# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

|  |  |
| --- | --- |
| planning and environment LIST | vcat reference No. P395/2021  Permit no. TPA/31584/A |

|  |
| --- |
| CATCHWORDS |
| Section 77 of the *Planning & Environment Act* 1987; Monash Planning Scheme;  Veterinary Clinic Expansion: Landscape character & parking layout (GRZ3; VPO1; Cls. 22.01 & 22.09) |

|  |  |
| --- | --- |
| APPLICANT | S.D.H. Veterinary Consulting Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| SUBJECT LAND | 5 Andrew Street, Mount Waverley |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 12 October 2021 |
| DATE OF ORDER | 15 October 2021 |
| CITATION | S.D.H. Veterinary Consulting Pty Ltd v Monash CC [2021] VCAT 1198 |

# Order

1. The decision of the Responsible Authority is set aside.
2. Planning Permit No. TPA/31584 is amended and an amended permit (TPA/31584/A) is directed to be issued for the land at 5 Andrew Street, Mount Waverley in accordance with the endorsed plans and on the conditions set out in Appendix A. The amended permit allows:

* The use of the premises for a Veterinary Clinic with associated building alterations and car parking.

|  |  |  |
| --- | --- | --- |
| Tracy Watson **Member** |  |  |

**APPEARANCES**

|  |  |
| --- | --- |
| For Applicant | Paul O’Shea, town planner. Mr O’Shea called expert evidence from: John Patrick, landscape architect; and James Dear, traffic engineer. |
| For Responsible Authority | Peter English, town planner. |

# INFORMATION

|  |  |
| --- | --- |
| Description of Proposal | It is proposed to expand the existing veterinary clinic by increasing the number of practitioners from one to two. To facilitate this increase, an extension of the existing single storey building is required, as well as making changes to the carparking layout to increase the number of spaces from six to eight. |
| Nature of Proceeding | Application under Section 77 of the *Planning and Environment Act* 1987 – to review the refusal to grant an amended permit. |
| Planning Scheme | Monash. |
| Zone and Overlay | Clause 32.08 – General Residential Zone, Schedule 3 (GRZ3). Clause 42.02 – Vegetation Protection Overlay, Schedule 1 (VPO1). |
| Permit Requirements | This is an application to amend an existing permit pursuant to section 72 of the *Planning and Environment Act 1987*. I note that there is no permit trigger under the VPO1. |
| Relevant Scheme, policies and provisions | Includes Clauses 15, 17, 21.05, 22.01, 22.09, 32.08, 52.06, 65 and 71.02. |
| Land Description | The subject site is located on the western side of Andrew Street. The subject site has a regular shape with a frontage of 23.16 metres, a depth of 31.70 metres, and an overall site area of 734m2. The subject site has been used as a veterinary clinic since 2004. |

# REASONS[[1]](#footnote-1)

## What is this proceeding about?

1. The Monash City Council issued a Notice of Decision to Refuse to Grant an Amendment to the Permit in February 2021. The applicant who requested the permit amendment is now seeking a review of the Council’s decision by the Tribunal. The Tribunal has not received any non-party statements of grounds in relation to this proceeding.
2. Based on the hearing process and all the relevant associated documentation and expert evidence, I consider that the key issues are whether the proposal’s landscape response and car parking layout result in an acceptable planning outcome.
3. It is important to highlight at the outset that the number of issues in dispute are very confined. The Council acknowledged that the subject site continues to enjoy locational attributes making it suitable for the commercial use, and it does not oppose the proposed increase in the number of practitioners. Putting aside the proposed landscaping changes, the Council was satisfied that the clinic’s expansion will not have any detrimental amenity impacts, nor did it argue that the expansion of the existing building will result in an unacceptable built form impact. Finally, the Council agreed that the proposed quantum of on-site car parking is appropriate.
4. All of these positive aspects of the proposal need to be considered and given weight as part of my decision about whether, on balance, the amendment of the permit results in an acceptable planning outcome.
5. The Tribunal must decide whether an amended permit should be granted and, if so, what conditions should be applied. Having considered all submissions, and the landscape and traffic engineering expert evidence, together with the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the Responsible Authority. My reasons follow.

