

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11144/2021
PERMIT APPLICATION NO. TPA/51529/A

CATCHWORDS

Application under section 77 of the Planning and Environment Act 1987 – to review the refusal to amend a permit

APPLICANT	Virtue Group Developments Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	418-424 Haughton Road CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	4 February 2022
DATE OF ORDER	19 May 2022
CITATION	Virtue Group Developments Pty Ltd v Monash CC [2022] VCAT 559

ORDER

- 1 In application P11144/2021 the decision of the responsible authority is set aside.
- 2 Planning permit TPA/51529A is amended and an amended permit is directed to be issued for the land at 418 – 424 Haughton Road, Clayton. The permit is amended as follows.
- 3 What the permit allows is amended to read as follows:
 - Construction of a four storey building with basement comprising 21 apartments, and a reduction in the provision of car parking.
- 4 Conditions in the permit are amended as follows:
 - (a) Conditions 9 and 10 are deleted.Conditions in the permit are renumbered accordingly.
- 5 Plans endorsed under the permit are amended and the responsible authority is directed to endorse amended plans showing:
 - (a) The deletion of the mechanical car stacker system and the provision of 11 car parking spaces on grade in the basement as shown in the plans prepared by Artisan Architects titled Proposed Residential Development 418 Haughton Road Clayton, Revision D dated 02/03/21.



Laurie Hewet
Senior Member



APPEARANCES

For applicant

Mr M Dunn, town planner

Mr Dunn called expert evidence from:

- Mr T Hardingham, traffic engineer

For responsible authority

Mr D Vorcheimer of HWL Ebsworth,
Lawyers.

Mr Vorcheimer called expert evidence from:

- Mr D Beaton, traffic engineer



INFORMATION

Description of proposal	<p>Permit TPA/51529 allows the construction of a four storey building comprising 21 apartments with 21 car parking spaces in a basement level car park.</p> <p>The amendment application proposes the deletion of the basement car stacker system and the reduction in the number of car parking spaces from 21 to 11. The amendment also involves changes to the ramp levels and finished floor level in the basement and minor configuration to the bin rooms.</p>
Nature of proceeding	<p>Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.</p>
Planning scheme	<p>Monash Planning Scheme</p>
Zone and overlays	<p>Residential Growth Zone (RGZ3)</p>
Permit requirements	<p>Clause 32.07-5 (RGZ) - A permit is required to construct two or more dwellings on a lot.</p> <p>Clause 52.06-3 (Car Parking) - A permit is required to reduce the number of car parking spaces required under Clause 52.06-5 of the Scheme</p>



Land description

The subject site is located on the western corner of the Haughton Road and Pullyn Street intersection in Clayton.

The site is generally rectangular in shape comprising an area of approximately 840 square metres. The site has three road frontages, a frontage of 20.04 metres to Haughton Road, 31.01 metres to Pullyn Street and 8.14m to Jean Avenue as well as 15.8 metres to an unnamed right-of-way.

The site currently comprises three residential dwellings, with vehicle access provided via three crossovers: one on Haughton Road, one on Pullyn Street and one on Jean Street.

The surrounding land use is primarily residential in nature. The site abuts a residential dwelling to the west and there are dwellings on the opposite side of Pullyn Street and Jean Street to the east and south respectively. Clayton train station is located on the opposite side of Haughton Road to the north of the subject site. A commuter car park is located directly opposite the review site on Haughton Road.

The site is part of the Clayton Major Activity Centre. The commercial area of the activity centre is about 200m to the west of the review site. The site is in the Principal Public Transport Network (PPTN).



