

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1179/2022
PERMIT APPLICATION NO.TPA/54181

APPLICANT	Weiping Dai
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	18 Jeffrey Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	23 November 2022
DATE OF ORDER	23 November 2022
CITATION	Weiping Dai v Monash CC [2022] VCAT 1345

ORDER

- 1 In application P1179/2022 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/54181 no permit is granted.

Tracey Bilston-McGillen
Member



APPEARANCES

For applicant	Weiping Dai.
For responsible authority	Sally Moser, town planner.

INFORMATION

Description of proposal	Removal of a tree in a Vegetation Protection Overlay.
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 3 (GRZ3). Vegetation Protection Overlay Schedule 1 (VPO1).
Permit requirements	Clause 42.02 - a planning permit is required pursuant to Clause 3 of the VPO1 as follows: A permit is required to remove or destroy any vegetation that: <ul style="list-style-type: none">• Has a trunk circumference greater than 500mm (160mm diameter) at 1200mm above ground level and• Is higher than 10 metres Due to the height of the trees and their DBH, a planning permit is required for their removal.
Key scheme policies and provisions	Clauses 21.01, 22.01, 21.04, 21.10, 22.01, 22.05 and
Land description	The subject land is in an irregular shape located on the corner of Wilga Street and Jeffery Street with a total site area of approximately 785 square metres.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 The parties were advised orally of the reason for this decision to affirm the decision of the Council and order that no permit is issued. Following are the oral reasons given.
- 2 I say upfront, that it is my role to assess the proposed application, and in this case, it is the removal of the tree against the provisions of the Monash Planning Scheme. This is an application for review against the decision of the Monash City Council (**Council**) to refuse to grant a permit for the removal of a *Eucalyptus camaldulensis* located in the rear yard of 18 Jeffrey Street, Mount Waverley.
- 3 The proposed removal was refused on the following grounds:
 - [1] There is inadequate justification for the removal of the tree having regard to the objectives or decision guidelines of:
 - Clause 22.05 - Tree Conservation Policy of the Monash Planning Scheme.
 - Clause 42.02 - Vegetation Protection Overlay of the Monash Planning Scheme.
 - Clause 59.06 - Remove, Destroy or Lop a Tree of the Monash Planning Scheme.
 - [2] The tree makes a significant contribution to the landscape character of the area. The removal would fail to maintain the Garden City Character of the area.
 - [3] The location of tree has a very minimal impact on the future development potential of the site
 - [4] The tree is in a healthy condition and good structure
- 4 The applicant has requested that the tree is permitted to be removed because of the following reasons:

The disputed tree has caused significant impacts to our family's daily life both physically and mentally, especially to my kids and wife. I have raised 4 arguments in support of my position.

 - Safety issues.
 - Close to the power line.
 - Sleep disorder.
 - Tree Wound- remove and replant.

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.



The Tree

5 The tree in question is a River Redgum *Eucalyptus camaldulensis*. The Arboricultural Assessment prepared by *Smart Alec Tree Surgery Co* (date 02/08/2022) identifies the tree as:

- River Redgum - *Eucalyptus camaldulensis*.
- 17 metre height and 16 metre (approximate) spread.
- Age – Mature
- Health – Good. The report states ‘Tree foliage is entire with good colour and complexion. Signs of pathogens are minimal and of good density. Good growth indicators i.e. wound wood development and extension growth shoots. Very minimal dead twigs and dieback within the canopy’.
- Structure – Good. The report states ‘Trunk and large branches showing good attachment and taper with little or no structural defects. A fine example of its species with a well-developed formation with no obvious underlying pests and diseases in the canopy or roots’.
- ULE – Useful Life Expectancy. Long stating ‘Trees that appears to be retainable with an acceptable level of risk for more than 40 years.’.
- Retention. High – ‘Trees with high potential to positively contribute to the landscape due to their botanical, horticultural, historical or local significance, this combined with good structural characteristics, health and future growth. Trees such as these should be inclusive in the development plan’.
- Comment. ‘River Redgum located in the backyard of the property. Good health and structure, plenty of leaves in the canopy. Some poor pruning techniques used’.