## Is the proposal respectful of the area’s landscape character?

1. The Council submitted that the proposed reduction in the landscaping of the subject site is contrary to the planning scheme’s local policy framework and the GRZ3 neighbourhood character objectives, which seek to maintain and enhance the garden city character of the municipality. Further, the Council argued that the proposed landscaping outcome is contrary to the preferred landscape character articulated in Clauses 22.01 and 22.09 of the planning scheme.
2. In particular, the Council submitted that the proposed reduction in landscaping along the western and southern site boundaries results in an inappropriate buffer to the abutting residential properties.
3. A key influence on the acceptability of the proposed landscaping response is the existing physical context of the subject site, which includes a relatively hard-edged commercial setting. Directly to the north of the subject site is a large corner allotment developed with a petrol station and car wash, while the eastern side of Andrew Street is developed with a strip shopping centre comprising some ten shop fronts featuring a hard street edge with adjacent angled car parking. The shopping centre’s street wall includes double storey form located proximate to the subject site, at nos. 18 and 20 Andrew Street. Further to the south of the shopping strip there are two to three storey high dwellings with visually prominent garages and driveways. There are two, double storey high dwellings, each featuring a double garage constructed to the boundary, located to the south of the subject site, on the western side of Andrew Street. In other words, the northern, residentially developed, section of Andrew Street generally comprises two-storey high forms with garages constructed to the boundary.
4. Although the existing veterinary clinic is accommodated in a converted single dwelling, it does read as a commercial site within the streetscape, largely due to the size and configuration of its existing U-shaped accessway.
5. Notwithstanding the residential zoning of the subject site I find that, from a physical context standpoint, it is essentially part of the commercial ‘bookend’ to the northern section of Andrew Street. In addition, the northern residential section of Andrew Street (on both sides of the street) features visually prominent built form. That is, the built form is the primary influence in this section of the street rather than the landscaping.
6. The impact of the proposed changes to the existing landscaping on the two existing residential properties abutting the western rear boundary of the subject site is also mitigated by their existing physical features. The property at no. 23 Oakhill Road has a substantial shed constructed along the full length of its rear boundary, and the sizeable rear secluded private open space of no. 25 Oakhill Road only partly abuts the subject site. The main secluded private open space area of no. 25 Oakhill Road is orientated northwards as a consequence of the siting of the outdoor dining along the northern side of the dwelling. In addition, although I give this lesser weight, the area between the swimming pool of no. 25 Oakhill Road and the shared boundary with the subject site is currently heavily vegetated. The proposed extension to the existing building is also sited well off the southern and western site boundaries.
7. The Council submitted that the extent of landscaping along the southern and western boundaries should be maintained in order to respond to the Clause 22.09-4 locational criteria to, “Provide appropriate buffers and interface between commercial, residential and industrial land uses.” On the basis of the existing characteristics of the adjoining residential properties, combined with the subject building’s single storey height and positioning of its expanded footprint away from the side boundaries, I do not consider that a landscape buffer to these shared boundaries needs to be maintained. I also wish to highlight that the approved landscaping under the existing permit relates to the two-storey high building which was endorsed under the original permit.
8. The extent of the landscaping response required also needs to be considered in relationship to the bulk and mass of the built form outcome. In this case, the subject building retains its single storey height, with only a marginal change to the minimum street setback. Moreover, the proposed amendments do not affect the number of crossovers accessing the subject site, nor do they impact the existing street tree.
9. Lastly, the fact that the subject site is used for commercial purposes also influences the extent of the required landscaping response. This is implicitly recognised by the planning scheme in that the provisions of Clauses 54 and 55 of the planning scheme do not apply. This of course includes the non-applicability of the local variation to the Landscaping Standard B13, which forms part of Schedule 3 to the General Residential Zone.
10. In light of all of this, I find that the proposed landscaping response does make an acceptable contribution to the preferred garden city character of the area. This includes providing for the desired well landscaped and spacious front garden and the planting of canopy trees. The principal landscaping response occurs in the front garden area. This aligns with the primary focus of the preferred character statement for the Garden City Suburbs (Northern) Area, which seeks the provision of a well-planted front garden area capable of supporting canopy trees. Consequently, the landscaping response satisfactorily achieves the relevant GRZ3 neighbourhood character objectives.
11. I accept the evidence of Mr Patrick, and find that his proposed landscape plan provides for the desired front garden area, including the planting of three canopy trees and planting along the edges of the two driveways at the front interface. The proposed front garden canopy trees are a Rose Sheoak, Bloodwood and Red Box with heights at maturity suitable for softening a two-storey building, never lone a single storey one. The proposed Native Frangipani planted in the rear, north-west corner of the site will also be visible from within the streetscape, given the single storey building height.
12. In summary, I am satisfied that the landscaping response is acceptable having regard to the GRZ3 neighbourhood character objectives and the preferred neighbourhood character outcomes articulated in Clauses 22.01 and 22.09 of the planning scheme.

