

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P436/2021
PERMIT APPLICATION NO. WYP12311/20

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987*; Wyndham Planning Scheme; General Residential Zone – Schedule 1; Two dwellings at the rear of an existing dwelling

APPLICANT	Joan Theresa Williams
RESPONSIBLE AUTHORITY	Wyndham City Council
RESPONDENT	Gurpreet Singh
SUBJECT LAND	23 Leigh Street WERRIBEE VIC 3030
HEARING TYPE	Hearing
DATE OF HEARING	8 November 2021
DATE OF INTERIM ORDER	9 November 2021
DATE OF ORDER	21 January 2022
CITATION	Williams v Wyndham CC [2022] VCAT 80

ORDER

Amend permit application

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

Prepared by:	• Andes Drafting and Design
Drawing numbers:	• 2019-11/DD-01; 2019-11/DD02; 2019-11/DD-03; 2019-11/DD04; 2019-11/DD-05; 2019-11/DD06; 2019-11/DD-07; 2019-11/DD-08; 2019-11/DD09; 2019-11/DD10; 2019-11/DD-11; 2019-11/DD-12.
Dated:	• 6 July 2021, Revision A

No permit granted

- 2 In application P436/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application WYP12311/20 no permit is granted.



Juliette Halliday
Member

APPEARANCES

For Joan Theresa Williams	Ms Williams, in person (assisted by Mr David Sheehan)
For Wyndham City Council	Mr David Song, Director, Song Bowden Planning
For Gurpreet Singh	Mr Erique Cancino, Andes Drafting and Design



INFORMATION

Description of proposal	To construct two, two-storey dwellings to the rear of the existing dwelling on the land.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> – to review the decision to grant a permit.
Planning scheme	Wyndham Planning Scheme
Zone and overlays	General Residential Zone – Schedule 1
Permit requirements	Clause 32.08-6
Land description	<p>The land is located on the eastern side of Leigh Street, north of the intersection of Leigh Street with Golden Avenue. It is rectangular in shape, having a frontage to Leigh Street of 15.4 metres, a depth of 52.7 metres and a total area of 792 square metres. The land is relatively flat, and a 6 metre wide right-of-way adjoins its rear boundary. The land is improved with a single storey detached brick dwelling with a tiled, hipped roof. A driveway is located along the northern side of the land and provides access to outbuildings at the rear of the land. The land adjoins No. 21 Leigh Street to the north which is improved with a single storey detached brick dwelling. To the south, the land adjoins four residential properties: No. 36 Golden Avenue, which is improved with a single storey detached dwelling and which has its secluded private open space to the rear of the dwelling; Nos 1/34 and 2/34 Golden Avenue which are both improved with a double storey semi-detached dwelling with secluded private open space located to the rear of the dwelling, and No. 32 Golden Avenue which is improved with a single storey detached brick dwelling with secluded private open space located to the rear.</p>
Tribunal inspection	An unaccompanied inspection was carried out after the hearing.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The application is brought by Joan Theresa Williams (**applicant**) under s 82 of the *Planning and Environment Act 1987* (**Act**) seeking review of the decision of the Wyndham City Council (**Council**) to grant a permit for the development of land at 23 Leigh Street, Werribee (**land**).
- 2 The proposal is for the construction of two new two-storey dwellings at the rear of the existing dwelling on the land which is to be retained (with some modifications). The applicant submits that the proposal is inappropriate in this location and that this area should be protected from the intrusion of multiple unit developments. She also submits that the proposal would result in a loss of solar access and overlooking impacts on her property and that the proposal is a significant overdevelopment of the land.
- 3 The Council submits that the proposal appropriately balances the need to increase dwelling densities, while respecting neighbourhood character and the amenity of neighbours. The Council's position is that the amenity of neighbours has been reasonably protected in accordance with the standards at clause 55 of the Wyndham Planning Scheme (**Scheme**).
- 4 Gurpreet Singh who is the respondent and the permit applicant (**permit applicant**) submits that the proposal complies with the relevant aspects of the Scheme, including those regarding walls on boundaries, overlooking and overshadowing.
- 5 Having considered the submissions of the parties, and having inspected the site and surrounds, I conclude that the proposal does not achieve an acceptable planning outcome. My reasons follow.

