

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P351/2022
PERMIT APPLICATION NO. TPA/53194

CATCHWORDS

Section 77 of the *Planning & Environment Act 1987*; Monash Planning Scheme;
Two dwellings: Neighbourhood Character – GRZ3; Clause 22.01 (Accessible Area & Garden City Suburbs-Southern Area)

APPLICANT	Nenad Subotic
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	27 Selworthy Avenue, Oakleigh South
HEARING TYPE	Hearing
DATE OF HEARING	1 September 2022
DATE OF ORDER	21 September 2022
CITATION	Subotic v Monash CC [2022] VCAT 1100

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:
 - Prepared by: Damian Orlando Design (Development Plans)
GreenDaze Garden Design (Landscape Plan)
 - Drawing numbers: 2021-16 – Sheet nos. 1 to 5 – Revision D
(Development Plans)
Sheet no. 1 (Landscape Plan)
 - Dated: 04/07/2022 (Development Plans)
07/07/2022 (Landscape Plan)
- 2 The decision of the Responsible Authority is set aside.



- 3 In permit application TPA/53194 a permit is granted and directed to be issued for the land at 27 Selworthy Avenue, Oakleigh South in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
- Construction of two dwellings on a lot.

Tracy Watson
Member

APPEARANCES

For Applicant	Sebastian Lorenzo, town planner.
For Responsible Authority	Gerard Gilfedder, town planner.

INFORMATION

Description of Proposal	It is proposed to construct two, double storey dwellings on the subject site.
Nature of Proceeding	Application under Section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning Scheme	Monash.
Zone and Overlays	Clause 32.08 – General Residential Zone, Schedule 3 (GRZ3). No overlays apply to the subject site.
Permit Requirements	Clause 32.08-6 – To construct two or more dwellings on a lot.
Relevant Scheme, policies and provisions	Includes Clauses 11, 15, 16, 21.01, 21.04, 22.01, 22.04, 22.05, 32.08, 52.06, 55, 65 and 71.02.
Land Description	The subject site is located on the western side of Selworthy Avenue, in an established residential area. The subject site has a frontage of 15.24 metres and a maximum depth of 40.84 metres, yielding a site area of 622m ² . The subject site is currently developed with a single storey dwelling, and is abutted by residential properties, including a two-dwelling development directly to its north.
Tribunal Inspection	15 September 2022.

REASONS¹

What is this proceeding about?

- 1 The Monash City Council issued a Notice of Decision to Refuse to Grant a Permit for the proposed development in February 2022, on a number of grounds. The permit applicant has requested that the Council's decision be reviewed by the Tribunal.
- 2 Based on the hearing process and all the relevant associated documentation, I consider that the key issue for determination relates to whether the proposal respects the neighbourhood character of the area.
- 3 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions, 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 neighbourhood character?

- 4 The Council's submission was that the proposal fails to adequately respond to the neighbourhood character of the area in regards to its built form and landscaping outcomes.
- 5 Broadly, the local planning policy framework component of the planning scheme highlights the importance of the garden city character of the municipality and seeks to encourage new development that positively responds to this green leafy garden city character (refer to, for example, Clause 21.01-2 of the planning scheme).
- 6 More specifically, the subject site is located in the Accessible Areas Category 2 and the Garden City Suburbs Category 8 pursuant to Clause 21.04-1 of the planning scheme. The Accessible Areas designation means that the subject site is identified as having 'future development potential' while the Garden City Suburbs designation identifies a desired 'incremental' level of change. In other words, these somewhat competing categorisations within the housing change hierarchy need to be balanced against one another when determining if the proposed design response is an acceptable one. The accessibility of the subject site is also recognised by its inclusion within the Principal Public Transport Network Area.
- 7 The Council argued that the side-by-side layout of the proposed design response (and particularly the consequential provision of two crossovers, extent of hard surfaces, lack of landscaping and the building's side presentations) is inconsistent with the more specific outcomes sought by the 'Garden City Suburbs (Southern Area)' and the local variations contained

¹ I have considered the written and oral submissions of the parties, including all their tendered exhibits. In accordance with the Tribunal's practice, I do not recite or refer to all of the contents of those documents in these reasons.

in the GRZ3. The Council also submitted that the proposal would result in the unacceptable loss of the existing street tree.

