

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11915/2021
PERMIT APPLICATION NO. TPA/52846

CATCHWORDS

Section 77 *Planning and Environment Act 1987*. Monash Planning Scheme. General Residential Zone, Schedule 3. Two dwellings in a side-by-side layout. Neighbourhood character. Amenity.

APPLICANT	Wanda Mulgrave Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	70 Wanda Street MULGRAVE 3170 VIC
HEARING TYPE	Hearing
DATE OF HEARING	1 September 2022
DATE OF ORDER	8 September 2022
CITATION	Wanda Mulgrave Pty Ltd v Monash CC [2022] VCAT 1041

ORDER

- 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: Synch
 - Drawing Numbers: TP00, TP02-TP11 (inclusive)
 - Dated: 20 July 2022
- 2 In application P11915/2021 the decision of the responsible authority is affirmed.
- 3 In planning application TPA/52846 no permit is granted.

Cindy Wilson
Member



APPEARANCES

For applicant	Mr Paul Truong, town planner of Bayside Town Planning
For responsible authority	Mr Gareth Gale, town planner of Gareth Gale Consulting Pty Ltd

INFORMATION

Description of proposal	Construction of two dwellings in a side-by-side layout
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 No overlays
Permit requirements	Clause 32.08-6 A permit is required to construct two or more dwellings on a lot
Land description	The review site is on the east side of Wanda Street, Mulgrave approximately 66 metres south of Caper Court. The land is irregular in shape with a frontage of 15.81 metres and site area of 685.1 square metres.
Tribunal inspection	Prior to the hearing I inspected the review site and surrounds, including some developments in the wider area that were referred to in submissions.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 A proposal for two double storey, attached dwellings at 70 Wanda Street, Mulgrave has been refused by Monash City Council (Council). Wanda Mulgrave Pty Ltd (Applicant) seeks a review of that decision.
- 2 Prior to the hearing, amended plans for the proposal were circulated. After hearing from the parties, I allowed substitution of these plans for the permit application plans. Council continues to oppose the grant of a permit although no longer pursues concerns about compliance with the front setback standard. There has been no statements of grounds lodged in the review.
- 3 The Tribunal must decide whether a permit should be granted and, if so, what conditions should apply. Having considered the submissions, had regard to the Monash Planning Scheme and having inspected the site and surrounds, I have decided no permit should issue for the proposal. I have reached that decision based on my findings on the following key issues:
 - Respect for neighbourhood character; and
 - Amenity impacts
- 4 I set out my findings on these matters preceded by a description of the proposal and site context and a summary of the key provisions of the Monash Planning Scheme.

WHAT IS PROPOSED?

- 5 Two attached double storey dwellings are proposed in a side-by-side arrangement. Both with a similar layout, the dwellings comprise a study, two living rooms, kitchen, laundry and powder room at ground level with three bedrooms, two bathrooms and a rumpus room at upper level.



Figure 1: Ground and upper floor plans Source: Synch Plans TP03 & TP04 dated 20 July 2022

¹ The submissions of the parties, any supporting exhibits given at the hearing 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.

- 6 A single garage is proposed for each dwelling accessed via separate driveways each of which will also accommodate a tandem car space.
- 7 Elevations show pitched rooflines to the upper levels and the porch elements with a parapet to the ground level.



Figure 2: Street elevation Source: Synch Plans TP06 dated 20 July 2022

WHAT IS THE SITE CONTEXT?

- 8 The review site is irregular in shape with a site area of 685.1 square metres. It has a frontage of 15.81 and widens to an 18.01 metre rear boundary. The land has a slight fall, contains an existing house and no vegetation of significance.
- 9 The land is on the east side of Wanda Street, Mulgrave, in a mid-block location, approximately 66 metres south of Caper Court. Adjoining to the south and north and on the opposite side of Wanda Street are detached single storey dwellings. For the most part the dwellings in the nearby area are older, post-war styles. There are some limited examples of contemporary development including a two storey, two dwelling development on the southeast corner of Caper Court and Wanda Street.
- 10 To the rear there are single storey dwellings in Lea Road. A two dwelling development, in a tandem layout, at 51 Lea Road, directly abuts the rear boundary.



Figure 3: Aerial photo of site and surrounds Source: Council submission page 5 from MetroMap

- 11 Wanda Street has a curved alignment near the review site, includes nature strips and footpaths on both sides with established street trees providing an attractive streetscape. Front fencing is generally low or absent.



- 12 A small set of shops, a child care centre, preschool and place of worship are located approximately 300 metres to the north. A bus route runs along Wanda Street.

IN SUMMARY, WHAT DOES THE PLANNING SCHEME SAY?

