VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P1487/2020Permit Application no. TPA/51342 |
| CATCHWORDS |
| Section 77 of the Planning and Environment Act 1987; Monash Planning Scheme; General Residential Zone Schedule 3; Site Layout; Visual Bulk; Upper Level Massing; Landscaping Opportunities; Crossovers; Design Detail; Standard B17.  |

|  |  |
| --- | --- |
| **Applicant** | Stavros Moutsos |

|  |  |
| --- | --- |
| **Responsible Authority** | Monash City Council |

|  |  |
| --- | --- |
| SUBJECT LAND | 42 Lebanon CrescentMULGRAVE VIC 3170 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 1 June 2021 |
| DATE OF ORDER | 8 November 2021 |
| CITATION | Moutsos v Monash CC [2021] VCAT 1373  |

# Order

1. Pursuant to Clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by amending the name of the applicant for permit and applicant for review to Stavros Moutsos.
2. In application P1487/2020 the decision of the responsible authority is affirmed.
3. In planning permit application TPA/51342 no permit is granted.

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

# Appearances

|  |  |
| --- | --- |
| For applicant | Mr Andrew Gray, town planner of GrayKinnane  |
| For responsible authority | Peter English, town planner of Peter English & Associates Pty Ltd |



# Information

|  |  |
| --- | --- |
| Description of proposal | Construction of two double storey dwellings in a side by side manner, effectively mirror images of each other, with two crossovers proposed.  |
| 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 3 |
| Permit requirements | Clause 32.08-6 construction of two or more dwellings |
| Relevant scheme policies and provisions | Clauses 11.01-1S, 11.01-1R1, 11.02-1S, 11.03-1S , 15.01-1S, 15.01-2S, 15.01-4R, 15.01-5S, 16.01-1S, 16.01-1, 16.01-2S, 16.01-2R, 16.01-3S, 16.01-3R, 16.01-4S, 21.01-1, 21.04, 22.01, 22.05, 32.08, 52.06, 55, 65 and 71.02. |
| Land description | The site is located on the eastern side of Lebanon Crescent in Mulgrave. The site is currently developed with a single storey brick dwelling. The site is rectangular in shape and has a frontage of 17.68 metres and a depth of 41 metres for a total site area of 726 square metres. The site includes a fall from the east to west of 1.3m and contains a crossover to the southern portion of the frontage. A 1.83 metre wide drainage and sewage easement traverses the eastern (rear) boundary. The site is not encumbered by a covenant. The site is sparsely vegetated with shrubs and trees. Surrounding sites are residential in nature and generally include single and double storey dwellings of varied ages. Dwellings generally include carports or garages set behind the frontage of the dwellings. Multi unit development typology is evident as the emerging typology, usually with two dwellings on a lot, such as at 3, 17 and 65 Lebanon Crescent. 2315-2319 Dandenong Road includes 48 dwellings of up to 3 storeys that also has a presence at the southern end of the north/south portion of Lebanon Crescent. The site is well served with access to schools, parks and open spaces, and shopping facilities (corner Springvale and Dandenong Roads to the SW). The site also has good access to community facilities. Public transport is available by way of buses on Police, Springvale and Dandenong Roads with train access further afield.  |
| Tribunal inspection | The Tribunal undertook an unaccompanied inspection of the site after the hearing on 3 November 2021 |

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

## What is this proceeding about?

1. On 24 August 2020 Monash City Council issued a refusal to grant a planning permit for the construction of two double storey dwellings at 42 Lebanon Crescent Mulgrave.
2. The decision was based on Council’s view that the design is contrary to the character of the neighbourhood regarding mass, bulk and form and is an overdevelopment of the site, especially having regard to recession of the upper level, the side by side mirror image layout, the number of vehicle crossings, visual impacts and side and rear setbacks. Council contends that this development also does not comply with the objectives of ResCode with regard to neighbourhood character, side and rear setbacks and design detail.
3. The review applicants, through Mr Gray, applied to the Tribunal to review this decision. The applicants disagree with Council and assert that the design has taken into account the constraints of the site and is responsive. Mr Gray argued that the areas of non-compliance with the standards of ResCode are justified and contends that the proposal meets the objectives of ResCode. It was his contention that the PPF and local policies lend support to the proposed development.

## What are the key issues?

1. The key issue for determination is:
	1. Does the development represent an appropriate response to the neighbourhood? Are the amenity impacts 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 and refuse the application for permit. My reasons follow.

## Does the development represent an appropriate response to the neighbourhood? Are the amenity impacts reasonable?

### Urban Consolidation

1. The site enjoys strategic policy direction towards a greater level of development and density than currently exists. This is on the basis that the site is well located as it is:
* Near the junction of two main roads within the PPTN being Springvale Road and Princes Highway;
* Near a commercial centre to the south and south-west.
1. As such policy reasonably directs the accommodation of a greater density for the site than it currently does. An increase of one further dwelling on the lot is reasonably described as low to medium density development.
2. However, development must be contextual and of a design that provides reasonable amenity for its future residence. In this regard I am not satisfied that this proposed development has achieved design outcomes that are respectful of neighbourhood character. I also find the development does not facilitate appropriate levels of external amenity.