PROCEDURAL ISSUES & RULINGS

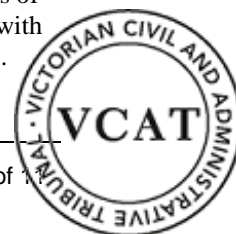
- 6 After the hearing, orders were made requiring the permit applicant to provide additional shadow diagrams to the Tribunal and the other parties (amongst other things).² The other parties were given the opportunity to provide further written submissions regarding the additional shadow diagrams. I have considered the material provided in response to the orders in reaching my conclusions in this matter.

PROPOSAL AND SITE CONTEXT

- 7 The land and its surrounds are described at page 3 of this decision.
- 8 The key elements of the proposal are as follows:
 - a At ground floor level, each dwelling has a laundry, powder room, kitchen, dining and living space, with secluded private open space to

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. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

² By way of orders dated 9 November 2021.



the rear. Each dwelling has a single garage with a tandem space adjoining the garage at ground floor level;

- b Unit 3 has a wall on the southern boundary which is 8.25 metres in length and 3.13 metres in height;
- c At first floor level, each dwelling has three bedrooms and two bathrooms. The first floor windows facing south (towards the applicant's property) are either treated with fixed obscure glazing or have sill heights to 170mm above finished floor level;
- d A contemporary design is proposed, with the dwellings having pitched tiled roofs and the external walls finished in face brickwork and render. The maximum building height is 7 metres; and
- e The existing dwelling is to be retained, with the rear portion to be demolished, construction of a new entry to the front, an enlarged bedroom three and a new carport and tandem space and secluded private open space for the existing dwelling partly covered by an 'open roof'.

- 9 Extracts from the west elevation (facing towards the rear of the existing dwelling on the land) and the south elevation are set out in Figures 1 and 2 below (respectively).

