

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P141/2024
PERMIT APPLICATION NO.TPA/55233

CATCHWORDS

Section 80 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone Schedule 3, Construction of 2 dwellings, planning policy, neighbourhood character

APPLICANT	Kumar Moluguri & Lavanya Varadan
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	65 Golf Road OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATES OF HEARING	14 and 27 May 2024
DATE OF ORDER	28 May 2024
CITATION	Moluguri v Monash CC [2024] VCAT 498

ORDER

Conditions changed

- 1 The decision of the responsible authority is varied.
- 2 The Tribunal directs that planning permit TPA/55233 must contain the conditions set out in planning permit TPA/55233 issued by the responsible authority on 1 February 2024 with the following modifications:
 - (a) Condition 1(e) is deleted.
- 3 The responsible authority is directed to issue a modified planning permit in accordance with this order.

Katherine Paterson
Member

APPEARANCES

For applicant	Daniel Bowden, Town Planner, Song Bowden
For responsible authority	Sally Moser, Town Planner



INFORMATION

Description of proposal	Construction of two dwellings on a lot, in a one behind the other configuration. Dwelling 1 is to be a triple storey dwelling, with the third level being an attic style level. Dwelling 2 is a two storey dwelling.
Nature of proceeding	Application under section 80 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the conditions 1(b) and 1(e) contained in the permit: (b) The Dwelling 1 attic deleted and roofing form to be modified to be reflective of Dwelling 2 (e) The west wall of Bedroom 2 of Dwelling [sic] on the first floor setback 700mm in from the ground level on that side.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 3, Special Building Overlay.
Permit requirements	Clause 32.08-7 – Construct two dwellings on a lot; Clause 44.05-2 – Construct a building and construct or carry out works in the SBO
Land description	The land is irregular in shape, with an overall area of 616 square metres. The site is occupied by a detached single storey dwelling.
Tribunal inspection	20 May 2024

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Kumar Moluguri & Lavanya Varadan wish to construct two dwellings on land at 65 Golf Road Oakleigh South. Following the decision of Monash City Council to grant a planning permit for the development, they have requested that the Tribunal review two conditions of the planning permit being conditions 1(b) and 1(e). These conditions state:
 1. Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council, but modified to show:
 - ...b) The Dwelling 1 attic deleted and roofing form to be modified to be reflective of Dwelling 2.
 - ...e) The west wall of Bedroom 2 of Dwelling [sic] on the first floor setback 700mm in from the ground level on that side.
- 2 Sally Moser, on behalf of Monash City Council submitted that the reason behind the two conditions is to ensure that the development is more consistent with the preferred character of the area.
- 3 In his submission to the Tribunal, Daniel Bowden provided the tribunal with architectural drawings showing the changes sought by the conditions. His submission included a useful side by side comparison of the two developments, which I have included below:



Figure 1 – Extract from applicant's submissions prepared by Song Bowden

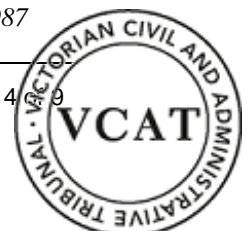
¹ The submissions of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.

- 4 The Tribunal received five statements of grounds from persons who chose not to be a party in these proceedings. The matters raised in these statements of grounds, which relate to the proceeding before me include:
- Amenity impacts generated by the proposed three storey dwelling;
 - The three storey height of the proposed dwelling is inconsistent with the neighbourhood character of the area.²
- 5 The Tribunal in *CMA Corporation Pty Ltd v Maroondah CC* [2010] VCAT 660 (10 June 2010) outlined the limited discretion of the Tribunal in reviews under section 80 of the *Planning and Environment Act 1987* (Vic):
- [14] A conditions review under s 80 PE Act differs from other planning merits reviews as to its scope. Most other reviews put the whole question of conditions in issue. That is true for an applicant's review of a refusal to grant a permit under s 77, an applicant's review of the failure of a responsible authority to grant a permit within the prescribed time under s 79 and an objector's review of a decision to grant a permit under s 82. As already noted, there is no objectors review before us.
- [15] Typically, a conditions review is in relation to one or more specified conditions. The scope of the review is limited to those particular conditions and it does not throw open for consideration other conditions not specified. Furthermore, it does not create the opportunity for the introduction of new conditions not even mentioned or contemplated in the decision of the responsible authority.
- [16] The only scope for a new condition would be if it arose as an incident, result or ramification of the removal of or alteration to a condition under challenge.

