

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P167/2023
PERMIT APPLICATION NO. TPA/54492

APPLICANT	CSQ Town Planning Services Pty Ltd t/a CS Town Planning Services
RESPONSIBLE AUTHORITY	Monash City Council
REFERRAL AUTHORITY	Head, Transport for Victoria
SUBJECT LAND	704 Ferntree Gully Road Wheelers Hill VIC 3150
HEARING TYPE	Short Case Hearing
DATE OF HEARING	23 May 2023
DATE OF ORDER	25 May 2023
CITATION	CSQ Town Planning Services Pty Ltd t/a CS Town Planning Services v Monash CC [2023] VCAT 584

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: Themeski Design and Build
 - Drawing numbers: A007 - Context plan
A101 - Existing/demolition site plan
A102 - Proposed site plan/design response
 - Dated: 17 March 2023, Revision A

No permit granted

- 2 In application P167/2023 the decision of the responsible authority is affirmed.
- 3 In planning permit application TPA/54492 no permit is granted.

Claire Bennett
Member



APPEARANCES

For applicant	Sav Koletas, Planner of CS Town Planning
For responsible authority	Matt Cooper, Planner of Monash City Council Assisted by Sally Moser, Planner of Monash City Council
For referral authority	No appearance



INFORMATION

Description of proposal	Creation of an additional crossover in a Transport Zone 2.
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) Transport Road Zone – Schedule 2 (TRZ2)
Permit requirements	Clause 52.29 - a permit is required to create access to a road in a TRZ2
Land description	The subject land is located on the southern side of Ferntree Gully Road in Wheelers Hill. The land is of rectangular shape with a frontage of 16 metres, a depth of 38.5 metres and an overall area of 652 square metres. A new dwelling is nearing completion on the land. There is a 2.44 metre wide easement that runs along the rear boundary of the site. Residential properties are located to the east, west and south. The existing crossover is at the eastern edge of the frontage.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Application P167/2023 is an application made by CSQ Town Planning Services Pty Ltd t/a CS Town Planning Services (**applicant**) under section 77 of the *Planning and Environment Act 1987* (**PE Act**) to review Monash City Council's (**council**) decision to refuse a permit for the creation of access to a road in a Transport Road Zone – Schedule 2 (**TRZ2**) on land at 704 Ferntree Gully Road Wheelers Hill VIC 3150 (**subject land**).
- 2 On 21 March 2023, prior to the hearing, the applicant circulated amended plans and sought to have these substituted for the previous plans. Council raised no objection to the request for substitution but advised that its opposition to the proposal remained. The Tribunal allowed the substitution as reflected in Order 1.
- 3 The Tribunal must decide if the permit should be approved.
- 4 Having considered the submissions of the parties, and having regard to the Monash Planning Scheme (**Scheme**), the Tribunal will affirm the decision of council and direct that no permit be granted.

Subject land and surrounds

- 5 The subject land is located on the southern side of Ferntree Gully Road in Wheelers Hill. The land is of rectangular shape with a frontage of 16 metres, a depth of 38.5 metres and an overall area of 652 square metres. A new dwelling is nearing completion on the land. There is a 2.44 metre wide easement that runs along the rear boundary of the site. Residential properties are located to the east, west and south. The existing crossover is at the eastern edge of the frontage.
- 6 The subject land is zoned General Residential Zone – Schedule 3 (**GRZ3**).
- 7 The arterial road abutting the subject land is zoned Transport Road Zone – Schedule 2 (**TRZ2**). There is a trigger for a permit to create this crossover pursuant to clause 52.29 of the Scheme, as the crossover would create access to the Ferntree Gully Road service road, which is contained within the Principal Road Network.

Background

- 8 The application originally before council was refused on 28 December 2022 on the following grounds:
 - a. The proposal does not meet the following objectives of Clause 55 of the Monash Planning Scheme:

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.



