VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1547/2020Permit Application no. TPA/51383 |
| CATCHWORDS |
| Section 77 of the *Planning and Environment Act 1987*, two crossovers to the street, extent of screening  |

|  |  |
| --- | --- |
| APPLICANT | Xun Lu |
| responsible authority | Monash City Council |
| SUBJECT LAND | 42 Winbourne Road, Mount Waverley |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 4 June 2021 |
| DATE OF ORDER | 22 June 2021 |
| CITATION | Lu v Monash CC [2021] VCAT 635  |

# Order

1. In application P1547/2020, the decision of the Responsible Authority is set aside.
2. In planning permit application TPA/51383 a permit is granted and directed to be issued for the land at 42 Winbourne Road, Mount Waverley, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
* Construction of two, two storey dwellings in the General Residential Zone – Schedule 2

|  |  |  |
| --- | --- | --- |
| **K Birtwistle****Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For Xun Yu | Mr G Vekos, town planner of GVK Town Planning |
| For Monash City Council | Mr C Marulli, town planner |



# Information

|  |  |
| --- | --- |
| Description of proposal | Construction of two, two storey dwellings in a side-by-side format. Both dwellings face Winbourne Road and have a minimum setback of 7.6 metres. The overall maximum building height is 8.4 metres. Each dwelling will be provided with four bedrooms, with three located on the first floor and one located on the ground. There are two car spaces proposed for each dwelling, with one in a garage format and the second in a tandem arrangement. There are no front fences proposed. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone – Schedule 2 (GRZ2) |
| Permit requirements | Clause 32.08-6 – Construction of two or more dwellings on land |
| Land description | The site is regular in shape and is located on the south side of Winbourne Road, 35 metres south of the intersection with Carmel Avenue, Mount Waverley. It is rectangular in shape, with a width of 18.2 metres, a depth of 41.5 metres and an overall area of 753sq.m. There is a 1.8 metre wide drainage and sewerage easement at the rear of the property. The land is relatively flat and there is an existing crossover located to the north-west of the site which provides access to a brick garage located to the rear (south-west corner).Abutting the site to the east at 44 Winbourne Road are two single storey units in a one behind the other formation. Both of these dwellings have separate crossovers to the street.Abutting the site to the west at 40 Winbourne Road is a single storey detached brick dwelling. The associated garage to the dwelling abuts the common boundary with the review site. Opposite the site, at 29A Winbourne Road is a single storey dwelling which is part of a two dwelling development at the corner of Carmel Avenue. |
| Tribunal inspection | Unaccompanied subsequent to the hearing  |

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

## What is this proceeding about?

1. Xun Yu (the applicant) proposes to develop two, two storey attached dwellings at 42 Winbourne Road, Mount Waverley. In October 2020, Monash City Council (the Council) determined to refuse to grant a planning permit for the proposed development. The permit applicant has requested the Tribunal to review Council’s decision.
2. Council refused the proposal on the following grounds:
* The proposal is inconsistent with neighbourhood character objectives of Clause 55.02-1 of the Monash Planning Scheme.
* The proposal is inconsistent with design detail objectives of Clause 55.06-1 of the Monash Planning Scheme.
* The proposal is inconsistent with Clause 22.01 (Residential Development and Character Policy) of the Monash Planning Scheme.
* The proposal is an inappropriate design response having regard to neighbourhood character and residential policy.
* The proposed design would not allow for the overall development to comply with the landscaping objectives of Clause 55.03-8 of the Monash Planning Scheme.
* There is over-reliance on screening of windows which reduces internal amenity for future residents.
* The dwelling entries do not comply with the objective of Clause 55.05-2 of the Monash Planning Scheme.
1. The Council does not dispute that the site is located within an area and a streetscape where medium density infill housing is evident and could be accommodated. The issue in dispute is whether the particular design response, being the side-by-side format with separate individual crossovers, is appropriate based on the specific neighbourhood character and the policy framework that applies to the site.
2. I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the responsible authority and direct that a permit be granted.
3. My detailed reasons follow.

