

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P434/2022
PERMIT APPLICATION NO.TPA/52942

CATCHWORDS

Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; Neighbourhood Residential Zone; Two dwellings; Side by side configuration; Neighbourhood Character; Creek Abuttal

APPLICANT	Karan Singh
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	14 Sadie Street MOUNT WAVERLEY VIC 3149
HEARING TYPE	Hearing
DATE OF HEARING	5 December 2022
DATE OF ORDER	12 December 2022
CITATION	Singh v Monash CC [2022] VCAT 1388

ORDER

Amend application

1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and 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: Cultured House Pty Ltd
- Drawing numbers: VCAT Issue, TP000- TP007 Revision D
- Dated: October 2022

Permit granted

- 2 In application P434/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52942 a permit is granted and directed to be issued for the land at 14 Sadie Street Mount Waverley VIC 3149 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two (2) dwellings on a lot.

Megan Carew
Member



APPEARANCES

For applicant	P Nickas, Solicitor, Nickas Legal
For responsible authority	G Gilfedder, Town planning consultant, Currie and Brown.

INFORMATION

Description of proposal	To construct two, double storey dwellings in a side-by-side arrangement.
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	Neighbourhood Residential Zone- Schedule 2 (NRZ2)
Permit requirements	Clause 32.09-6- To construct two or more dwellings on a lot in the NRZ2.
Relevant scheme policies and provisions	Clauses 10, 11, 15, 16, 18, 21, 22.01, 22.04, 22.05, 22.13, 32.08, 52.06, 53.18, 55, 65 and 72
Land description	<p>The review site is located on the south side of Sadie Street and backs onto open space along Scotchmans Creek and the Monash Freeway. The site has a frontage of 16.76 metres to Sadie Street and a total site area of 725.37sqm. It is presently occupied by a single storey brick dwelling and garage. There is a 4 to 5 metre fall from the front to the rear of the site. There is a drainage and sewerage easement adjoining the southern boundary of the site.</p> <p>The surrounding area is residential in nature. There is a dual occupancy under construction to the west of the review site and a single dwelling to the east.</p>



REASONS¹

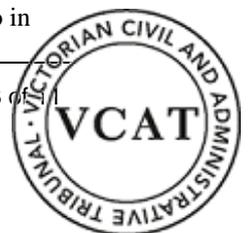
WHAT IS THIS PROCEEDING ABOUT?

- 1 The permit applicant seeks a review of Council's decision to refuse a permit to construct two double storey dwellings on the land in a side-by-side configuration. The permit applicant says the proposal is an acceptable design response, will sit comfortably within this street and will respect the amenity of the adjoining properties.
- 2 Council considered that the proposal would not respect the preferred neighbourhood character of the area. Council submits that the side-by-side configuration provides a poor response to the streetscape and that there is insufficient room for landscaping.
- 3 I must decide if a permit should be granted and if so, what conditions should apply. Having considered the submissions and material before me and the applicable policies and provisions of the Monash Planning Scheme, I have determined to set aside the decision of the Responsible Authority and grant a permit. My reasons follow.

WHAT ARE MY FINDINGS?

- 4 There was no dispute between the parties that the site was suitable for medium density development subject to an acceptable design response to the preferred neighbourhood character and amenity. Council identified the following key issues:
 - Is the proposal respectful of neighbourhood character and streetscape;
 - Is the proposal an appropriate design and built form outcome for the site; and
 - Does the proposal appropriately address landscape and entry requirements of ResCode.
- 5 The review site has a rear abuttal to open space along the Scotchmans Creek and freeway, although Council identified that this part of the reserve was not heavily utilised. This is recognised in the application of the NRZ2 that applies to creek abuttal areas. The schedule has the following neighbourhood character objectives:
 - To emphasise the visual dominance of landscaping, particularly along the interfaces with the creek corridors.
 - To ensure new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography.

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.



- To respect and enhance the existing character and functions of the open spaces along the creek corridors.
- 6 The schedule to the zone provides modified Clause 55 requirements including a 7.6m front setback, a 7m rear setback, a minimum 1m side setback, 40 percent site coverage, 40 percent permeability and objectives for landscaping and front fencing.
- 7 The scheme sets out a preferred character for this area at Clause 22.01. The preferred character applies to both creek abuttal and creek environs areas:

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.

- 8 The area retains a predominance of older single dwellings on large lots, however there are examples of contemporary infill dwellings and dual



is characteristic in the wider landscape. The site coverage and permeability requirements are met and the garden area requirement well exceeded.

