

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P89/2022
PERMIT APPLICATION NO.TPA/52438

CATCHWORDS

APPLICANT	Daxion Constructions Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	9 Munro Avenue MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	4 August 2022
DATE OF ORDER	4 August 2022
CITATION	Daxion Constructions Pty Ltd v Monash CC [2022] VCAT 877

ORDER

- 1 In application P89/2022 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52438 a permit is granted and directed to be issued for the land at 9 Munro Avenue Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two double storey dwellings above a basement level.

Tracey Bilston-McGillen
Member



APPEARANCES

For applicant	Daniel Bowden, town planning consultant, SongBowden planning consultants.
For responsible authority	Adrienne Kellock, town planning consultant, Kellock town planning.

INFORMATION

Description of proposal	Construction of two double storey dwellings above a basement level.
Nature of proceeding	Application under section 79 of the <i>Planning and Environment Act 1987</i> – to review the failure to grant a permit within the prescribed time. ¹
Planning scheme	Monash Planning Scheme (planning scheme).
Zone and overlays	General Residential Zone Schedule 2 (GRZ2).
Permit requirements	Clause 32.08-6, a permit is required to construct two or more dwellings on a lot.
Key scheme policies and provisions	Clauses 11, 11.01-1S, 11.01-1R, 15, 15.01- 1S, 15.01-2S, 15.01-5S, 15.02-1S, 16, 16.01- 1R, 16.01-2S, 21.04, 22.01, 22.05, 32.08, 55, 65 and 71.02-3
Land description	The land is rectangular in shape, with a frontage of 18.29 metres, a depth of 39.01 metres and an overall area of 713.49 square metres. There is a slight fall towards the rear of the site and there is a 1.83m wide easement at the rear of the site.

¹ Section 4(2)(d) of the *Victorian Civil and Administrative Tribunal Act 1998* states a failure to make a decision is deemed to be a decision to refuse to make the decision.



REASONS²

1 The Tribunal by order 9 June 2022 provided the applicant the opportunity to prepare plans to address the areas of concern including:

Address the issue of the dominance of the garages by either:

- Reducing the size of the garages or reducing one of the garages to a single garage, or
- Recessing the garage/s behind the entrance to the dwelling. That is making the entry to the dwellings more prominent and not recessed 6.5 metres behind the façade of the garage; or
- An alternative arrangement; and
- Reducing the extent of driveway pavement to the garage/s.

Addressing the issue of overshadowing by:

- Modification to the first floor east elevation to comply with Standard B22.

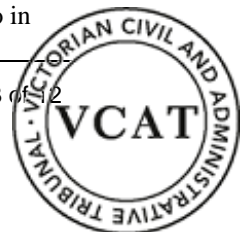
Addressing the issue of visual bulk by:

- Modification to the first floor west elevation to replicate the setbacks of the east elevation as detailed in the reasons above.

2 In response to the order, the applicant submitted plans addressing the above and noted the following changes:

- The garages have been reduced in size to the minimum standard double garage of 5.5m wide and 6m in depth. This reduction in width has allowed for the gallery hallway to be increased in width to 2.1m as shown on the ground floor plan. In addition to its move forward as discussed below.
- The garages have been recessed a further 500mm to now provide an 8.6m setback to the street frontage. In combination the previously recessed entrances have now been brought forward to the Monash 7.6m setback. A key feature of these entrances is the porch that sits an additional 1.2m forward of the 7.6m setback, the glazing to the street frontage and glazing that faces east and west adjacent to the recessed garage door so as to provide a prominent entrance. This is reflected in the updated streetscape elevation
- The driveway pavement area has been reduced for both driveways to represent was considered the minimum extent to provide access to the garages. The reduction in the paved areas results in subsequent increase of landscaping opportunities at the street frontage

² 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.



- Our submissions at the hearing included a modified upper level for unit 2 to reduce shadowing to the adjoining neighbour to the east. It was identified by Council that the 2pm shadow did still cast a very small amount of additional shadow to this space. The enclosed plans have addressed this issue and there is no additional shadowing to the adjacent courtyard at 1/11 Munro Street at the 2 and 3pm period. This now achieves compliance with Standard B22 as there is no additional shadowing of this space.
- The technique used to the east to reduce overshadowing has been employed to the western elevation in direct response to the suggested design change.