### Neighbourhood Character

1. Within the Monash Planning Scheme, local policy retains an imperative of the protection of existing neighbourhood character through the promotion of the Garden City Character theme. This Garden City Character element of the Monash Planning Scheme is iterated throughout its local policy, and is reflective of the desires within the Monash community. Any new development needs to be respectful of these character considerations.[[2]](#footnote-3)
2. This Garden City emphasis is reiterated within the Residential Development and Character Policy[[3]](#footnote-4) which states:
* *The City of Monash’s residential areas have a garden city character that is highly valued by the community. The Municipal Strategic Statement recognises that these residential environments are important to the well being of the community and that Monash City Council is committed to the effective management of the ongoing process of change that is occurring in the urban areas of the municipality.*
1. Clause 22.01 also seeks to encourage new development that responds to the character of existing residential areas, integrating the theme of Garden City with maintenance of a highly vegetated environment. Specifically, Clause 22.01 seeks:
* *To build upon the important contribution that landscaping makes to the garden city character of Monash.*
* *To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.*
* *To encourage the provision of a variety of housing types to accommodate future housing needs and preferences.*
* *To achieve best practice environmentally sustainable development.*
1. A key issue for the municipality as identified in the local policy at Clause 21.04 includes:
* *The retention of neighbourhood character and enhancement of garden city character is very important to the Monash community and redevelopment needs to be respectful of these character considerations.*
1. Again, this emphasis toward Garden City is reiterated at Clause 21.01 which states:

*Monash’s policy of large front setbacks facilitates the retention and enhancement of canopy tree cover which acts to soften the built form and provide shelter and shade. The presence of “greenery” and vegetation within developed areas is visually appealing and results in benefits to the environment in terms of air quality and water balance.*

And

*Erosion of the garden city character through loss of significant vegetation and tree canopy and inappropriate redevelopment of residential, commercial and industrial areas is a key concern of Council and the community. Council has addressed this through the planting of street trees along arterial roads and consistently applying a decision making process to planning decisions where garden city character is a key consideration. This significant investment will ensure the garden city character continues to dominate the landscape.*

1. Relevantly, the Monash Planning Scheme seeks to manage the retention of the garden city character through planning strategies as outlined at Clause 21.04-3, which include (amongst others):

*Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within Clause 22.01.*

*Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.*

*Encourage vegetation retention and provision on development sites.*

*Ensure that new residential development provides a high level of amenity including internal amenity, privacy for occupants and neighbours, access to sunlight, high quality private and public open space, canopy tree cover, and effective traffic management and parking.*

*Use best practice environmentally sustainable design to maximise comfort and residential amenity, and minimise the environmental impact and running costs of residential development.*

1. Council further advised that the site is located within a neighbourhood classified as Garden City Suburbs Southern Areas character area at Clause 22.01. The preferred character statement of this area includes:

*Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes. On larger sites, low rise apartment development may be appropriate, provided the development is sited within generous open space, is well landscaped, retains the ‘open landscape character’ of the garden suburban setting and tapers down in scale closer to the boundaries of the site.*

*While the housing mix within this area will continue to evolve to meet the changing needs of the community, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous spacious, open, landscaped character of the area.*

*This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.*

*Front fences will be low to enable vegetation to be visible from the street, allow clear views of buildings and give the street an open quality. Fencing will complement the architecture of the building in design, colour and materials.*

*Existing mature trees and shrubs within properties should be retained and additional tree planting proposed to gradually create a tree canopy in the private domain, including at the rear of properties. This will create a visually permeable buffer between the house and street. The soft quality of the street that is derived from the wide nature strips and street tree planting will be maintained by ensuring that there is only one crossover per lot frontage.*

*Expanses of blank, or continuous, walls will be avoided, particularly when adjacent to public parks or creating the appearance of a continuous building mass. The character of existing public open space within the area will be protected by ensuring that buildings directly adjacent are set back and buffered with planting that complements that within the public open space.*

*Sympathetically designed architecture is encouraged in preference to imitations of historic styles*