- 13 The review site is within the General Residential Zone, Schedule 3 (GRZ3). A permit is required for two dwellings on the land.
- 14 The purpose of the GRZ, in addition to implementing policy and supporting housing growth and diversity, encourages development that respects neighbourhood character. Schedule 3 to the GRZ has specific neighbourhood character objectives as follows:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

To support new development that locates garages and carports behind the front walls of buildings.

- 15 Schedule 3 varies a number of clause 55 requirements and requires consideration of the following decision guidelines:

Whether the development provides an appropriate transition to built form on adjoining sites.

The robustness of proposed materials and finishes.

The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.

The location and number of vehicle crossovers.

The impact of the development on nature strips and street trees.

The location, quantity and species of vegetation provided.

- 16 Pursuant to the GRZ provisions, a development must meet the specified garden area, the requirements of clause 55, dwelling height must not exceed 11 metres and relevant decision guidelines must be considered. Also relevant are decision guidelines at clause 65 and the requirement for integrated decision making at clause 71.02-3.
- 17 There is a range of relevant policy in the Planning Scheme including support for increased dwelling diversity and numbers in areas with access to services and facilities and ensuring development responds to context and achieves appropriate amenity outcomes.

- 18 The Municipal Strategic Statement,² in addition to stating the importance of the garden city character of Monash, recognises the need to accommodate additional and more diverse housing while concurrently ensuring respect for neighbourhood character. A residential framework plan includes eight categories classified according to development potential. The review is in ‘Category 8 Garden city suburbs’ identified as suitable for incremental change.
- 19 Local policy³ on residential development and character sets out objectives that apply to all residential development. In summary, as relevant to this case, the objectives seek landscaping to respond to the garden city character and for development to achieve architectural outcomes that positively contribute to neighbourhood character, add to the variety of housing and achieve best practice environmentally sustainable development. Policies⁴ relating to general matters, setbacks, site cover, landscaping, private open space, fencing, vehicle crossings, built form, car parking and environment are provided.
- 20 The preferred future character statement for the area must be considered. The review site is included in a Garden City Suburbs Northern Area character type where the preferred character statement is:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

² At clauses 21.01 and 21.04.

³ At clause 22.10.

⁴ At clause 22.01-3.



Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and nonexistent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe.

RESPECT FOR NEIGHBOURHOOD CHARACTER

21 The Applicant submits the width of the lot, at 15.8 metres, is wider than a typical lot of 15.24 metres and can support the side-by-side layout. The Applicant submits that the proposal is an appropriate response to neighbourhood character having regard to the following elements:

- The 7.6 metre front setback for the garages and main walls of both dwellings that meets the varied front setback standard. Although the porches slightly encroach into the setback, they will not be intrusive given the hipped roof design and the staggered setback.
- Siting that will accommodate appropriate landscaping including:
 - Setbacks from front and rear boundaries that provide for trees that will achieve similar height to the dwellings.
 - Opportunities along side boundaries for smaller trees and other planting, including a planting strip along the southern side of the driveway for dwelling 2.
 - Short driveways that limit hard paving.
 - Compliance with the varied landscaping standard in GRZ3.
- Building design that avoids visual bulk in terms of height and wall length. High level of articulation in terms of upper level recesses and the use of different building materials and colours, noting the external finishes are consistent with contemporary development in the area.
- Upper levels setback from side boundaries to meet the requirements of Standard B17 and providing good separation from adjoining properties.
- The single garage for each dwelling that does not dominate the proportions of the ground floor. Although the garage for dwelling 1



is slightly forward of the main wall of the dwelling, the Applicant would accept a condition requiring recessing, if thought necessary.

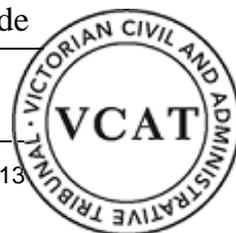
- Absence of boundary-to-boundary construction with setbacks of between 1 and 5 metres from the northern boundary. This will adjoin the 2 metre setback of 68 Wanda Street creating a separation of built form clearly visible from Wanda Street.
 - The inclusion of a study window that will provide activation and passive surveillance at ground level.
 - Excellent sense of address for both dwellings.
 - The Council traffic engineer raising no objection to an additional crossover.
- 22 The Applicant refers to a number of approved side-by-side development in the wider area that include dual crossings and lengthy ground and first floors that extend deep into sites. Some of these are completed and other are under construction.
- 23 Council submits that the proposal responds poorly to the existing and preferred neighbourhood character having regard to the following design features:
- The two driveways in the front setback that result in significant hard surface instead of the spacious landscape setting sought for the area.
 - Inadequate setback to the south which allows for only limited landscaping to contribute to the character or provide filtering of views of the development from the south.
 - The extensive decking to the rear boundary resulting in the majority of planting being in an easement.
 - Inadequate provision of space that allows for the substantial canopy planting sought by policy.
 - The near boundary-to-boundary construction at ground level and a wide first floor level with minimal setbacks resulting in built form dominating the streetscape rather than landscaping.
 - On a site with a width of only 15.8 metres, the garages and driveways will result in a disproportionate component of the frontage being dominated by car accommodation. This impact is exacerbated by the garages being sited broadly in line with the dwelling facades rather than recessed.
- 24 Council says where an area displays a character of detached single dwellings and where site width is modest, a tandem style format is preferred. In reference to the examples of side-by-side development referred to by the Applicant, Council says there are distinguishing features including wider sites, approval under different planning scheme provisions

