

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

ADMINISTRATIVE DIVISION

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1054/2018
PERMIT APPLICATION NO. TPA/48555

CATCHWORDS

Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone; Neighbourhood Character; Second crossover; Overshadowing.

APPLICANT	Planning & Design
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	3 Gowan Road, Mount Waverley
WHERE HELD	Melbourne
BEFORE	Joel Templar, Member
HEARING TYPE	Hearing
DATE OF HEARING	13 November 2018
DATE OF INTERIM ORDER	11 December 2018
DATE OF ORDER	8 February 2019
CITATION	Planning & Design v Monash CC [2019] VCAT 196

ORDER

Permit granted

- 1 In application P1054/2018 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/48555a permit is granted and directed to be issued for the land at 3 Gowan Road, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two dwellings on a lot.

Joel Templar
Member



APPEARANCES

For Planning & Design	Mr Andrew Gray, town planner of ARG Planning.
For Monash City Council	Mr David De Giovanni, town planner of David De Giovanni Town Planning.

INFORMATION

Description of proposal	<p>The proposal is to construct two double storey attached dwellings. The layout of each would be similar to the other, except at ground floor level dwelling one would have a single car garage and dwelling two would have a double garage. Otherwise, the dwellings would comprise kitchen/meals/living area, an entrance/study and guest bedroom at ground floor level with three bedrooms and a sitting-room at upper floor level. The Master bedroom of each dwelling would be located at the front of the first floor of each dwelling, with a balcony extending towards the street. Roof form at the first floor level is to be pitched and materials include face brickwork and render respectively at ground and first floor levels. Ground level private open space would be 100 and 117 m² respectively each for dwellings one and two. Site coverage is proposed at 53.1% with permeable area of 37% and a garden area of 37.1%. Each dwelling would be provided with individual access from Gowan Road, with dwelling one gaining access via a new crossover and dwelling 2 utilising the existing crossover. The maximum height of the proposal would be 8.4 metres.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 2



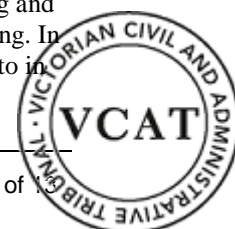
Permit requirements	Clause 32.08-6 – to construct two or more dwellings on a lot.
Land description	The review site is rectangular in shape and located on the northern side of Gowan Road, approximately halfway between Lyons Road to the west and Inverell Avenue to the east. It has a frontage of 19.5 metres and a length of 31.1 metres with an overall area of 725 m ² . The review site has fall from the south-west corner to the north-east corner of approximately 1.46 metres.
Tribunal inspection	I inspected the review site and surrounding area on 23 November 2018.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application for review of Monash City Council's (the **Council**) decision to refuse to grant a permit for the construction of two double storey dwellings on a lot. Planning & Design (the **Applicant**) seeks a review of this decision.
- 2 The Council is not opposed to the development of the land for the purpose of two dwellings. Rather, it says it is the form of the proposal and the manner in which it responds to the policy and physical context of the review site. The key submissions by Council related to the dominance of the proposed garages to the streetscape, the extent of bulk and massing presented to the streetscape and adjoining properties. The Council was also concerned about the limited opportunities for landscaping within the frontage setback that would be commensurate with the scale and massing of the proposal.
- 3 The Applicant essentially refuted these submissions.
- 4 The Council was not able to provide a position in relation to the overshadowing of the adjoining property to the east at 5 Gowan Road, as shadow diagrams submitted with the permit application did not provide sufficient detail regarding existing shadows to that property. The Interim Order referred to above provided the opportunity for the Applicant to prepare further shadow diagrams and make submissions and for the Council to respond.
- 5 The permit applicant submitted further shadow diagrams and a brief submission that the proposal complies with Standard B21 of clause 55.04-5 of the Scheme. No response was received by Council.
- 6 The following is the key issue for determination in this matter:
 - Is the built form an acceptable response to the streetscape and adjoining properties?
- 7 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered the submissions and the evidence, with regard to the relevant policies and provisions of the Monash Planning Scheme (the **Scheme**), I have decided to set aside Council's decision. My reasons follow.

