

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P997/2023
PERMIT APPLICATION NO. TPA/54714

CATCHWORDS

Monash Planning Scheme; construction of a second dwelling in addition to an existing dwelling; reduction of car parking for medium density development; neighbourhood character outcomes for a medium density development.

APPLICANT	Samuel Cicerone
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	92 Lea Road Mulgrave
HEARING TYPE	Short Case Hearing
DATE OF HEARING	9 November 2023
DATE OF ORDER	9 November 2023
CITATION	Cicerone v Monash CC [2023] VCAT 1251

ORDER

- 1 In application P997/2023 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/54714 a permit is granted and directed to be issued for the land at 92 Lea Road Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - The construction of a second dwelling in addition to the existing dwelling
 - The extension of a dwelling if there are two or more dwellings on a lot
 - Reduction of the standard car parking requirement

Michael Deidun

Member



APPEARANCES

For applicant	John Joyner, Town Planner of Melbourne Planning Outcomes
For responsible authority	Adrienne Kellock, Town Planner of Kellock Town Planning

INFORMATION

Description of proposal	The construction of a two storey dwelling at the rear of an existing dwelling.
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 3
Permit requirements	Clause 32.08-6 to construct a dwelling if there is at least one dwelling existing on a lot, and to extend a dwelling if there are two or more dwellings on a lot, on land within the General Residential Zone Clause 52.06-3 to reduce the standard car parking requirement
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 19, 21, 22.01, 22.04, 22.05, 32.08, 52.06, 55, 65 and 71.02.
Land description	The land is a rectangular shaped allotment, with a frontage to Lea Road of 16.76 metres, a depth of 43.98 metres, and an overall area of 737 square metres. The land presently supports a single storey detached dwelling and an outbuilding.
Tribunal inspection	The Tribunal conducted an inspection of the review site and surrounding area prior to the hearing, on 1 November 2023.

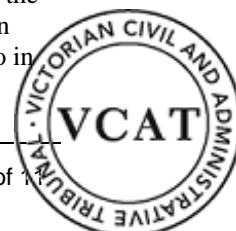


REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Samuel Cicerone (the ‘Applicant’) seeks to review the decision of the Monash City Council (the ‘Council’) to refuse to grant a permit for the proposed development of a second dwelling on land at 92 Lea Road Mulgrave (the ‘review site’).
- 2 I have decided to set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. Reasons for my decision were given orally at the conclusion of the hearing. What follows is an edited version of those oral reasons.
- 3 The application proposes the construction of a two storey dwelling at the rear of an existing single storey dwelling, on a standard residential lot of 737 m² in size, in a mid-block location. The existing dwelling is to be altered by reducing the size of the existing double carport on one side of the dwelling to a single carport, and by removing a rear component of the existing dwelling. The space created by a reduction in the size of the existing carport will provide for a driveway leading to the proposed rear dwelling. The existing dwelling will comprise three bedrooms and be provided with one car parking space, whereas the proposed dwelling will comprise four bedrooms, and be provided with one space in a single garage, and a second space in tandem in front of the garage. The two cars in the parking spaces for the proposed dwelling will be able to turn around at the rear of the review site and enter and exit in a forward motion, whereas the one car in the single carport for the existing dwelling will have to either enter or exit the review site while reversing.
- 4 The Council’s submission in this proceeding raised the following concerns. Firstly, that the proposed development does not comply with Clause 52.06 of the Monash Planning Scheme, in that it fails to provide the required amount of car parking for the existing dwelling, and the car parking layout is not appropriate. Secondly, that the proposal fails to achieve appropriate neighbourhood character outcomes, having regard to:
 - a. The proposed rear dwelling has a bulk and mass that is not responsive to the surrounding neighbourhood character;
 - b. The proposed rear dwelling has a rear setback that is too narrow, and as a result, a lack of landscaping opportunities is provided along the rear boundary; and,
 - c. The shared driveway and carport for the existing dwelling will present as visually dominant in the streetscape.

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.



