

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P157/2024
PERMIT APPLICATION NO.TPA/49621

CATCHWORDS

Planning and Environment Act 1987 (Vic) s 87A; Monash Planning Scheme; Request to amend permit issued to develop land for five dwellings; Whether amendments should be granted to reduce car parking requirements and to convert a two-bedroom dwelling to a one-bedroom dwelling

APPLICANT	Papermite Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	25 Thomas Street CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	28 October 2024
DATE OF ORDER	30 October 2024
CITATION	Papermite Pty Ltd v Monash CC [2024] VCAT 1045

ORDER

Application allowed

- 1 The application is allowed.

Permit amended

- 2 Planning permit TPA/49621 is amended and an amended permit is directed to be issued for the land at 25 Thomas Street Clayton VIC 3168. The permit is amended as follows.
- 3 For what the permit allows, substitute:
 - Construction of five dwellings on a lot
 - Reduction in car parking
- 4 For condition 1, substitute:

Before the development starts, a copy of 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 must be generally in accordance with the plans prepared by R Architecture dated 1 February 2024 (drawings numbers TP03, TP04, TP05, TP06, TP06.1 and TP07) but modified to show:

 - (a) The removal of the bicycle parking space on the north side of the garage and the inclusion of a bike locker for dwelling 5,



generally in accordance with figure 6.2 in the statement of evidence prepared by Russell Fairlie dated 6 September 2024, with consequential relocation of the bin enclosure for dwelling 5 as shown on that figure.

5 For condition 4, substitute:

Before the development starts, 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 plan must be generally in accordance with the landscape plan prepared by Zenith Concepts endorsed by the responsible authority on 15 September 2023 but with modifications to reflect the changes to the plans endorsed under condition 1 following amendment of the permit as a result of final orders of the Victorian Civil and Administrative Tribunal in proceeding P157/2024.

6 The responsible authority is directed to issue a modified planning permit in accordance with this order.

Geoffrey Code
Senior Member

Sarah Porritt
Member

APPEARANCES

For applicant

Andrew Clarke, town planner, Clarke
Planning Pty Ltd

He called the following witness:

- Russell Fairlie, traffic engineer, Ratio
Consultants Pty Ltd

For responsible authority

Adrienne Kellock, town planner, Kellock
Town Planning Pty Ltd



INFORMATION

Description of proposal	Construction of five dwellings
Nature of proceeding	Application under section 87A(2)(a) of the <i>Planning and Environment Act 1987</i> – to amend or cancel a permit
Planning scheme	Monash Planning Scheme
Zone and overlays	Residential Growth Zone
Land description	The land is on the west side of Thomas Street, about 30 metres north of the intersection with Belmont Avenue
Tribunal inspection	29 October 2024, unaccompanied by the parties



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Papermite Pty Ltd (**Papermite**) has requested the Tribunal to amend a permit granted under the Monash Planning Scheme (the **Scheme**) to construct five dwellings (the **permit**).
- 2 Monash City Council (the **Council**) issued the permit on 17 December 2019 on the direction of the Tribunal.² The current plans endorsed under condition 1 of the permit are those endorsed by the Council on 15 September 2023 (the **endorsed plans**).³ The Council has extended the permit and it remains in force.
- 3 Papermite requests endorsement of amended plans dated 1 February 2024 (the **amended plans**) and consequential amendments to conditions 1 and 4 of the permit.
- 4 The Council opposes the request. The Tribunal required notice to be given of the request in accordance with the Council's requirements. No statements of grounds were filed and, accordingly, there are no other parties to the proceeding.
- 5 The two main changes to the endorsed plans are a reduction in car parking for residents of each dwelling and changes to the built form of dwelling 5.
- 6 As is well accepted, our task is confined to determining the requested amendments and to not otherwise revisit the merits of the permit including the endorsed plans.

CAR PARKING

- 7 The endorsed plans show the provision of eleven car parking spaces in a car stacker accessed from the rear lane.
- 8 The amended plans provide for four at-grade spaces. One space is provided for each of dwellings 1 to 4, each being three-bedroom dwellings. No space is provided for dwelling 5. Dwelling 5 is a two-bedroom dwelling in the endorsed plans but is a one-bedroom dwelling in the amended plans. There is no change to the zero provision of spaces for visitors to the five dwellings.
- 9 As the endorsed plans provide eleven spaces and the amended plans provide four spaces, the change in car parking for residents that we must consider is a reduction in seven spaces. The requirement under the Scheme for all the dwellings in the amended plans is nine spaces, comprising two spaces for each of dwellings 1 to 4 and one space for dwelling 5. Permission is

¹ The submissions and evidence of the parties have 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 *Papermite Pty Ltd v Monash CC* [2019] VCAT 1954.

³ A landscape plan was also endorsed under condition 4 of the permit on the same date.

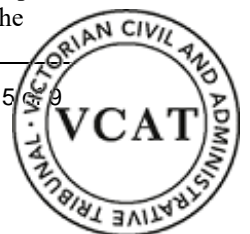


therefore required to reduce the statutory requirement by five spaces ie from nine spaces to four spaces.