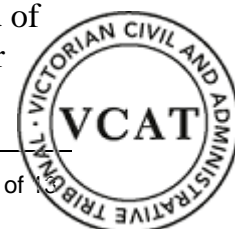
¹ The submissions and any evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.



IS THE BUILT FORM AN ACCEPTABLE RESPONSE TO THE STREETScape AND ADJOINING PROPERTIES?

Dominance of car parking features and opportunities for landscaping

- 8 The Council submitted that Gowan Road has a consistent character of wide nature strips and large, well vegetated front yards. It submitted that the proposal introduces the element of a second crossover into the streetscape. The Council says that this streetscape is one which is characterised by one crossover per lot frontage. It says that this will interrupt a particularly long and 'intact' naturestrip. The Council also submitted that to ensure an existing street tree is protected, the proposed crossover will need to be relocated further to the west and effectively join with the existing crossover of 1 Gowan Road, resulting in a double crossover. Again, the Council submitted that this is foreign to the Gowan Road streetscape.
- 9 The Council also submitted that the garages will be a dominating element in the streetscape, being wider than habitable parts of the dwelling at ground floor level. The Council further submitted that the proposed front porches extend the full width of the habitable parts of each dwelling and result in a reduced frontage setback and impact on the ability to landscape this area. It also submitted that a tandem arrangement would be a better outcome.
- 10 The Applicant submitted that whilst the site could accommodate a tandem format, with garages being located at the rear, a side-by-side development on this site is a preferable outcome for the following reasons:
- It is a site located on the north side of the street, which enables a high level of amenity to be obtained for both of the proposed dwellings, which have living areas opening onto secluded private open space.
 - The side-by-side arrangement locates the proposed built form away from adjoining properties, and well away from the rear boundary which enables landscaping and lesser visibility of building bulk at the rear of the site.
 - Any tandem arrangement would likely provide greater areas of hard paving to provide for driveways to each of the dwellings, reducing the ability for setbacks and landscaping to be incorporated.
 - The width of the review site allows for side setbacks to both sides without any proposed boundary walls.
- 11 Clause 71.02-3 requires competing policy positions to be balanced in the favour of net community benefit. In doing so, acceptable planning outcomes must be achieved, not perfect or ideal outcomes.
- 12 In this case, I find that the design response and site features are favourable to a side-by-side arrangement and that the proposal is an acceptable one.
- 13 The Scheme includes policy that has consistently, and for a long period of time, maintained a position of minimising the number of crossovers per



frontage and limiting that to one. This is in pursuit of the ‘Garden City’ character and protecting the “soft quality of streets derived from nature strips²...”

- 14 The Scheme also has a preference for locating vehicle accommodation at the rear of sites in medium density developments.
- 15 The policy objectives of seeking both the location of garages at the rear and minimisation of crossovers is aimed at maximising landscaping opportunities at the front of properties and to achieve a high-quality streetscape environment.
- 16 I find that the character of Gowan Road, and the broader area is not so consistent that it cannot accommodate the proposal without unacceptably interrupting the streetscape and character. There is a variety of development, dwelling arrangements and crossovers locations.
- 17 Within Gowan Road itself, there are side-by-side developments, a tandem multi-unit development adjacent at number 1 and a second crossover diagonally opposite at number 2. Further afield, there are some particularly large and dominating developments along Inverell Road, in close proximity to the review site which display little regard for the desired future character insofar as front landscaping is sought. These properties display little vegetation other than grass with large extents of hard paved areas. Whilst most of those examples are single dwellings on lots, they still form part of the character of the area. Development to the west along Lyons Street is more consistent with the ‘Garden City’ character that is sought to be maintained and protected through policy.
- 18 The relative short length of Gowan Road heightens the inconsistency of variations in streetscape presentation of individual development within this streetscape. On this basis, and coupled with the variations in Inverell Road and Lyons Street, I find that the character of the area is not consistent.
- 19 I find that the proposal will be an acceptable fit.
- 20 Whilst two garages are proposed to face the street, one will be a single width garage and both will be setback from each side boundary. The proposed driveway for dwelling 2 would be setback 1.475 metres from the side boundary which would enable landscaping to be incorporated which would help to soften the impact of the proposal in the streetscape, in addition to the frontage setback areas which can also incorporate landscaping.
- 21 The double storey scale of the proposal also helps to ensure that the garages will not be dominant elements, with a greater proportion of built form facing the street over both levels being the façade of the dwellings.
- 22 The proposed garages are also well set back from the street at a minimum of 7.3 metres and both would be setback significantly further than the

² Residential Character Type C statement at clause 22.02 of the Scheme.



adjoining development to the east and approximately in line with the development adjoining to the west.

