

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P133/2022
PERMIT APPLICATION NO. TPA/52596

CATCHWORDS

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|-------------------------------|------------------------------------|
| APPLICANT | DVMCA Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| REFERRAL AUTHORITY | Melbourne Water |
| SUBJECT LAND | 69 Manton Road CLAYTON VIC 3168 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 7 September 2022 |
| DATE OF ORIGINAL ORDER | 8 September 2022 |
| DATE OF CORRECTION | 3 January 2023 |

ORDER

- 1 In application P133/2022 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/525596 a permit is granted and directed to be issued for the land at 69 Manton Street, Clayton in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two (2) double storey dwellings and fencing on a lot subject to the Special Building Overlay in accordance with the endorsed plans.

Laurie Hewet
Senior Member



APPEARANCES

| | |
|---------------------------|----------------------------|
| For applicant | Ms D King, town planner |
| For responsible authority | Ms A Kellock, town planner |
| For referral authority | No appearance |



INFORMATION

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| Description of proposal | Construction of 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 | Clause 32.08: General Residential Zone (GRZ3) Clause 44.05: Special Building Overlay |
| Permit requirements | Clause 32.08-6: A permit is required to construct two or more dwellings on a lot. Clause 44.05-2: A permit is required to construct a building or to construct or carry out works. |
| Land description | <p>The subject site is located on the north side of the Manton Road approximately 70 metres east of its intersection with Flora Road.</p> <p>The subject site has a regular configuration with a frontage dimension of 17.37 metres and a depth of 40.11 metres. It has an area of 697m² and is not encumbered by any easements</p> <p>The site has a gradual fall of approximately 1.2 metres from the rear to the front.</p> <p>A single storey weatherboard dwelling currently occupies the site.</p> <p>The site is in an established residential area characterised primarily by single storey detached dwellings. The area is experiencing a reasonable level of development with medium density housing becoming an increasingly prominent part of the neighbourhood's character.</p> <p>The site is well located having access to a wide range of services and facilities including public transport.</p> |



REASONS¹

- 1 This is an application to review the decision of the Responsible Authority to refuse permission for the construction of two dwellings on a lot at 69 Manton Road, Clayton. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:
 1. The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the area. The proposal fails to provide a side setback on one side and the boundary-to-boundary construction is not in keeping with the existing or the preferred character of the area.
 2. The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to Standard B1 Neighbourhood Character, B2 Residential policy, B13 Landscaping, B17 Side and rear setbacks, B26 Dwelling Entry and B31 Design Detail.
 3. The design response will result in a loss of amenity to the adjoining properties by way of visual bulk and scale. The upper level of the dwellings is extensive and long and extends well into the site which will have a direct impact on the secluded open space areas of the adjoining properties.
 4. The proposed development is considered a poor design outcome for the site.
- 2 I provided oral reasons for my decision at the end of the hearing.

Laurie Hewet
Senior Member

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.



APPENDIX A – PERMIT CONDITIONS

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| PERMIT APPLICATION NO: | TPA/52596 |
| LAND: | 69 Manton Road CLAYTON VIC 3168 |

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two (2) double storey dwellings and fencing on a lot subject to the Special Building Overlay in accordance with the endorsed plans.

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 plans must be generally in accordance with the plans submitted to Council but modified to show:
 - (a) The maximum finished floor level above natural ground level at the building line shown for all ground floor habitable room windows that face side boundaries.
 - (b) Screening treatment of the following windows, if required, to satisfy Standard B22 of Clause 55 of the Monash Planning Scheme, unless it is satisfactorily demonstrated (e.g. by showing the height of finished floor levels above natural ground level and/or providing cross-section or other diagrams) that no screening is required to satisfy Standard B22, to the satisfaction of the Responsible Authority:
 - i Ground floor habitable room windows within Dwelling 1 that face the eastern side boundary.
 - ii Ground floor habitable room windows within Dwelling 2 that face the western side boundary.
 - (c) Fixed external louvers (no more than 25 percent transparent) or other measures, to the north facing windows of Bedroom 4 of each dwelling (so as to minimise views into the rear yards of the other dwelling within the development) and demonstration of compliance with Clause 55.04-7.
 - (d) Deletion of first floor ensuite windows from the east and west elevations (for the sake of consistency with the floor plan).



- (e) Changes (if required)/notations on the plans to demonstrate compliance with Melbourne Water conditions 5 to 9.
- (f) A minimum internal width of 3.5 metres to both carports, which must be achieved whilst maintaining the 150mm offset provided to side boundaries.
- (g) A tandem car space within the driveway of each dwelling, which must be setback a minimum of 500mm from the front of the carport and have dimensions of 2.6m x 4.9m.
- (h) Corner splays or areas 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.
- (i) 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".
- (j) 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 Before the development commences, 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 prior to the commencement of any works. When approved, the plan will be endorsed and will then form part of the Permit. The plan must be generally in accordance with the Landscape Plan prepared by Zenith Landscape Concepts Pty Ltd labelled Revision A and dated 07/21, but modified to show:

- (a) Details of changes required by Condition 1 of this Permit.
- (b) Replacement of the Euky Dwarf trees proposed in each rear yard with a native canopy tree that will reach a minimum mature height of at least 8m.
- (c) Provision of one (1) additional small canopy tree (minimum height of 5 metres at maturity) within each front yard and each rear yard.
- (d) Deletion of the rain gardens within the front setback of each dwelling (so as to satisfy Melbourne Water's conditions).



- (e) Changes (if required)/notations on the plans to demonstrate compliance with Melbourne Water conditions 5 to 9.
- (f) The location and details of all proposed fencing in accordance with Melbourne Water requirements.

to the satisfaction of the Responsible Authority. When approved the plan will be endorsed and will then form part of the permit.

Landscaping Prior to Occupation

- 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.

Melbourne Water Conditions

- 5 Finished floor levels of the dwellings must be constructed no lower than 72.22 metres to AHD which is 300mm above the applicable flood level of 71.92 metres to AHD.
- 6 Finished surface levels of open Carports must be set no lower than levels shown on plans submitted. (Dated 23/03/21 and revised on 15/07/21)
- 7 All proposed Private Open Spaces and setbacks from boundaries must be maintained and kept open and kept at the existing surface levels.
- 8 No earth filling, retaining walls, solid fencing and raised solid landscaping will be permitted within the front setback of the property.
- 9 Any new fencing, boundaries and internal must not obstruct flood flows. Hence, any new fencing must be 50% open style or standard timber paling style of construction to allow flows through property.

End Melbourne Water conditions

Boundary walls

- 10 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority

Drainage & Stormwater

- 11 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.
- 12 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.



- 13 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.
- 14 The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the naturestrip via a Council approved kerb 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

- 15 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 16 All vehicle crossings within 2.40 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 17 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
- 18 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.

Engineering Permits

- 19 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 \$1,000 is to be paid prior to the drainage works commencing.

Satisfactory Continuation and Completion

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

Permit Expiry

- 21 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - The development has not started before 2 years from the date of issue.
 - 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 request is made in writing before the permit expires, or

- i within six (6) months afterwards if the development has not commenced; or



- ii 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 -

