# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P962/2021  Permit no. TPA/51143 |

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| CATCHWORDS |
| Section 80 of the *Planning & Environment Act 1987*; Monash Planning Scheme;  Shop & two dwellings: Car parking arrangement |

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| APPLICANT | William Pace |
| RESPONSIBLE AUTHORITY | Monash City Council |
| SUBJECT LAND | 122 Hansworth Street, Mulgrave |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 10 February 2022 |
| DATE OF ORDER | 17 February 2022 |
| CITATION | Pace v Monash CC [2022] VCAT 173 |

# Order

1. Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting Sheet 1 of the permit application plans with the following plan filed with the Tribunal:

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| * Prepared by: | Blueprint Designs |
| * Drawing number: | Sheet 1 of 7 (TP01) |
| * Dated: | 04-05-20 |

1. The decision of the Responsible Authority is varied.
2. The Tribunal directs that planning permit TPA/51143 must contain the conditions set out in Appendix A.
3. The Responsible Authority is directed to issue a modified planning permit in accordance with this order.

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| Tracy Watson **Member** |  |  |

**APPEARANCES**

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| For Applicant | Daniel Bowden, town planner. Mr Bowden called expert evidence from Andy Mujkanovic, traffic engineer. |
| For Responsible Authority | Gerrard Gilfedder, town planner. |

# INFORMATION

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| Description of Proposal | Planning Permit TPA/51143 allows the development of a shop and two dwellings and a reduction in car parking. |
| Nature of Proceeding | Application under Section 80 of the *Planning and Environment Act* 1987 – to review conditions in a permit. |
| Planning Scheme | Monash. |
| Zone | Clause 34.01 – Commercial 1 Zone. No overlays apply. |
| Permit Requirements | Clause 34.01-4 – Construct a building or construct or carry out works. Clause 52.06-3 – Reduce the number of car parking spaces. |
| Relevant Scheme, policies and provisions | Includes Clauses 11, 18, 21.01, 21.06, 21.08, 22.03, 34.01, 52.06, 65 and 71.02. |
| Land Description | The subject site is located on the southern side of Hansworth Street at the eastern end of a small commercial strip. The subject site has a regular shape with a frontage of 5.48 metres, a depth of 28.04 metres, and an overall site area of 162m2. The subject site is currently developed with a vacant, single storey building. |

# REASONS[[1]](#footnote-1)

## What is this proceeding about?

1. The Monash City Council issued a Planning Permit for the proposed development on 30 March 2021. The permit applicant is seeking a review of Condition nos. 3, 4a, 4b, 4c, 4d, 4e, 4f, 5, 6, 7 and 8 which form part of Planning Permit TPA/51143. The Tribunal has not received any non-party statements of grounds in relation to the notification of the amended plan.
2. The permit conditions being reviewed all relate to a requirement for the proposed on-site car parking to be provided via a mechanical car parking system. The applicant wishes to replace the proposed car stacker with at-grade spaces, and is therefore seeking the deletion of the following conditions (being nos. 3 through to 8):
3. *KLAUS Multibase 2078i-195 with 350cm height stacker system is to be used to provide 2 on-site parking spaces.*
4. *Mechanical car parking system modules are required to cater for the following:*
5. *Independent operation for each parking space.*
6. *A minimum ground level overhead clearance of 1.8 metres.*
7. *A car/van up to 175cm height on the upper level.*
8. *A clear/usable platform width of at least 230cm.*
9. *Minimum pit length of 520cm.*
10. *Loading weight per platform of at least 2000kg.*
11. *All access points to the mechanical parking system require the provision of a gate/door which is to be fully automated and linked to the operating system to ensure that there is no inadvertent access when the system is in motion.*
12. *The mechanical parking system to meet Australian Standard AS 5124:2017 Safety of machinery—Equipment for power driven parking of motor vehicles - Safety and EMC requirements for design, manufacturing, erection and commissioning stages (EN 14010:2003, MOD).*
13. *The mechanical parking system to be maintained in a good working order and be permanently available for the parking of vehicles in accordance with its purpose, to the satisfaction of the Responsible Authority.*
14. *The mechanical parking system is to provide a “hold-to-run” switch to ensure that the system immediately stops when released. It should also provide an acoustic warning signal which sounds while the system is in operation.*
15. This means that the planning issue in dispute is confined to whether it is acceptable to provide the two on-site car spaces, at-grade, rather than in a mechanical car stacker. That is, the number of on-site car spaces, and the location of the car parking at the rear of the proposed building are not in contention.
16. The Tribunal must decide whether to retain, modify or delete the proposed permit conditions. Having considered all submissions, and the traffic engineering expert evidence, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to vary the decision of the Responsible Authority. My reasons follow.

