VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

administrative DIVISION

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| planning and environment LIST | vcat reference No. P255/2019  Permit Application no. KP-2018/506 |

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| APPLICANT | Regina Komkha |
| responsible authority | Kingston City Council |
| SUBJECT LAND | 13 Gwenda Avenue, Moorabbin |
| WHERE HELD | Melbourne |
| BEFORE | Michael Nelthorpe, Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 12 August 2019 |
| DATE OF ORDER | 12 August 2019 |

# 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: | Seaboard Building Design |
| * Drawing numbers: | TP01-TP08 , TP08A-TP12 All Revision C VCAT |
| * Dated: | 26 June 2019 |

1. In application P255/2018 the decision of the responsible authority is set aside.
2. In planning permit application KP-2018/506 a permit is granted and directed to be issued for the land at 13 Gwenda Avenue, Moorabbin in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

* Develop three (3) dwellings.

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| Michael Nelthorpe **Member** |  |  |

# Appearances

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| For applicant | Mr Mark Waldron, town planner of St-Wise Pty Ltd. He called the following witnesses:  Ms Susan Mitchell, town planner of David Lock Associates (Australia) Pty Ltd; and  Mr Robert Thomson, landscape architect of habitat landscape, environmental design consultants. |
| For responsible authority | Mr Guillermo Henning, Principal Planner. |

# Information

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| Description of proposal | Three attached side-by-side dwellings in a part-two-storey /part-three-storey building with basement car parking. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Kingston Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 2 |
| Permit requirements | Clause 32.08-6: to construct two or more dwellings on a lot. |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 21.05, 22.11, 22.11, 22.20, 32.08, 52.06, 55, 65 & 71.02. |
| Land description | This rectangular site is located mid-block on the north side of Gwenda Avenue. It has a 16.62 metre frontage, a 32.17 metre length and an area of 536 square metres. The site falls gently from the east to west boundaries. A single-storey dwelling with high sub-floor on its western edge occupies the site. |
| Tribunal inspection | 9 August 2019 |

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

## What is this proceeding about?

1. Regina Komkha (‘the applicant’) proposes to construct three attached side-by-side dwellings in a part-two-storey /part-three-storey building with basement car parking at 13 Gwenda Avenue, Moorabbin. Kingston City Council refused to grant a permit and the applicant seeks a review of that decision.
2. The council says that the proposal fails due to its excessive levels of visual bulk to the street and adjacent properties. It says that it does not respond to the neighbourhood’s existing character and emerging character. Separately, it says the proposal fails to meet several standards of ResCode.
3. The applicant relies on amended plans that reduce the number of bedrooms in Dwelling 3 which reduces the basement’s length and the building’s third storey. The plans also show slight changes to the side setbacks and variations to the cladding.

## My findings and reasons

1. I find the proposal is an acceptable response to the policy framework and the General Residential Zone 2.
2. In terms of the policy framework, the site is in an Increased Housing Diversity area because it is close to the Moorabbin activity centre and railway station. The following outcomes are sought in such areas:

The intention in these areas is that new medium density housing comprising a variety of housing types and layouts will be promoted responding to the established but evolving urban character. Because these are already established as residential areas, the design of new medium density housing proposals will need to display sensitivity to the existing residential context and amenity standards in these areas.