What are the key issues?

- 6 Since the day of the first hearing, the Monash Planning Scheme was amended via Amendment C166mona on 23 May 2024. At the commencement of the decision hearing on 27 May 2024 the implications of the amendment for the hearing were discussed, with both parties agreeing the changes which were of significance for the application for review were largely policy neutral, except in some instances where policy has been rationalised. Both parties consented to the Tribunal determining this matter without the need for further detailed submissions to be made regarding the amendment.
- 7 The questions that arise in considering whether the conditions are appropriate are:

² As this is an application for review under Section 80 of the *Planning and Environment Act 1987* (Vic) the Tribunal's discretion in this matter is limited to the conditions under review.



- Is condition 1(b) acceptable having regard to the preferred neighbourhood character of the area?
- Is condition 1(e) acceptable having regard to the neighbourhood character of the area?
- Are the conditions required to reduce the impacts on the amenity of the adjoining properties?

8 I will consider each question in turn.

IS CONDITION 1(b) ACCEPTABLE HAVING REGARD TO THE PREFERRED NEIGHBOURHOOD CHARACTER OF THE AREA?

- 9 The purposes of the General Residential Zone Schedule 3 encourage development that respects the neighbourhood character of the area. Clause 55.02-1 seeks to ensure that the design of a medium density housing development either respects the existing neighbourhood character or contributes towards a preferred character.
- 10 The schedule to the zone contains neighbourhood character objectives which include:
- To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.
- 11 Clause 15.01-5L of the Monash Planning Scheme contains the preferred neighbourhood character policy, which provides further guidance for the design of medium density housing. Under the heading ‘detailed design’ the policy includes the following statements:
- Design buildings and dwellings two storeys or greater to incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and the neighbourhood.
 - Limit blank, or continuous walls.
 - Provide roof forms and pitches consistent with other dwellings in the neighbourhood.
 - Discourage reproduction or mock-historic building styles incorporating superficial detailing.
 - Provide robust and low maintenance building materials and finishes that withstand weathering and create minimal adverse impacts (for instance, safe walking surfaces and limited reflective materials).
- 12 The policy divides Monash into various character types, with the subject site located within a ‘Garden City Suburbs Southern Area’. Clause 15.01-5L encourages dwellings that include the following:



- Simple, pitched rooflines.
- Articulated facades.
- Do not dominate the site by over developing.
- Present of comparable scale and form to older dwelling stock in the area will be supported

Set buildings back from at least one boundary and from the rear of the site.

Support buildings that front the street and provide articulated upper levels to minimise the impression of building bulk.

- 13 Clause 02.04-3 provides the residential development plan within the municipality and divides the municipality into various categories. The subject site is located within Category 8 – Garden City Suburbs which Clause 02.03-5 states is identified for incremental change. The subject site is located just outside of an area designated as ‘Category 2 – Accessible areas’ which is identified as an area for future development potential. Clause 02-03-4 states

The retention of garden city neighbourhood character is important to the community and an essential component of Monash’s residential areas. Council has undertaken significant work to identify Monash’s preferred neighbourhood character throughout the municipality in order to ensure development does not erode neighbourhood character.

Council seeks to:

- Maintain and enhance the garden city character by ensuring that development contributes to the garden city character including through the conservation of existing trees and the planting of canopy trees.
- Ensure that development enhances the character of the neighbourhood, consistent with the identified preferred future character.

- 14 The subject site is located within an area identified for incremental change, and is not within a heritage overlay or in proximity to sites included within the heritage overlay. It is also noted that the General Residential Zone allows for buildings of three storey in height, whilst encouraging built forms that respect the character of the area.
- 15 It was common ground at the hearing that the existing character of the area consists primarily of single storey detached dwellings, interspersed with two storey dwellings being primarily extensions to original dwellings in the streetscape or recently constructed medium density developments. There are no dwellings which are three storey in scale in the area, and as such the height of the proposed development represents a departure from the height of dwellings established in the area to date.

