

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P19/2022
PERMIT APPLICATION NO.TPA/52371

CATCHWORDS

S80(1) review; Monash Planning Scheme; General Residential Zone Schedule 3; Two, two storey dwellings; Dwelling 1 First floor setbacks to the street and north boundary. First floor setback to the front façade of Dwelling 2. Articulation; Visual bulk; Recessive first floors; Internal amenity

APPLICANT	Luc Dao
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	19 Devon Grove, OAKLEIGH VIC 3166
HEARING TYPE	Hearing
DATE OF HEARING	5 April 2022
DATE OF ORDER	19 April 2022
CITATION	Dao v Monash CC [2022] VCAT 428

ORDER

- 1 The decision of the responsible authority is varied.
- 2 The Tribunal directs that planning permit TPA/52371 must contain the conditions set out in planning permit TPA/52371 issued by the responsible authority on 10 November 2021 with the following modifications:
 - (a) Condition 1(b) is amended to read:
 - 1(b) The first floor northern wall of Dwelling 1's rumpus room and the north side of the balcony to have a setback of a minimum 4.8 metres from the northern title boundary.
 - (b) Condition 1(c) is amended to read:
 - 1(c) The first floor eastern wall of Dwelling 2's WIR and Ensuite to not extend forward of the eastern edge of the ground floor roof.
- 3 The responsible authority is directed to issue a modified planning permit in accordance with this order.

Geoffrey Rundell
Member



APPEARANCES

For applicant

Mr Ben McKenna, Town Planner, CS Town
Planning Services

For responsible authority

Mr Peter English, Town Planner



INFORMATION

Description of proposal	To develop two, two storey dwellings.
Nature of proceeding	Application under section 80 of the <i>Planning and Environment Act 1987</i> – to review conditions 1(a), 1(b) and 1(c) contained in the permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 3
Permit requirements	Clause 32.08, two or more dwellings on a lot
Relevant scheme policies and provisions	Clause 11.01 – Settlement Clause 11.01-1S – Settlement Clause 11.01-1R – Settlement – Metropolitan Melbourne Clause 11.02-1S – Supply of urban land Clause 15 – Built Environment and Heritage Clause 15.01 – Urban Design Clause 15.01-1R – Urban Design-Metropolitan Melbourne Clause 15.01-2S – Building Design Clause 15.01-4S – Healthy neighbourhoods Clause 15.01-4R – Healthy Neighbourhoods – Metropolitan Melbourne Clause 15.01-5S – Healthy neighbourhoods – Metropolitan Melbourne Clause 16 – Housing Clause 16.01-1S – Housing Supply Clause 16.01-1R – Housing supply – Metropolitan Melbourne Clause 16.01-2S – Housing affordability



Land description

The review site is located on the west side of Devon Grove, a short distance to the south of the intersection with Lister Street.

The review site is irregular in shape with a frontage of 16.6 metres, a northern boundary of 47.97 metres and a southern boundary of 42.86 metres.

The review site has an overall size of 719 square metres.

There is a 3.05 metres wide easement on the western boundary. The site has a fall of 2.58 metres from the front to the rear.

The site is occupied by a single storey detached dwelling and it contains no significant vegetation.

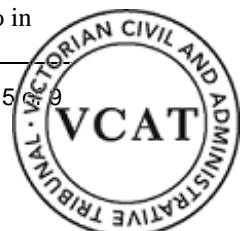


REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Luc Dao applied for a planning permit to develop two, two storey dwellings at 19 Devon Grove, Oakleigh. Monash City Council decided the development was generally acceptable and it accords with the Monash Planning Scheme. There was no dispute between the parties that the development contributes to increasing the supply and diversity of dwellings in an area that is well serviced with employment, health, education, retail and transport services.
- 2 It was also agreed between the parties that the development has a high level of compliance with the objectives and standards of Clause 55 and hence provides acceptable amenity to its neighbours and to its future residents.
- 3 The Tribunal agrees with these submissions.
- 4 The responsible authority decided the development needs some refinements to reduce its visual bulk and improve its articulation. It decided to impose conditions that amended plans need to be submitted showing changes to various first floor façades.
- 5 Luc Dao seeks a review of conditions 1(a), 1(b), 1(c) in planning permit TPA/52371. The first two conditions respectively require the eastern and northern first floor walls of Dwelling 1 to be recessed behind the ground floor walls. The third condition requires the first floor eastern wall of the WIR and Ensuite of Dwelling 2 to be recessed one metre behind the ground floor wall below.
- 6 The responsible authority says the changes are required to comply with planning policy, particularly local policy at clauses 21.01-1 and 22.01 that in general terms require articulated façades, avoidance of long expanses of blank walls and recessed upper levels. New development is to respect the scale of adjoining dwellings and the neighbourhood. These aspirations are to be achieved through sufficient articulation and recession of the first floor façades behind the ground floor facades.
- 7 The permit applicant says the three conditions are unnecessary as the two dwellings exhibit a high level of articulation through a mix of upper level cantilevers and setbacks relative to the ground floors. A mix of materials assists the articulation and visual relief. He says the new dwellings respond to an emerging character of two storey dwellings that have proud, sheer front façades, front and side walls with minimal articulation. He says Dwelling 1 will comfortably sit in the streetscape. He says the two dwellings will not impose unacceptable adverse amenity impacts on