and varied designs. These circumstances and the distance of the examples from the review site, means they do not provide justification for the proposal.

Tribunal findings

- 25 As has been frequently acknowledged by the Tribunal, there are advantages of side-by-side developments that include avoidance of built form extending to the rear boundary, rear open space that can align with adjoining rear gardens and a clear street address and entry for each dwelling. However, such development must achieve an acceptable response to neighbourhood character when assessed against the relevant Planning Scheme provisions and policies. In this case, I find the proposal fails to achieve that acceptable response for the following reasons.
- 26 Nature strips exist along both sides of Wanda Street with established and consistent street planting creating an attractive streetscape. There is a pattern of development that does not include two vehicle crossings per lot. The proposed dual crossings will result in loss of nature strip and detract from the ‘soft leafy’ nature of the street, a feature sought to be retained in the preferred neighbourhood character statement.
- 27 I consider the width of the lot, 15.8 metres at the frontage, is not generous. The relatively narrow site width means the two crossings and the associated driveways, to be used for tandem car spaces, limits opportunity for landscaping. Although it can be argued that the use of two shorter lengths of driveway limits the extent of hard paving compared to a longer shared driveway, on a narrow site it means the frontage becomes dominated by hard paving. On this site, the layout does not maximise the opportunity for landscaping in the front setback nor exclude car spaces from street setbacks, as sought in policy.
- 28 I acknowledge the overall width of accessways does not exceed 40% of the street frontage as set in the standard⁵ relating to access. However, I am not satisfied that the two vehicle crossings on a site of this size respects the neighbourhood character nor allows for the spacious garden setting sought for garden city suburbs in the GRZ3 objectives.
- 29 The width of the lot also limits the ability for the design to avoid garages dominating the streetscape appearance and restricts opportunity for an active interface to the street. The inclusion of two garages facing the street on a lot of this width results in the ground floor front elevation presenting with garages as the dominant element. The relatively narrow window provided adjacent to the front door of each dwelling limits passive surveillance opportunities at ground level.
- 30 An objective of the GRZ3 seeks to minimise building mass in the streetscape through generous front and side setbacks, landscaping in the front setback and recesses in the built form. There is policy that seeks side

⁵ At clause 55.03-9.



setbacks that reflect the rhythm of existing streetscapes and maintain the separation of dwellings. I find the extent of built form across the site at ground floor, the relatively limited area available for landscaping between the two driveways and the minimal recessing of the upper levels from the lower levels in the front elevation, in combination, result in a development that fails to respond to this direction. In a streetscape where there is clear sense of spacing between dwellings, I consider the layout that provides a minimal setback from the northern boundary (as viewed from the street) and construction to the southern boundary, will not achieve the outcomes sought.

- 31 I acknowledge the landscape plan provided as part of the Applicant's submission. I accept there is opportunity to plant the four canopy trees specified as part of the varied landscaping standard in GRZ3 and, subject to permit conditions that address species selection, trees could reach a mature height that equals the building height. Concerns about the size of the rear decks and opportunity to provide planting outside the easement could be addressed by permit condition that limits the extent of the decks. However, these factors do not alter my view that the layout fails to achieve an acceptable response to neighbourhood character, as sought in the Planning Scheme.
- 32 I acknowledge the Applicant's reference to, and reliance on, existing approved developments in Mulgrave⁶ to support the proposal. However, each proposal must be considered on its own merits having regard to context, planning scheme provisions and design response. Without examining all the examples referred to in detail,⁷ I note the following:
- All of the sites are wider than the review site.
 - Designs vary but some have separated upper levels and large windows facing the street at ground level.
 - The examples, although in Mulgrave, may be in areas with a different pattern of development
 - All have been approved prior to the approval of Amendment C125 to the Planning Scheme and thus were subject to different assessment criteria.⁸

AMENITY

- 33 Council raises the following matters in relation to amenity:
- Adverse impact to the north facing windows of the adjoining dwelling at 72 Wanda Street.

⁶ Including 8 & 8A Aintree Avenue, 9 Lea Road, 6 Mangana Drive, 19 Mangana Drive, 58A & 58B Albany Drive, 32A & 32B Hansworth Street and 13A & 13B Rupert Drive.