- i. Clause 55.02-1 Neighbourhood character
 - ii. Clause 55.02-5 Integration with the street
 - iii. Clause 55.03-7 Safety
 - iv. Clause 55.03-8 Landscaping
 - v. Clause 55.06-1 Design detail
 - b. There is inadequate justification for the turntable and additional crossover in context of the surrounding area. The existing sites neighbouring the proposal contain single width driveways or one crossover along the frontage.
 - c. The proposal does not support the neighbourhood character of the surrounding area in accordance with Clause 15.01-5s of the Monash Planning Scheme.
 - d. The proposal reduces opportunity for additional landscaping and permeability. The reduction of permeable surfacing and garden area would fail to maintain the Garden City Character of the area.
 - e. Council generally does not support a turntable unless the property only has access via an arterial road and the parking arrangement has no alternatives to let cars drive out in a forward direction.
- 9 The plans refused by council included a new turntable and car parking space in the site's frontage.
- 10 The amended design, circulated on 21 March 2023, removed the turntable and replaced it with a standard car parking space, retaining the crossover and hard surface configuration.
- 11 The new parking space does not trigger a planning permit, and so this application only pertains to the proposed crossover to the south-west boundary of the subject land.
- 12 Under clause 52.29 a permit is required to create access to a road in a TRZ2. The purpose of clause 52.29 Land Adjacent to the Principal Road Network is:
- To ensure appropriate access to the Principal Road Network or land planned to form part of the Principal Road Network.
 - To ensure appropriate subdivision of land adjacent to Principal Road Network or land planned to form part of the Principal Road Network.
- 13 The decision guidelines at clause 52.29-6 require that:
- Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider:
- The Municipal Planning Strategy and the Planning Policy Framework.
 - The views of the relevant road authority.



- The effect of the proposal on the operation of the road and on public safety.
- Any policy made by the relevant road authority pursuant to schedule 2, clause 3 of the Road Management Act 2004 regarding access between a controlled access road and adjacent land.

WHAT ARE THE KEY ISSUES?

- 14 Council's submissions raise the following issues with the application before this Tribunal:
- The proposed second crossover has the potential to result in safety impacts for drivers as it is directly opposite the median break in the service road.
 - The proposed second crossover is out of character with the area and the proposed third car space overloads the front of the site with paved area and car parking.
- 15 The Tribunal deals with each in turn below.

Safety and operation of the road

- 16 The decision guidelines at clause 52.29-6 require the responsible authority to consider the effect of the proposal on the operation of the road and on public safety.
- 17 Relevantly, clause 65 requires the responsible authority to consider as appropriate, the impact the use or development will have on the current and future development and operation of the transport system.
- 18 The application originally before council was referred to the Head, Transport for Victoria (**Head, TfV**) as a determining referral authority under section 55 of the PE Act on 2 December 2022. The determining authority had no objection to that version of the proposal.
- 19 The amended plans were served by the applicant to the Head, TfV on 21 March 2023. No response was received from the Head, TfV. However, the applicant did enquire, via an email to Head, TfV dated 15 March 2023, as to whether Head, TfV would support the change, as follows:

We are considering amending the plans (also attached) to replace the turntable with a single car space measuring 4.9metres X 2.6 metres.

Would DOT continue to support the application if this change was made? It would require cars to reverse onto the road but there is a service road in this location and cars from other existing dwellings reverse onto the service road.

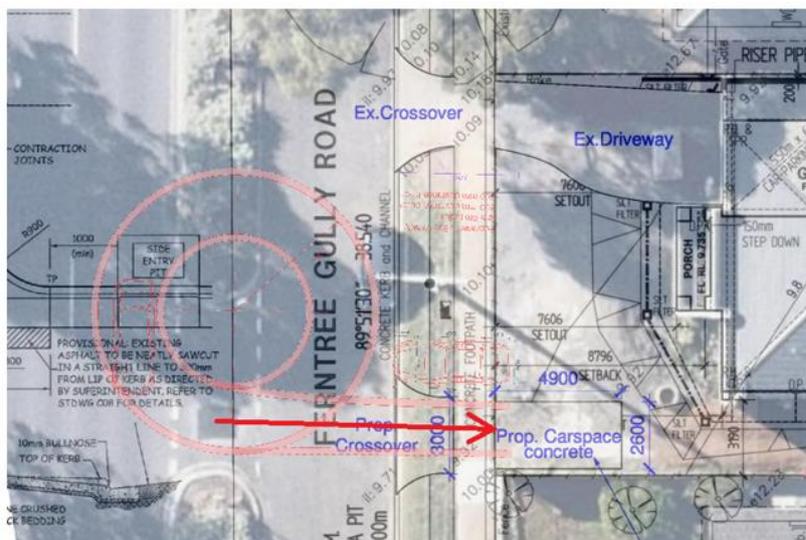
Could you confirm DOT would continue to support the proposal if this change was made?

