

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1628/2022
PERMIT APPLICATION NO.TPA/53746

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone Schedule 3; Street Trees; Tree 1 and Tree 2; Site Layout; Visual Bulk; Massing; Landscaping Opportunities.

APPLICANT	Jin Chen
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	29 Watsons Road GLEN WAVERLEY VIC 3150
HEARING TYPE	Hearing
DATE OF HEARING	24 April 2023
DATE OF ORDER	21 July 2023
CITATION	Chen v Monash CC [2023] VCAT 844

ORDER

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

- Prepared by: NYC
- Drawing numbers: TP00 to TP10 Revision E
- Dated: 20/2/2023

And the following landscape plan filed with the Tribunal:

- Prepared by: Zenith Concepts Pty Ltd
- Drawing numbers: Rev A
- Dated: 20/2/2023

No permit granted

- 2 In application P1628/2022 the decision of the responsible authority is affirmed.
- 3 In planning permit application TPA/53746 no permit is granted.



Alison Slattery
Member

APPEARANCES

For applicant	Mr Stephen O'Brien, Town Planner Universal Planning Pty Ltd
For responsible authority	Mr David De Giovanni, Town Planner David De Giovanni Planning Pty Ltd



INFORMATION

Description of proposal	Construction of two double storey dwellings with one fronting the street and the second behind the front dwelling. Two crossovers are proposed with a new crossover constructed to the northern portion of the frontage.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – 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 western side of Watsons Road in Glen Waverley. The site is currently developed with a single storey dwelling. The site is rectangular in shape and has a frontage of 17.37 metres and a depth of 42.67 metres for a total site area of 740.7 square metres.



31 Watsons Road Review Site - 29 Watsons Road 27 Watsons Road

The site includes a fall of 2.29 metres across the site and contains a crossover to the southern portion of the frontage. A 2.44 metre wide drainage and sewage easement traverses the southern (side) boundary and the rear western 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 dual occupancy style development.

The site is well served with access to schools, parks and open spaces, and shopping facilities (further afield in Brandon Park or elsewhere to the west). The site also has good access to community facilities. Public transport is available by way of buses on Watsons Road with train access at Glen Waverley.

Tribunal inspection

The tribunal undertook an unaccompanied inspection of the site prior to the hearing.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 On 4 November 2022 Monash City Council issued a refusal to grant a planning permit for the construction of two double storey dwellings at 29 Watsons Road Glen 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, energy efficiency, landscaping, private open space and design detail. Concerns were also raised regarding the location of crossovers such that they would unreasonably impact on the health of two street trees.
- 3 The review applicants, through Mr O'Brien, 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 O'Brien 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 Planning Policy Framework (PPF) and local policies lend support to the proposed development.

WHAT IS THE KEY ISSUE?

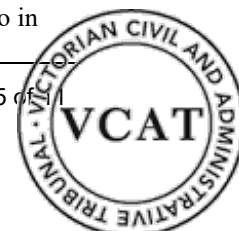
- 4 The key issue for determination is:
 - a Does the development represent an appropriate response to the neighbourhood? Are the amenity impacts reasonable?
- 5 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions 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

- 6 The proposal is modest in its increase of one dwelling above the current conditions.

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.



- 7 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 :
- Not overly distant from the junction of two main roads within the PPTN being Springvale and Waverley Roads;
 - Near commercial centres to the west being Brandon Park and Glen Waverley.
 - Located on a road with a bus route (and a bus stop out the front of the site).
- 8 As such policy reasonably directs the accommodation of a modest increase in density for the site than it currently does-an increase of one further dwelling on the lot is reasonably described as low density development.
- 9 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 having regard to the likely need to remove and replace the two street trees to the frontage of the site, and having regard to the extent of form at the upper level.

Neighbourhood Character

- 10 Before I speak to the impacts of the tree removal on the character of the area, I note for completeness the following:
- 11 Council has a street tree policy that is not referenced in the planning scheme, and has no planning basis. It is a policy that is applied when Council assesses, outside the parameters of a planning application, any new crossover, or any requirement or application to remove a street tree.
- 12 The policy is in two parts and states:

Street Tree Strategy

At its 28 June 2016 meeting, Council adopted a 30 year strategy to improve and protect Monash's valued street tree canopy.

[Monash Street Tree Strategy](#) (PDF, 7MB)

With the strategy, Council is aiming to achieve high quality, consistently-planted and attractive avenues.

The strategy identifies trees that are in declining health and will need to be replaced over time. It is about delivering a vision for Monash where the trees in any particular street are the best choice for that part of the City (taking into account available growing space, proximity to infrastructure like overhead power lines and footpaths, as well as neighbourhood character).

