VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P1318/2020Permit Application no. TPA/51380 |
| CATCHWORDS |
| Section 77 of the Planning and Environment Act 1987; Monash Planning Scheme; General Residential Zone Schedule 3; Site Layout; Boundary to Boundary construction; Visual Bulk; Massing; Landscaping Opportunities; Car Parking Arrangement; Design Detail.  |

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| APPLICANT | Roger Rao |
| responsible authority | Monash City Council |
| SUBJECT LAND | 24 Albert Street,MOUNT WAVERLEY VIC 3149 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 8 April 2021 |
| DATE OF ORDER | 12 July 2021 |
| CITATION | Rao v Monash CC [2021] VCAT 704  |

# Order

1. Pursuant to Clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998* the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

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| * Prepared by:
 | Bello Design Group  |
| * Drawing numbers:
 | TP01 to TP12 Revision B  |
| * Dated:
 | 19/2/2021 |

1. In application P1318/2020 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/51380 no permit is granted

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



# Appearances

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| For applicant | Daniel Bowden, town planner of SongBowden Planning  |
| For responsible authority | Peter English, town planner of Peter English & Associates Pty Ltd  |



# Information

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| 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 southern side of Albeit Street in Mount Waverley. The site is currently developed with a single storey dwelling. The site is rectangular in shape and has a frontage of 18.29 metres and a depth of 39.62 metres for a total site area of 724 square metres. The site includes a minimal fall from the east to west of 300mm and contains a crossover to the western portion of the frontage. A 1.83 metre wide drainage and sewage easement traverses the southern (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 directly to the east and west. To the rear of the review suite lots face on to Waverley Road and are commercial in nature. The site is well served with access to schools, parks and open spaces, and shopping facilities (corner Stephensons and Waverley Roads and Mount Waverley to the north). The site also has good access to community facilities. Public transport is available by way of buses on Waverley and Stephensons Roads with train access at Mount Waverley.  |
| Tribunal inspection | The Tribunal undertook an unaccompanied inspection of the site after the hearing.  |

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

## What is this proceeding about?

1. On 5 August 2020 Monash City Council issued a refusal to grant a planning permit for the construction of two double storey dwellings at 24 Albert Street Mount Waverley.
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. Council contends that this development also does not comply with the objectives of ResCode with regard to neighbourhood character, site layout and building massing, visual amenity impacts, landscaping, and design detail. Concerns were also raised regarding the location of car parking.
3. Resident objectors support this decision.
4. The review applicants, through Mr Bowden, 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 Bowden 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. There is no doubt that the site enjoys strategic policy direction towards a greater level of development and density than currently exists. This position is on the basis that the site is well located as it is :
* Near the junction of two main roads within the PPTN;
* Near a commercial centre to the south.
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, density does not come at any price. As always 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 internal and external amenity.

### Neighbourhood Character

1. Within the Monash Planning Scheme, local policy retains an imperative 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 Northern Areas character area at Clause 22.01. The preferred character statement of this area includes:

Although there will be changes to some of the houses within this area, including the development of well-designed and sensitive unit development and, on suitable sites, some apartment development, these will take place within a pleasant leafy framework of well-vegetated front and rear gardens and large canopy trees.

Setbacks will be generous and consistent within individual streets. Building heights will vary between neighbourhoods. Neighbourhoods with diverse topography and a well-developed mature tree canopy will have a larger proportion of two storey buildings. In the lower, less wooded areas, buildings will be mainly low rise unless existing vegetation or a gradation in height softens the scale contrast between buildings. New development will complement the established buildings through consistent siting, articulated facades and use of materials. New development will consider energy efficiency and sustainability principles. Long expanses of blank wall will be avoided, particularly when adjacent to public parks, reserves and other open space areas, where the building should address the public area.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street. New development will be screened from the street and neighbouring properties by well planted gardens that will ensure the soft leafy nature of the street is retained.

Gardens will consist of open lawns, planted with a mix of native and exotic vegetation and trees. Existing mature trees and shrubs will be retained and additional tree planting within streets and private gardens will add to the tree canopy of the area.

Buildings will be clearly visible through these low garden settings, and non-existent or transparent front fences. Additional vehicle crossovers will be discouraged.

The built-form will be visually unified by well-planted front gardens that contain large trees and shrubs and street tree planting. Trees within lots to be redeveloped will be retained wherever possible to maintain the established leafy character.

Landscape elements such as remnant indigenous vegetation and the large old coniferous wind-rows will be retained until trees are no longer healthy or safe

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 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 boundary to boundary construction.
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 7.430 metres. I am satisfied that this height responds well to the scale of the buildings on the immediately adjoining properties to the east and west 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. However, I have not been persuaded that the boundary to boundary construction of the garages is reasonable, nor is it 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. 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 off the side boundaries, which may require the inclusion of single garages. In assessing the garages as proposed, I find them overbearing and a dominant element of the development, where policy seeks to minimise their appearance in the streetscape, comparative to the dwellings. That has not been achieved here. Instead, the garages are overly wide, with limited to no opportunity for planting that might soften their appearance in the streetscape. Exacerbating this breadth of appearance of garaging is the limited setback from the frontage of the dwellings (1 metre). These matters should be given far greater consideration in any new development proposed.
5. In conjunction with my concerns relating to the garages, I share Councils concerns regarding the dual crossovers. These leave limited space for planting in the front setback, 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. Parties agreed that the primacy of this aspect of the development had, as a result of this zone consideration, been raised above mere policy consideration. As a straight out contest of how many crossovers are appropriate for the site, the decision guideline is rather a blunt tool, with limited precision. Instead, I prefer to see it as what it is, 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 and extent 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 expanse of crossovers, that necessarily limit opportunities for appropriate screening in line with Garden City expectations.
6. In addressing these matters in any new design, consideration should also be given to a more meaningful presentation of windows to the frontage, such that they serve a habitable room, rather than an entry, albeit one with a desk area.
7. I agree with Mr Bowden that the orientation of the site makes it a suitable candidate for side by side development, and that the interface to the rear is robust, such that impacts on amenity are limited to the south. However, that does not allow for any ‘free kicks’ when it comes to amenity by way of bulk to the properties adjoining to the east and west. In any development that is pushed to the boundaries, there always comes fear of amenity impacts. In this case bulk and shading were of concern to Council. Whilst I agree with Mr Bowden that the visual bulk and shading amenity impacts are not unreasonable in this instance, it may well be that with the 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 or the form, being contained under the one expanse of roof, 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 construction of the ground level to the boundaries, which as I have said, is uncharacteristic of the area, and lacks contextual thoughtfulness.
9. In coming to my conclusion to refuse this application for review I considered the option of setting the development off the side boundaries and setting the upper level further back from the ground floor level. This was a fruitless task as the consequential changes 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.

## Conclusion

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

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| **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)