

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P245/2023
PERMIT APPLICATION NO.TPA/54015

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone; Construction of two dwellings; Policy; Neighbourhood character

APPLICANT	Kenny Min
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	1/33 Eva Street CLAYTON VIC 3168 plus part of the common property in plan of subdivision PS645583G
HEARING TYPE	Hearing
DATE OF HEARING	2 June 2023
DATE OF ORDER	27 June 2023
CITATION	Min v Monash CC [2023] VCAT 711

ORDER

Permit application amended

1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

- Prepared by: K A M
- Drawing numbers: TP01 to TP07
- Dated: April 2023

2 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended. For the description of the land, substitute:

1/33 Eva Street, Clayton plus part of the common property in plan of subdivision PS645583G

Decision affirmed

3 The decision of the responsible authority dated 1 February 2023 is affirmed



No permit granted

4 In permit application TPA/54015 no permit is granted.

Geoffrey Code
Senior Member

APPEARANCES

For applicant	Michael Belden, town planner, Plan Urban Pty Ltd
For responsible authority	Adrienne Kellock, town planner, Kellock Town Planning Pty Ltd



INFORMATION

Description of proposal	Construction of two 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 Schedule 3
Permit requirements	Clause 32.08-6 (construction of two or more dwellings on a lot)
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21, 22, 52, 55, 65 & 71 The responsible authority decided a minimum garden area requirement under clause 32.08-4 did not apply because the subject land has an area of less than 400 square metres.
Land description	The land is on the west side of the street, about 50 metres south of Gentle Street. The land is irregular in shape with a frontage of 12.42 metres, a maximum depth of 29.62 metres and an area of 342.59 square metres. These dimensions exclude a part of the common property in plan of subdivision PS645583G that is affected by the buildings and works in the permit application. The land contains a single storey weatherboard dwelling with a street setback of about 7.6 metres.
Tribunal inspection	24 June 2023

REASONS¹

- 1 The applicant wants to replace a single storey weatherboard dwelling on the subject land with two double-storey, side-by-side townhouses (the **proposal**).
- 2 The applicant now seeks a review of the responsible authority's decision to refuse to grant permission under the Monash Planning Scheme (the **planning scheme**).
- 3 The applicant prepared amended plans in an effort to address some of the responsible authority's grounds of refusal.
- 4 No persons objected to the responsible authority before it made its decision. The applicant therefore gave notice in accordance with practice note PNPE9 to those originally notified, including to the owner and occupier of the adjoining lot to the rear (being lot 2, 33 Eva Street) (**lot 2**). No persons lodged statements of grounds intending to participate in the proceeding.
- 5 In reviewing those plans, the responsible authority realised that both the decision plans and the amended plans propose to incorporate part of the common property in the subdivision of 33 Eva Street at the rear of the subject land into the secluded private open space of the proposed northern of the two new townhouses.² In other words, the land to which the application relates was inaccurate and the responsible authority had not realised this in its consideration of the application.
- 6 At the responsible authority's request, the applicant provided the written consent of the owner of lot 2 to the works in the common property.³
- 7 The responsible authority submitted that the amended plans addressed its grounds relating to design standards for car parking and private open space⁴ and those grounds would not be pursued. It did not oppose the amendment of the land in the application and the substitution of the plans.⁵
- 8 The wider residential neighbourhood comprises lots subdivided nearly 80 years ago with generally uniform size street frontages of 15.24 metres, depths of about 46 metres and areas of about 700 square metres. The original housing is mainly single-storey weatherboard or brick veneer with pitched tiled roofs.

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.

² Also small part at street frontage.

³ According to the applicant, the owner of that lot is a family member of the applicant.

⁴ Being ground of refusal 4 and part of ground of refusal 5.

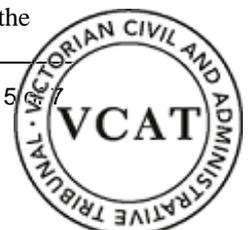
⁵ The responsible authority identified minor errors in the applicant's statement of changes and the applicant agreed to those changes. They are relatively minor and it is unnecessary to formally amend the statement.



