

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P687/2022
PERMIT APPLICATION NO. TPA/53459

CATCHWORDS

Monash Planning Scheme; medium density development and neighbourhood character outcomes; Garden Suburban Northern Area under Clause 22.01 of the Monash Planning Scheme.

APPLICANT	Nushrath Ahamed
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	7 Cranwell Court, Mulgrave
HEARING TYPE	Hearing
DATE OF HEARING	29 August 2022
DATE OF ORDER	29 August 2022
CITATION	Ahamed v Monash CC [2022] VCAT 1001

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & 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: Urban Creative
 - Drawing numbers: A001, A011, A101, A201, A202, A501 to A505, A901 to A907, A1000
 - Dated: 27 July 2022 (except that plans A901 to A907 are dated 8 December 2021)
- 2 In application P687/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53459 a permit is granted and directed to be issued for the land at 7 Cranwell Court, Mulgrave in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - To construct two dwellings on a lot

Michael Deidun

Member



APPEARANCES

For applicant	James Livingston, Town Planner of JLP Melbourne He called the following witness: <ul style="list-style-type: none">• Andrija Zivanovic, Traffic Engineer of Ten Three Eight
For responsible authority	Adrienne Kellock, Town Planner of Kellock Town Planning

INFORMATION

Description of proposal	The construction of two double storey dwellings
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 two or more dwellings on a lot on land within the General Residential Zone
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21, 22.01, 22.04, 22.05, 32.08, 52.06, 55, 65 and 71.02.
Land description	The land is an irregular shaped allotment, with an overall area of 811 square metres. The land presently supports a single storey detached dwelling.
Tribunal inspection	The Tribunal inspected the site and surrounding area prior to the hearing, on 19 August 2022.



REASONS¹

- 1 Nushrath Ahamed (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 two dwellings on land at 7 Cranwell Court, Mulgrave (the ‘review site’).
- 2 The Council opposes the grant of a planning permit, predominantly on the basis of the impact of the proposal on the surrounding neighbourhood and landscape character. They also argue that the first floor setbacks to the property to the east are insufficient, and raise one concern in relation to the level of internal amenity to be enjoyed by one of the proposed dwellings.
- 3 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.
- 4 Policy at Clause 21.04 of the Monash Planning Scheme identifies the review site as within a Garden city suburb, which is suitable for incremental change. Unfortunately, this policy does not provide any guidance as to what incremental change means or looks like. In a broader approach to character issues across the municipality, the following policies are relevant from Clause 21.04-3 of the Monash Planning Scheme:
 - To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.
 - 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 encourage a high standard of architectural design in buildings and landscaping associated with residential development that takes into account environmentally sustainable development.
- 5 The review site is located within a Garden City Suburbs Northern character area under policy at Clause 22.01 of the Monash Planning Scheme. This policy provides the following preferred future character statement for this area:

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,

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.



these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

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.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

- 6 In addition, Schedule 3 to the General Residential Zone provides a series of decision guidelines, as well as the following Neighbourhood character objectives:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.



To support new development that locates garages and carports behind the front walls of buildings.

- 7 The Council submits that the proposal is an inappropriate response to the surrounding neighbourhood character, having regard to the following elements of the design response:
- a. The front setback to Cranwell Court combined with the minimal side boundary setback will result in excessive visual bulk in the streetscape;
 - b. The proposed Dwelling 1 will have a side wall to a garage as part of the front façade;
 - c. The proposed Dwelling 2 entry being tucked behind Dwelling 1 where it cannot be viewed from the street or much of the common driveway;
 - d. An excessive amount of hard paved surfaces is proposed across the site; and,
 - e. A lack of landscaping opportunities, including along the common driveway, and through a front garden with a reduced front setback.
- 8 I am not persuaded by these submissions, and instead find that the proposal is an appropriate response to the surrounding neighbourhood character, and the preferred future character statement. I make this finding for the following reasons. On a broader level, the proposed two double storey dwellings have an appropriate scale due to the well articulated design, generous setbacks from most boundaries, variations between the ground and first floor walls, changes in materials, and the use of pitched and gabled roof forms. From a streetscape perspective, the proposed scale will sit comfortably between the modern two storey dwelling to the west of the review site, and the elevated single storey dwelling to the east of the review site.
- 9 In response to the Council's specific concerns, I make the following findings and reasons:
- a. Given the position of the review site at the curvature of a court bowl, the review site is not read as part of a streetscape with a consistent street setback, and a change in setbacks can still contribute in a consistent manner to the streetscape. The proposed Dwelling 1 will have front setbacks varying between 5.2 and 9.7 metres. The element with a setback of 5.2 metres is essentially an enclosed entry which is single storey in height and will add visual interest to the front façade, without appearing as a significant built form element. On this basis it is reasonable that it sits forward of the front façade and with a reduced setback. Even at a minimum setback of 5.2 metres, the proposed Dwelling 1 will still appear to sit behind the line of the front façade of the dwelling to the immediate west of the review site. In comparison, the existing



dwelling to the east of the review site, while having more generous setbacks, has a front façade that is orientated almost 90 degrees to the front facade proposed on the review site. These two properties therefore will be read very differently in the streetscape, regardless of the proposed front setbacks on the review. Having regard to the prevailing setbacks in Cranwell Court in its entirety, including the variety in front setbacks that already exist, I regard the proposed setbacks on the review site as being an appropriate character response.