## Is it acceptable to provide at-grade car spaces?

1. The Council submitted that the use of a mechanical car stacker is necessary as there is not enough space for the two car spaces to be provided at-grade, in a satisfactory layout. In other words, the Council’s position was that the existing conditions of the subject site and the abutting laneway mean that the proposed at-grade spaces are unsafe and inefficient and do not meet the relevant Clause 52.06 provisions.
2. The proposed car spaces are accessed from the east-west aligned laneway which abuts the rear of the subject site, as well as the other properties located within the commercial strip. This laneway is 6.15 metres wide, is located off Einstein Avenue and does not extend beyond the rear of the subject site. Ultimately, the proposed accessway width is 6.4 metres as the at-grade car spaces are proposed to be setback an additional 250mm from the northern laneway edge.
3. The key purposes of Clause 52.06 relevant to this proceeding are:

To ensure that car parking does not adversely affect the amenity of the locality; and

To ensure that the design and location of car parking is of a high standard, creates a safe environment for users and enables easy and efficient use.

1. These Clause 52.06 purposes are also reflected in the planning scheme’s local planning policy framework, for instance at Clauses 21.08 and 22.03. One of the objectives at Clause 21.08-3 is, “To ensure that adequate vehicle parking is provided for all new uses and developments and that the cost is shared on an equitable basis.” In addition, one of the policies at Clause 22.03-3 seeks car parking which is designed for safe and efficient vehicle movement.
2. Other parts of the planning scheme also seek new development which has reasonable off-site amenity impacts. For example, one of the decision guidelines at Clause 34.01-8 requires a consideration of, “The interface with adjoining zones, especially the relationship with residential areas.”
3. The proposed car parking layout needs to be to the satisfaction of the decision-maker, pursuant to Clause 52.06-8 of the planning scheme. The Clause 52.06-9 car parking layout Design Standards, which are relevant to this proceeding, are: Design Standard 1 (accessways); and Design Standard 2 (car parking spaces).
4. In addition, Clause 52.06-9 specifies that the car parking plan (that is, the car parking layout) must meet the design standards of Clause 52.06-9, unless the decision-maker agrees otherwise. Put another way, the usual expectation is that a car parking layout will meet the Clause 52.06-9 design standards. Importantly, however, the planning scheme does allow for alternative designs to be approved.
5. It is the Council’s position that the proposed car parking layout needs to meet the dimensions specified in the Clause 52.06-9 design standards in order to provide for a safe, convenient and efficient arrangement. In essence, the Council said that the proposed at-grade car spaces are unacceptable as they cannot meet the width and length dimensions specified for a 6.4 metres wide accessway. The Council submitted that each car space needs to be 2.6 metres wide, rather than the proposed 2.46 metres wide. It is for this key reason that the Council only approved the proposed development conditional upon the use of a car stacker.
6. The Council’s position contrasts with the expert traffic engineering evidence of Mr Mujkanovic who concluded that “the rear parking arrangement will function well and provide a safe access to future occupants of the building.”
7. Given the facts and circumstances of this case, Mr Mujkanovic’s expert opinion was that a width of 2.46 metres for each car space allows for safe access and that the car spaces will function well for future occupants. He was satisfied that in this case, compliance with the AS2890.1:2004, which specifies a car space width of 2.4 metres, is acceptable.
8. During the course of his evidence, Mr Mujkanovic tabled a car parking layout plan showing that there will be 300mm available along the eastern and western edges around the parked cars, with 560mm space provided in between the parked cars. Although I agree with the Council that this is a tight layout, I accept Mr Mujkanovic’s evidence that these gaps are sufficient for car doors to be opened and for people to be able to move around the cars within this enclosed space.
9. It is also noteworthy that a similar existing arrangement is located nearby, at the recently redeveloped property at nos. 116-118 Hansworth Street. Mr Bowden tabled photographs showing two cars parked side-by-side in this new development where a combined width of 5.48 metres is also provided. The way this car parking space is being used differs from the staggered layout shown in the endorsed plans for this development. I think that this demonstrates that in practice, such a side-by-side layout (featuring a combined width of 5.48 metres) does provide for a convenient layout for the end-users. Indeed, this layout seems to be the preferred arrangement as chosen by the occupants of nos. 116-118 Hansworth. In my mind, it confirms that the proposed layout is workable and provides for the desired convenience and ease of access.
10. It is also somewhat self-evident, that an appropriately sized and sited at-grade car space is easier to access than a car space located within a mechanical car stacker. The provision of at-grade parking also eliminates any potential noise arising from the use of a mechanical car stacker. This is a relevant consideration given that the rear of the proposed building directly abuts the backyard of a residential property, with another residential backyard also abutting the eastern end of the laneway.
11. Lastly, Mr Mujkanovic’s evidence statement included swept path diagrams demonstrating that B85 vehicles can enter and exit the site in a forwards direction, in an appropriate manner. It is also noteworthy that this is a relatively short laneway that only provides other vehicular access to the rear of properties located at nos. 116, 118 and 120 Hansworth Street.
12. Nothing arose during Mr Gilfedder’s cross-examination of Mr Mujkanovic that caused me to doubt the expertise of the witness, nor the contents, analysis and conclusions contained in his expert evidence statement.
13. On the basis of the expert evidence, I am satisfied that the proposed car parking layout is acceptable and achieves the applicable Clause 52.06 purposes.