- 8 Policy under Clause 22.01 of the planning scheme is that the proposed development should respond to the preferred future character of the applicable Garden City Suburbs (Southern) area, with this preferred character articulated in the statement reproduced below:

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.

- 9 When I examine the aerial photograph of the eighteen allotments in the immediate area bounded by Warrigal Road, Alleford Street, Selworthy Avenue and Bossington Street, evident features of the existing character

include consistent front setbacks and mostly open rear yards (excluding the four allotments which have been developed with one-behind-the-other dual occupancies). The benefit of the proposed side-by-side development is that it maintains the original rearyard 'spine' in this neighbourhood and provides for the desired tree canopy planting at the rear of the site, as well as allowing for both dwellings to address the street. In other words, the design response retains the 'open landscape character' and 'complements the scale and siting of the original housing' (including through the proposed building's setbacks off both side boundaries, and the central positioning of its upper level), consistent with the Southern Area's preferred character. The only element of the Southern Area's preferred character which the proposal does not achieve, is that it provides for a second, single crossover to the street. However, I consider that this aspect of the design response is counterbalanced by its other benefits.

- 10 In support of the provision of dual crossovers, I have given weight to the recent Tribunal decision relating to land at no. 7 Legon Road, Oakleigh South (*Lee v Monash CC* [2022] VCAT 660), which I also visited as part of my site inspection. The applicant's submission detailed the extent of the similarities between the subject site and surrounds and the land at no. 7 Legon Road, both in terms of the physical attributes and the applicable policy settings.
- 11 The Clause 22.01 policy also includes a range of policy statements that apply to all residential land relating to a range of matters, such as street setback, side and rear setbacks, landscaping and vehicle crossovers.
- 12 These general Clause 22.01 policies emphasize providing canopy tree planting in front and rear setback areas, minimising hard paving throughout the site and preserving backyard character, whilst also stating that additional crossovers are discouraged.
- 13 Another benefit of the proposed design response is that it results in a lesser amount of hard paving for vehicle access as compared to existing and proposed tandem developments. The proposed driveway areas are 48.4m², which is considerably lower than the driveway areas of other existing nearby developments, as follows: 272 Warrigal Road has driveway areas of 106.2m²; 282 Warrigal Road has driveway areas of 109.7m²; and 33 Selworthy Avenue has driveway areas of 121.04m². The existing approved tandem development on the subject site also provides for 118m² dedicated to the driveway areas.
- 14 The existing street tree planted in front of the subject site is approximately six years old, and based on my observations during the site inspection, it makes little contribution to the overall landscaping of the public realm within Selworthy Avenue. Nevertheless, the arboricultural report (dated 22 November 2021, V2) forming part of the permit application material concluded that the new crossover will not impact this tree, nor affect its potential to reach full maturity. This arboricultural report was not referred

to the Council's arborist, so on the basis of the updated version of the arboricultural report's findings, I am satisfied that the development will not impact the existing street tree.