### PLANNING SCHEME CONTEXT

1. The site is located in the GRZ2. The GRZ2 relates to Monash Residential Areas and includes variations to several standards of clause 55 of the Monash Planning Scheme. These include minimum street setbacks of at least 7.6 metres, a minimum of 75 square metres of private open space per dwelling and front fence heights of 1.2 metres. The application meets all of these requirements.
2. With respect to neighbourhood character, the council’s policies at clause 21.04 and 22.01 provide detailed explanation of what is sought to be achieved in terms of residential development throughout the municipality.
3. In clause 22.01-4, the site is included in the ‘Garden City Suburbs Northern Area’. The preferred character for this area is described as follows:

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

 Buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences. Additional vehicle crossovers will be discouraged.

## Matters in dispute

### Built form matters

1. The Council submits the extent of built form proposed on this site, in the form and layout proposed, would not enhance or be a positive response to the existing or preferred character but instead would detract from the setting, and have a negative impact upon it. It asks too much of the land and is too expansive in this context. The Council submits that this development is overpowering and an uncomfortable “fit” for this site.
2. They say this arises because while other developments exist in the street, these are configured in a tandem, ‘one-behind-the-other’ design. In other words, Council says that design typology, as an attached side-by-side format, is inconsistent with this emerging character.
3. Council say that that the lengthways division of the site has the potential to alter the existing streetscape in an adverse manner by effectively reducing the width of lot frontages. This concern is reflected in the preferred future character statement for the area which states:

Additional vehicle crossovers will be discouraged[[2]](#footnote-2)

1. Further, they say that the design of the dwellings is repetitive in nature, presenting as a mirror image design and the stepping between the ground and first floors to the north-façade presenting to the street is minimal. They say this is not in line with Council’s policy in regard to built form and scale of development, which seeks to:

Incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey[[3]](#footnote-3).

1. Finally, Council assert that the proposal lacks articulation to the rear south-facing façade of the dwellings, with a minor stepping back of approximately 500mm proposed between the ground and first floors of the dwellings to the south title boundary. It says that this will create a ‘box-like’ appearance presenting to the secluded private open space areas of the existing dwellings to the south along Virginia Street. This concern is reflected in Council’s policy in regard to built form and scale of development, which seeks to:

Preserve backyard character by ensuring multi-storey development at the rear of properties incorporates generous articulation and setbacks[[4]](#footnote-4).

1. The applicant says the proposal is consistent with the existing neighbourhood character by:
* Using face brick, render finish and weatherboard cladding, which are all evident in the immediate area.
* Providing a hipped roof form with tiles with a single roof form consistent with recently constructed medium density developments in the immediate area.
* Although proposing two garages facing Winbourne Road, this is characteristic of the street with both 29 & 29A Winbourne Road both providing double garages on the boundary.
* Providing appropriate articulation by proposing a pitched roof form for the porches set forward of the principal façade of the dwellings.
* Providing setbacks between the first and ground floors for each dwelling.
* Providing no sheer walls throughout the development, with the first floors setback from the east and west boundaries in compliance with Standard B17 of clause 55.
1. With respect to the issue of the additional crossover, the applicant says:
* There are examples of two crossovers per lot within Winbourne Road, with the site immediately to the east at 44 Winbourne Road having two crossovers.
* The site has a width of 18.29 metres, which can accommodate a second crossover, while still providing sufficient space for planting.
* Each dwelling will have a minimum area of 15 sq.m. of garden space within the front setback which can provide for at least one medium canopy tree within the front setback and also small shrubs on each side (500mm) adjoining the driveway for each dwelling.
* While the second crossover provides additional hard surface within the front setback, it is comparatively less total area of hard surface when compared to a tandem dwelling arrangement.

### Landscape character

1. Council says there is a clear expectation that any development should preserve the Garden City Character and provide meaningful areas of landscaping in order to respond to the preferred future character statement for the Garden City Suburbs (Northern) Area, which states

New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained[[5]](#footnote-5).