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to review the decision of the Responsible Authority to refuse permission to amend a permit for the construction of a four storey apartment building at 418-424 Haughton Road, Clayton. The Responsible Authority issued a Notice of Refusal to Grant a Permit for the following reasons:
 1. The proposal fails to satisfy the requirements of Clause 52.06 in relation to onsite car parking provision.
 2. The proposal will have a detrimental impact on the amenity of the adjoining residential properties as a result of the inadequate on site car parking provision.
- 2 The permit granted by Council allows the construction of a four storey apartment building comprising 21 one and two bedroom apartments. Twenty-one car parking spaces are provided in a basement. Sixteen spaces in the approved design are provided in a mechanical car stacker system.
- 3 The provision of 21 car parking spaces complies with the requirements of Clause 52.06-5 of the planning scheme.
- 4 The amendment application proposes to remove the car parking stacker systems resulting in the reduction of car parking from the approved 21 to 11. Consequential minor alterations to the basement design are also proposed.
- 5 Having considered the submissions and the evidence, I have concluded that the proposed reduction in car parking is acceptable having regard the support for that outcome offered by the planning scheme's policy framework.
- 6 The reduction in car parking can be accommodated without any significant adverse impact on the amenity of surrounding residential area or the functioning of surrounding streets.
- 7 My reason are set out below.

BASIS OF DECISION

- 8 The Council submits that the reduction in car parking from 21 to 11 is excessive, amounting to an overall reduction of 48% from the approved development.
- 9 While the Council acknowledges that some reduction maybe warranted in this case, having regard to the site's proximity to public transport, it submits the proposed reduction is excessive and will lead to an undersupply of

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.



parking and a consequent over reliance on available on street parking to the detriment of the amenity of the surrounding residential area.

- 10 The Council also expresses concern that because the review site is in a Residential Growth Zone and the Monash National Employment and Innovation Cluster, the continued growth and development of the locality will generate increased demand for car parking. This increased demand is, in the Council's submission, unlikely to be accommodated by existing publicly available parking. The Council does not regard existing and proposed public transport or alternative transport modes as suitable alternatives to ensuring each development is self-sufficient in onsite parking.
- 11 The Council relies on the evidence of Mr Beaton in support of its refusal of the application.
- 12 It is Mr Beaton's evidence that the proposed reduction in parking is not supported by the Car Parking Demand Assessment which, based on ABS data for the Monash LGA, establishes that 18 parking spaces are likely to be generated by the proposed 21 apartments.
- 13 Mr Beaton concludes that the site's location is not appropriate for this number of dwellings without car parking because:
 - a) Car parking restrictions, particularly at peak resident times (evenings and weekends) are largely unrestricted.
 - b) Car parking occupancy levels are low at all times.
 - c) ABS data, which provides a historical snapshot of car ownership, shows this product type will have car ownership in the order of 0.73 spaces per 1-bedroom and 1.09 space per 2-bedroom apartment.
 - d) There are no car share pods (cars) in the nearby area which would allow residents in this location to not own a car but still have access to a car, unlike the majority of inner suburb locations.
- 14 Mr Beaton reaches his conclusion notwithstanding his acknowledgement that the site has access to public transport, including bus services operating within 400m of the site and Clayton Railway Station a short walking distance from the site (250m).
- 15 It is Mr Beaton's evidence that the largely unrestricted on street parking in this area, combined with the absence of a car share scheme, are factors that will influence the car ownership decisions of prospective future residents of the approved development. It is his view that residents are likely to own a car because they can park on street if they can't park onsite.
- 16 In Mr Beaton's view, this characteristic differentiates this locality from many inner urban areas where a shortage of on street parking options does create the potential to offer generous parking reductions to accommodate residents who have low car ownership rates.



- 17 Mr Beaton identifies the adverse consequences of reducing the parking provision for this site, to include reduced amenity of surrounding residential streets, which are likely to experience increased overflow parking from the site.

