

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P739/2023
PERMIT APPLICATION NO. TPA/54290

CATCHWORDS

Section 77 *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; Neighbourhood Residential Zone Schedule 3; Two crossovers; Hard Surfaces; Landscaping; Dwelling Entrance; Neighbourhood Character.

APPLICANT	Mladen Ervacanin
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	3 Lewis Grove MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	18 December 2023
DATE OF ORDER	8 January 2024
CITATION	Ervacanin v Monash CC [2024] VCAT 14

ORDER

- 1 In application P739/2023 the decision of the responsible authority is affirmed.
- 2 In planning permit application TPA/54290 no permit is granted.

Bill Sibonis
Senior Member

Cassandra Rea
Member

APPEARANCES

For M Ervacanin

A Clarke, Town Planner of Clarke Planning
Pty Ltd

For Monash City Council

M Harding, Town Planner



INFORMATION

Description of proposal	Construction of an additional dwelling to the rear, including alterations and an extension to the existing dwelling
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme ('Planning Scheme')
Zone and overlays	Neighbourhood Residential Zone - Schedule 3, Creek Environs Area ('NRZ3')
Permit requirements	Cl. 32.09-7: (construction of a dwelling if there is at least one dwelling existing on the lot; extend a dwelling if there are two or more dwellings on the lot)
Key scheme policies and provisions	Cl. 11, 15, 16, 21, 22.01, 22.05, 32.09, 52.06, 55 and 65.
Land description	The review site is located on the east side of Lewis Grove, between Dickson Street and Carrol Grove, in Mount Waverley. It is a regular lot with a frontage of 15.24 metres and a depth of 45.72 metres, yielding an overall area of 697 square metres. The property is occupied by a single-storey detached dwelling with a protruding basement level at the rear. Surrounding land is developed in the form of single dwellings, predominantly single storey.
Tribunal inspection	An inspection was undertaken after the hearing.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This proceeding concerns a proposal to construct an additional dwelling located to the rear of the existing dwelling on the subject land. A new carport with its own driveway and vehicle crossover is to be provided, as well as some alterations to a deck and landing as necessary to the existing dwelling to accommodate the new dwelling behind. The rear dwelling will be double storey, with a double garage accessed by the extension of the existing driveway adjacent to the northern title boundary.
- 2 The Monash City Council ('the Council') refused a planning permit on grounds which address matters of neighbourhood character and dwelling entry.
- 3 The applicant has applied to the Tribunal for a review of the Council's decision.
- 4 Based on the submissions, the key issues for determination may be expressed as follows:
 - Will the development contribute to the preferred neighbourhood character?
 - Is the dwelling entrance for Dwelling 1 acceptable?
- 5 There is no dispute between the parties that the site has strategic justification for medium density housing. In this respect, the proposal complies with those policies within the Planning Policy Framework that support increased residential densities in established areas to make better and more efficient use of infrastructure and services.² The proposal would also contribute to housing diversity, as sought by policy at clause 16.01-3S.
- 6 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered the submissions, with regard to the relevant policies and provisions of the Planning Scheme, assisted by our inspection, we have determined to affirm the Council's decision. Our reasons follow.

WHAT IS THE KEY PLANNING CONTEXT?

- 7 Clause 21.04 (Residential Development) of the Municipal Strategic Statement ('MSS') refers to the adopted Monash Housing Strategy 2014 and provides a residential development framework. The site is identified in the corresponding map as 'Garden City Suburbs,' a designation which applies to areas suitable for incremental change.

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.

² Relevant clauses include 16.01-1R and 21.04-3.



8 One of the key issues stated in Clause 21.04-2 relevant to the application is:

The retention of neighbourhood character and enhancement of garden city character is very important to the Monash community and redevelopment needs to be respectful of these character considerations.

9 Council referred to the following key objectives and strategies of Clause 21.04:

To recognise the need to conserve treed environments and revegetate new residential developments to maintain and enhance the garden city character of the municipality.

To protect and contribute to the special character of the creek environs.

Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within Clause 22.01.

Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.

Ensure that development contributes to the naturalistic character of the creek environs.

10 Under Clause 22.01, Residential Development and Character Policy, the site is located within the Creek Environs Area and the related future character statement says:

Creek Abuttal and Creek Environs

The neighbourhood character of this area will be defined by its spacious garden settings, tall canopy trees and consistent built form. New development will be designed to complement the established planting patterns and topography. There will be consistency in front setbacks and the maintenance of larger setbacks from the creek which will provide areas for planting and sustaining larger trees. Vegetation will dominate the streetscape and buildings will be recessive and normally hidden from view behind vegetation and tall trees. The larger rear setbacks will accommodate substantial vegetation, including large canopy trees. The landscape will be complemented by street trees and a lack of front fencing. Regular front setbacks and side setbacks from at least one side boundary will reinforce the consistent setback patterns along the street, allow views between buildings and provide space for landscaping.