1. Council says the two proposed vehicle crossings, driveways, and other hard surface areas is inconsistent with the open gardens that characterise the surrounding area and where policy is to “maximise landscaping in front setback areas by minimising the number of crossovers[[6]](#footnote-6)”. It says the inclusion of two crossovers and driveways reduces the area for an effective landscaping outcome and results in a street frontage dominated by hard surfaces rather than trees and landscaping.
2. The applicant says that the proposal is consistent with the existing and preferred landscape character for the following reasons:
* It proposes no front fencing, which allows for an open landscape setting.
* There will be no impact to the existing street tree as a result of the proposed crossover and development, as evidenced by the Arborist Report submitted with the application.
* Sufficient space has been provided for adequate planting within the front setback of both dwellings.
* Further planting can be provided throughout the site including smaller scale planting to the frontage of dwellings within the driveway, with canopy trees to the rear open spaces.
* The secluded private open space (spos) areas are a minimum of 71 sq.m. which will allow for canopy and other supplementary tree planting.
* Both garages are set back a minimum of 1.0 metres from each side boundary with the remainder of the building set back a minimum 2.2 metres allowing for appropriate screen planting along each side boundary.

### Internal amenity

1. Council is also critical that the majority of first-floor bedrooms to the development rely on screened windows which they say will result in poor internal amenity. First floor habitable room windows for all dwellings are proposed to be obscured at a sill height of 1.7 metres.
2. The applicant says this is a by-product of the surrounding development pattern, and that alternative screening techniques are unopposed.

## What are my findings?

1. I find this proposal provides an acceptable response to both the Scheme and its site context, would not impose unacceptable amenity impacts on neighbouring residents and would provide acceptable amenity for future residents. The design complies with all of the more restrictive variations to the clause 55 requirements that arise from the GRZ2.
2. From a streetscape perspective, I find that the two dwellings are well articulated with pitched roof forms reflective of traditional housing forms. They have generous side setbacks. Each elevation is reasonably articulated and there is sufficient distinction between the ground and first floors. The design provides for a garden area of 42% where 30% is required by the Scheme. The proposal has a permeability of 43% where Clause 55 seeks 20%.
3. Council fundamentally opposes the side-by-side nature of the proposal. This is confirmed from a reading of the officer report which says that a tandem format is preferred. There is little nuanced assessment about whether the proposal is more broadly consistent with the existing and preferred neighbourhood character.
4. The proposal is not vastly different from the emerging built form in the street. Although the side-by-side arrangement is not as common as tandem arrangements, the overall width of these two attached dwellings is not something that I find is excessive. There are other newer developments that have a single dwelling presentation to the street but where the front dwelling is wider at both ground and upper floor levels than what both Dwellings 1 and 2 would be.
5. The upper floors of the dwellings are set back further from the frontage than the respective ground floors and the built form at the upper level is set back from both side boundaries. The built form at ground level is also set back from both side boundaries, which is consistent with what the preferred character seeks.
6. There is a level of articulation at the upper levels. Although I find that this articulation is modest, it provides an acceptable outcome in the physical and policy context.
7. The front building facade include a variety of materials, with the upper front façade having different materiality between each dwelling. I am satisfied that the proposed built form presentation to the street will result in an acceptable outcome.
8. Whilst there are two crossovers, this would not be the first in the street. Pertinently, there are two existing crossovers to the adjoining property which is of similar width lot as the site. The second crossover comfortably complies with Standard B14 of Clause 55. I consider that the site is of sufficient width to accommodate two crossovers and note that there will be no impact on the street tree which assists the character of this area.
9. I am satisfied that there is adequate space at the front of the property within which to plant vegetation, including canopy trees. The garden area provided is 42.2%, and the dwellings are set back 7.7 metres from the frontage. This allows for the planting of at least one canopy tree in the front setback of each dwelling, as well as other planting within the large (more than 70 sq.m.) spos at the rear of each dwelling. The construction of a second crossover also does not affect the existing street tree retention.
10. I see this to be a response consistent with the garden city character sought by the council.
11. With respect to the extent of upper level screening, there was discussion during the hearing about whether some of the upper level windows shown as obscured glazing could be unscreened or alternative methods of screening used. I have not amended the screening as shown on the plans because neighbouring properties who were not party to the hearing may have relied on that screening to inform their decision not to object to the application.
12. I have, however, included a condition requiring consideration of alternative methods of screening that could retain views and openness for future residents while limiting overlooking of neighbouring properties. This could be achieved, for example, by fixed external panels or louvres rather than opaque glazing.