- 10 In determining a reduction, the Scheme requires consideration of various matters, including a demand assessment, relevant policy, availability of alternative parking, on street parking in residential zones, and future development of any nearby activity centre.⁴
- 11 The Council relies on the comments of its traffic engineers in opposing any reduction. The traffic engineers referred to the ABS 2021 Census data showing average vehicle ownership of 0.71 vehicles for one bedroom dwellings and 1.45 vehicles for three bedroom dwellings.⁵ The engineers in their comments therefore identified a minimum requirement of 6.5 car spaces.
- 12 The Council also relies on existing permit only parking in Thomas Street (both sides, 8 am to 6 pm Monday to Saturday) and its policy to not issue additional parking permits. The Council claims some residents will therefore park in surrounding unrestricted residential streets, at some distance from their dwellings, causing inconvenience. The Council is not concerned about amenity impacts associated with such parking.
- 13 The Council also says the reduction sought is not supported by any parking limitations in the Scheme for the surrounding area including Thomas Street.
- 14 Papermire relies on the evidence of Mr Fairlie who supports the reduction in the amended plans.
- 15 We prefer Mr Fairlie's evidence to the Council's submissions.
- 16 The provision of a reduction to four car spaces for residents in the amended plans is acceptable for the following reasons.
- 17 First, the subject land is in the Clayton major activity centre. Furthermore, it is not located at the outer edge of the centre. It is in the heart of the centre and abuts a lane at the rear of commercially zoned and developed premises fronting Clayton Road.
- 18 Second, the subject land is within a Residential Growth Zone and the Monash National Employment and Innovation Cluster and is proximate to Monash Medical Centre and Monash University.
- 19 Third, the subject land is well located for sustainable transport options. The subject land is less than a 300 metre walk to Clayton Railway Station and proximate to a wide range of bus services. It is also proximate to a quality bicycle path network near the railway station and to an existing car share space.

⁴ The Scheme cl 52.07.

⁵ The comments did not expressly refer to whether these figures relate to all or part of the municipal district, but having regard to Mr Fairlie's evidence it is now apparent the comments relate to the 'Clayton suburb'.

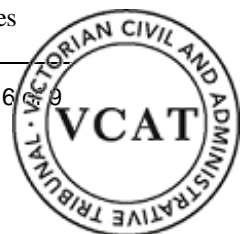


- 20 Fourth, there is general policy support for fewer spaces.⁶ Although we accept there is no express local policy that supports any reduction in the residential growth zone adjoining the centre, the Council has adopted a strategy encouraging a reduction in car dependence and use, to which we give some weight.⁷
- 21 Fifth, Mr Fairlie's parking surveys shows limited availability of unrestricted on-street parking in business hours (eg some parts of both Belmont Avenue and Jean Avenue) but this fact neither supports nor mitigates against the proposed reduction.⁸
- 22 We agree with Mr Fairlie that it is likely due to planning policies for more intense development in the centre that these restrictions could be extended if required in the future. We note that Mr Fairlie's surveys show there is plenty of short-term parking in the surrounding area for visitors to the five dwellings (particularly after business hours), but this is not relevant to the assessment of the proposed reduction.
- 23 Sixth, Mr Fairlie says the subject land has a 'walk score' of 90 (out of 100) which means that most daily errands can be completed on foot.
- 24 Seventh, the 2021 Census data that is referred to by the Council's traffic engineers is for the Clayton suburb. Mr Fairlie includes data for statistical areas SA1 and SA2 that are part of the Clayton suburb but are more focused on the subject land. The data for these two areas is not more reliable than those for the Clayton suburb for one bedroom dwellings for reasons unnecessary to set out here. However, the data for three bedroom dwellings in SA1 is for lower vehicle ownership at 1.26 cars and 64% of those dwellings have zero or one vehicle.
- 25 The Census data for the Clayton suburb shows there is a demand for zero vehicles in 37% of one bedroom dwellings. This means zero spaces for dwelling 5 will be consistent with a significant demand. It also shows in SA1 there is a demand for no more than one space in 64% of three bedroom dwellings. This also means that one space for dwellings 1 to 4 will be consistent with a significant demand.
- 26 The final observation we make about the Census data is that based on the Clayton suburb, the demand assessment shows provision of 6.5 spaces would meet demand. The Council's traffic engineers referred to this provision. While the Council did not submit six spaces (rounded down from 6.5 spaces, in accordance with the Scheme) would be acceptable, the data for the Clayton suburb shows the amended plans would result in a

⁶ The Scheme cl 18.02

⁷ Monash Integrated Transport Strategy 2017.

⁸ Papermire relied on *Vincent Corporation Pty Ltd v Moreland* [2015] VCAT 2049 at [54] for the proposition that '[i]f residents have opportunity to park on-street due to nearby on-street spaces being unrestricted, then that is fortuitous only'.



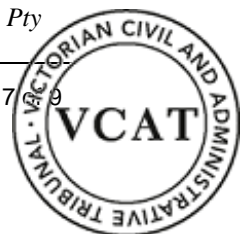
reduction of two spaces from demand rather than five spaces from the statutory requirement.

