 VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1806/2020Permit Application no. TPA/50932 |
| CATCHWORDS |
| Section 77 of the Planning & Environment Act 1987; Monash Planning Scheme; General Residential Zone Schedule 6; Student Accommodation; Car Parking Provision. |

|  |  |
| --- | --- |
| APPLICANT | Djung Holdings Pty Ltd |
| responsible authority | Monash City Council |
| SUBJECT LAND | 10 Auguste AvenueCLAYTON  |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 24 May 2021 |
| DATE OF ORDER | 11 October 2021 |
| CITATION | Djung Holdings Pty Ltd v Monash CC [2021] VCAT 1185 |

# Order

### Permit refused

1. In application P1806/2020 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/50932 no permit is granted.

|  |  |  |
| --- | --- | --- |
| **Alison Slattery****Member** |  |  |

# Appearances

|  |  |
| --- | --- |
| For applicant | Mr Mark Waldon, town planner of St Wise. He called traffic and car parking evidence from Mr Evan Boloutis of EB Traffic Solutions Pty Ltd.  |
| For responsible authority | Mr Gerard Gilfedder, town planner of Currie & Brown. |

# Information

|  |  |
| --- | --- |
| Description of proposal | Use of the existing dwelling for student accommodation with ten rooms listed but with 11 provided. Some works both internally and externally are required. One all abilities access car parking space will be provided within the existing garage. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit.  |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 6 (GRZ6) |
| Permit requirements | Clause 32.08-6 construction of works in association with a section 2 use.Clause 32.08-2 use of the site as a residential building (student accommodation).Clause 52.06-6 provision of car parking to the satisfaction of the Responsible Authority. |
| Relevant scheme policies and provisions | Clauses 11.01-1R, 15.01-1S, 15.01-2S, 15.01-5S, 16.01-1S, 21.01, 21.04, 22.01, 22.10, 32.08, 52.06, 52.34 and 65 |
| Land description | The site is located on the northern side of Auguste Avenue, Clayton towards its end. The site is currently developed with a double storey brick dwelling that will be retained for the proposed use. A crossover to the western portion of the frontage leads to a garage. The site has an area of 434.3 square metres, with a frontage of 17.45 metres and a depth of 24.89 metres. The site is flat, as are most in the area. The site is located within a residential area but has close proximity to the CSIRO site and to Monash University (around 500m). Fixed rail is not proximate but busses (route 742) travel down Gardiner Road to the east.  |

# Reasons[[1]](#footnote-2)

## What is this proceeding about?

1. On 22 September 2020, Monash City Council issued a refusal to grant a planning permit for the use of the dwelling on site as student accommodation, works and the reduction of car parking to one space, at 10 Auguste Avenue, Clayton.
2. The decision was based on Council’s view that there is inadequate justification for the reduced car parking provision within local policy at 22.10 or within Clause 52.06. Concerns were also raised with regard to the provision of kitchen facilities and amenities provided for students.
3. The applicant, Djung Holdings Pty Ltd, applied to the Tribunal to review this decision. The applicant, through Mr Waldon disagrees with Council and asserts that provision of parking is reasonable. In this position he relied on the traffic and c ar parking evidence of Mr Evan Boloutis of EB Traffic Solutions Pty Ltd. It was his contention that the car parking provided (one space) is appropriate and that the Planning Policy Framework (PPF) and local policies lend support to the proposal.

## What are the key issues?

1. The key issue for determination is whether the proposed use and provision of car parking reasonable?
2. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to affirm the Council’s decision. My reasons follow.