- 15 In addition, the size of the proposed front and rear gardens (including the widths of the side boundary setbacks adjacent the proposed driveways) means that the proposal can make a meaningful contribution to the level of canopy tree planting in this area. The proposed landscape plan shows that two Snow Gums and two Black She-Oaks (the latter to be changed to indigenous species as per Council's preference) will be planted in the front garden area (with the proposed pedestrian paths sited so that they do not bisect the front garden); and that two Blackwood trees and one Lightwood tree will be planted in the rear garden area (with the rear garden area unencumbered by any easements). The proposed landscape plan also demonstrates that the whole of each of the side boundaries will feature planting (with the only exclusion being the lengths occupied by the clotheslines). Overall, I consider that the extent of the proposed landscaping resulting from the siting of the building achieves a positive outcome.
- 16 Schedule 3 to the GRZ articulates a range of specific built form and landscaping outcomes. I find that the proposal achieves all of the outcomes articulated by this detailed local schedule, and I give this considerable weight in my deliberations.
- 17 The proposed landscape plan exceeds the local variation to Standard B13 under the GRZ3 by providing seven canopy trees with mature heights of either 8 or 12 metres, thereby exceeding the maximum building height which is 7.5 metres. The proposed landscape plan also provides the desired: mixture of vegetation including indigenous species; vegetation in the front, side and rear setbacks; and vegetation on both sides of the accessways. Moreover, the proposal meets the local variation to Standard B8 (site coverage), and exceeds the local variations to Standards B9 (permeability), B28 (private open space) and B32 (front fences). The extent to which the proposal exceeds Standard B28 is noteworthy: with 131m² of total private open space for each dwelling being provided, of which 64m² is secluded private open space. This compares to the local standard which requires a total of 75m² to be provided, of which 35m² should be secluded private open space.
- 18 The proposed front 7.6 metres setback is consistent with the existing character of the area and complies with the local variation to Standard B6. The proposed garages have a front setback of 7.95 metres, with material variation provided to each garage door, and a further setback of 1.42 metres behind the front porch element provided. The combination of these features ensures that the proposed single garages are not a visually dominant element within the Selworthy Avenue streetscape. The upper level of the proposed building has a modulated front presentation, with a minimum

street setback of 8.4 metres provided. Overall, I find that the proposed streetscape presentation of the development sits comfortably within the existing mixed character of Selworthy Avenue.

- 19 The proposed sides of the building are also reasonably modulated, with the upper level form tapering at the rear, where the maximum side setbacks of 3.355 metres are provided. Importantly, the siting and form of the upper level is an appropriately sensitive response to the open rearyard character of the abutting property to the south at no. 29 Selworthy Avenue, as well as to the open rearyard character of the abutting and nearby Warrigal Road properties. I therefore do not share the Council's concerns regarding the upper level presentation of the building, as it is appropriately recessive on each of its sides.
- 20 Unlike with side setbacks, the GRZ3 does include a local variation in relation to rear setbacks, by requiring a 5.0 metres setback. The proposed ground level rear setbacks of 8.45 metres generously exceed this local variation. Additionally, the proposed upper level is further recessed, with rear setbacks of 12.05 metres provided. As I have already stated, this aspect of the proposal is a positive response to the existing physical attributes of the abutting properties.
- 21 In light of all of the above factors, and having also considered the part 7.0 decision guidelines of the GRZ3 along with the applicable local policies, I consider that the proposed design response achieves all of the GRZ3 neighbourhood character objectives, which are set out below:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

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.

To support new development that locates garages and carports behind the front walls of buildings.

- 22 In summary, I find that the proposal meets all of the Clause 55 objectives, including the neighbourhood character, landscape and access objectives, at Clauses 55.02-1, 55.03-8 and 55.03-9 of the planning scheme. I am satisfied that the building and associated landscaping will make a positive contribution to this neighbourhood.

What conditions are appropriate?

- 23 The draft conditions were discussed at the hearing, and the conditions included on the permit at Appendix A reflect these discussions, a consideration of the ‘track changes’ version of the conditions with comments provided to the Tribunal, along with my findings.

Conclusion

- 24 For the reasons explained above, the decision of the Responsible Authority is set aside. A permit is issued subject to conditions.

Tracy Watson
Member

APPENDIX A

PERMIT APPLICATION NO:	TPA/53194
LAND:	27 Selworthy Avenue, Oakleigh South
WHAT THE PERMIT ALLOWS:	<ul style="list-style-type: none">• Construction of two dwellings on a lot in accordance with the endorsed plans.