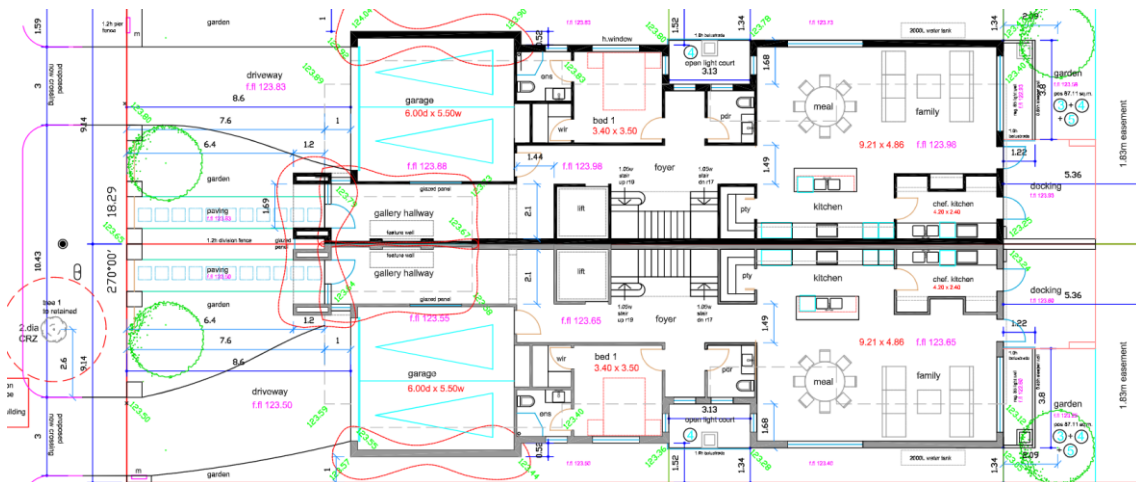


Figure 1: Proposed plan lodged in response to the Tribunal order.

- 3 In response to the changes, Council submitted the following comments:
- The proposed increase in setbacks to the first floor east elevation address the concerns relating to shadow due to the changes to the first floor (increased setbacks). The corresponding change to the western elevation is acceptable.
 - The plans do not satisfactorily address the requirement of the Tribunal’s order to ‘address the issue of the dominance of the garages’. The changes included relocating entry doors so that they are setback 7.6 metres, rather than being recessed well behind the garage façade, providing a more solid style entry porch (with walls on both sides) that is located forward of each entry door and garage and separating the two entries with a glass wall panel. Council noted that these changes are an improvement but do not result in any substantive decrease in the garage dominance because:
 - The width of each front entry remains very similar to that shown on the amended plans considered by VCAT (i.e. as noted above, the width of each garage has reduced by only 150mm, so the front entry width has only increased by similar amount).

- The streetscape presentation at ground level remains one predominantly of garaging, as each garage continues to occupy a very large portion of the overall dwelling façade.
 - The glass wall between the entries creating a wall failing the front setback requirement of 7.6 metres.
- Council also remained concerned that whilst the driveway paving has been reduced, it is still substantial as the paved surface includes two separate parallel footpaths.
 - Council put that the proposed inclusion of a window facing the street to the side of each front entry door allows some level of surveillance but this is limited. This window is not a habitable room but a ‘transitional space’ to a long narrow hallway.
 - Council submitted that the following further changes should be required:
 - Reduction in the width of one gage to a single width of no more than 3.5 metres with the extra space allocated to a haybale room facing the street.
 - Provision of pedestrian access to each dwelling directly from the driveway.
 - Deletion of the pedestrian paths.
- 4 The Tribunal order further required Council’s position in relation to the street tree. Council maintained its position that it does not support relocation of the street tree and that the design should be modified to setback a sufficient distance to allow for the tree to be retained. Further, Council’s Horticulture advice confirms that the tree is an *Acacia pendula*.

Findings



Figure 2: Street elevation. Plans considered by the Tribunal (decision plans).



Figure 3: Modified Street elevation. Plans lodged in response to Tribunal order.

- 5 My findings were clear in the interim decision and to a large degree have been met. I agree with the submissions that the first floor changes including the increased setback from side boundaries is a positive change. However, the changes do not go far enough to address my concerns regarding the front façade. If I compare the proposed front façade and street elevation, there is little difference due to the width of the two garages.
- 6 My order stated that a possible change to address my concerns could be to reduce the size of the garages or reducing one of the garages to a single garage. The garages have been reduced to 5.5 metres in width, the street setback increased and the front porch has been brought forward in front of the garages. However, I find these changes make little difference to the visual appearance to the street and the level of interaction or surveillance that would occur. It is for that reason that I will order that the garage of unit 2 will be reduced to a single car garage and the extra space be provided as part of the gallery/hallway or a habitable area. This space may be used as a study or habitable room but I will leave that for the final design (as it is internal), with the proviso that a window be provided to the street frontage.
- 7 During the hearing I raised an alternative option of relocating one garage to a side boundary therefore allowing for a greater space to be provided in the gallery/hallway area whilst maintaining a double garage for both dwellings. I further advised however that this change goes beyond what is before me, would require a further amendment to the plans and notice to adjoining owners may need to be undertaken. I am making these comments as observations and as an alternative but not to prejudice or make any decision of the merits of such a change if and when such a change is considered by Council.

