

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1192/2023
PERMIT APPLICATION NO. TPA/54359

CATCHWORDS

Section 82 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone; two double storey dwellings; neighbourhood character; amenity and traffic safety

APPLICANT	Victoria Dixon and Sean Dixon
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Mulyana Wijaya
SUBJECT LAND	7 Nicholson Avenue, Mount Waverley
HEARING TYPE	Hearing
DATE OF HEARING	7 May 2024
DATE OF ORDER	7 May 2024
CITATION	Dixon v Monash CC [2024] VCAT 425

ORDER

Permit granted

- 1 In application P1192/2023 the decision of the responsible authority is varied.
- 2 In planning permit application TPA/54359 a permit is granted and directed to be issued for the land at 7 Nicholson Avenue, Mount Waverley in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two (2) double storey dwellings on a lot

Christopher Harty
Member



APPEARANCES

For Victoria Nixon and Sean Dixon	Mr Sean Dixon and Ms Victoria Dixon, both in person
For Monash City Council	Ms Michaela Harding, Town Planner
For Mulyana Wijaya	Mr Mulyana Wijaya and Ms Sharanya Chandrananth, owner



INFORMATION

Description of proposal	Construction of two (2) double storey dwellings in a tandem format on a lot.
Nature of proceeding	Application under section 82 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the decision to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 3 – ‘Garden City Suburbs’ (‘GRZ3’) Vegetation Protection Overlay Schedule 1 – ‘Tree Protection Area’ (‘VPO1’)
Permit requirements	Clause 32.08-7 to construct two or more dwellings on a lot.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21.01, 21.04, 22.01, 32.08, 52.06, 55, 65 and 71.02.
Land description	<p>The subject land is located on the western side of Nicholson Avenue in Mount Waverley. It is an irregular shaped parcel of land with a frontage width of 16.16 metres, a maximum depth of 45.54 metres and a site area of 728 square metres. The land has a fall of approximately 1.5 metres from the eastern boundary to the western boundary and is currently vacant, with the previous dwelling removed. There is an existing single crossover located on the northern side of the frontage. No trees were retained on site.</p> <p>The surrounding area is residential in character with predominantly single or double storey dwellings with some examples of multi-dwelling developments.</p>
Tribunal inspection	An unaccompanied inspection was conducted prior to the hearing.



REASONS¹

- 1 I delivered reasons for my decision orally on 7 May 2024 at the conclusion of the hearing. These are the reasons for the decision.
- 2 This is a joint application by Victoria Dixon and Sean Dixon ('applicants') to review the decision of the Monash City Council ('Council') to issue a Notice of Decision to Grant a Permit No. TPA/54359 on 25 August 2023 for the construction of two (2) double storey dwellings on a lot at 7 Nicholson Avenue, Mount Waverley ('site').
- 3 The applicants' grounds of review generally relate to:
 - Neighbourhood character issues associated with the proposal being at odds with the single dwelling character evident in the neighbourhood including the emergence of luxury homes and encroachment into the front setback by a porch.
 - Impacts on amenity associated with overlooking.
 - Impacts on traffic safety associated with the additional traffic generated by the proposal and the difficulty with on-street parking given Nicholson Avenue is a cul-de-sac street.
- 4 Council and the permit applicant, Mulyana Wijaya ('respondent') and the owner Ms Sharanya Chandrananth, disagree with the grounds of the applicants and consider the proposal has been designed to achieve a respectful response to the neighbourhood character of the cul-de-sac and is an acceptable outcome to the requirements and policy of the Monash Planning Scheme ('planning scheme') and the physical context of the site and surrounds.
- 5 I have been provided with a detailed description of the review site and its environs, the proposal, the planning scheme provisions and applicable policies. It is not necessary for me to repeat that material other than to record that:
 - The site is on the western side of Nicholson Avenue in Mount Waverley. It is an irregular shaped parcel of land with a frontage width of 16.16 metres, a maximum depth of 45.54 metres and a site area of 728 square metres.
 - The site has a fall of approximately 1.5 metres from the eastern boundary to the western boundary and is currently vacant, with the previous dwelling removed. There is an existing single crossover located on the northern side of the frontage. A small number of trees along the rear boundary have been and are proposed to be retained on the site.