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.



neighbours. He also says the changes required by the three conditions will adversely affect the internal amenity of both dwellings and require a significant redesign of Dwelling Two.

- 8 Luc Dao has requested the Tribunal to delete conditions 1(a), 1(b), 1(c) in planning permit TPA/52371

KEY ISSUE 1 - SHOULD CONDITION 1(A) BE DELETED?

- 9 Condition 1(a) is *The first floor eastern wall of Dwelling 1's master bedroom to have an increased setback of minimum 7.6 metres from the front title boundary (eastern title boundary)*
- 10 The front (eastern) wall of the first floor of Dwelling 1 is proposed to be setback 6.6 metres at its nearest point to the front boundary. The front wall of the ground floor intrudes further into the front setback area. The condition would require the first floor front wall to be setback a further 1.2 metres than proposed in the application plans. It would remove the protrusion in the centre of the front façade above the porch. It would result in a consistent setback of the first floor front wall behind the eaves of the ground floor roof.
- 11 The responsible authority says the setback is required to diminish the visual bulk of the front façade. It says the front façade would appear to be unreasonably bulky and prominent in the streetscape.
- 12 The responsible authority says the proposed setback of the first floor front façade does not comply with standard B6 of clause 55, which requires a setback of 7.6 metres. The non-compliance would result in part of the front façade comprising a two storey sheer wall construction with the ground floor lounge room and the master bedroom above. It says a setback that visually separates the first floor from the ground floor is needed to make the first floor visually recessive, thereby complying with planning policy at clauses 21.04-1 and 22.01-4.
- 13 The permit applicant says the setback included in Schedule 3 to the GRZ is a discretionary requirement. It says the required setback at the first floor is largely achieved because the front walls to the WIR and ensuite are consistent with the required setback due to the irregular alignment of the front boundary. Furthermore, the proposed setback is consistent with the average setback of the dwellings on the two adjoining properties.
- 14 He also says the two storey vertical planes in the front façade are consistent of the emerging character of the area, evidenced by new large, proud dwellings. The proposed setback does not undermine or disrupt the prevailing or emerging streetscape. He submits the proposed setback complies with the objective of Standard B6 in clause 55. Finally, the proposed setback provides an adequate area for landscaping.



- 15 I acknowledge the submissions of the permit applicant, particularly the emerging character of large single dwellings with prominent front façades comprising two storey sheer walls, with minimal or no recessive first floor elements.
- 16 However I am required to apply the planning scheme as I find it, even though I consider it to be overtaken by the emergence of a new streetscape comprising new dwellings with prominent, sheer and proud front façades that have limited articulation or recession to the first storeys. The scheme clearly expresses its preference for the first floor elements of new dwellings to be recessed behind the ground floors.
- 17 I consider that this requirement should be complied with, and encroachments allowed only in circumstances where the prevailing setbacks in the streetscape are less than the requirement, the streetscape character predominantly comprises two storey forms with sheer walls, and meeting the requirement would compromise internal amenity. In my view these circumstances do not apply in this case.
- 18 Hence it is my decision that the requirement that is clearly set out in the Scheme should be met. I have decided that condition 1(a) should be retained.

KEY ISSUE 2 - SHOULD CONDITION 1(B) BE DELETED?