New dwellings will complement the older 1950s and 1960s building styles through the use of simple details, low building scale and articulated facades. They will be well-designed, energy efficient and adhere to sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks and open space areas. In this instance, the building should address the public area.



Upper levels will be recessed and articulated to reduce visual dominance in the streetscape.

Design emphasis should be placed on promoting the preferred neighbourhood character by responding to the landscape setting.

This area will continue to provide lower scale residential development. Modest dwellings, with simple pitched rooflines and articulated facades, will continue to be the prevailing character.

New development will be well landscaped retaining the 'open landscape character' of the nearby creek environment and will taper down in scale closer to the creek. Development will visually connect to the creek environment through the use of colours and materials for buildings and fencing that blend with, rather than contrast with it.

Given the important recreational and ecological functions of the creek corridors, development on adjoining residential sites should seek to respect and enhance the existing character of these open spaces.

11 The purpose of the NRZ includes:

To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.

12 The schedule to the NRZ3 details the following neighbourhood character objectives:

To ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography.

To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.

13 The schedule also varies selected clause 55 standards, as follows:

- B8 Site coverage: 50%
- B9 Permeability: 30%
- B13 Landscaping: retain or provide at least one canopy tree plus one canopy tree per 5 metres of site width with a minimum mature height equal to the height of the roof. The species of canopy trees should be native, preferably indigenous.
- B17 Side and rear setbacks: rear setback – 5 metres
- B28 Private open space: An area of 75 square metres, with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum dimension of 5 metres, convenient access from a living room and clear of all structures and services.
- B32 Front fence: Streets in a Transport Zone 2 – 1.2 metres. Other streets – 0.6 metres.

WILL THE DEVELOPMENT CONTRIBUTE TO THE PREFERRED NEIGHBOURHOOD CHARACTER?

- 14 The Council's principal neighbourhood character concern is the provision of two vehicle crossovers and driveways, and the associated implications for landscaping. The Council's submission included a photographic analysis of vehicle access arrangements for dwellings within the streetscape which demonstrated the provision of single crossovers for lots or, put differently, no examples of two crossovers per lot. It was submitted that the preferred siting typology for development is dwellings one behind the other, using a shared driveway. No. 15 Lewis Grove was an example offered as a preferred outcome.
- 15 The applicant submitted that the proposal complies with standard B14 at clause 55.03-9, Access objective. A photographic analysis of Lewis Street and immediate streets, capturing driveway examples in Dickson Street, Cash Grove and Carrol Grove was provided. It was suggested that inspection of these streets would assist in determining the prominence of driveways in the immediate context. Our inspection included these streets.
- 16 In the Council's submission, the provision of the two driveways will result in excessive hard surfacing in the frontage which, in turn, results in insufficient landscaping opportunities.
- 17 The Council acknowledged that the front setback of the existing dwelling is dominated by concrete, but submitted that the redevelopment of the site should achieve an outcome that is in keeping with the policy direction of the Planning Scheme.
- 18 The applicant's submission included plans showing existing permeability within the front setback at 29.53 square metres and the proposed permeability to be 70.05 square metres, with a commensurate reduction in the extent of hard pavement.
- 19 By reference to the decision guidelines of the schedule to the NRZ3, the Council submitted that future development ought to produce outcomes that:
 - Maximise planting opportunities adjacent to the street by excluding hard paving such as car parking, turning circles and driveways.
 - Maximise landscaping in front setback areas by minimising the number of crossovers.
- 20 Concern was also expressed by the Council regarding the increased hard surface cover due to the new crossover specifically, and the change to the rhythm of crossovers within the streetscape.
- 21 In addressing whether sufficient opportunity for the provision of landscaping is provided, the Council referred to standard B13 at clause 55.03-8³ and to the Planning Scheme's Tree Conservation Policy at clause 22.05.

³ Landscaping objective.