- 5 I am not persuaded by these submissions, and instead find that the proposal is an appropriate response to the surrounding neighbourhood character, and the guidance provided by the Monash Planning Scheme. I make these findings for the following reasons.
- 6 Firstly, in relation to the car parking issues, I find that the proposed development provides for an appropriate level and layout of car parking, that is a reasonable response to Clause 52.06 of the Monash Planning Scheme. I make this finding for the following reasons, having regard to the concerns identified by Council.
- a. I acknowledge that the modifications to the existing double carport for the existing dwelling, to turn it into a single carport and make room for a driveway to the rear dwelling, will result in the modified single carport being 3.2 metres in width. Council is concerned that this does not comply with the minimum width for a single carport set out at Clause 52.06-9 of the Monash Planning Scheme, which is 3.5 metres. Historically, this minimum width is applied in order to ensure that car spaces that are enclosed by walls or fences within a garage or a carport, have sufficient space for a vehicle, as well as the opening and closing of doors. The proposed single carport for the existing dwelling will not be enclosed either by walls or fences. Instead, it will have a clearance to the dwelling on one side, and be open to a garden bed on the other side. These clearances will allow all doors on a car to open fully, and for convenient access to be gained to a vehicle parked in the single carport. For these reasons, I find that the carport is of a sufficient width to enable its efficient use as a single car space.
 - b. The Council also raises a concern that a vehicle using this single car space cannot enter and exit the site in a forward motion. I am not persuaded that this is an unreasonable proposition, for the following two reasons. Firstly, the car space already exists, in a format where both cars for the existing dwelling cannot enter and exit the site in a forward motion. Therefore, the proposal does not present an added safety risk to users of the footpath or the street, over the existing conditions. Secondly, Clause 52.06-9 only requires vehicles to be able to enter and exit a site in a forward direction, when an accessway serves four or more car spaces. As only three car parking spaces are proposed to be provided on the review site, such a requirement does not apply to this proposed development.
 - c. The Council is also concerned that the existing dwelling is provided with only one car parking space on site, when two car parking spaces are required under Clause 52.06-5 for a three bedroom dwelling. Having regard to the relevant decision guidelines under Clause 52.06-7 of the Monash Planning Scheme, I am satisfied that a reduction in car parking supply is appropriate



here, given the convenient access between this existing dwelling and the street, and the extent of on street car parking that appears to be regularly available in Lea Road.

- d. Finally, while I agree that the tandem car parking space in front of the garage for the rear dwelling requires a clearance between the car space and the garage door, I am satisfied that there is adequate room in the proposed driveway for this to occur, and that the plans do not need to be amended to show the clearance.

7 Secondly, in relation to the response of the proposal to the surrounding neighbourhood character, I find that the proposal is an appropriate response to both the existing neighbourhood character, and the future character statement for the Garden City Suburbs (Southern) Area under Clause 22.01-4 of the Monash Planning Scheme. In addition, I have had regard to the policies at Clause 22.01-3 of the Monash Planning Scheme. In relation to broader considerations of neighbourhood character, I find that the two storey scale of the proposed dwelling is an appropriate response to the existing mix of single and double storey dwellings that is emerging in this neighbourhood, including the existing two storey dwelling that is sited beyond the rear boundary of the review site. Further, the proposed materials and colours draw on the existing materials and colours that are already found in this neighbourhood, the pitched roof to the proposed dwelling will match the predominant roof form in this neighbourhood, and the proposal will enable the existing front garden to remain as an open and established front garden that contributes an appropriate level of landscaping to the streetscape.

8 In response to the specific concerns identified by Council, I make the following findings and reasons:

- a. While the proposed rear dwelling has a first floor that is of a significant size, it is well articulated with a range of setbacks from each boundary, and a high level of variation is provided through a change of materials, different window treatments, and a complex hipped roof form. The properties that abut the rear of the review site do not provide a sensitive interface to scale and bulk. I make this observation having regard to the size and positioning of outbuildings on the adjoining properties to the north and south of the review site, and the position of a rear two storey dwelling on the adjoining property to the rear of the review site, which has its primary area of secluded private open space facing north. For these reasons I find that the proposed development will not result in an unreasonable level of visual bulk to be viewed from any of the adjoining properties, and the proposed rear dwelling will integrate with the surrounding neighbourhood character.
- b. The proposed rear setback varies between 2.58 and 5.7 metres. At these setbacks, the proposal either replicates or exceeds the



setbacks in the corresponding rear dwelling on the adjoining property beyond the rear boundary of the review site. The varied Standard B17 under the schedule to the zone requires either built form on the boundary, or setback 5.0 metres. The avoidance of built form to the boundary provides a more generous rear boundary setback arrangement, as does the component setback 5.7 metres. In addition, I regard the proposed variation in rear boundary setbacks to achieve an outcome that is consistent with other nearby development in rear yards in this neighbourhood, and therefore the emerging neighbourhood character. As such, the side and rear setbacks objective is achieved.