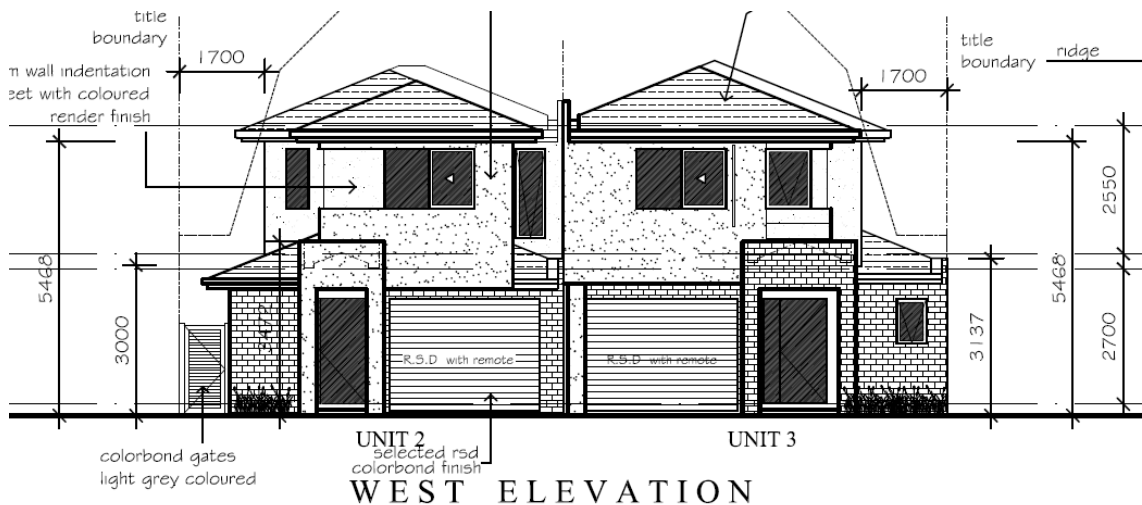


Figure 1

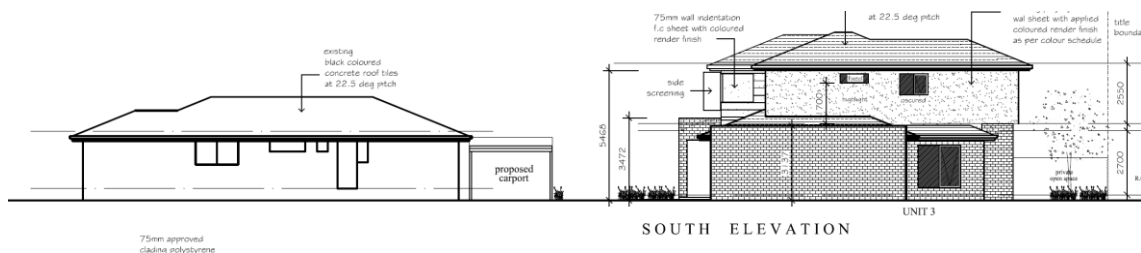


Figure 2

- 10 The land is located:

- a Within a residential area comprised of original detached dwellings which are predominantly single-storey brick dwellings with hipped roofs, often with a car port or garage located along one side boundary. Lots typically have open front gardens with shrubs and grass and low (or no) front fences. There is some more recently constructed double storey development in the area, including the two dwellings located directly to the south of the land at Nos 1/34 and 2/34 Golden Avenue; and
- b In an area which has reasonable access to the Werribee Activity Centre, which has transport, shopping and community facilities, including the Werribee Train Station and Werribee Primary School, and which has good access to the Werribee River, which is located within about 50 metres from the land.

WHAT IS THE PLANNING AND POLICY CONTEXT?

Zoning

- 11 The land is within the GRZ1, the purposes of which include the following:

To implement the Municipal Planning Strategy and the Planning Policy Framework.

To encourage development that respects the neighbourhood character of the area.

To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.

...

- 12 The Schedule to the GRZ1 contains no modifications to the requirements of clause 55 of the Scheme.

State and local planning policy

- 13 There are a range of State and local policies which are relevant to the application, including the following:
- a Clause 15.01-2S (Building design) which seeks to achieve building design outcomes that contribute positively to the local context and enhance the public realm through strategies such as minimising the detrimental impact of development on neighbouring properties;
 - b Clause 15.01-5S (Neighbourhood character) which seeks to recognise, support and protect neighbourhood character, cultural identity, and sense of place through strategies such as supporting development that respects the existing neighbourhood character or contributes to a preferred neighbourhood character;
 - c Clause 16.01-1S (Housing supply) which seeks to facilitate well-located, integrated and diverse housing that meets community needs through strategies such as increasing the proportion of housing in



designated locations in established urban areas and reducing the share of dwellings in greenfield, fringe and dispersed development areas;

- d Clause 16.01-2S (Housing affordability) which seeks to deliver more affordable housing closer to jobs, transport and services through strategies such as improving housing affordability by increasing choice in housing type, tenure and cost;
- e Clause 21.06-1 (Urban environment) which, amongst other things seeks to improve the quality of development through improved design, siting and landscaping through strategies such as ensuring that multi-unit housing is well landscaped;
- f Clause 21.07-1 (Residential development) which seeks to:
 - i provide a variety and choice in housing densities through strategies such as encouraging medium density housing, especially within close walking distance of existing fixed rail stations, defined Activity Centres and bus routes (Objective 1); and
 - ii provide a diversity of choice in housing styles and designs through strategies such as ensuring that smaller household units are developed, particularly near rail stations, activity centres or employment areas (Objective 2).