- 27 Eighth, we give more weight to Mr Fairlie's tested evidence than the comments of the Council's traffic engineers, none of whom were called to give tested evidence. The comments of the Council's traffic engineers were very brief and did not take the broader and more detailed approach taken by Mr Fairlie.
- 28 We have also considered the Tribunal cases that considered reductions in residents parking requirements in the Clayton area that Papermite and the Council tendered.⁹
- 29 The facts and circumstances in each case is, of course, different but they contain relevant principles to which we have had regard. We will simply observe that *Thomas Clayton Pty Ltd* and *Virtue Group Developments Pty Ltd* relate to land at 6 Thomas Street and 418 Haughton Road (respectively) both of which are in the same area east of the commercial strip along Clayton Road and south of the railway line.
- 30 *Virtue Group Developments Pty Ltd* related to a proposal to construct 21 one and two bedroom apartments in a four-storey building and to provide eleven car spaces for residents. The applicant in that case sought permission for a reduction of ten spaces from the statutory requirement. After considering the different and tested evidence of two traffic engineers, the Tribunal supported the reduction largely based on policy and the location of the land. The principles in that case do not mitigate against and tend to support the grant of the reductions in this case.
- 31 In conclusion, we support a reduction to provide the four residents spaces as shown on the amended plans.

DWELLING 5

- 32 In the amended plans, dwelling 5 is changed from a two bedroom to a one bedroom dwelling. There are changes to its footprint and its three-dimensional building envelope, but it remains a two level dwelling located generally above the garage at the rear of the site with access from a door at ground level off a shared path.
- 33 The changes result, in part, from the change to the garage. The garage in the amended plans does not require the greater height to accommodate the car stackers as shown in the endorsed plans (because it no longer contains the stackers). Dwelling 5 will have a maximum height that is 900 mm lower than in the endorsed plans. The Council does not oppose the change in height.

⁹ *Ma v Monash CC* [2023] VCAT 1020; *GNL Developments Pty Ltd v Monash CC* [2021] VCAT 1062; *Thomas Clayton Pty Ltd v Monash CC* [2022] VCAT 171; *Virtue Group Developments Pty Ltd v Monash CC* [2022] VCAT 559.



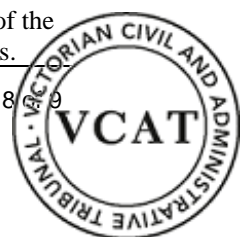
- 34 The Council opposes the less articulated form of dwelling 5. In relation to building setbacks from side and rear boundaries, there are reductions of up to 500 mm at the first floor on its south and west walls. There are also reductions of up to 980 mm at the second floor on its north, south and west walls.
- 35 The new footprint of dwelling 5 is acceptable because the overall impact should be balanced against the lower height, the changes have no impact from Thomas Street,¹⁰ they have no material impact on land to the north and south, and there is compliance with relevant setback standards in the Scheme.
- 36 The Council opposes the change in materiality of dwelling 5. There are some changes to the allocation of face brickwork and colorbond cladding. They are acceptable because they are not significant. The only change to the public realm relates to the garage which now has more brickwork facing the lane.

BICYCLE PARKING

- 37 The Council also opposes proposed bicycle parking.
- 38 The amended plans include a bicycle parking rack on the north side of the garage open to the rear lane. Mr Fairlie's opinion is that the provision should be improved. Papermite accepts Mr Fairlie's recommendation to remove the rack and provide a bike locker along the south boundary adjoining the dwelling 5 entry. This necessitates the minor relocation of the dwelling 5 bin storage and the removal of another bike rack on the south side of the garage along a residents' pathway.¹¹
- 39 The Council does not oppose Mr Fairlie's recommendation.
- 40 We support Mr Fairlie's recommendation because it provides enhanced bicycle storage facilities for dwelling 5 which (as we have mentioned) does not have a dedicated car space. We have provided for that in an amended condition 1.
- 41 At the hearing, Papermite and the Council agreed that the space on the north side of the garage occupied by the bike rack on the amended plans should be largely returned to landscaping, consistent with the endorsed landscaping plan.
- 42 At the hearing, Papermite and the Council also agreed that the canopy tree shown in the north-west corner of the dwelling 4 courtyard would need to be relocated having regard to the 500 mm additional depth of the garage.

¹⁰ We note the changes do have minimal impact from the less-sensitive lane at the rear of the commercial strip, which is acceptable.

¹¹ Papermite also submits the services area located on the endorsed plans to the immediate east of the dwelling 5 bin storage area may be deleted as a consequence of the removal of car the stackers.



We will amend condition 4 so that a new landscaping plan is prepared so that a better location can be found for the tree.

- 43 We will leave it to the parties to consider whether, in the interests of providing a larger courtyard free of a clothesline, both the dwelling 4 store and clothesline could or should be located on the north side of the garage, to occupy part of the space freed up by relocation of the bicycle rack.

CONCLUSION

- 44 For the above reasons, we will allow the application and amend the permit.

Geoffrey Code
Senior Member

Sarah Porritt
Member