- c. Further, while the proposed rear setback is partly occupied by an easement, I am satisfied that there are sufficient opportunities in the rear of the review site to achieve a landscape setting. This is not a neighbourhood with a strong and consistent character of canopy vegetation in rear yards. While some properties in the surrounding context do have canopy trees at the rear of their sites, most of the surrounding properties have open rear yards with minimal landscaping contribution. While the proposed dwelling will insert a built form into the existing open rear yard, that is a natural and expected outcome as a result of the increased housing that is presently needed and strongly encouraged in the middle ring suburbs of Melbourne.
- d. I am not persuaded that the proposed single carport for the existing dwelling, and driveway to the rear, will result in an unreasonable presentation in the streetscape. In fact, I am not persuaded that it will present as a more dominant element of car accommodation, as compared to the existing double carport that sits slightly forward of the existing dwelling, and which is highly visible in the streetscape. Indeed, the proposal could be said to represent an improvement, as it will reduce the size of the existing double carport significantly, provide an additional garden bed to the south of the reduced carport where one currently does not exist, and provide a smaller built form associated with car accommodation that is visible in the streetscape. Further, I am satisfied that the proposed carport is consistent with the character of the placement of car accommodation, as can be viewed on other properties along Lea Road.

- 9 The Council did not raise any concerns in relation to the standard of internal amenity to be achieved on site, nor in relation to the potential for overshadowing and overlooking of the surrounding properties. I have undertaken my own assessment, and find that the proposed dwelling and the existing dwelling, will each achieve a level of internal amenity that is appropriate, having regard to the various provisions of Clause 55 of the Monash Planning Scheme. I also find that the proposal will not result in



any unreasonable levels of overlooking or overshadowing to the surrounding properties.

- 10 The concerns identified by Council and presented in submission before this Tribunal, represent Council's pursuit of an ideal form of development on the review site, that perfectly meets all of the policies and provisions of the Monash Planning Scheme. However, a proposal need not be ideal in order to be granted a planning permit. This means that it does not need to meet every policy objective and every provision. Instead, the planning system in Victoria seeks to facilitate development that is appropriate and reasonable. An appropriate and reasonable development may not quite tick every box that Council would ideally want ticked, but it should achieve an outcome that is able to be supported having regard to the range of relevant policy encouragement, and the site constraints and opportunities that are in play. Unfortunately, it is the pursuit of the ideal that is holding up many projects such as this, at a time when Melbourne's population needs projects like this to proceed, without unreasonable delay.
- 11 It therefore follows that I will set aside the Council's decision and direct the grant of a planning permit subject to conditions. In relation to the permit conditions, I will broadly adopt those that were drafted by Council and circulated prior to the hearing, but with the following changes:
 - a. I will delete Conditions 13 and 14 as drafted by Council, as I do not regard the matters sought to be covered as appropriate for conditions on a planning permit.
 - b. I will also delete the permit expiry condition as drafted by Council, and replace it with the one adopted as standard by the Tribunal.

Michael Deidun

Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54714
LAND	92 Lea Road Mulgrave

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- The construction of a second dwelling in addition to the existing dwelling
- The extension of a dwelling if there are two or more dwellings on a lot
- Reduction of the standard car parking requirement

CONDITIONS

- 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 Madison & Co, dated Feb 2023 with revision date 30 April 2023, but modified to show:
 - (a) A Landscape Plan in accordance with condition 3 of this Permit.
all to the satisfaction of the Responsible Authority.
- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 3 Concurrent with the endorsement of the development plans, an amended landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be 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
 - (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
- (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) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (h) The location of external lighting (if any);
- (i) details of all proposed hard surface materials including pathways, patio or decked areas

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

- 4 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.
- 5 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.
- 6 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.
- 7 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.
- 8 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.
- 9 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. Refer to Engineering Plan Checking on www.monash.vic.gov.au.

- 10 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.
- 11 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.
- 12 The full cost of reinstatement of any Council assets affected by the 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.
- 13 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.
- 14 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 15 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority.
- 16 The development must be provided with a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of the vehicle crossing to provide a clear view of pedestrian on the footpath of the frontage road.
- 17 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.
- 18 Any walls on the title boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
- 19 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
- 20 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** –

