespersons operating on the site are advised of the status of trees to be retained and protected as detailed in the endorsed arborist report and are advised of any obligations in relation to the protection of those trees.
6. No building material, demolition material, excavation or earthworks shall be stored or stockpiled or vehicles parked within the Tree Protection Zone (TPZ) of any tree (including nature strip tree) to be retained, during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

**Drainage**

1. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority. The plan must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.
2. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoin properties or the road reserve.
3. The private on-site drainage system must prevent stormwater discharge from each driveway over the footpath and into the road reserve. The internal drainage system may include either:
   1. a trench grate (150mm minimum internal width) located within the property; and/or
   2. shaping the driveway so that water is collected in a grated pit on the property: and/or
   3. another Council approved equivalent
4. All storm water discharge is to be detained on site to the predevelopment level of peak stormwater discharge to the satisfaction of the Responsible Authority. Approval of any detention system is required by the City of Monash, the Responsible Authority, prior to works commencing.
5. The nominated point of storm water connection for the site is to the south-east corner of the property where the entire site's storm water drainage must be collected and free drained via a Council approved kerb adaptor to be constructed to Council Standards. Note:- If the point of discharge cannot be located then notify Council's Engineering Division immediately.
6. Any new drainage work within the road reserve requires the approval of the Council’s Engineering Division prior to the works commencing. A refundable security deposit is required to be paid prior to the drainage works commencing.
7. Engineering permits must be obtained for new or altered vehicle crossings and for new connections to the kerb and channel Council drains/pits and these works are to be inspected by Council (telephone 9518 3555).

**Vehicle Crossovers**

1. Approval of a proposed crossing, and a permit for installation or modification of any vehicle crossing is required from Council’s Engineering Department.
2. All new vehicle crossings must be a minimum of 3 metres in width and be constructed in accordance with Council standards.
3. Any new vehicle crossings are to be no closer than 1 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process. The proposed crossing is to be constructed in accordance with the City of Monash standards.
4. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
5. The development must 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) at both sides of the vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

**Urban Design**

1. The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

**Completion of Buildings and Works**

1. Once the development has started it must be continued and completed 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:
   1. The development has not started before two (2) years from the date of issue.
   2. 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 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-2)