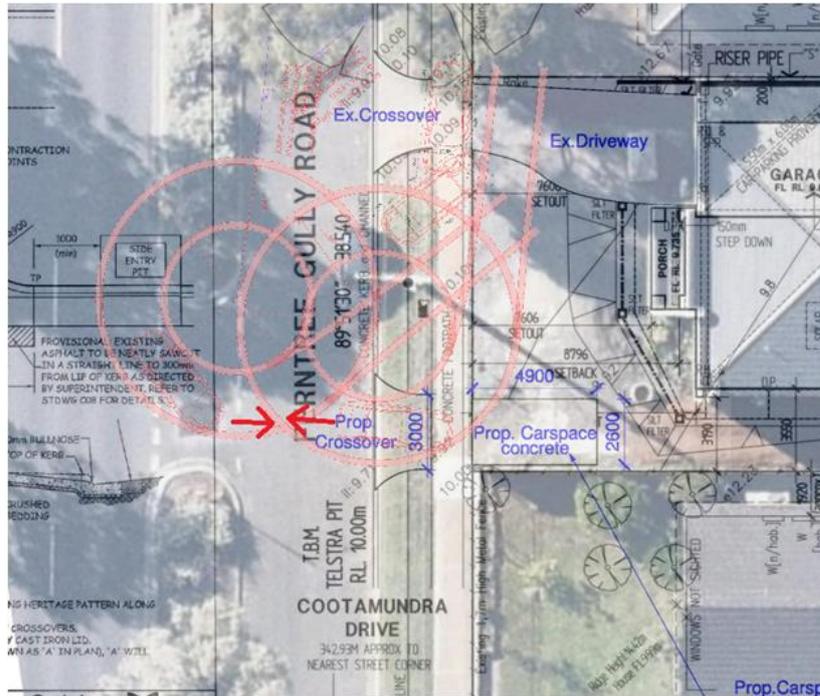
- 20 The Head, TfV replied via email on 15 March 2023 with the following:



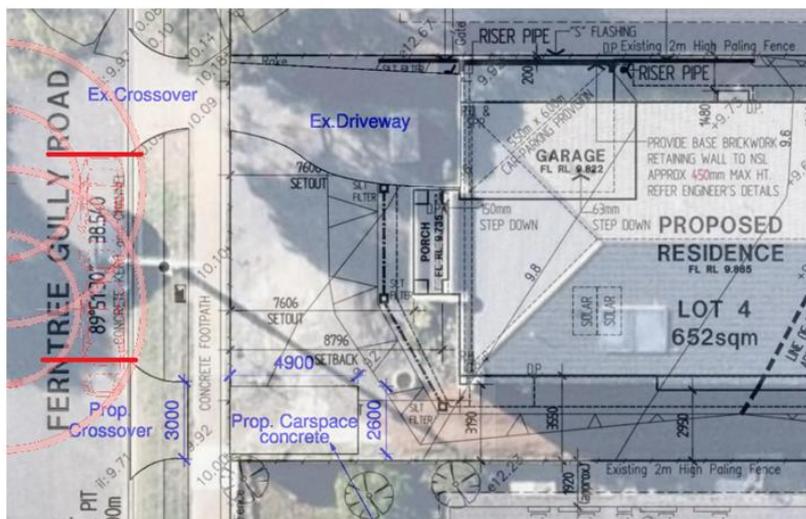
The Head, Transport for Victoria offers in-principle no objection for the proposal to replace the turntable with a single car space give that access is onto a service road.

- 21 Whilst the Head, TfV has not objected to the second crossover, council submit that they have a responsibility to ensure the arterial and service road remains functional and without conflict. Council submits that the subject land has a specifically higher risk as the proposed second crossover is directly opposite the median break in the service road.
- 22 The amended plans were provided to Council's Traffic Department engineers who provided the following comments:
 - a. Council does not support a second vehicle crossing for a single-house dwelling. An inspection of the street in the vicinity of the property shows that the single dwellings only have one vehicle crossing.
 - b. The proposed vehicle crossing will require vehicles to make a sharp left turn from Ferntree Gully Road (an arterial road) into the property. This could cause issues if vehicles are travelling fast along Ferntree Gully Road or alternatively the need for them to brake along Ferntree Gully Road presents and issue for rear end crashes.