I have also not been persuaded that the proposed side boundary setback of 1.35 metres, when combined with the other design elements including the front setback, will result in an excessive scale in the streetscape. I make this finding having regard to the level of articulation in the overall design of both proposed dwellings on the review site, the low wall heights proposed for both dwellings, the angled boundaries around this court bowl which create a wide variation in side boundary setbacks, and the comparative scale of the existing dwelling to the immediate west of the review site.

For these reasons I find that the policy guidance at Clause 22.01-3 and the decision guidelines at Clause 55.03-1 of the Monash Planning Scheme support the proposed front setbacks.

- b. I regard the overall façade design, that includes two windows to the side wall of a garage, to present an appropriate level of visual interest, activation and surveillance of the public realm. The proposed design of the front façade is an appropriate response to the character of housing found near to the review site. While some of the front façade comprises the side wall of a garage, the way this has been treated results in an improved presentation to the streetscape, compared to the usual arrangement where a garage roller door presents as part of a front façade to a dwelling.
- c. I am not concerned by the slightly concealed presence of the entry to Dwelling 2, noting that the wide common driveway leading to a rear double garage indicates the presence of a rear dwelling, and the entry door is prominent once one moves down the common driveway past Dwelling 1.
- d. I do not regard the extent of hard paved surfaces to be excessive for a development of two dwellings, noting the use of only one crossover and one common driveway onto the review site, and the relatively short length of that driveway for a development comprising of one dwelling sited behind the other.
- e. I appreciate that the Monash Planning Scheme places great emphasis on landscaping outcomes, having regard to the desire to enhance the existing garden city character. The proposal comprises



a front garden that can accommodate two canopy trees as well as other landscaping. Additional canopy tree planting opportunities are provided in both areas of secluded private open space, as well as across the entire rear boundary of the review site, which is very wide at over 40 metres in length. Further, while the landscaping opportunities along the common driveway are modest, they are sufficient along with the other opportunities that I have described to achieve an appropriate balance between landscaping and built form. Given these planting opportunities, I find that a competent landscape proposal can achieve an appropriate garden setting for the proposed dwellings.

- 10 For these reasons I find that the proposed development is an appropriate response to the existing and preferred future neighbourhood character, as well as the guidance provided by the Monash Planning Scheme.
- 11 The Council is concerned regarding the first floor setbacks to the eastern boundary of the review site. While these setbacks, at 1.35 and 1.75 metres to two corners of the proposed dwelling respectfully, are relatively narrow, they are adjacent to the large front yard of the adjoining property. Further, the walls at these setbacks have proposed heights of 5.9 and 5.2 metres above the natural ground level respectively (as measured to the top of the eaves), and so are relatively low for two storey walls, and partly cut into the rising topography. Given the height of these walls, and as they are not located adjacent to an area of secluded private open space or a habitable room, I consider that there is no unreasonable off-site impact arising from these setbacks. I also agree with the Council's analysis that there are no other unreasonable off-site amenity impacts by way of visual bulk, overshadowing or overlooking.
- 12 In terms of internal amenity, the Council's one area of concern is the solar access to the front courtyard for Dwelling 2. As this front courtyard is a light court providing daylight to some of the habitable rooms, it does not need to receive solar access to provide that daylighting function. Further, Dwelling 2 has a very generously sized area of secluded private open space to its east, that will receive very good levels of solar access. On this basis I am not persuaded by the Council's submissions. In other respects, I consider that both dwellings will achieve a good level of internal amenity, having regard to the sizes of individual rooms, their ability to receive direct daylight, the size of the areas of secluded private open space, and the convenient car parking and storage facilities provided on site.
- 13 Finally, the proposal provides two car parking spaces on site for each dwelling. While the Council raises some concern regarding the turning of vehicles for Dwelling 2 and the extent of hard paved surfaces, I am persuaded by the evidence of Mr Zivanovic, that all vehicles can enter and exit the site in a forward motion, and that the extent of hard paved surfaces proposed on site, are required to facilitate turning movements.



- 14 It therefore follows that I will set aside the Council’s decision, and direct the grant of a planning permit subject to conditions. I will broadly adopt the conditions as drafted by Council and circulated prior to the hearing, but with the following changes:
- a. I will delete Conditions 1(d) and 1(f) as drafted by Council, as for the reasons set out above I find that the proposed first floor setbacks are appropriate.
 - b. I will also delete Condition 1(e) as drafted by Council, as for the reasons set out above I do not consider it necessary to relocate or redesign the garage for Dwelling 1.
 - c. Finally, I will add a component to Condition 6 to ensure landscaping to a maximum height of 150mm in the areas depicted in the swept path diagrams attached to the expert evidence of Andrija Zivanovic.