- 14 Neighbourhood character types have been established for existing residential areas in Wyndham. The land is within the ‘Garden Court’ area which is described as follows at clause 21.07-3 (Neighbourhood character):

... comprising street patterns of winding roads and cul de sacs, with a range of dwellings set in garden surrounds. In some areas, an established tree canopy as well as wide grass verges at the street edge, creates a strong landscape character.

- 15 The policy seeks to recognise places of distinct neighbourhood character through strategies such as maintaining the rhythm of spacing between buildings and minimising the loss of front garden space and the dominance of parking structures (clause 21.07-3).
- 16 The neighbourhood character policy at clause 22.04-2 seeks to recognise places of distinct neighbourhood character and to define aspects of neighbourhood character that are important in designing infill development. Proposals for new development in the ‘Garden Court Character Type area’ are to be assessed against the following criteria under clause 22.04-3.2:
- Protection of existing tree canopy where well established.
 - Provision for new canopy trees where lacking.
 - Pattern of dwelling spacing of 1 to 2m from side boundaries.
 - Low front fencing or open frontage with no fencing.
 - Interface with open spaces and creek or river corridors.



WHAT ARE THE KEY ISSUES?

- 17 I consider that the development of two additional dwellings on the land is consistent with the purposes of the GRZ1 which contemplates further development to achieve broader planning objectives, such as facilitating well-located and diverse housing, subject to the design responding to other relevant provisions of the Scheme, including clause 55. The proposal complies with several numeric standards of clause 55. The site coverage of 36.9% is less than the 60% maximum set out in Standard B8³ and the side and rear setbacks objectives⁴ are met. The retention of the existing dwelling means there is no loss of front garden space, which responds well to the policy in the Scheme at clause 21.07-3 which seeks to minimise the loss of front garden space.
- 18 Having regard to the submissions presented to the Tribunal at the hearing, the key issue for consideration is whether the proposal will have unreasonable impacts on the amenity of the applicant's property in terms of overshadowing and overlooking. I now turn to that issue.

WILL THE PROPOSAL HAVE UNREASONABLE IMPACTS ON THE AMENITY OF THE APPLICANT'S PROPERTY IN TERMS OF OVERSHADOWING AND OVERLOOKING?

Overshadowing

- 19 Amongst other things, the applicant submits that:
- a The proposed wall on the boundary will be a blank high wall which will block her view of the sun and sky and take away her vital healthy lifestyle;
 - b The clothesline in the rear yard of her property will not be in light and sunshine; and
 - c There is a patio at the rear of her dwelling which she uses daily for living, resting and dozing and this will be taken away from her and her home will be detrimentally affected due to the construction of a two-storey dwelling next door.
- 20 The Council and the permit applicant submit that the proposal complies with Standard B21 with respect to overshadowing of open space to the adjoining properties.
- 21 Standard B21 at clause 55.04-5 (Overshadowing open space objective) provides as follows:

Where sunlight to the secluded private open space of an existing dwelling is reduced, at least 75 per cent, or 40 square metres with minimum dimension of 3 metres, whichever is the lesser area, of the

³ At clause 55.03-3 (Site coverage objective).

⁴ At clause 55.04-1 (Side and rear setbacks objective).



secluded private open space should receive a minimum of five hours of sunlight between 9 am and 3 pm on 22 September.

If existing sunlight to the secluded private open space of an existing dwelling is less than the requirements of this standard, the amount of sunlight should not be further reduced.