- 23 Whilst the Scheme has long-held policy seeking to avoid second crossovers to site frontages, I am not persuaded that the inclusion of a second crossover in this instance is unacceptable, balancing all other policy considerations. I find the proposal achieves a high level of compliance with other aspects of policy and the applicable provisions of the Scheme and there is another example of a second crossover in close proximity and a varied character. Whilst policy seeks to avoid such an outcome, I am not persuaded that this one 'negative' is enough to tip the balance away from approval in this instance.
- 24 The front porches extend some distance into the frontage setback and could be reduced in length so as to increase the amount of landscaping area, albeit not significantly.
- 25 The combination of the front and side setbacks, landscaping areas and a reduction in the extent of front porches will result in an acceptable outcome of the built form, including vehicle access and accommodation as presented to the street. The relocation of the crossover will also protect the existing street tree, as recommended by both the Council's horticulturalist and the Applicant's arborist report.
- 26 I will include conditions to reduce the length of the porches and to relocate the proposed crossover for dwelling 1.

Built form

- 27 The Council submitted that the development introduces a level of heaviness into the streetscape that is foreign owing to the breadth of development across the site, the use of uncharacteristic decorative parapet detailing, the flat plane of the upper level, absence of ground floor roof detailing and balconies that protrude into the frontage setbacks.
- 28 There are no specific controls applying to the land such as a Design and Development Overlay or Neighbourhood Character Overlay that might warrant specific design outcomes, other than respecting the existing character and contributing to a preferred character. Clause 55.02-1 requires a proposal to respect the existing or contribute to a preferred character.
- 29 Clause 22.01 seeks a preferred character and includes policy that seeks development to include similar:
 - building materials to that found in the surrounding area;
 - roof heights and pitches of adjoining development; and
 - built form and style in streets with a consistent built form theme.
- 30 As I set out in the previous section, the character of Gowan Road and the broader surrounding area does not have a consistency about it. There are varying styles and forms of development, including single and double



storey development and some reproduction styles, particularly along Inverell Road. The only feature that appears to be consistent is the incorporation of pitched roofs.

- 31 The upper floor facades of both dwellings are recessed from the ground floor, with balconies to each that extend towards the street. I find that the upper floors are sufficiently setback and, coupled with the introduction of balconies which will help to break up the upper floor massing, will present an acceptable response to the varied streetscape and character of the surrounding area. Although the upper floor facades of each dwelling, and in combination, do not have any articulation, I do not find that this is fatal to the application, owing to the varied styles and character of the surrounding area. Policy seeks similar built form, where there is consistency and I find that does not occur in this area.
- 32 The upper floors are also recessed from the side boundaries by 2.20 metres and 3.05 metres respectively for dwellings 1 and 2. They are also set in further from each side boundary than the corresponding ground floor walls. These attributes help to minimise the level of bulk associated with the proposal.
- 33 I find that the proposal will not present an unacceptable level of built form across the site. I acknowledge that the proposal does extend across much of the lot width. However, this is not foreign to the surrounding area, which does display some very large examples of built form, particularly to the east along Inverell Road and on the south-west corner of Gowan Road and Inverell Road.
- 34 The proposal includes setbacks to both side boundaries, as well as a 1.475 metre wide landscape strip in the frontage setback, between the driveway of dwelling 2 and the eastern boundary. This provides landscaping opportunities to help soften the proposal's impact on the streetscape.
- 35 I find that the decorative parapet does contrast with the predominant character of design detail of development in the surrounding area. Whilst there is some reproduction styles in the surrounding area, these are both limited and more distant from the review site. Such design detail would be inconsistent with the Scheme at clause 55.06-1 and policy at clause 22.01 that seek development styles to be consistent with existing forms in the area. I will include conditions to delete the decorative parapet corbelling and replace with simpler detail.