6 It is important to note that the arborist report referred to was undertaken on behalf of the applicant. The recommendation of the arborist reads:

With the tree being in good health and structure as mentioned above it is highly recommended that the tree is retained. Some tree surgery will be required to rectify poor pruning techniques used on branches in the canopy. When the work is complete the tree will be able to compartmentalize the wounds properly which is best for the health of the tree. Children’s equipment can be moved to minimize the risk of any other small branches falling onto the equipment.

Planning provisions

7 Council has a number of policies that recognise the vision of the city of Monash to protect and conserve its vegetated character. In particular the planning scheme includes a Tree Conservation Policy at clause 22.05. The policy acknowledges the importance of maintaining and enhancing the Garden City Character of Monash. It is policy that:

- Existing semi-mature and mature canopy trees be retained wherever possible to ensure maintenance of the tree canopy.

8 In considering an application to remove a tree, VPO1 requires:

An application to remove or destroy vegetation must be accompanied by the following information:

- A plan showing the location of the vegetation to be removed or destroyed.
- The type and quality of the vegetation to be removed or destroyed.
- The justification for the proposed removal or destruction.

A statement of alternatives examined to removal or destruction. An application to remove or destroy vegetation in conjunction with development of the land must be accompanied by a site analysis plan and a written statement demonstrating how the removal or destruction of the vegetation is essential for the proposed development to proceed, including an assessment of alternative design solutions retaining the vegetation.

9 The decision guidelines of VPO1 require consideration of:

- The reason for removing or destroying the vegetation and the practicality of alternative options which do not require removal or destruction of vegetation.
- The practicality and benefits of relocating significant vegetation.
- The condition and quality of the vegetation.

Should the tree be removed?

10 I have decided that the tree should be retained. In making my decision, I have addressed the concerns of the applicant and the provisions of the planning scheme.

11 Safety and sleep disorder. I acknowledge the submissions regarding safety of both children playing in the backyard and the potential for the tree to drop branches. In considering this issue, I have given weight to the arborist document which was conducted on 02/08/2022 so it is a reasonably recent assessment and states:

- Is in a healthy condition and good structure.

- There has been some poor pruning techniques were used but notes that with proper surgery, this can be rectified.
 - Is of high retention value as described above.
 - The children's play equipment should be moved to minimise the risk of branches falling onto the equipment.
- 12 Close to power lines. Trees occur throughout metropolitan Melbourne near powerlines and therefore I do not consider this to be a reason to remove the tree.
- 13 Tree wound and replant. As stated in the arborist report, 'some tree surgery will be required to rectify poor pruning techniques used on branches in the canopy. When the work is complete the tree will be able to compartmentalize the wounds properly which is best for the health of the tree'. The applicant indicated that they would be willing to replant a replacement tree. I am persuaded by Council that it would take many, many years for any replacement tree to make the same level of contribution the current tree makes.
- 14 Policy. Policy in the planning scheme seeks the retention of vegetation and canopy trees. These policies are repeated in clauses 22.05 and the provisions of the VPO.
- 15 I am persuaded by Council that the tree makes a significant contribution to the character of the neighbourhood and its removal would result in a loss of visual amenity and character for the review site and neighbourhood.
- 16 The applicant submitted that he supports the green character of Monash and it is noted that the applicant obtained expert advice regarding the health of the tree. In this case, it is this tree that makes a significant contribution to the character of the area.
- 17 I agree with Council that the tree is located on the site in the corner of the site, away from the house and away from what appears to be other areas of open space located along Jeffrey Street (appears to be a front garden) and an area along Wilga Street. It appears that this secondary space to Wilga Street is another area of open space where playground equipment may be able to be relocated.
- 18 Having regard to the planning scheme provisions both policies and the VPO, I see no reason to permit the removal of the tree. I further make the observation that a tree such as this requires ongoing maintenance and attention from a qualified arborist, as recommended by the arborist report to ensure the tree remains at its optimum health.

CONCLUSION

19 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Tracey Bilston-McGillen
Member