- 22 Standard B13 has the following objectives:
- To encourage development that respects the landscape character of the neighbourhood.
 - To encourage development that maintains and enhances habitat for plants and animals in locations of habitat importance.
 - To provide appropriate landscaping.
 - To encourage the retention of mature vegetation on the site.
- 23 The relevant objectives identified by Council under Clause 22.05 are:
- To maintain, enhance and extend the Garden City Character throughout Monash by ensuring that new development and redevelopment is consistent with and contributes to the Garden City Character as set out in the Municipal Strategic Statement.
 - To promote the retention of mature trees and encourage the planting of new canopy trees with spreading crowns throughout Monash.
- 24 Further, pursuant to Clause 22.05 it is policy that:
- Semi-mature canopy trees with spreading crowns be planted as part of any new development, in open space areas, along boundaries adjacent to neighbouring open space and in front setback areas to reinforce the Garden City Character of the area.
- 25 The applicant submitted that the plans would allow an area of 62.26 square metres within the front setback as a single large garden area that could accommodate three large Coast Banksia and other complimentary plantings. It was further submitted that across the site, the future planting of seven trees would result in a density of planting of at least one tree per each 100 square metre of site area. The provision of seven trees will exceed the requirement of varied standard B13 of four trees across the site.
- 26 The parties agree that the subject land has no significant trees to be retained. The applicant identified the neighbouring tree at 17 Curtis Street to the east as the only sizable tree in the immediate context.
- 27 The Council does not consider the Coast Banksia to be an appropriate species for this location and submitted that the planting over an easement with assets is problematic.
- 28 The 15.24 metre frontage is a conventional lot width for this neighbourhood. With two driveways within the front setback, over 39% will be occupied by driveways. It is acknowledged that the two driveways comply with standard B14 at clause 55.03-9⁴ however the Planning Scheme seeks to minimise driveways and hard surfaces whilst maximising landscaping to enhance the neighbourhood character. This is reflected in clauses 21.04 and 22.01, as detailed earlier. In addition, the decision guidelines of Schedule 3 of the NRZ3 include:

⁴ Access objective.



Maximise planting opportunities adjacent to the street by excluding hard paving such as car parking, turning circles and driveways.

Maximise landscaping in front setback areas by minimising the number of crossovers.

- 29 The proposal will be incongruous within the existing streetscape. Lewis Grove is characterised by a single crossover and driveway for each lot. The only exceptions from this standard streetscape appearance and form have been associated with development on corner sites at 6 and 23 Lewis Grove. However, the presence of these crossovers/driveways does not detract from the preferred neighbourhood character as detailed in policy. The design response is not in keeping with what already exists in Lewis Grove, nor will contribute to the preferred future character expressed in policy.
- 30 The photo analysis provided by the permit applicant included nearby streets that had more instances of additional hard surface paving within front setbacks. These were mostly associated with single dwellings that were not subject to planning approval. These are sufficiently removed from the subject site to not have any meaningful influence on its context and, in any event, are not consistent with the preferred character. They do not provide justification for development that does not contribute to this character, as expressed in policy.
- 31 Other than on corner sites, medium density housing developments in the neighbourhood incorporate a shared driveway and associated single crossover. The proposal has not minimised the number of crossovers. A crossover has been provided for each dwelling, which is inconsistent with the decision guideline of NRZ3. The resultant extent of hard surfacing and consequential limitation on landscaping opportunities is accentuated by the 15.24 metre width of the lot, and will detract from, rather than contribute to, the preferred neighbourhood character.
- 32 The surface treatments, whether permeable or hard surfaces, within the front setback will result in an area 4.0 metres wide that will become the pedestrian entry point for both dwellings. The impact of this arrangement will be discussed further below. Whilst tree canopy provision meets the variation of the NRZ3 and is an improvement on the existing site condition, we find that the location of other landscaping does not soften the visual impact of the hard surfaces within the front setback. The landscaping plan relies upon narrow garden beds that will not be effective to mitigate the visual impact of driveways.

IS THE DWELLING ENTRANCE FOR DWELLING 1 ACCEPTABLE?

- 33 A pedestrian path for the existing dwelling will be located adjacent to the driveway serving the rear dwelling. This contributes to the extent and visual impact of hard surfaces when viewed from the street. Due to the location of a garden bed, the pedestrian path narrows significantly to 500mm and would not be trafficable.

- 34 The applicant submitted that it is a luxury for the front dwelling to have its own pedestrian path and suggested that the pedestrian entry could be incorporated into the driveway of the new dwelling and secured via an easement, or the like.
- 35 During the hearing, the Tribunal asked whether the driveway and pedestrian path for the section in front of existing dwelling could be separated to provide a garden bed to soften the visual impact of the hard surfaces. The applicant submitted that this is achievable however the location of the existing front fence and the movement of the sliding gate would create some challenges in providing the separate access.
- 36 Even if the pedestrian path were to be removed as suggested by the applicant, the existing vehicle sliding gate would need to serve all pedestrians for both dwellings, as well as vehicles associated with the rear dwelling. This reduces the sense of address to both dwellings.

CONCLUSION

- 37 Whilst this development may achieve a high number of ‘silent positives,’ as referred to in the hearing by the applicant, we have concluded that the development will not contribute to preferred neighbourhood character due to the second driveway/crossover, hard surface cover and the inability for landscaping to soften the resultant impact. Similarly, the presentation and arrangement associated with the dwelling entries has not been well resolved.
- 38 For these reasons, the Council’s decision is affirmed. No permit is granted.

Bill Sibonis
Senior Member

Cassandra Rea
Member