- 22 The shadow diagrams submitted by the permit applicant in response to the Tribunal's interim order dated 21 November 2021 show the impact of shadows cast by the proposed development at the equinox at the hours of 9 am, 10 am, 11 am, 1 pm and 3pm. No shadow diagrams were provided for the hours of 12 noon or 2 pm.
- 23 The shadow diagrams that were provided show that Standard B21 is not met at 9 am, 11 am, 1 pm or 3 pm at the equinox. The shadow diagrams show that at 10 am at the equinox, Standard B21 is met. There is no information in the updated shadow diagrams about the impact of shadows cast by the proposed development on the applicant's secluded private open space at 12 noon or 2 pm. On this basis, the permit applicant has not demonstrated that the secluded private open space at the applicant's property will receive a minimum of five hours sunlight between 9 am and 3 pm on 22 September, according to Standard B21.
- 24 The applicant's submissions are that she regularly uses her secluded private open space to dry clothes, to access sunlight and to rest. On the basis of the material before me, I have not been persuaded that the reduction in sunlight associated with the proposed development will have a reasonable impact on the existing use of the secluded private open space at the applicant's property.
- 25 I have not been persuaded that the proposed development will not significantly overshadow the existing secluded private open space at the applicant's property. I am not satisfied that the positive features of the proposed development I referred to above outweigh the impact of the overshadowing of the secluded private open space of the applicant's property.
- 26 On this basis, I am not satisfied that the objective of clause 55.04-5 has been achieved. The proposal should be refused on the basis that it does not adequately respond to clause 55.04-5 (Overshadowing of secluded private open space objective).

Overlooking

- 27 Amongst other things, the applicant submits that the proposal will overlook her garden and house and that it is a significant overdevelopment that does not consider the impact on her house and garden.
- 28 The plans show that the two first floor windows which face the applicant's property are as follows:



- a A highlight window at the stair landing which has a sill height of 1700 mm; and
 - b A bathroom window which has full height obscure glazing.
- 29 Whilst neither the stair landing or the bathroom is a ‘habitable room’⁵ to which clause 55.04-6 (Overlooking objective) refers, I am satisfied that the first floor windows facing towards the applicant’s property which have the potential to overlook her property have been designed to avoid direct views into the secluded private open space of the applicant’s dwelling.
- 30 I would not refuse the proposal on the basis that it does not adequately limit views into the existing secluded private open space of the applicant’s property.

ARE THERE ANY OTHER ISSUES?

- 31 Amongst other things, the applicant submitted that the proposal is a significant overdevelopment of the land, and that it will put a strain on the limited infrastructure in the area. From a review of the plans, there are several matters that are relevant to this submission, including the following:
- a Whilst the size of the ground floor living areas (excluding kitchen and dining areas) for Dwelling 2 is approximately 12.8 square metres, the living area is an awkward L-shaped space which includes a study desk against the west wall of the living area which reduces the space available for the living area;
 - b The size of the living area for Dwelling 3 is approximately 11.5 square metres. The size of the living areas of Dwellings 2 and 3 (and the awkward shape of the Dwelling 2 living area) is unlikely to create usable and functional living areas to meet the needs of the residents of Dwellings 2 and 3 given that each of these dwellings is proposed to have three bedrooms;
 - c The plans do not appear to show that there will be 500mm between each tandem space, or that all accessways will have an internal radius of at least 4 metres available at changes of direction or intersection (or have at least 4.2 metres width available) as required under clause 52.06 of the Scheme (Car parking); and
 - d The ground floor west elevations for Dwellings 2 and 3 do not include any ground floor habitable windows with an outlook to the driveway servicing Dwellings 2 and 3. This design response provides no opportunity for passive surveillance or any visual interaction between the dwelling entrance area and the interior of the dwellings. It also creates a poor sense of address for the two rear dwellings.
- 32 Whilst these issues were not specifically discussed at the hearing, and I do not rely on them in refusing the application, they are indicative of a

⁵ As defined at clause 73.01 of the Scheme.



development that is seeking too much from the land and are suggestive of an overdevelopment.

- 33 A future proposal for the land should be moderated, and it should be designed to take into account the impact of the proposal on the secluded private open space of adjoining residential properties.

CONCLUSION

- 34 For the reasons given above, the decision of the responsible authority is set aside. No permit is granted.

Juliette Halliday
Member