1. Mr English submitted that the proposed development did not appropriately respond to the policy that seeks to enhance the valued low scale character of the area through the implementation of sympathetic styles and scale whilst maintaining and enhancing the landscaped streetscape. He submitted that the development fails to respect the quality and style of surrounding development and is discordant with the neighbourhood character of the area. Mr English submitted that the policy seeks to maintain and enhance the streetscape character of ‘Garden City’ through the inclusion of appropriate building forms and opportunity for landscaping that reduces the impact of new development. He noted that the extent of built form across the frontage of the lot needs to be designed so it maintains the opportunity for built form to be comprehended in a garden setting.
2. I agree that the site context and the PPF and local policy points to this area as being able to sustain a more intense level of change to accommodate future increases in dwelling stock. I also agree that the policy also seeks to enhance the valued low scale character of consistent streetscapes in the area through the implementation of styles and scale that are sympathetic to the area. I agree with the submissions of Council and find that the proposed development offends against these local policies having regard to the massing of the buildings across the frontage of the site such that they appear as too close to both side boundaries, and offers little opportunity for landscaping.
3. I accept that the proposed dwellings satisfy the policy at Clause 22.01 with regard to minimising the scale and massing of the development by way of a reasonable maximum height of 7.47 metres. I am satisfied that this height responds well to the scale of the buildings on the immediately adjoining properties to the north and south where dwellings are constructed to a single storey scale. I noted during my site visits that the streetscape is clearly experiencing change by way of multi unit developments of up to two storeys replacing older dwellings. I am satisfied that the height of the building will not dominate the streetscape as the two storey scale responds well to the inconsistent built form scale in the streetscape, with dwellings ranging from one to two storeys.
4. I have not been persuaded that the construction of the development across the frontage of the site with 1 metre setbacks on either side stopping it from being boundary to boundary, is reasonable. In addition to this I note Mr English’s interpretation that almost 50% of the façade is given over to garages. This is neither appropriate nor reflective of the character of built form in the area where a setback to at least one boundary is generally provided. In this way I find that the proposed development does not appropriately “*respect the character of surrounding development, including the maintenance of consistent setbacks”* as is sought within local policy at Clause 22.01-3. During my site visit the presentation of side by side development was not apparent in the streetscape, with the exception of 17 and 65 Lebanon Crescent. Due to this, the inclusion of new side by side development, whilst not prohibited, should take its cues from the rhythm and spacing of recently constructed multi unit development. Any new development should consider setting the form further off the side boundaries, which may require the inclusion of single garages that are a less dominant element of the façade.
5. In assessing the garages as proposed, I find them overbearing and a dominant element of the development, both horizontally as noted above but also vertically, with setbacks to the study at ground level and to the upper level around 500mm. More needs to be done to recess these garages such that they do not form the primary visage of the façade. Again, single garages or a different development typology might assist in this task. The reduction in the prominence of the garages is in line with policy expectations for the area which seeks to minimise the appearance of car parking structures in the streetscape, comparative to the dwellings. That has not been achieved here. Instead, the garages are overly wide, with limited opportunity for planting that might soften their appearance in the streetscape. These matters should be given far greater consideration in any new development proposed.
6. In conjunction with my concerns relating to the garages, I share Council’s concerns regarding the dual crossovers. These leave limited space for planting in the front setback to the fence side of the driveways. I am otherwise satisfied that there is enough space for planting within the inner portion of the front setback. The lack of planting opportunities near the fence lines reduces opportunities for planting that might otherwise serve to screen and soften the appearance of the dominant garage forms. The consideration of the number and location of crossovers is a decision guideline of the schedule to the GRZ3, whereas previously this matter had been ventilated only within policy. It is trite to say that the primacy of this aspect of the development has, as a result of this zone consideration, been raised above mere policy consideration. That said, the decision guideline is rather a blunt tool, with limited precision. I use this guideline as a tool of guidance in decision making. It is no more a prescription than other guidelines or objectives of the schedule to the GRZ3. It requires the consideration of the number and location of the crossovers, and the appropriateness therein. To that end, I have not been persuaded that the number of crossovers is unreasonable, only that their location serves to limit the opportunity to screen what is in itself built form that is inappropriate. What drives my concern here is, therefore, the built form, which is exacerbated by the location of the crossovers, that necessarily limit opportunities for appropriate screening in line with Garden City expectations.
7. In any development that is pushed close towards the boundaries, there always comes fear of amenity impacts. In this case bulk and shading were hovering as concerns, but I am satisfied that the minor non-compliance with Standard B17 limits unreasonable impacts. Whilst I agree with Mr Gray that the visual bulk and amenity impacts are not unreasonable in this instance, it may well be that with the further setting back of the development from these boundaries, a reduction in amenity loss will occur.
8. I also agree with Mr English that the mirror images of the form, punctuated by a central wing wall, serves to highlight the fact of the two dwellings, and in doing so highlights the bulk of the upper level, especially in relation to the ground floor form. The only meaningful relief from the dominance of the upper level is the use of differing materials, which is limited in its reach.
9. In coming to my conclusion to refuse this application for review I considered the option of setting the development off the side boundaries further and setting the upper level further back from the ground floor level. This involves too many unknown consequential changes that were not only not readily apparent (thus requiring an interim order to require plans to be provided), but also amounted to what I consider would be transformational changes. Changes would be required to the layout at ground level, the frontage presentation and the roof and wing wall presentation in order to ameliorate my concerns.

|  |  |  |
| --- | --- | --- |
| 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)
2. Clause 21.04 [↑](#footnote-ref-3)
3. Clause 22.01-1 [↑](#footnote-ref-4)