⁷ Noting I was provided with photographs of these developments but not with permits or plans.

⁸ As advised by Council at the hearing.



- Failure to provide a reasonable level of landscaping on the southern side of the site resulting in an unbroken built form impact to the south.
- Poor energy efficiency for dwelling 2 with no north facing windows.
- Excessive reliance on use of obscure glazing to the detriment of the amenity for future residents.

34 In response to these concerns, the Applicant submits as follows:

- The proposal meets the walls on boundary standard.
- The non-compliance with the north facing window standard is acceptable given the affected windows would receive at least 3 hours of sunlight at the equinox.
- The new owner of the adjoining land to the south did not object to the proposal.
- The Applicant would agree to install skylight tubes on the roof of the adjoining dwelling to the south to provide solar light to the affected rooms.
- If thought necessary, the setbacks could be increased for the upper level bathroom and ensuite and at ground level, the garage could be moved forward to reduce the impact on solar access to the north facing windows.
- Obscure glazing to bathroom windows could be replaced with clear glazing and external louvres could be provided to the first floor rumpus room in both dwellings to allow outlook but limit overlooking.
- The dwellings are provided with east facing living rooms and secluded private open space for both dwellings has northern aspect.
- Although dwelling 2 will not have north facing windows and solar access will be limited, all habitable rooms will have good access to daylight.

TRIBUNAL FINDINGS

35 Various provisions and policies in the Planning Scheme seek to achieve an acceptable standard of internal amenity for future residents and avoid unreasonable amenity impacts for existing residents.

36 There are three north facing windows in the dwelling at 72 Wanda Street, These windows are setback approximately 2.1 metre from the common boundary with the review site. The siting of dwelling 2 fails to meet the standard⁹ that applies to north facing windows as follows:

⁹ At clause 55.04-4.



- From the most western of the north facing windows, the garage on the boundary should be setback 1 metre from the common boundary to meet the standard. Moving the garage forward, as suggested by the Applicant to meet the standard, would result in the garage being located within approximately 4.8 metres of the frontage and considerably forward of the front wall of the dwelling, an outcome that would result in an unacceptable streetscape appearance.
- At upper level, the dwelling is setback 2 metres from the most western and the central of the north facing windows of the adjoining dwelling. Compliance with the standard would require a setback of 2.5 metres to comply with the standard.

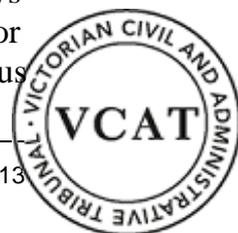
37 I find the failure to meet the relevant standard for two north facing windows will result in an unacceptable amenity impact to the adjoining dwelling and reflects a poor design response. I consider this matter cannot be remedied by permit conditions that alter setbacks.

38 I do not criticise the extent of built form deep into the site, acknowledging the area is designated for incremental change. However, I agree with Council's criticisms of the design of dwelling 2 with two sections of boundary construction, a wide deck in the rear setback and only limited opportunities for landscaping to soften the built form when viewed from the south. I find the design is not a respectful response to the adjoining sensitive interface to the south which includes habitable room windows and secluded private open space.

39 The poor solar access to dwelling 2 is not ideal and adds to my concerns about the design. It is a consequence of the side-by-side layout on an east-west oriented lot. However, I would not have rejected the proposal if this had been the only aspect of concern having regard to the following:

- The standard relating to energy efficiency seeks to place living room windows on the north side, if practicable. The wording of the standard recognises that such a design is not always practicable.
- The secluded private open space for dwelling 2 has northern aspect.
- A skylight is provided above the stair.
- Windows are well provided to allow for daylight.
- The attached nature of the design provides for some energy efficient benefits and compliance with environmentally sustainable design requirements will ensure other energy efficiency matters are addressed.

40 At upper level, each dwelling contains unscreened windows to a bedroom facing the street and a bedroom facing the rear boundary. Also at upper level, a single bedroom and rumpus room in each dwelling have windows shown with obscure glazing to a height of 1.7 metres above finished floor level. If I had decided to grant a permit, I would have required the rumpus



room window to be provided with external screens with fixed louvres limiting views to the adjoining properties, as offered by the Applicant. This treatment would allow outlook whilst maintaining privacy and, together with the two unscreened bedroom windows would provide acceptable internal amenity for future residents.

CONCLUSION

- 41 In reaching my views on the proposal, I have had regard to the positive elements of the proposal that include the provision of additional housing in a location which is designated for incremental change and where there is access to a range of services and facilities and the advantages of a side-by-side layout. On balance, these positive elements do not outweigh my concerns about neighbourhood character and amenity impacts.
- 42 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

Cindy Wilson
Member