## WHAT CONDITIONS ARE APPROPRIATE?

1. In determining the conditions of permit, I have had regard to the draft conditions discussed at the hearing and the submissions of the parties as well as the matters arising from my reasons above. While I accept that the rear setback is acceptable, I have required that a revised material palette be provided across the rear upper elevation (similar to the front façade) to improve the sense of articulation across this elevation.
2. I have deleted the draft condition which requires that walls on the boundary of adjoining properties be cleaned and finished in a manner to the satisfaction of the Responsible Authority as there are no walls proposed on side or rear boundaries.

## conclusion

1. In conclusion and having regard to the requirements of Clauses 65 and 71.02, I consider that the proposal is an acceptable outcome, and that when assessed against all relevant policies, it does, on balance, achieve a net community benefit. The decision of the responsible authority is set aside, and a permit is granted.

|  |  |  |
| --- | --- | --- |
| **K Birtwistle** **Member** |  |  |

# Appendix A – Permit Conditions

|  |  |
| --- | --- |
| Permit Application No: | TPA/51383 |
| Land: | 42 Winbourne Road, Mount Waverley |

|  |
| --- |
| What the permit allows |
| In accordance with the endorsed plans:* Construction of two, two storey dwellings in the General Residential Zone – Schedule 2
 |

## Conditions:

**Amended Plans**

1. Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council, but modified to show:
	1. Revised screening treatment to the upper level windows to provide for views for future residents while still meeting the requirements of Standard B22 in clause 55.04-6.
	2. Pedestrian paving to connect from the entrances to the associated driveways shown on proposed floor plans to Dwellings 1 and 2, to the satisfaction of the Responsible Authority.
	3. The provision of screening vegetation at an interval abutting the east and west title boundaries, to the satisfaction of the Responsible Authority.
	4. Variation in the external finish of the rear upper facade, to the satisfaction of the Responsible Authority.
	5. A notation on plans showing the Council street tree is to be protected by temporary rectangular wire fencing as per Australia Standards, and erected prior to the commencement of works until completion of works. Fence must extend out to at least the distances given in AS4970.
	6. A notation for all proposed lattice and clothing line to be affixed to a sturdy free-standing frame, to the satisfaction of the Responsible Authority.
	7. A Landscape Plan in accordance with condition 3 of this Permit.

**Layout not to be Altered**

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

**Landscape Plan**

1. Concurrent with the endorsement of any plans requested pursuant to 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. The Landscape Plan must show:
	1. a survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan.
	2. provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development.
	3. planting to soften the appearance of hard surface areas such as driveways and other paved areas.
	4. a planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities.
	5. the location and details of all fencing.
	6. the location of any retaining walls associated with the landscape treatment of the site; and
	7. details of all proposed surface finishes including pathways, accessways, patio or decked areas.

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

**Tree Protection**

1. Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.
2. No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any 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.

**Landscaping prior to occupation**

1. Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority.

**Drainage**

1. The site must be drained to the satisfaction of the Responsible Authority.
2. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.
3. Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
4. No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
5. The full cost of reinstatement of any Council assets damaged as a result of demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

**Vehicle crossovers**

1. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
2. Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.

**Satisfactory Continuation and Completion**

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:
* The development has not started before 2 years from the date of issue.
* The development is not completed before 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 (6) months afterwards if the development has not commenced; or

within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

**- End of conditions -**

1. The submissions of the parties, any supporting exhibits provided to 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)
2. Clause 22.01-4 [↑](#footnote-ref-2)
3. Clause 22.01-3 – Built Form and Scale of Development [↑](#footnote-ref-3)
4. Clause 22.01-3 – Built Form and Scale of Development [↑](#footnote-ref-4)
5. Clause 22.01-4 [↑](#footnote-ref-5)
6. Clause 22.01-3 – Vehicle Crossings [↑](#footnote-ref-6)