- 9 Over recent years, there has been some redevelopment and new housing in the neighbourhood. It comprises mainly larger, two-storey single dwellings on lots or two or three dwelling unit developments. I will refer to some of that shortly.
- 10 To use a colloquial expression, the backyard of the land at 33 Eva Street was subdivided off about eight years ago. The subdivider retained the original dwelling on the front lot (lot 1, now the subject land in this proceeding). The owner of the new rear lot (lot 2) constructed a second dwelling at 33 Eva Street on that lot.
- 11 The subdivider also constructed a new three metres wide driveway to serve lot 2 along the northern side boundary and it also served a new car space behind the existing dwelling on the front lot. As the driveway served both lots, it became common property in the subdivision.
- 12 It is not disputed that the proposal meets almost all of the *ResCode* objectives with numerical standards.⁶ What is in dispute is neighbourhood character objectives and response to housing policy.
- 13 The responsible authority's main concern with the design response is the proposed crossover in Eva Street to dwelling 2.⁷
- 14 Under residential policy introduced into the planning scheme in November 2019, the land is now in neighbourhood character type 'Garden City Suburbs (Southern Area)'. The preferred future character of this neighbourhood type includes development complementing the scale and siting of original housing so as to enhance the 'generous, spacious, open, landscaped character'.
- 15 The proposal does not respond well to design guidance under character policy, particularly as the new vehicle crossing for the southern dwelling 2 does not minimise crossovers and results in a loss of garden in the street setback.
- 16 In deciding how much weight to give to character and policy, I need to consider to what extent two crossover developments are present in the neighbourhood.
- 17 If constructed, development at 33 Eva Street would consist of a total of three dwellings, being two new attached double-storey dwellings facing the street and one existing single-storey dwelling at the rear, with the provision of a single common driveway.

⁶ The only non-compliant standard is B15 because dwelling 1 contains north facing living room and kitchen windows that are only 500 mm from the common driveway, whereas the standard is 1000 mm for windows with sills at least 1400 mm above the driveway.

⁷ There is no new crossover for dwelling 1 because its parking is at the rear and accessed from the existing common driveway.



- 18 The applicant submits that there are other three dwelling developments with similar typologies in the neighbourhood and the proposal would respect the existing and emerging character.
- 19 On careful analysis, this submission does not carry great weight for three reasons.
- 20 First, there are few other similar typology developments in Eva Street. There are only four examples in Eva Street (at nos. 4, 17, 67 & 75) and one example in a close-by street (25 Prince Charles Street). Accordingly, they are not a material part of the existing and emerging character in Eva Street.
- 21 Second, they are not located in the vicinity of 33 Eva Street. The closest is about 100 metres from 33 Eva Street and the furthest is about 300 metres from 33 Eva Street. Accordingly, they do not form part of the character in the immediate vicinity of 33 Eva Street.
- 22 Third, each of the four examples was approved in the period 2012 – 2016. This is relevant because the approvals pre-date current character and housing policy introduced in 2019. It means more weight should be given to the implementation of policy. There are no examples of approvals contrary to this policy in Eva Street since the policy commenced.
- 23 The plans show the paved driveway for dwelling 1, accessed from the new crossover, visually occupying 3.5 metres of the width of the subject land.⁸ Adjoining the driveway is a 1.6 metres wide path to the front door of the dwelling. This leaves a little over 3 metres for the width of the front garden for dwelling 2. Adjoining to the north is the front garden of dwelling 1, about 4.1 metres wide, and then the existing 3 metres wide common driveway.
- 24 The applicant's landscaping proposals for the front setback include one canopy tree for each dwelling and include retention of a large street having regard to the crossover location. Nonetheless, the outcome is a material loss of front garden contrary to policy.
- 25 Policy must be applied in a balanced and flexible way. The proposal enjoys support under other policy including for urban consolidation in moderate forms in established residential area. However, in my opinion, the balance swings against approval having regard to existing conditions and the need to give weight to relatively-recently approved policy. The proposal is therefore not an acceptable planning outcome.

⁸ The pavement width of the driveway is 3.0 metres but is angled to include a 500 mm landscaping strip about 2 metres inside the property line. The effect from the street is an apparent width of 3.5 metres.

26 I will therefore affirm the responsible authority's decision and no permit will be granted.

Geoffrey Code
Senior Member