## Is the proposed carparking layout acceptable?

1. The Council submitted that the proposed customer car spaces located towards the front of the subject site are unacceptable. This is because in order to exit the site in a forwards direction, multiple manoeuvres are required in a confined area. The Council said that drivers unfamiliar with these conditions are likely to find these manoeuvres difficult to execute.
2. I agree with the Council that this is a relatively tight space, with little room for error. However, the reality is that both of these spaces can be adequately exited from with the use of a three-point turn. The swept path diagrams provided by Mr Dear and explained in the course of his verbal evidence do confirm that there is enough space for this to occur with the required 300mm clearance.
3. It was also the evidence of Mr Dear that the probability of a vehicle overhanging the proposed staff car space no. 2 is very low. Further, he said that even in the unlikely event that this does occur, there is enough available excess space adjacent to the southern boundary fence to enable the satisfactory execution of the required three-point turn. Further, it was his evidence that the necessary corrective manoeuvres are not uncommon for a commercial premises such as this one.
4. I therefore accept the opinions of Mr Dear, including that:

* The parking and access design is appropriate and consistent with the relevant design standards. [Noting that in this case Mr Dear confirmed that he was referring to Design Standards 1 and 2, rather than to Design Standards 5 and 7]
* The ground for refusal relating to car parking is not warranted.

## Amended Conditions

1. The draft conditions were discussed at the hearing, and the conditions included at Appendix A generally reflect these discussions.
2. The Council did submit that the permit preamble should be amended to permit a one space reduction in parking under Clause 52.06-5, where an existing use is increased. This submission related to a technicality only, as it was agreed that the provision of eight on-site spaces for two veterinarians complies with the specifications of Table 1 at Clause 52.06-5 of the planning scheme. Table 1 enumerates that five spaces are required for the first practitioner and an additional three spaces are required for the second practitioner.
3. However, the existing planning permit approves the provision of six on-site car spaces for one practitioner. The relevant provisions of Clause 52.06-5 are that:

Where an existing use is increased by the measure specified in Column C of Table 1 for that use, the car parking requirement only applies to the increase, provided the existing number of car parking spaces currently being provided in connection with the existing use is not reduced.

1. Because the increase is for one extra practitioner, an additional three spaces are required, provided the existing six spaces are not reduced. That is, under the Clause 52.06-5 requirements relating to an increase in an existing use, nine on-site spaces are required. This is a somewhat anomalous and unintended outcome arising from the fact that currently an excess of on-site parking is provided. Mr Dear’s evidence confirmed that the proposal does technically generate a shortfall of one space.
2. I therefore agree with the Council’s submission that the permit preamble needs to be modified to permit the proposed one space parking reduction, even though in this case it is merely a technical quirk.
3. Finally, the Council submitted that the building’s proposed 265mm setback from the northern site boundary is impractical and inaccessible and referred to Standards A10 and A16 as a guide to substantiate their argument.
4. I do not agree that it is appropriate in this scenario to refer to Standards A10 and A16 as an argument for an additional side setback in this location because of the non-residential nature of the proposed rooms and the commercial use abutting the subject site directly to the north. However, it became apparent during the course of Mr Patrick’s evidence that this area could only be ‘maintained’ from the adjoining property, which is an unacceptable outcome.
5. In response to this, one of the solutions put forward by the applicant was that the building’s side setback be increased to 1.0 metre. I think this is warranted as it will allow for additional planting in this location, and more importantly it will provide the ability to readily maintain the landscaping along this site interface.
6. Lastly, I have decided it is unnecessary to expand the extent of the proposed southern boundary fence climbing plants shown on Mr Patrick’s landscape plan.