**Is the proposed use and provision of car parking reasonable?**

1. The Monash Planning Scheme includes local policy imperatives at Clause 22.10 that directly address matters relating to student accommodation. This policy is called into action when a permit is required for the use and/or development of a site for student accommodation, such as is sought here. This policy has as its genesis a need to address accommodation requirements in association with the three large university/tafe campuses within the municipality. These are Monash, Deakin and Holmesglen. The policy also speaks to the need to locate student accommodation in close proximity of these large campuses that include large numbers of international students (during pre-covid times). The policy at Clause 22.10 has as a base Clause 21.04-3 which seeks to “*Encourage the provision of high quality student accommodation in preferred locations such as in proximity to tertiary education facilities and activity centres with good access to public transport, which minimises potential conflicts with neighbouring uses”.*
2. I have not been satisfied that the proposed student accommodation provides sufficient car parking in line with the policy and objectives of Clause 22.10. I say this for the following reasons:
	1. Despite Mr Boloutis suggesting the site had “*excellent”* access to public transport, I have not been persuaded that public transport for the site is convenient. Indeed, it would be easier for students to walk to Monash University (the closest of the three universities) than it would to catch the route 742 bus (closest public transport). Whilst the site’s location close to Monash is a plus, its lack of reasonable access to fixed rail transport nor to a convenient bus service is not only not excellent, it is not reasonable.
	2. The site is not within walking distance of the Principal Public Transport Network (PPTN).
	3. The site is not within reasonable or convenient proximity of a range of commercial, retail, entertainment and social facilities.
	4. Whilst I have no concern with the bulk or form of the building on site (it is essentially a re-purposed dwelling), I am not satisfied that the use of the existing garage to accommodate one car parking space is reasonable for a student accommodation facility with effectively 11 bedrooms. I have not been persuaded by the traffic evidence that this provision is adequate. I agree with Councils assessment that the site is located within a preferred location and should provide a rate of 0.3 spaces per bed. I find that no adequate justification for departure from this position has been offered. I have not been persuaded that the inadequate provision of car parking will not have an unreasonable impact on the amenity of surrounding residents through the additional demand for on street car parking.
	5. Whilst bicycle parking is provided on site, it is not under cover and as a result, is suboptimal. As the only alternative provision of transport storage, a reasonable expectation would be for bicycle parking to be convenient and desirable. It is neither.
	6. External open spaces are well proportioned, convenient, safe and will meet the recreational needs of student residents. However, internal spaces such as the kitchen and living area are small. These spaces are in line with the expectations of a dwelling, understandably so given the re-purposing of the dwelling. Consequently, the dimensions of the indoor spaces are not in line with expectations for a larger number of people, a minimum of 11 students. Cooking facilities are limited and opportunity for dining is similarly in line with that for a dwelling, as opposed to a student accommodation. In this way, the standards of habitation for communal rooms is not acceptable.
	7. Clause 22.10-4 requires the submission of a traffic report from a qualified traffic engineer if provision of car parking is less than 0.3 spaces per bed. The report is required to make an assessment of similar facilities with similar locational attributes. Neither Mr Boloutis’ report to Council nor his evidence address this requirement (Mr Boloutis having had carriage of both traffic engineering responses). As has been held by this Tribunal on many occasions, the weight afforded to an expert giving evidence who has been involved with the planning application during the Council process, must be tempered.
	8. In addition to the above concerns with the traffic engineering evidence, I hold the following concerns:
		1. In preparing his evidence Mr Boloutis has listed as his first referenced document “*discussions with and information provided by the applicant.”* The duty of an expert is to assist the Tribunal. It appears from this number one listing of discussions with the applicant, in combination with the ongoing input in to this matter as detailed above, that such duty has not been appropriately concentrated. At paragraph 4.3.1, Mr Boloutis relies on the advice of the permit applicant in giving his expert opinion, suggesting that the applicant says that 11 students were on site therefore there must have been 11 students. The assessment from Mr Boloutis prior to that had been based on there being 4 students.
		2. Mr Boloutis assessment is for a facility with ten bedrooms when clearly 11 rooms are proposed, with one room not labelled. The assessment is not correct as a result.
		3. The evidence relies on the existing illegal use to justify the rate of car parking for the proposed use. When asked, Mr Boloutis could not ascertain if a different car parking pattern might result from a use that does not have the requisite permissions.
		4. At paragraph 4.3.1(a), surveys from 2019 were relied upon, suggesting that 4 students were in attendance. Extrapolation from such low figures and where there is some discrepancy as to student numbers is not of assistance. Assumptions on the basis of the rate of car parking occupation from 4 students is not reliable.
		5. At paragraph 4.3.1(d), the traffic evidence refers to the site as being located within an inner area. This has not been expanded upon. Does this mean that it is an inner part of the Melbourne metropolis? Or an inner area of Monash? Or is it an inner area in relation to Monash University? When asked to clarify, this position was retracted.
		6. Mr Boloutis relied on factors that could not possibly have been known for suggesting a reduced car parking provision was reasonable due to reduced car ownership. He put that students might reduce ownership for environmental reasons. Possibly. He suggested they might avail themselves of car share schemes. Again possibly. But when asked how far the nearest car share scheme was, Mr Boloutis did not know. Mr Boloutis also suggested the reduction was justified on the basis of excellent proximity to public transport. The site is not within the PPTN. He suggested that students might work near the site. Possibly. He also suggested *“some residents may be unable to drive due to being unlicenced, due to their age or a disability*”. Possibly. These are all possibilities. They are not however, empirical, nor are they based on similar facilities with similar locational attributes. The provision of evidence should not be on the basis of possibilities. There should be an evidence based, empirical assessment of the likely probabilities. Such an assessment has not been adequately provided here.
3. Similarly, I have not been satisfied that the proposed student accommodation provides sufficient car parking in line with the purposes of Clause 52.06. I say this for the following reasons:
	1. As noted above I find that the provision of car parking is not in line with Clause 22.10 and hence not in accordance with the expectations of the local planning policy framework.
	2. I have not been persuaded that an appropriate number of car parking spaces has been provided having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
	3. I have not been persuaded that the reduced rate of car parking (pursuant to Clause 22.10, a rate of 0.3 spaces per bed) does not adversely affect the amenity of the locality.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.



|  |  |  |
| --- | --- | --- |
| **Alison Slattery****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. [↑](#footnote-ref-2)