- 19 Condition 1(b) reads *The first floor northern wall of Dwellings 1's rumpus room and the northern side the balcony to have an increased setback of minimum 5.5 metres from the northern title boundary.*
- 20 The application plans show the northern (side) wall of the first floor rumpus room and an adjoining first floor balcony of Dwelling 1 would be cantilevered forward of the northern ground wall of the living and dining room below.
- 21 The ground floor walls would be setback 5.3 metres from the boundary fence. The first floor northern wall of the rumpus room would be setback 4.33 metres from the northern boundary and the screening wall on the north side of the balcony would be 4 metres from the north (side) boundary, protruding over the deck below and over the garage to Dwelling 2.
- 22 These northern (side) walls would face a driveway, garage, and part single and part two storey sheer walls of the rear of the dwelling at No.17 Devon Grove, the next-door neighbour. The responsible authority thinks there are habitable room windows in this dwelling facing the review site. It says the cantilever would be an unreasonable visual intrusion when seen from No.17 Devon Grove.
- 23 I am unclear as to whether there are windows to any habitable rooms at the rear of the neighbouring dwelling. Any windows in this part of the dwelling



would face a concrete driveway and entry to the garage, a very robust context.

- 24 There was no dispute that the setbacks to the northern side boundary easily comply with the relevant objectives and standard of clause 55.
- 25 The permit applicant says reducing the cantilever would limit the amenity of the rumpus room and adjoining balcony. I am not persuaded by this submission as the balcony is large (4.2 by 4.9 metres) and is a secondary area of private open space. The rumpus room is approximately 4 metres square and is a pleasant, usable living area.
- 26 I am not persuaded that a further 1 metre setback is necessary in this context. It would compromise the utility of the rumpus room.
- 27 However, given the policy emphasis on recessive upper levels, I am persuaded that some reduction of the cantilever of the northern wall and balcony screen is required.
- 28 I will therefore vary condition 1(b) and require the northern wall of the rumpus room and the edge of the balcony be setback 4.8 metres from the northern boundary, providing for a modest, barely noticeable cantilever of 0.5 metre. I consider this to be appropriate in this context.

KEY ISSUE 1 - SHOULD CONDITION 1(C) BE DELETED?

- 29 Condition 1(c) provides *The first floor eastern wall of Dwellings 2's WIR and Ensuite to be recessed by 1.0 metre from the ground level.*
- 30 Part of the eastern (front) first floor façade of Dwelling 2 cantilevers forward of the ground floor wall. The eastern walls of the first floor walk through robe and the ensuite extend forward of the porch and the garage below. The cantilever forward of the ground floor front façade is approximately 0.5 to one metre.
- 31 The responsible authority accepts that the front façade of Dwelling 2 is located a considerable distance (26.6 metres) from the street and so would be barely visible in the streetscape. However, it says that cantilevered built forms are not a characteristic of the built form in the area. It says planning policy and respect for the preferred neighbourhood character require the first floor of Dwelling 2 to be recessed behind the ground floor façade.
- 32 Hence, it has imposed condition 1(c) that requires the first floor façade to be recessed at least one metre behind the ground floor front (eastern) facade
- 33 The permit applicant says the cantilevered built form provides protection from the weather at the entry to the dwelling. It would be barely visible from the street. Policy preferences should not be applied as mandatory requirements, discretion is available to decision makers, and in this case, there is no need to recess the first floor behind the ground floor Finally requiring the first floor to be recessed behind the ground floor would



severely comprise the internal arrangements of the proposed dwelling. It would also increase the visual bulk to the neighbours to the south and west.

- 34 I generally agree with the permit applicant. The first floor front facade will be a very recessive element in the streetscape. It will be largely unseen, or visible only in its general form. The cantilever will have little presence to people walking past the review site.
- 35 I also agree that the one metre setback would have significant consequences for the internal layout of Dwelling 2. The dwelling would need to be redesigned because the setback would affect the location of the internal stairs.
- 36 Dwelling 2 adjoins a driveway, garage and pergola at the rear of the dwelling on the adjoining land. It is not a highly sensitive area, and the pergola would screen views of the first floor of the front façade. I am not persuaded that it would be unduly intrusive or dominant in views from this property.
- 37 I have noted above that I have to apply the Scheme as I find it, even though I think new large single dwellings are changing streetscapes and making the Scheme's aspirations outdated.
- 38 Consequently I think a reasonable compromise is to require the eastern wall of the walk in robe and ensuite to align with the eaves of the roof below. This does not compromise the internal layout, it retains the articulation of the first floor eastern façade and it respects the aspiration of the Scheme that the first floor elements be recessive.
- 39 I will vary condition 1(c) to reflect my reasons.

CONCLUSION

- 40 For the reasons given above, the decision of the responsible authority is varied. A permit is granted subject to varied conditions.

Geoffrey Rundell
Member