Adjoining properties

- 36 The Council submitted that the proposal will add to the sense of enclosure of the adjoining secluded private open space of 5 Gowan Road. It submitted that this area is enclosed by built form on its adjoining property to the north and by the dwelling on the land at 5 Gowan Road itself, and that the built form of the proposal will present an intensive appearance and that greater first floor recession is necessary along the eastern elevation.



- 37 This SPOS of 5 Gowan Road has a significant width of approximately 10 metres and a length of approximately 4 metres directly adjacent to the review site. This excludes a covered verandah area located towards that site's eastern boundary.
- 38 The proposal is setback a minimum of 2.20 metres at ground level and 3.55 metres at upper floor level opposite the SPOS of 5 Gowan Road. The wall height in this location is approximately 6.56 metres.
- 39 Standard B17 of clause 55.04-1 requires a minimum setback of 1.88 metres and so the proposal complies with this Standard.
- 40 I find that the proposal is setback sufficiently at both ground floor and first floor level such that no unacceptable impacts will occur to the SPOS of 5 Gowan Road. This SPOS is quite wide and so the impact of the proposal will diminish at more distant parts of the SPOS. In addition, there is adequate space within which some screen planting could occur, directly adjacent to this SPOS to help soften the appearance of the proposal. I will include conditions to require species of suitable height and spread to achieve some screening effect.

ARE THERE ANY OTHER ISSUES?

Overshadowing

- 41 Based on the additional shadow diagrams submitted in response to the Interim Order, the only additional overshadowing to the adjoining property to the east at number 5 Gowan Road would be at 3:00pm. At this time, 5 Gowan Road would receive the minimum required sunlight to its SPOS area, based on Standard B21 of clause 55.04-5. This clause sets out the following:

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 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.

- 42 On this basis, and the fact that Council made no further submissions, I am satisfied that there will be no unacceptable shadow impact to this adjoining property.

CONCLUSION

- 43 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.



Joel Templar
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/48555
LAND	3 Gowan Road, Mount Waverley

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two dwellings on a lot.

CONDITIONS

- 1 Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the plans substituted by the Tribunal prepared by 'Planning and Design', Revision B, dated 09 July 2018, but modified to show:
 - (a) The crossover to dwelling 1 set further to the west as per the arborist report submitted with the permit application by Treemap Arborculture dated February 2018.
 - (b) Reduction in the length of each front porch to a maximum of 1.0 metre with a consequential increase in the length of the private open space in front of each dwelling.
 - (c) The deletion of the parapet corbel detailing along the front façade of the development.
 - (d) Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2m), which may include adjacent landscape areas with a height of less than 0.9m, extending at least 2.0m long x 2.5m deep (within the property) to both sides of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
- 3 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:-



- (a) the location of all existing trees and other vegetation to be retained on site.
- (b) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development. The planting provision is to include tall trees that when grown will positively contribute to the upper level tree canopy of the area.
- (c) planting to soften the appearance of hard surface areas such as driveways and other paved areas.
- (d) 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 (semi-mature plant species are to be provided).
- (e) the location and details of all fencing.
- (f) the extent of any cut, fill, embankments or retaining walls associated with the landscape treatment of the site.
- (g) details of all proposed hard surface materials including pathways, patio or decked areas.
- (h) coloured concrete, paving or the like is to be utilised in the driveways.
- (i) Screen planting along the eastern boundary directly adjacent to the secluded private open space of 5 Gowan Road. Such planting must be a minimum height of 2.0 metres at the time of planting and be capable of reaching a minimum mature height of 4.0 metres.

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

- 4 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.
- 5 The walls facing the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
- 6 The driveway and parking area is to be constructed to the satisfaction of the responsible authority.
- 7 All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties. The on-site drainage system must prevent discharge from the driveway onto the footpath.
- 8 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the nature



strip via a Council approved kerb adaptor to be constructed to Council Standards.

- 9 All new vehicle crossings must be a minimum 3.0 metres in width and constructed in accordance with Council standards.
- 10 Once the development has started it must be continued, completed and then be maintained to the satisfaction of the Responsible Authority.

Expiry of permit for development

- 11 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

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 –