- 12 From a streetscape perspective, I find that the two dwellings are set back more than the varied requirements of the zone. The dwellings are of a low scale with pitched roof forms reflective of traditional housing forms. Each elevation is reasonably articulated and there is sufficient distinction between the ground and first floors to the east and west as well as the frontage. The dwellings are each setback from the side boundary a minimum of 1m, increasing to 1.9-2m. Garages are recessed with Unit 1 cut into the site. There are large ground floor windows at the entries which I find will provide sufficient passive surveillance. While the introduction of a second crossover is discouraged by policy, I am satisfied that there is minimal impact on the streetscape and naturestrip. The response to the streetscape is an appropriate one.
- 13 The landscape plan demonstrates that landscaping can be provided in accordance with the varied standard B13 so that the development will contribute to the future garden city character of the area. I am satisfied that the landscaping will ensure that the dwellings will sit in a garden setting. I note that the landscape plan includes two large eucalypts within the frontage and some hedging along the side boundaries. Council's draft conditions require that there be no dividing fence between the front of the dwellings to provide a cohesive central landscape area. I note that no front fencing is proposed which will assist the presence of the landscaping in the public realm.

AMENITY

- 14 Council did not identify any significant impacts on the amenity of the adjoining properties. Daylight and overshadowing comply with the standards of Clause 55 and overlooking is addressed.
- 15 I have considered the approved development at 12 Sadie Street to the west. The private open space of Unit 1 faces the review site. There is an east facing deck area that is raised above ground level. The applicant submitted that this was acceptable because the built form was set off the boundary and had been well articulated to minimise visual bulk. Given the way the proposed development steps with the topography of the land and the level of articulation provided, I am satisfied that visual bulk will be acceptable in this location.

WHAT CONDITIONS ARE APPROPRIATE?

- 16 In determining the conditions of permit, I have had regard to the draft conditions discussed at the hearing and the submissions of the parties as well as the matters arising from my reasons above.

CONCLUSION

17 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to conditions.

Megan Carew
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52942
LAND	14 Sadie Street MOUNT WAVERLEY VIC 3149

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

Construction of two (2) dwellings on a lot.

CONDITIONS

Amended Plans

- 1 Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans are to be generally in accordance with Plans TP000 to TP700 Revision D dated October 2022 by Cultured House Pty Ltd and design but modified to show:
 - (a) No crossover within 3.3 metres from the base of the *Melaleuca leucodendron* street tree.
 - (b) Tree protection fencing in accordance with the AS4970-2009 for the Council street tree.
 - (c) No fencing between the dwellings in the front setback.
 - (d) Gas/water meter locations in unobtrusive locations.
 - (e) Letter boxes no greater than 900mm in height convenient to the dwellings.
 - (f) Acoustic treatment as required to all south-facing habitable room windows of both dwellings to address freeway noise, to the satisfaction of the Responsible Authority.
 - (g) A Landscape Plan in accordance with Condition 5.

No Alterations

- 2 The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.



Tree Protection

- 3 The Council street tree must be protected by temporary rectangular wire fencing accordance with AS4970-2009 for a distance of at least 3.3 metres from the base of the tree.
- 4 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on or on adjoining sites during the construction period of the development hereby permitted.

Landscaping

- 5 Concurrent with the endorsement of any plans requested pursuant to Condition 1 modified to reflect any changes under that condition, a Landscape Plan drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must be generally in accordance with the Landscape Plan Sheet 1 of 1 by Habitat dated October 2022 and modified to show:
 - (a) Any landscape design alterations arising from the project arborist needed to protect trees on abutting land including the nature strip.
 - (b) 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;
 - (c) 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;
 - (d) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
 - (e) The location of any fencing internal to the site;
 - (f) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
 - (g) Canopy trees / significant plantings on adjoining properties within 3 metres of the site;
 - (h) The location of any retaining walls associated with the landscape treatment of the site;
 - (i) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
 - (j) The location of Tree Protection Zones and Tree Protection Fencing as outlined in Condition 4;

- (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) Planting required by any other condition of this permit; 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.

Landscaping Prior to Occupation

- 6 Before the occupation 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 then maintained to the satisfaction of the Responsible Authority.

Drainage

- 7 Drainage of the site is to be to the satisfaction of the Responsible Authority.
- 8 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.
- 9 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - (a) a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
 - (b) shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
 - (c) another Council approved equivalent.
- 10 All stormwater collected on the site is to be detained on site to the pre-development 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 and is to be to the satisfaction of the Responsible Authority.
- 11 The nominated point of stormwater connection for the site is to the south-east corner of the property where the entire site's stormwater must be collected and free drained via a 100 mm pipe to the 300 mm Council drain in the rear Council reserve via a Council approved saddle adaptor to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.



Road Infrastructure

- 12 All new crossings must be a minimum of 3.0 metres in width.
- 13 All new vehicle crossings are to be no closer than 1.0 metres, measured at the kerb, to the edge of any power pole, drainage of service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 14 Any works within the road reserve must ensure the footpath and nature strip are to be reinstated to Council standards.
- 15 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit of \$5000 is to be paid prior to the drainage works commencing.

Completion of Buildings and Works

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

Expiry of permit for development

- 17 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 –