¹ The submissions 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 surrounding area is residential in character with predominantly single or double storey dwellings with some examples of multi-dwelling developments in the Seaview Street and Prospect Street area.
- The site and surrounding area are in the General Residential Zone Schedule 3 ('GRZ3') which relates to the 'Garden City Suburbs' in Monash. The GRZ3 encourages housing growth and diversity particularly in locations offering good access to services and transport. The GRZ3 also encourages development that respects the neighbourhood character of the area.
- Schedule 3 to the GRZ contains neighbourhood character objectives supporting development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees, limiting hard paving and providing generous front and side setbacks to minimise visual bulk and mass, provide space for landscaping to the streetscape and locating garages behind buildings.
- The GRZ3 also varies Rescode provisions under Clause 55 of the planning scheme in relation to minimum street setbacks, site coverage, permeability, landscaping, side and rear setbacks, private open space and front fence heights.
- The site is also affected by the Vegetation Protection Overlay Schedule 1 – 'Tree Protection Area' ('VPO1'). I note that the application is exempt from notice requirements and review rights where tree removal is proposed and requires a permit under the VPO1. However, I understand that the proposal does not trigger any permit requirements under the VPO1 because the trees did not satisfy the tree removal thresholds.

6 The proposal is to construct two (2) double storey dwellings in a tandem form. The key elements of the proposal are as follows:

- Provision of a front setback of 7.6 metres with an encroachment of 1.4 metres for a front porch which is 3.5 metres high. I note this is compliant with the varied schedule setback of 7.6 metres and with the requirements of Standard B6 under Clause 55.03-1 where a porch less than 3.6 metres in height may encroach into the front setback by no more than 2.5 metres.
- Site coverage of 39%, site permeability of 42% and garden area of 40%. I note these metrics are all compliant with the requirements of the planning scheme.
- Dwelling 1 will have a maximum height of 7.35 metres and Dwelling 2 will be 7.4 metres in height. I note these heights are compliant with the requirements of the planning scheme.
- Dwelling 1 has 3 bedrooms and Dwelling 2 has 4 bedrooms. Both dwellings have a double garage with access from the existing single



crossover located on the northern side of the frontage. I note the provision of car parking is compliant with the requirements under Clause 52.06 of the planning scheme.

- Private Open Space with Dwelling 1 proposed to have a total of 153 square metres with 37.5 square metres set aside as secluded private open space and Dwelling 2 proposed to have a total of 136 square metres with 62 square metres set aside as secluded private open space and both with a minimum dimension of 5 metres. I note the provision of private open space for both dwellings are compliant with the varied requirements under the GRZ3.
- Pitched tiled roof with a mix of brick and render finish and no front fencing.

7 I have had the benefit of submissions from Ms Harding for Council, Mr and Mrs Dixon for the applicants and Mr Wijaya and Ms Chandrananth for the respondent and have given consideration to them.

8 With this matter, I must decide whether the proposal will produce an acceptable and not a perfect outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02 – ‘Integrated Decision Making’ of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.

9 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.

10 Having considered all submissions presented with regards to the applicable policies and provisions of the planning scheme and from my inspection, I find the proposal represents an acceptable outcome.

11 Clause 21.04 relates to ‘Residential Development’ and introduces a residential development framework which comprises eight areas that have varying development potential, each of which have a preferred future character type. The site is in Category 8 relating to ‘Garden City Suburbs’. These areas are focussed on Council’s ‘Garden city character’. Clause 21.01 refers to this as leafy, well vegetated private gardens and streets. The proposal retains the existing street tree and includes space for canopy tree planting which has been conditioned to satisfy the varied requirements for landscaping of the GRZ3.

12 Clause 22.01 relating to ‘Residential Development and Character Policy’ identifies the site in the ‘Garden City Suburbs Northern Areas’. The specific character sought recognises that change will occur in the area which still is required to respect the existing character of the area. Relevant to the site and proposal, the future character statement says:



Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

...New development will complement the established buildings through consistent siting, articulated facades and use of materials....

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.

....

- 13 The proposal is for a modest infill residential development whereby what was a single storey dwelling on the site is replaced by two double storey brick and tile dwellings. This form of medium density residential development assists in contributing to a diversity of housing and accommodating population growth as sought under Clause 11 relating to 'Settlement' and Clause 16 relating to 'Housing'.
- 14 The neighbourhood exhibits both single and double storey dwellings and, although the proposal represents the first medium density residential development in Nicholson Avenue which currently has single dwellings, it is not at odds with the built form or streetscape character present in the street which is sought under Clause 15.01-2S relating to 'Building design' and Clause 15.01-5S relating to 'Neighbourhood character'.
- 15 Neighbourhood character in this area is defined by a mixture of older style single storey dwellings and newer, larger double storey dwellings. I note that some dual occupancy type developments are present at the entrance to the cul-de-sac that becomes Nicholson Avenue at Seaview Street and multi-dwelling development on the corner of Seaview Street and Prospect Street. Change has occurred, but that its extent is modest. The proposal follows that trend.
- 16 I find the proposal is suitable for the site and area. It respects the existing character with its proposed setbacks, two storey form and design finish while also contributing to the diversity of housing in the area. The proposal is generally consistent with the outcomes sought for this area.
- 17 The streetscape view will be maintained with Dwelling 1 facing the street and Dwelling 2 set behind with the tandem layout. Canopy tree planting is available in the front setback with use of the existing driveway and garaging set behind the front dwelling.
- 18 Regarding neighbourhood character and front setbacks, I am satisfied the encroachment offered by the front porch is nominal and compliant with what the planning scheme allows. The general front setback of 7.6 metres



combined with the single accessway creates appropriate spacing for landscaping including the planting of canopy trees.