CONDITIONS

Amended Plans

1. Before the development starts, 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 are to be generally in accordance with Drawing No. 2021-16-1/5 to 5/5 Issue D dated 04-07-22 by Damian Orlando Design, but modified to show:
 - a) Internal room dimensions for both dwellings.
 - b) Gas/water meter locations in unobtrusive locations.
 - c) Letter boxes no greater than 900mm in height convenient to the dwellings.
 - d) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes and any associated infrastructure must be located at a distance from the street which is at or behind the setback alignment of buildings on the site. Alternatively it must be setback a minimum of 3 metres from the front title boundary, be no greater than 1.4 metres in height and must be adjacent a side boundary fence where the most minimal level of visual impact arises.
 - e) Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) on both sides of the proposed vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
 - f) A clear, identifiable notation on the ground floor plan advising the development is subject to a Tree Management Plan.
 - g) The landscape plan required in Condition 9.



No Alterations

2. The development as shown on the endorsed plans must not be altered without the prior written consent of the Responsible Authority.

Common Boundary Fences

3. All external common boundary fences are to be a minimum of 1.8 metres above the finished ground level to the satisfaction of the Responsible Authority. The fence heights must be measured above the highest point on the subject or adjoining site, within 3 metres of the fence line. Fences are to taper down forward of the dwellings to meet required reversing lines of sight.

Tree Protection

4. The Council street tree must be protected by temporary rectangular wire fencing in accordance with AS4970-2009 for a distance of at least 2.7 metres from the base of the tree excluding during the construction of the vehicle crossover for dwelling 1 whereby the tree protection fencing can be adjusted to suit construction processes.
5. No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on the subject site or on adjoining sites during the construction period of the development hereby permitted.
6. Prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and be approved as being satisfactory by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must be based on the recommendations and requirements contained in the '*Arborist Report Development Impact Assessment*' of Melbourne Arborist Reports, 22 November 2021 V2, as well as any other recommendations arising.
7. The Tree Management Plan must make specific reference to the Condition 1 and Condition 9 plans confirming they have been assessed.
8. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and detailing a Tree Protection Plan drawn to scale that shows the following to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction:
 - a) Tree protection zones and structural root zones of all trees to be retained;

- b) All tree protection fenced off areas and areas where ground protection systems will be used;
- c) The type of footings within any tree protection zones;
- d) Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist;
- e) A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones;
- f) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist;
- g) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority; and
- h) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, Pruning of Amenity Trees and include a detailed photographic diagram specifying what pruning will occur.

The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.

Landscaping

- 9. Concurrent with the endorsement of any plans requested pursuant to Condition 1 modified to reflect any changes under that condition, a Landscape Plan drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must be generally in accordance with Landscape Plan Sheet 1 dated 7/7/2022 by GreenDaze and modified to show:
 - a) Replacement of the *Allocasuarini littoralis* (Black She-Oak) with a species indigenous to the area.
 - b) Any landscape design alterations arising from the project arborist needed to protect trees on abutting land including the nature strip.
 - c) The location of Tree Protection Zones and Tree Protection Fencing as outlined in the Tree Management Plan approved by the Responsible Authority under this permit.

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

Landscaping Prior to Occupation

10. Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed Landscape Plan must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

Drainage

11. Drainage of the site is to be to the satisfaction of the Responsible Authority.
12. All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
13. The private on-site drainage system must prevent stormwater discharge from the/ each driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - a) a trench grate (minimum internal width of 150 mm) located within the property boundary and not the back of footpath; and/or
 - b) shaping the internal driveway so that stormwater is collected in grated pits within the property; and or
 - c) another Council approved equivalent.
14. All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing and is to be to the satisfaction of the Responsible Authority.
15. The nominated point of stormwater connection for the site is to the north-east corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the existing Council pit in the nature strip to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

Road Infrastructure

16. All new crossings must be a minimum of 3.0 metres in width.
17. All vehicle crossings within 2.4 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
18. All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
19. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
20. Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council drains and these works are to be inspected by Council's Engineering Department. A refundable security deposit of \$1,500 is to be paid prior to the drainage works commencing.

Completion of Buildings and Works

21. Once the development has started it must be continued and completed to the satisfaction of the Responsible Authority.

Permit Expiry

22. This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - The development has not started before two (2) years from the date of issue.
 - The development is not completed before four (4) years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987*, the Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

--- End of Conditions ---