Michael Deidun

Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53459
LAND	7 Cranwell Court, Mulgrave

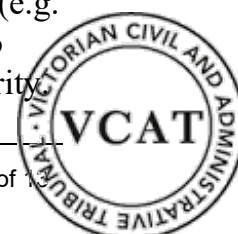
WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- To construct two dwellings on a lot

CONDITIONS

- 1 Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will then form part of the Permit. The must be generally in accordance with plans prepared by Urban Creative, dated 27 July 2022, but modified to show:
 - (a) A corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
 - (b) Landscape plans in accordance with Condition 6 of this Permit.
 - (c) The location and design of any proposed 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”.
 - (d) A maximum height of 900mm to all proposed side boundary fencing within 30 feet of the site frontage (so as to satisfy Covenant B900983).
 - (e) All first floor habitable room windows that are nominated as being constructed of frosted glass also notated as fixed to a minimum height of 1.7 metres above finished floor level.
 - (f) Screening treatment to the Master bedroom window of Dwelling 2, in accordance with the requirements of Standard B22 of Clause 55 of the Monash Planning Scheme, unless it is satisfactorily demonstrated (e.g. by cross section or other diagrams) that no screening is required to satisfy Standard B22, to the satisfaction of the Responsible Authority.



- (g) The vehicle crossover widened to align with the driveway to the satisfaction of the Responsible Authority.
 - (h) A maximum average height of no more than 3.2 metres to the boundary garage wall of Dwelling 2.
 - (i) The location of the existing street tree and its setback from the vehicle crossover.
 - (j) An updated development summary that reflects the amended plans, including the floor area of each dwelling, the common driveway space, site coverage, permeability and garden area.
 - (k) An updated finishes schedule that contains details regarding materials (e.g. roofing materials and upper floor wall materials).
- 2 Prior to the commencement of works (excluding works reasonably required to conduct the landfill gas assessment), the owner of the land must to the satisfaction of the Responsible Authority:

- (a) Engage an appropriately qualified site assessor with demonstrated experience in the assessment of landfill gas in the subsurface environment, to conduct an assessment of any methane within the land, subsurface services and buildings and structures on the land adopting the methane gas action levels prescribed at items 6 and 7 of schedule 3 of the Environment Protection Act 2017 (Vic) as set out below.

Item	Location for assessing methane gas concentration action level	Methane gas concentration action level
6	Subsurface services on, and adjacent to, the waste	10,000 parts per million
7	Buildings and structures on, and adjacent to, the waste	5000 parts per million

The site assessor must prepare a report to be submitted to the Responsible Authority. The landfill gas assessment should be based on guidance prepared by the Environment Protection Authority from time to time and incorporated under the Environment Protection Act 2017 (Vic) and subordinate legislation.

If the landfill gas assessment identifies methane at concentrations exceeding the methane gas concentration action levels, an environmental auditor is to be engaged to complete an environmental audit with a scope limited to:

- (b) assessment of the nature and extent of the risk of harm to human health from waste;
- (c) recommending measures to manage the risk of harm to human health from waste;



- (d) making recommendations to manage any waste, where the landfill extends onto or beneath the land. The land owner must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the *Environment Protection Act 2017* (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the *Environment Protection Act 2017* (Vic).
- 3 Prior to the commencement of the development authorised under this permit, the permit holder must:
- (a) provide to Council a copy of the Landfill Gas Risk Assessment (LGRA) undertaken in accordance with condition 2 within 14 days of receiving the LGRA;
 - (b) pay Council's costs and expenses associated with a Council-arranged peer review of the LGRA. The peer review will be undertaken by an independent and suitably qualified environmental consultant nominated by Council;
 - (c) obtain a copy of the peer review obtained by Council.
- 4 The recommendations of the LGRA assessment including any requirements arising from the peer reviews are to be implemented by the permit applicant.
- 5 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.
- 6 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) Canopy trees to be Australian native species.
 - (e) the location of any boundary and internal 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) Landscaping and planting within all open areas of the site.
- (m) Landscaping that will grow to a maximum height of 150mm in the areas marked for vehicle clearance on the swept path diagrams attached to the expert evidence of Andrija Zivanovic of Ten Three Eight dated 15 August 2022.

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

- 7 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.
- 8 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.
- 9 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.
- 10 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
- 11 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing.



- 12 The site must be drained to the satisfaction of the Responsible Authority.
- 13 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.
- 14 The full cost of reinstatement of any Council assets damaged as a result of 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.
- 15 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
- 16 Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
- 17 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.
- 18 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.
- 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 –