1. In terms of the zoning, recent Ministerial amendments have allowed developments of up to three-storeys in height. This is a significant change that allows proposals such as this to be assessed. Such height could be achieved across the large swathes of suburban land in this zone if it is supported by policy or by a site’s particular conditions. In this case, greater variety is encouraged by policy and this makes the site a candidate for three-storey form.
2. In deciding that the proposal displays sensitivity to the existing residential context, I note that the Neighbourhood Character Guidelines say that the major contributors to this neighbourhood’s character are the building’s placement and its front boundary and garden treatment. This building meets the first of these contributors because it is placed in a similar location on the site to its neighbours. In this way, it retains consistent front and rear setbacks. On the second contributor, I am satisfied that the 8-metre front setback, the single driveway for three dwellings, the planting proposed by Mr Thomson and the lower front fences recommended by Ms Mitchell will deliver the landscaped frontage that the character guidelines seek.
3. In making this finding, I consider that the council placed too much emphasis on details of the existing character. The character guidelines do not call for the traditional articulation of pitched roofs, eaves and regularly placed windows that most original dwellings in the street have. This allows a building of a different appearance to be proposed.
4. Apart from this, I find that the quality of its design eases this buildings relationship with the street and its neighbours. The council focused on its ‘box-like’ and ‘wedding cake’ form yet I consider that the negative aspects of these terms have been reduced or resolved by the building’s composition and its detailed design. I consider that the negative implications of the ‘box-like’ form of its ground and first floor have been reduced by its harmonious, understated composition.
5. Cut-outs and carefully designed porches soften the ground level frontage while corner windows and curved external window frames do the same for the first floor. These are complemented by an understated palette of materials and finishes.
6. The negative attributes of a ‘wedding cake’ design have been reduced by the reasonably deep recessions of the third floor and by the height of the first-floor parapet. This parapet height conceals most of the third floor from adjoining properties and lessens its impact from the street.
7. All of this is in a context where the zone allows three-storey buildings and where policy supports them in this location. As such, I consider that the building responds to its residential context as much as it needs to.
8. In terms of amenity, I find the north-south orientation of the lot satisfactorily limits overshadowing of its neighbours. This occurs along the neighbours’ side boundaries for a limited time in the mornings or the afternoons. This impact is not great enough to be fatal.
9. Overlooking is satisfactorily managed by privacy screens and the placement of unscreened windows.
10. The siting of the building in a similar location to its neighbours satisfies most issues of visual bulk. Its ground and first floor walls are tall, and its first-floor parapet does not meet Standard B17, yet these aspects of the building do not have a great visual impact on the rear yards of its neighbours to the north, east and west. They affect the side yards of its eastern and western neighbours, but these are not areas of primary open space. I do not believe that these aspects of the building have a great impact on the habitable rooms of its neighbours because the height of these walls will not be apparent from these rooms. Only part of these walls will be seen from these spaces. In this context, the curved external window frames and Mr Thomson’s perimeter landscaping will soften the appearance of the building in these views.
11. On internal amenity, I consider that the architect has overcome what is a major flaw in the other three-storey proposals on single lots in residential area. This flaw is the dependence on the screening of the windows and balconies of side-loaded, reverse living dwellings. This has been overcome by using a basement for car parking and by facing each dwelling towards the street. This allows unscreened windows to ground floor living areas and allows bedroom windows to face the street or the rear yard. This provides a good level of internal amenity. These positive aspects of the building outweigh the council’s concern over limited natural light to the living areas and study of Dwelling 2.
12. In summary, I am conscious that this building differs from its neighbours. I find that this difference is acceptable because both policy and the zone controls allow it, and because it is as sensitive to its neighbours and the broader area as it needs to be. I consider that the quality of its design ameliorates concerns with its difference and acceptably resolves external and internal amenity issues.
13. On a separate and confined matter, I accept Mr Thomson’s opinion that it would not be sensible to relocate the existing Date Palms on the site. While they would provide an instant landscape response, they are not the most appropriate trees for the front gardens of this development. As I said at the hearing, an instant response to an evolving character is not required by the Planning Scheme. The future character of this area will evolve over the coming decades and the landscaping proposed by Mr Thomson will reach maturity in that time. In that time, it will soften this building’s appearance.

## What conditions are appropriate?

1. I have revised draft condition 1a because I have not retained the Canary Island Date Palms. Accordingly, I see no benefit in the landscape plan having detailed Tree Management conditions because no vegetation is retained on site and no existing trees on adjoining properties are likely to be affected by the development.
2. I have deleted draft conditions 1b) and 1d) because I am satisfied with the proposed setbacks from the side boundaries.
3. I have deleted draft condition 1c) because I do not foresee unreasonable overlooking of adjoining properties from the balcony of Dwelling 2’s master bedroom. Such views would only be available if one was to stand at the edge of the balcony and purposefully look backwards into the neighbour’s windows. This is not a reasonable expectation.
4. I have deleted the requirements in draft condition 1i) to add 500mm to the basement’s length and to show the swept path diagrams for car space 1. I have done this because I am satisfied with the swept path diagrams provided at the hearing.