CONCLUSION

8 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Tracey Bilston-McGillen
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52438
LAND	9 Munro Avenue MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two double storey dwellings above a basement level.

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 revised plan set circulated on 24 June 2022, prepared by Alan Chui Tai Luen, but further modified to show:
 - (a) The plan set clearly identified with a revision number on each plan.
 - (b) Unit 2 front façade to be modified as follows:
 - i Reduce garage to a single car garage to a width of 3.5 metres.
 - ii Provision of a tandem car space.
 - iii In the area formerly the second garage car space, provision of a space including a window facing the street.
 - (c) The Dwelling 2 driveway aligned so a minimum setback of 2.6 metres to the edge of the trunk of the street tree is achieved.
 - (d) The provision of front porches to each residence with a minimum front setback of 6.4 metres and a maximum height of less than 3.6m above NGL.
 - (e) The two pedestrian footpaths designed to be integrated into the landscaping such as pavers/stepping stones with landscaping between each paver.
 - (f) The glazed panel between the two porches removed.
 - (g) The fence dividing the two properties not exceeding 1.2 metres in height with a high level of transparency such as metal picket or the like in a muted or dark colour.



- (h) The crossing to be constructed to Council Standard, with a minimum setback of 2.6 metres to the edge of the trunk of the street tree. A notation is also to be added that ‘The street tree is to be protected by a protective barrier which accords with AS4970 erected prior to commencement of works until completion and extends a minimum distance as the required setback. No excavation or any works at all are to occur within the tree protection setback area of 2.6 metres.’
- (i) All first floor habitable room windows that face external side and rear boundaries notated, on the plans and elevations, as being constructed of fixed obscure glass to a minimum height of 1.7 metres above finished floor level.
- (j) All first floor bathroom and ensuite windows notated as being constructed of obscure glass on the plans and elevations.
- (k) 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”.
- (l) 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.
- (m) A Landscape Plan in accordance with condition 3 of this Permit.

Layout not to be Altered

- 2 The development 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) The location of any fencing internal to the site;
- (d) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- (e) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (f) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- (g) the location of any retaining walls associated with the landscape treatment of the site;
- (h) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (i) The location of external lighting (if any);
- (j) Landscaping and planting within all open areas of the site.

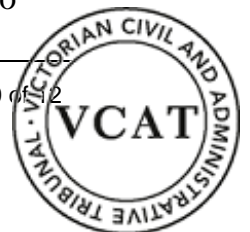
When approved the plan will be endorsed and will then form part of the permit.

Tree Protection

- 4 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 and the nature strip). 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. The tree protection fence for the Council tree in the nature strip is to be no less than 2.6 metres from the base of the tree. No cutting of the naturestrip or other works into the protection area is to occur for construction of the crossover.
- 5 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

- 6 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

- 7 The site must be drained to the satisfaction of the Responsible Authority.
- 8 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.
- 9 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.
- 10 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.
- 11 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.

Vehicle Crossovers

- 12 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.
- 13 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 14 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 each vehicle crossing to provide a clear view of pedestrian on the footpath of the frontage road.

Car Parking

- 15 The layout of the development shall follow the Design Standards for car parking set out in Clause 52.06-9 of the Monash Planning Scheme as detailed below:
 - (a) Garages or carports must be at least 6 metres long and 3.5 metres wide for a single space and 5.5 metres wide for a double space measured inside the garage or carport.
 - (b) In accordance with Australian Standard for Off - Street Car Parking AS/NZS 2890.1, the maximum grade within a parking module measured parallel to the angle of parking is to be 1 in 20. Measured in any other direction is to be 1 in 16

Urban Design

- 16 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

- 17 Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Permit Expiry

- 18 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
- (a) The development has not started before 2 years from the date of issue.
 - (b) The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or

- (c) within six (6) months afterwards if the development has not commenced; or
- (d) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

- End of conditions -