Findings

- 18 There is extensive policy in the planning scheme that supports land use and settlement patterns that promote walking, cycling, and the use of public transport, in that order to minimise car dependency.²
- 19 In broad terms the Planning Policy Framework, including local policy presents several strategies aimed at achieving these objectives. Increasing the density of development in activity centres and on sites with excellent access to public transport and alternative transport modes is a key component of that policy framework.
- 20 The appropriate provision of car parking is an important part of the policy matrix intended to achieve increased use of public transport and alternative transport modes. Clause 18.02-4S outlines strategies to achieve an appropriate provision of car parking including through the facilitation of public transport use. In addition, the purpose of Clause 52.06 includes the following
- To ensure the provision of an appropriate number of car parking spaces having regard to the demand likely to be generated, the activities on the land and the nature of the locality.
 - To support sustainable transport alternatives to the motor car.
- 21 The review site is in an activity centre and is very well served by public transport, as previously described. The site is in the PPTN. Because of the site's proximity to the Clayton Major Activity Centre and its access to public transport the site enjoys a high 'walk score'³ of 88/100, indicating that many daily errands can be completed on foot. Good cyclist access to and from the site is also available.
- 22 From a policy perspective therefore the review site enjoys all the attributes that would render it suitable for a car parking reduction from the rate specified at Clause 52.06-5.
- 23 The consideration of a parking reduction must also have regard to those planning scheme provisions including those at Clause 52.06, that ensure car parking is provided having regard to the demand likely to be generated by a development, the activities on the land and the nature of the locality. The protection of residential amenity and the functioning of the street network are, among other matters, relevant considerations.

² Clauses 18.01-S Land use and transport integration and Clause 18.03-S Sustainable and safe transport.

³ Referenced in the evidence of Mr Hardingham.



- 24 In this case, the applicant relies on the evidence of Mr Hardingham. Mr Hardingham's Car Parking Demand Assessment estimated a demand of 11 spaces which can be accommodated on site in line with the proposed reduction.
- 25 Mr Hardingham's evidence conflicts with Mr Beaton's evidence who estimates that a demand for 18 spaces would be generated by the approved development.
- 26 The disparity of 7 spaces between the two experts derives from Mr Beaton's reliance on ABS car ownership data for the Monash LGA as a whole, while Mr Hardingham relies on data for the Clayton suburb. It is Mr Beaton's evidence that the Clayton car ownership data is skewed by the high proportion of student accommodation developments close to Monash University which in his view is unlikely to be replicated in this development at this site.
- 27 Significantly, both parking demand assessments prepared by the expert witnesses establish that a reduction in car parking from the 21 spaces in the approved development, is acceptable.
- 28 In terms of deciding an acceptable reduction, I am satisfied that on a site that enjoys the locational advantages available to this site, the car ownership patterns for residents in one and two bedroom apartments is likely to be more aligned with the lower rates identified by Mr Hardingham than those identified by Mr Beaton.
- 29 A parking reduction greater than that recommended by Mr Beaton is therefore warranted. Consequently, I expect that any overflow car parking that may eventuate because of any reduction in parking will be less than the worst case estimated by Mr Beaton.
- 30 Assuming overflow car parking from this development does eventuate, that overflow can be comfortably accommodated in surrounding streets without any significant disruption to the amenity of the surrounding residential area or the functioning of those streets. Both Mr Beaton and Mr Hardingham record that there is a generous supply of largely unrestricted on street parking in surrounding streets.
- 31 I am satisfied therefore that a reduction as proposed by the applicant is acceptable and is an outcome supported by policy, Mr Hardingham's Demand Assessment and the locational characteristics of the site.
- 32 I acknowledge, the Council's concerns about the potential car parking implications associated with the long-term development of this locality. There is a challenge for the Council to develop and implement strategies that take account of this eventuality, and which also give effect to those planning scheme policies that aim to minimise car dependency.
- 33 The lack of policy development by the Council for this locality is not a reason to reject this application.



CONCLUSION

34 It follows from the above reasons that it is my conclusion that the decision of the responsible authority should be set aside and the permit amended.

Laurie Hewet
Senior Member