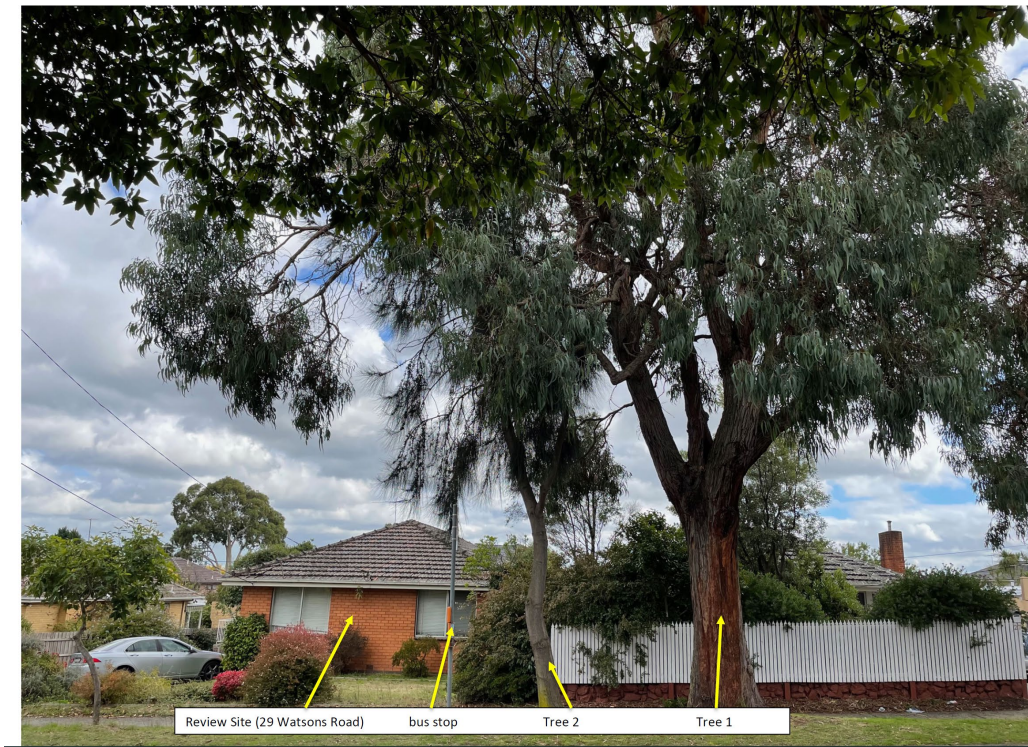
Street Tree Strategy Implementation

In late 2016 Council resolved to revise its approach towards the renewal of Monash's street trees by only removing trees that are dead, dying, (assessed as having less than 2 years useful life, for example diseased) or dangerous (pose an inappropriate level of risk to people or assets which cannot be reasonably be managed). The aim of the strategy is to increase the number of trees planted on public property.

- 13 There was some disagreement as to the status of the street trees (trees 1 and 2) to be removed or impacted, insofar as one of the trees that requires removal is a River Sheoak, which, pursuant to the Monash Tree Strategy 2016 ('MTS') is a priority 1 removal tree.

#	Species	Common Name	Height	DBH	TPZ	SRZ	Health	Structure	Form	Origin	Ownership	Permit Status	Retention Value
1	<i>Eucalyptus cephalocarpa</i>	Silver Stringybark	16.5	75	9.0	2.9	Fair	Good	Fair	I	Council	PARKS	High
2	<i>Casuarina cunninghamiana</i>	River Oak	11	25	3.0	1.8	Fair	Good	Fair	N	Council	PARKS	High

- 14 It was put by Mr O'Brien that this designation should give comfort to the Tribunal in assessing the appropriateness of the retention of the tree in the streetscape. On the contrary Mr De Giovanni submitted that the MTS needs to be read in its entirety, which includes the addendum of late 2016 that states that only trees that are dead or in peril may be removed. On this basis, Mr De Giovanni suggested a level of futility would exist in any permission relating to the review site that would require the removal of either tree 2, the River Sheoak, or would impact detrimentally on tree 1 the Silver Stringybark. I understand that Council must bring all applicable matters to the attention of the Tribunal, and in its role as a municipal authority needs to be cognisant of the various local laws within the various arms of Council. However, this sense of futility that arises from the disconnect between the planning scheme and other local laws is not a matter that is determinative in my decision. It cannot be. What is determinative, is whether or not the impacts of the proposal on the street trees, including the construction of two crossovers, will have an unreasonable impact on the character of the area. I find that it will.



- 15 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

- 16 This Garden City emphasis is reiterated within the Residential Development and Character Policy³ 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.

- 17 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.

To direct residential growth to neighbourhood and activity centres, the Monash National Employment Cluster and the boulevards (Springvale Road and Princes Highway).

- 18 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.

- 19 The 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):

² Clause 21.04

³ Clause 22.01-1



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.

- 20 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

- 21 Mr De Giovanni 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 De Giovanni 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 down the length of the lot needs to be designed so it maintains the opportunity for built form to be comprehended in a garden setting.
- 22 I agree that the site context and the PPF and local policy points to this area as being able to sustain a modest level of change to accommodate some future increases in dwelling stock. I 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 upper level portion of the buildings having limited set back from the ground level such that they appear as bulky to adjoining neighbours, particularly to the north at 27 Watsons Road.
- 23 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 8.5 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 visit that the streetscape is experiencing a modest level of 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.

- 24 However, I have not been persuaded that the extent of form at the upper levels is reasonable, nor is it reflective of the character of built form in the area where upper levels are generally recessive forms. 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. Any new development should consider setting the upper level form back from the ground level in order to be a recessive element in the streetscape.
- 25 In conjunction with my concerns relating to the upper levels, I share Councils concerns regarding the dual crossovers and their impacts on the street trees. I agree with Mr De Giovani that the assumptions relied on relating to the 10% encroachment of the driveway and crossover into tree 1 do not take into account the full extent of encroachment that the tree will experience. This includes the existing road pavement, likely bus relocation works, and possible site excavation.
- 26 Not only do the two crossovers leave limited space for planting in the front setback, planting that might otherwise serve to screen and soften the appearance of the dominant forms, but they take from the streetscape, two healthy street trees. 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. As an assessment tool 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, including the impacts on street trees, and the impact that the removal of those street trees might have in the appreciation of the garden city character of the area. 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, and also that its impacts on the street trees is unreasonable. My concerns relate both to the excessive upper level form, and the removal of opportunity for the development to be appreciated within a treed, environment in both the public and private realms, as is sought within garden city policy.

CONCLUSION

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

Alison Slattery
Member