- 16 The design of dwellings in the area varies, but generally incorporate pitched tiled roofs, predominately constructed from materials such as weatherboard, brick or render. The two dwellings immediately adjacent to the site are single storey.
- 17 Opposite the site is the Metropolitan Golf Club, and Mr Bowden advised that the purpose of the attic is to provide the occupiers of the dwelling with views across the golf course. The attic will provide a third living area for the proposed four bedroom dwelling.
- 18 The design of the dwelling is contemporary and is a departure from the buildings that have been established in the area to date.
- 19 Whilst I find that the height of the proposed built form may have been more acceptable on Golf Road, I share Council's concerns with the bulk of the proposed development when viewed from Allerford Street. Despite the significant attempt to mitigate the impact on this street by using the angled roof form, I find that this is not sufficient to mitigate the bulk of the third storey element when viewed from this vantage point.



ARTIST IMPRESSION

Figure 2 – Artist impression extracted from coverage page of drawings prepared by 2BScene Design dated March 2023

- 20 Whilst the artist's impression above indicates that the built form will appear recessed, this tends to hide the fact that the built form will include a three storey sheer wall element at this point, which consists of a void above the ground floor dining area with the attic above.
- 21 The proposed maximum building height is 9.8 metres, and whilst this may have been absorbed within the Golf Road streetscape overall, the height and design of the development will be an uncomfortable fit with its single storey neighbour at 67 Golf Road.

- 22 The plans provided by Mr Bowden indicate that the two storey form at 9.3 metres would only be marginally lower than the three storey form. Whilst this is the case, I find that the roof form is a much more comfortable ‘fit’ with the streetscape and will soften the development when viewed from Allerford Street. It is also more consistent with the outcomes sought by planning policy for pitched roof forms in this area.
- 23 I further note that the change would have limited impact on the amenity of this dwelling as it would retain its four bedrooms and two living areas.
- 24 I therefore find that condition 1(b) is reasonable and I have retained it on the permit.

IS CONDITION 1(e) ACCEPTABLE HAVING REGARD TO THE NEIGHBOURHOOD CHARACTER OF THE AREA?

- 25 The officer’s report indicates that whilst the separation provided between Dwellings 1 and 2 is sufficient, condition 1(e) seeks to provide a ‘step’ to the built form when viewed from Allerford Street.
- 26 It was common ground the condition was incorrectly worded and should refer to Dwelling 1.
- 27 Ms Moser submitted that the west end of Dwelling 1 currently provides no horizontal stepping and the condition will provide some further articulation at this level.
- 28 The plans provided by Mr Bowden indicate that this stepping in form will have little if any benefit from a streetscape perspective as it will still be read as a single form from the street:



Figure 3 – Extract from Plan TP06 prepared by 2BScene dated October 2023

- 29 I agree with Council that the separation in built form between the dwellings is acceptable, and I find that there is no benefit to the requirement to have a 700mm ‘step’ to provide articulation. Mr Bowden submitted that whilst the affected bedroom is large, clearly the condition would reduce the internal amenity of this room, and may create difficulties in meeting some of the requirements under the *Building Act 1993 (Vic)*, such as fire protection.

30 For those reasons I find that the condition is unnecessary, and I have deleted it from the permit.

ARE THE CONDITIONS REQUIRED TO REDUCE THE IMPACTS ON THE AMENITY OF THE ADJOINING PROPERTIES?

31 Concern was raised in the statements of grounds that condition 1(b) was required to protect the adjoining properties from amenity impacts including overlooking, overshadowing and visual bulk.

32 I am satisfied that the application, at three stories complies with the relevant standards of Clause 55, being standards B17, B21 and B22. I have not required the retention of the condition to protect the amenity of adjoining properties, although a reduction in height will reduce these impacts further.

CONCLUSION

33 For the reasons given above, the decision of the responsible authority is varied. Condition 1(e) of the permit is deleted.

Katherine Paterson
Member