- d. The proposed second vehicle crossing will result in the loss of an on-street parking space. The distance between the two crossovers could result in two vehicles trying to park and overhang the driveways.



23 The applicant says the crossover is:

- designed to the specifications of Council’s Standard Drawings;
- does not pose any risk to driver or pedestrian safety and the level of risk associated with vehicles making a sharp left turn or reversing into oncoming traffic is acceptable;
- does not risk the orderly use of the service road in any capacity as the only people accessing the service road would be largely familiar with its operation and it is the burden of the driver to manage the risk and enter the service road safely; and



- the proposed car parking space is of dimensions that meet the requirements under clause 52.06, being 4.9m in length and 2.6m in width and there is no risk to safety or to the operation of the road and this decision guideline is met.
- 24 The Tribunal finds that the proposed second crossover has the potential to result in safety impacts for drivers as it is directly opposite the median break in the service road. The Tribunal agrees with the reasons summarised by council, generally as follows:
- The proposed vehicle crossing will allow vehicles to make a sharp left turn from Ferntree Gully Road (an arterial road) into the property. This could cause issues if vehicles are travelling fast along Ferntree Gully Road or alternatively the need for them to brake along Ferntree Gully Road presents an issue for rear end crashes.
 - The proposed new vehicle crossing will require vehicles to reverse out of the parking space. This causes serious safety concern and the potential for conflicts for vehicles turning into the service road from Ferntree Gully Road.

Neighbourhood character

- 25 Council submits that a second crossover is out of character in the context of the surrounding area because there are no dwellings directly surrounding the subject land that have two separate crossovers, and separate crossovers can only be observed around the area for sites with two dwellings or more on a lot.
- 26 Further, they say that the proposed additional crossover does not respect the neighbourhood character of the area, will break up the pattern of green nature strips and front setback, and impacts on the on-street parking supply removing one space from the front of the site.
- 27 Council also submits that the dwelling on the land is provided with car parking in the form of a double garage. Space exists in front of the garage for further car parking. They say that the third car space proposed overloads the front of the site with paved area and car parking.
- 28 Council relies on policy, including the following:
- Clause 15.01-5S Neighbourhood Character including the objective:
 - To recognise, support and protect neighbourhood character, character identity and sense of place.
 - Clause 22.01 Residential development and character (specifically policy under Street setback, Site coverage and permeability, and Vehicle crossings) including to:
 - Exclude garages, carports and car spaces from street setbacks.



- Exclude hard paving such as car parking, turning circles, driveways and basement car parking within street setback areas.
 - Locate and minimise vehicle crossovers to prevent traffic disruption, and preserve nature strips and street trees.
 - Maximise landscaping in front setback areas by minimising the number of crossovers.
 - Clause 22.01-4 Preferred future character statements (specifically policy under Garden City Suburbs (Northern)) including that:
 - Additional vehicle crossovers will be discouraged.
- 29 The applicant submits that any commentary that does not specifically relate to the decision guidelines of clause 52.29 are irrelevant in this proceeding. They say that any submissions made by the Council that do not explicitly tie back to the views of the relevant road authority or the safety and operation of the road, do not carry weight in this proceeding.
- 30 The applicant says that neighbourhood character is not expressed as a decision guideline in clause 52.29 and council rely on ‘perceived non-compliances’ with the state planning policy framework clause pertaining to neighbourhood character.
- 31 The applicant submits that these policy items are designed to ensure that more significant development outcomes are controlled, and a crossover application is minor. They say an application of this minor level should not warrant a rigorous assessment against neighbourhood character objectives because, if this site were adjacent to a standard street that was not within the principal road network, a permit would not be triggered under any circumstances.
- 32 Since the Tribunal has made findings in the sections above that the proposal is not supported by the planning policy framework on the basis of the safety and operation of the road, the Tribunal does not consider it necessary to assess the proposal against neighbourhood character objectives or draw any further conclusions on the matter of neighbourhood character. Impacts to neighbourhood character are not central to our reasons for refusal.

CONCLUSION

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

Claire Bennett
Member

