

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P111/2022  
PERMIT APPLICATION NO.TPA/52998

### CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* to review refusal to grant a permit; Monash Planning Scheme; General Residential Zone 3 – Garden City Suburbs; three double storey dwellings; neighbourhood character and Garden City Character

<b>APPLICANT</b>	Kylie Buono
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	34 Calista Avenue OAKLEIGH EAST VIC 3166
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	9 September 2022
<b>DATE OF ORDER</b>	26 September 2022
<b>CITATION</b>	Buono v Monash CC [2022] VCAT 1107

### 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:	2SCALEdesign
Drawing numbers:	Sheets 1 of 11 to 11 of 11 inclusive
Dated:	27/7/22
- 2 In application P111/2022 the decision of the responsible authority is affirmed.
- 3 In planning permit application TPA/52998 no permit is granted.

**Christopher Harty**  
Member



## APPEARANCES

For applicant	Mr Paul Truong, Town Planner from Bayside Town Planning
For responsible authority	Mr David De Giovanni, Town Planner from David De Giovanni Town Planning

## INFORMATION

Description of proposal	Three (3) double storey dwellings on a lot. Dwellings 1 and 2 are a side-by-side arrangement fronting the street with Dwelling 3 positioned behind.
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 Planning Scheme
Zone and overlays	General Residential Zone Schedule 3 – <i>Garden City Suburbs (GRZ3)</i> No overlays
Permit requirements	Clause 32.08-6 – to construct two or more dwellings on a lot.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 21.01, 21.04, 22.01, 32.08, 52.06, 55, 65 and 71.02.



## Land description

The site is located on the east side of Calista Avenue in Oakleigh East, approximately 35 metres north of the intersection with Strelten Avenue. It is rectangular in shape with a frontage width of 16.45 metres and depth of 42.87 metres with an overall area of 705 square metres. The site is generally flat and currently contains a single storey detached rendered brick dwelling. The site contains garden plantings and one street tree in the front nature strip.

The surrounding area is residential in nature with a mix of single storey detached built form and dual occupancy tandem development and newer two-storey housing evident. To the north is a single storey dwelling, to the south are a single storey dwelling and newer two-storey dwelling behind. A single driveway along the southern boundary provides vehicle access to both dwellings. Both dwellings have their respective courtyards abutting the boundary with the site. Abutting the site to the east or rear is a single dwelling which has a large rear backyard comprising two sheds located on and close to the boundary with the review site. Located opposite the site to the west, are a series of single dwellings.

Calista Avenue has 1 hour (8am – 6pm, Monday to Friday) parking restrictions on the eastern side of the street and is located close to bus route 733 to the east along Clayton Road and Monash University to the south-east.

## Tribunal inspection

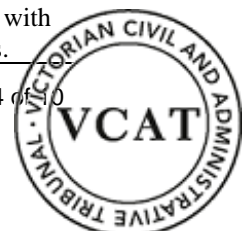
2 September 2022 and 16 September 2022 both unaccompanied

## REASONS<sup>1</sup>

- 1 I delivered reasons for my decision orally after the hearing and after I had conducted inspections of the site. These are the reasons for the decision.
- 2 This is an application by Kylie Buono (**applicant**) to review the decision of the Monash City Council (**Council**) to refuse permission in relation to permit application TPA/52998 on 31 January 2022 for the construction of 3 double storey dwellings at 34 Calista Avenue, Oakleigh East (**site**).
- 3 Council's grounds of refusal generally relate to the proposal being inconsistent with the provisions and policy of the Monash Planning Scheme (**planning scheme**) relating to neighbourhood character and the garden city suburbs policy. Council considers the proposal is too intense and representative of an overdevelopment of the site.
- 4 Council believes the site, at 705 square metres in size, is a modest parcel of land where the design of all three dwellings has excessive bulk and massing, including the use of cantilevered and sheer wall elements with limited separation between ground and first floor levels and which is exacerbated by proposing two separate crossovers and driveways. Council also considers these design features creates limited opportunities for landscaping, particularly to the rear of the site.
- 5 I note that despite the substitution of amended plans, Council maintains its position regarding refusal of the proposal. With the only change in position relating to its ground of refusal about inadequate provision for the retention of an existing street tree. Council was satisfied that the applicant had demonstrated an absence of roots that would be affected by the proposal and that it can be retained. Accordingly, this issue is no longer in dispute.
- 6 The applicant's position was that the proposal has been designed to achieve a respectful response and acceptable outcome to the requirements and policy of the planning scheme and the physical context of the site and surrounds.
- 7 I have been provided with a detailed description of the review site and its environs, the proposal, the planning scheme provisions and applicable policies. I have also inspected the site on the 2 and 16 September 2022. It is not necessary for me to repeat that material other than to record that:
  - The site is a generally flat rectangular shaped lot with an overall area of 705 square metres. It is in a residential area approximately 90 metres to bus route 733 to the east, 2 kilometres south to the Clayton Railway Station and 1.7 kilometres south-east to the Monash Medical Centre.