## Conclusion

1. For the reasons outlined above, the decision of the responsible authority is set aside. A permit will issue subject to conditions.

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| Michael Nelthorpe **Member** |  |  |

# Appendix A – Permit Conditions

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| Permit Application No: | KP-2018/506 |
| Land: | 13 Gwenda Avenue, Moorabbin |

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| What the permit allows |
| In accordance with the endorsed plans:   * Develop three (3) dwellings. |

## Conditions:

### Amended Plans

1. Before the development starts amended plans to the satisfaction of the Responsible Authority 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 drawn to scale with dimensions and three copies must be provided. The plans must be substantially in accordance with the VCAT plans prepared by Seaboard Building Design project number 1176 Revision C, received 25 June 2019, but modified to show:

a. the provision of a landscape plan in accordance with the submitted Landscape Plan prepared by Habitat (07/2019), with such plans to be prepared by a suitably qualified landscape professional to the satisfaction of the Responsible Authority and amended to show:

* + 1. A planting schedule of all proposed trees and shrubs, including botanical names, common names, pot sizes, sizes at maturity, and quantities of each plant with all plants to be to the satisfaction of the Responsible Authority; and
    2. All trees provided at a minimum of 2 metres in height at time of planting, medium to large shrubs to be provided at a minimum pot size of 200mm.

b the provision of minimum 2000 litre rainwater tank clearly nominated for each dwelling with water re-used for toilet flushing;

c a notation on site plans as follows: “Existing 150mm diameter easement drain must be upgraded to minimum 225mm diameter across the full width of the block, including pits at east and west corners of the easement within the subject site in accordance with the engineering plans approved by Council”;

d reduction of the height of the fences in the front setback to 1.2 metres;

e a cross-sections of the proposed retaining walls within the easement to demonstrate the retaining walls are not exceeding NGLs;

f a plan correction to clearly depict the number of bedrooms for dwelling 3;

g the basement plan amended to show the minimum length of car parking spaces;

h the provision of visual splays in accordance with Clause 52.06-9 of the Kingston Planning Scheme;

i the location of all externally-located heating and cooling units, exhaust fans and the like, clearly shown;

j a summary of all main commitments and with any changes resulting from the provision of a Sustainable Design Assessment (SDA) report in accordance with Condition 19 of this permit;

k vehicle crossings shown to be constructed at a 90 degree alignment with the kerb on Gwenda Avenue and all internal driveways shown to align with the existing / proposed vehicle crossing;

l the internal driveway shown to be constructed at least 500mm from the side boundary at the front boundary; and

m the provision of a full colour palette, finishes and building materials schedule for all external elevations and driveways of the development.

### Endorsed Plans

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

### Landscaping Conditions

1. The landscaping shown on the endorsed plans must be maintained to the satisfaction of the Responsible Authority, including that any dead, diseased or damaged plants are to be replaced.
2. Before the occupation of the development the landscaping works shown on the endorsed plans must be carried out and completed to the satisfaction of the Responsible Authority.

### Infrastructure and Road Works

1. Property boundary and footpath levels must not be altered without the prior written consent form the Responsible Authority.
2. The replacement of all footpaths, including offsets, must be constructed the satisfaction of the Responsible Authority.
3. All reinstatements and vehicle crossings must be constructed to the satisfaction of the Responsible Authority.
4. All redundant vehicle crossings must be removed (including redundant portions of vehicle crossings) to the satisfaction of the Responsible Authority.
5. All front and side fences must be contained wholly within the title property boundaries of the subject land.

### Drainage and Water Sensitive Urban Design

1. Unless with the prior written consent of the Responsible Authority, before the development commences, the following Integrated Stormwater Management documents must be prepared, by a suitably qualified person, to the satisfaction of the Responsible Authority.

a. Stormwater Management/drainage (drainage) Plans must be prepared, with supporting computations, showing the stormwater (drainage) works to the nominated point of discharge. The plans must show all details of the proposed stormwater (drainage) works including all existing and proposed features that may have impact on the stormwater (drainage) works, including landscaping details.

b. The Stormwater Management (drainage) Plan must address the requirements specified within Council’s “Civil Design requirements for Developers – Part A: Integrated Stormwater Management”.

c. A STORM modelling report with results demonstrating water sensitive urban design treatments that achieve Victorian best practice objectives with a minimum 100% rating must be provided as part of the Stormwater Management (drainage) Plan to the satisfaction of the Responsible Authority. These may include the use of an infiltration or bio-retention system, rainwater tanks connected for reuse, or other treatments to the satisfaction of the Responsible Authority.

d. The water sensitive urban design treatments as per conditions 10a, 10b & 10c above must be implemented on-site, unless an alternative agreement for stormwater quality in-lieu contribution is reached with the Responsible Authority.