## Conclusion

1. For the reasons explained above, the decision of the Responsible Authority is set aside. An amended permit is issued subject to conditions.

|  |  |  |
| --- | --- | --- |
| Tracy Watson **Member** |  |  |

# APPENDIX A

|  |  |
| --- | --- |
| **PERMIT NO:** | TPA/31584/A |
| **LAND:** | 5 Andrew Street, Mount Waverley |
| **WHAT THE PERMIT ALLOWS:** | |
| * The use of the premises for a Veterinary Clinic with associated building alterations and car parking. | |

# conditions

**Amended Plans**

1. Before the development starts, three copies of plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans submitted with the application,but modified to show, to the satisfaction of the Responsible Authority:
2. The carpark six located in the north-east corner of the site renumbered carpark eight.
3. The building setback a minimum 1.0 metre from the northern side boundary.
4. The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
5. No more than two (2) practitioners may practice from the site at any one time.
6. Carparks 1, 2, 7 and 8 to be used as staff car parking only. The spaces must be clearly marked for staff only.
7. The use may operate only between the hours of 8.00am and 6.00pm Monday to Friday and 8.00am to 12.00 noon Saturdays unless the Responsible Authority gives consent in writing.
8. The amenity of the area must not be detrimentally affected by the use or development, through the:
9. Transport of materials, goods, animals or commodities to or from the land;
10. Appearance of any building, works or materials;
11. Emission of noise, artificial light, or smell.
12. Any infections or potentially infectious wastes (as defined by the EPA) shall be properly segregated in containers colour coded yellow for infectious wastes and orange for potentially infectious wastes. Any prescribed waste which leaves the premises of generation must be disposed of in accordance with Environmental Protection Authority (EPA) requirements.
13. A landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. The plan must be drawn to scale, be dimensioned, and show the proposed landscape treatment of the site to be generally in accordance with the Landscape Plan prepared by John Patrick Landscape Architects Pty Ltd, dated 27/09/2021, and including:
14. The location and details (species, height etc.) of all existing trees and other vegetation to be retained on site;
15. Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
16. Any potential additional planting in the 1.0 metre northern side boundary setback area;
17. Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
18. A schedule of all proposed trees, shrubs and ground covers, which will include the size of all plants (at planting and at maturity), their location, botanical names and the location of all areas to be covered by grass, lawn, mulch or other surface material;
19. The location and details of all fencing;
20. The extent of any cut, full, embankments or retaining walls associated with the landscape treatment of the site;
21. Details of all proposed hard surface materials including pathways, patio or decked areas.

When approved the plan will be endorsed and will then form part of the Permit.

1. Before the allowed use commences, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.
2. A sign to the satisfaction of the Responsible Authority must be provided directing drivers to the area set aside for car parking and must be located and maintained to the satisfaction of the Responsible Authority. The sign must not exceed 0.3sqm.
3. Outdoor lighting must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse effect on adjoining land.
4. Before occupation of buildings and works specified in this permit must be completed to the satisfaction of the Responsible Authority. The Responsible Authority must be advised in writing when all construction and works are completed to enable the site to be inspected.
5. The Permit will expire if one of the following circumstances applies:

* The use/development is not started within two years of the date of this permit.
* The development is not completed within four years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

**---** **End of Conditions** ---

1. I have considered the written and oral submissions (including exhibits) of the two parties, and the expert evidence of Mr Dear & Mr Patrick. In accordance with the practice of the Tribunal, I do not recite or refer to all of the contents of those documents in these reasons. [↑](#footnote-ref-1)