- 19 Regarding amenity impacts, Clause 55.04-6 relating to overlooking requires views into existing secluded private open space and habitable room windows to be limited, not avoided.
- 20 I am satisfied overlooking will be minimised and compliant with the requirements of Standard B22 under the clause. The presence of high boundary fencing and fencing of the private open space of Dwelling 1, combined with a separation of 9 metres from windows on the upper levels of Dwelling 1, and the proposed screening at both ground and upper floor levels of Dwelling 2 will result in appropriate mitigation of amenity impacts from overlooking. I do not consider the potential for upward looking views from the proposal to the upper-level habitable room windows of the neighbouring two storey dwelling to the north represents an unreasonable loss of amenity.
- 21 I note the conditions further address this issue for the property to the south at 7 Nicholson Avenue.
- 22 For completeness, I also accept that impacts from overshadowing will not be unreasonable. The proposal demonstrates compliance with the requirements of Standard B21 under Clause 55.04-5.
- 23 Side boundary setbacks are compliant and reasonable. I also note a variation is proposed for the rear setback with a setback of 4.4 metres. This variation from the requirement of 5 metres under the GRZ3 is considered small and reasonable given the angled nature of the rear boundary and where most of Dwelling 2 achieves a rear setback of 5 metres or more with space for landscaping.
- 24 Regarding traffic, the proposal satisfies the requirements of Clause 52.06 of the planning scheme and no parking dispensation is triggered. I am satisfied the local road network can accommodate the additional traffic movement in a safe and slow manner. The proposal does not rely on on-street parking and does not result in the loss of available on-street parking capacity. I find any traffic impacts are not unreasonable. Any additional similar developments that may occur in the future and any effects on the road network will be subject to assessment at that time and what may occur in the future in terms of precedent should not influence decision making today. Council, as the relevant local road management authority, has the option of implementing additional road management measures if, and when necessary.
- 25 I note Council has suggested a condition relating to a freestanding trellis in lieu of the proposed lattices on fences. I consider this acceptable and will include such a condition.



- 26 I also understand Council has suggested a condition requiring any species for planting be selected to avoid root system impacts on any foundations. I consider this acceptable and will include such a condition.
- 27 I have deleted Council's suggested conditions relating to compliance with documents and prohibition of connection to reticulated gas services. These conditions are either not required or are covered by transitional arrangements.
- 28 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to varied conditions.

Christopher Harty
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54359
LAND	7 Nicholson Avenue, Mount Waverley

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two (2) double storey dwellings on a lot

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 prepared by Chosen Homes, dated 12 June 2023, but modified to show:
 - (a) Provision of a fixed privacy screen to at least 1.7 metres above finished floor level on Dwelling 1's first floor south elevation lounge window. The screen must be fixed, translucent glass or an external screen to the window which has a maximum of 25% transparency.
 - (b) Tree protection zones and structural root zones of all trees to be retained on site, with percentages of the development's encroachment within these zones.
 - (c) A Landscape Plan in accordance with condition 4 of this Permit.
 - (d) Replace proposed lattices on fences with freestanding trellises that achieves a similar height and outcome of limiting overlooking.all to the satisfaction of the responsible authority.

Layout not to be Altered

- 2 The development and use as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Landscape Plan

- 3 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:



- (a) 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;
- (b) 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;
- (c) A minimum of four (4) canopy trees (minimum 1.5 metres tall when planted). The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the responsible authority;
- (d) Selection of species for planting to avoid root system impacts on any foundations.
- (e) The location of any internal and boundary fencing to the site;
- (f) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (g) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (h) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (i) The location of any retaining walls associated with the landscape treatment of the site;
- (j) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (k) 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;
- (l) The location of external lighting (if any);
- (m) The location of electricity supply meter boxes. The electricity supply meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash"; and
- (n) Landscaping and planting within all open areas of the site.

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



Tree Protection

- 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.

Landscaping Prior to Occupation

- 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.

Drainage

- 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.



Vehicle Crossovers

- 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. 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.

Privacy Screens

- 16 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.

Boundary Walls

- 17 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the responsible authority.

Satisfactory Continuation and Completion

- 18 Once the development has started it must be continued and completed to the satisfaction of the responsible authority.

Expiry of permit for development

- 19 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 –