1. Stormwater/drainage works must be implemented in accordance with the approved stormwater management/drainage plans and to the satisfaction of the Responsible Authority including the following:

a. All stormwater/drainage works must be provided on the site so as to prevent overflows onto adjacent properties.

b. The implementation of stormwater/drainage detention systems which restricts stormwater discharge to the maximum allowable flowrate of 5L/s.

c. All stormwater/drainage works must be maintained to the satisfaction of the Responsible Authority.

1. A groundwater assessment report (GAR) must be prepared by a qualified hydro-geologist to assess any possible impacts the proposed development has on the ground water table, surrounding land and buildings to the satisfaction of Responsible Authority. Should the findings of the submitted GAR demonstrate that the site is likely to experience issues associated with ground water management, a ground water management plan (GMP) must be submitted to and approved by the responsible authority.
2. The basement structure must be designed to respond to the findings of the GAR and GMP required under condition 12 and constructed to the satisfaction of the responsible authority.
3. The existing easement drain of 150mm diameter pipe must be upgraded in accordance with Conditions 1c) at the Developer’s cost prior to any building works commencing over the easement. All works associated with drainage upgrade must be in accordance with engineering plans submitted to and approved by the Council. A priced schedule of the drainage upgrade works within the easement and the payment of Council’s engineering fees of 3.25% of the total cost of the drainage upgrade works are required to be submitted prior to approval of the engineering plans.
4. Any footing within the easement must be to the invert of the upgraded Council drain.
5. Stormwater property connection to the easement drain with downstream pipe size of 150mm is not permitted.
6. The applicant must maintain the capacity of any existing overland flow path within the property.
7. A post construction CCTV monitoring of the upgraded easement drain must be undertaken. This will be completed by Council at the applicant’s cost. The applicant is to pay total $450 to Council for completion of the post construction CCTV monitoring.

### Sustainable Design Assessment

1. Prior to the endorsement of the plans required pursuant to Condition 1 of this permit, the provision of a Sustainable Design Assessment (SDA) to be prepared by a suitably qualified professional must be submitted to and approved by the Responsible Authority. The SDA must include, but is not limited to, detailing initiatives for stormwater harvesting, insulation, building materials, daylighting, collective rainwater tanks and/or individual rainwater tanks, public and private landscape irrigation and car washing, energy efficient concepts, glazing and internal ventilation and the like.

### General amenity conditions

1. All works on or facing the boundaries of adjoining properties must be finished and surface cleaned to a standard that is well presented to neighbouring properties in a manager to the satisfaction of the Responsible Authority.
2. All externally-located heating and cooling units, exhaust fans and the like must not be located adjacent to bedroom windows on adjoining properties and must not be located where they will be highly visible from any public area to the satisfaction of the Responsible Authority.
3. All piping, ducting above the ground floor storey of the development (other than rainwater, guttering and downpipes) must be concealed to the satisfaction of the Responsible Authority.

### Completion of Works

1. Prior to the occupation of the dwellings hereby permitted, all buildings and works and the conditions of this permit must be complied with to the satisfaction of the Responsible Authority, unless with the further prior written consent of the Responsible Authority.
2. Prior to the occupation of the dwellings hereby permitted, the landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority. Thereafter, the landscaping shall be maintained (except where that landscaping is on public land) to the satisfaction of the Responsible Authority.

### Time Limits

1. In accordance with Section 68 of the Planning and Environment Act 1987 (the Act), this permit will expire if one of the following circumstances applies:

* The development is not started within two (2) years from the date of permit issue.
* The development is not completed within four (4) years from the date of permit issue.

In accordance with Section 69 of the Planning and Environment Act 1987, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

**- 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-1)