## Conditions

1. The draft conditions were discussed at the hearing, and the conditions included at Appendix A reflect these discussions.
2. The effect of the conditions included in the permit at Appendix A is to approve the replacement of the mechanical car stacker with two, at-grade car spaces as depicted in the plan substituted by the Tribunal.
3. The decision of the Responsible Authority is therefore varied.

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| Tracy Watson **Member** |  |  |

# APPENDIX A

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| **PERMIT NO:** | TPA/51143 |
| **LAND:** | 122 Hansworth Street, Mulgrave |
| **WHAT THE PERMIT ALLOWS:** | |
| * Development of a shop and two dwellings and reduction to the car parking requirements of Clause 52.06 of the Monash Planning Scheme. | |

# 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 must be generally in accordance with the plans submitted with the application [by Blueprint Designs, Reference No. 19-026, Sheets TP01 (Rev A, Sheet 1 of 7); andTP02 and TP03 (Issue B date 03-11-20)], but modified to show, to the satisfaction of the Responsible Authority:
2. The north facing, Apartment 2, Bedroom 1 window to be screened to prevent overlooking of the adjacent private open space in accordance with the requirements of Clause 55.04-6 of the Monash Planning Scheme.
3. Replacement of a car stacker with two at grade parking spaces in accordance with the layout shown in Sheet TP01 (Rev A, Sheet 1 of 7).
4. Confirmation of the location of the stairs and bin area.
5. The location and design of any proposed electricity supply meter boxes.
6. The location of letter boxes in accordance with Australia Post standards.

**No Alterations**

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

**Drainage**

1. Before the development starts, a site layout plan drawn to scale and dimensioned must be approved by the Responsible Authority.

The plans must show a drainage scheme providing for the collection of stormwater within the site and for the conveying of the stormwater to the nominated point of discharge.

The nominated point of discharge is the north-west corner of the property where the entire site’s stormwater must be collected and free drained via a pipe to the Council pit in nature strip via the existing property connection.

If the point of discharge cannot be located then notify Council’s Engineering Division immediately.

1. All on-site stormwater is to be collected from hard surface areas and must not be allowed to flow uncontrolled into adjoining properties or the road reserve. The private on-site drainage system must prevent discharge from driveways onto the footpath and into the road reserve.

**Urban Design**

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

**Completion of Buildings and Works**

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

**Permit Expiry**

1. 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 two (2) years from the date of issue.
* The development is not completed before four (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 within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry

**---** **End of Conditions** ---

1. I have considered the written and oral submissions (including exhibits) of the two parties, and the expert evidence of Mr Mujkanovic. In accordance with the practice of the Tribunal, I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)