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<sup>1</sup> 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.



- The site contains a dwelling and vegetation that is not of significance, and which is proposed to be removed.
- Calista Avenue is for the main characterised by low scale original housing. There are examples of double storey residential development including medium density forms of housing in the street. There is also evidence of change occurring with both older and newer forms of medium density residential development. This has comprised both dual occupancy forms of development with tandem typology and development like that of the proposal. There are examples of two crossovers and driveways on a single site evident in the street.
- The proposal is to construct three double storey dwellings comprising two facing the street in a side-by-side configuration setback 7.6 metres from the street. A third dwelling is proposed at the rear with a setback of 5.2 metres from the rear (eastern) boundary.
- Dwellings 1 and 3 are both three bedrooms while Dwelling 2 is proposed to have two bedrooms.
- Building heights are around 8 metres.
- Dwelling 1 proposes to utilise an existing crossover located on the north side of the site with a driveway 2.7 metres in width leading to a single garage that is setback 8.2 metres from the street with a tandem car parking space. Dwellings 2 and 3 will be provided with a new crossover and driveway along the southern side boundary of around 36 metres in length accessing a single garage behind Dwelling 2 and leading directly to a double garage for Dwelling 3 at the rear. Space is provided to allow vehicle access from the garage for Dwelling 2 to reverse out and exit the site in a forward direction whilst the two vehicles in the double garage for Dwelling 3 will most likely need to reverse exit from the site. I note Council has a concern regarding this reverse exit manoeuvring.
- The garages for Dwellings 1 and 3 have walls on part of the northern boundary and part of the rear south-eastern corner of the site. Dwelling 2 is setback around 5 metres from the southern boundary.
- The design of the dwellings comprises face brick and render treatments including greys and lighter colours with vertical cladding and a steel hipped roof form.
- A 900mm high brick pier and steel picket front fence is proposed in front of Dwellings 1 and 2.
- The site and area in Calista Avenue are in the General Residential Zone Schedule 3 relating to the *Garden City Suburbs* in Monash (**GRZ3**) with no overlays applying to the site.



- The site is located within an area of incremental change and within the *Residential Land in the Monash National Employment Cluster* (Category 3) and over the *Garden City Suburbs* (Category 8) base.<sup>2</sup> Under Clause 22.01 of the planning scheme, the site is identified within the *Garden City Suburbs – Southern Area* residential character type.

- 8 I acknowledge that there was no disagreement amongst the parties that the site is a candidate for some form of medium density residential development.
- 9 The GRZ3 encourages housing growth and diversity, but the neighbourhood character objectives in Schedule 3 to the zone and the *Garden City Suburbs Southern Character Area* place emphasis on achieving desired future character outcomes.
- 10 Neighbourhood character and Garden City Character go hand in hand under the planning scheme with a strong theme resonating with how new residential development is considered. Erosion of the Garden City Character through loss of significant vegetation and tree canopy and inappropriate redevelopment of residential areas is a key concern identified in the planning scheme.<sup>3</sup>
- 11 The planning scheme recognises that new development should provide suitable setbacks, appropriate site coverage and site permeability and sufficient open space areas to allow for canopy tree planting to support the Garden City Character.
- 12 I have had the benefit of submissions from Mr De Giovanni for Council and Mr Truong for the applicant and have given consideration to them.
- 13 With this matter, I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02 - *Integrated Decision Making* of the planning scheme requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development for the benefit of present and future generations.
- 14 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
- 15 Having considered the submissions presented with regards to the applicable policies and provisions of the planning scheme and from my inspections, I find I am generally in agreement with Council.

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<sup>2</sup> Refer to Clause 21.04 relating to *Residential Development*.

<sup>3</sup> Refer to *Maintaining the Garden City Character* under Clause 21.01-2.



- 16 I find the proposal does not represent an acceptable outcome. Although there is general compliance with the numerical requirements of the ResCode standards<sup>4</sup>, I find the proposal has several design attributes, that, although may appear minor, cumulatively add up to create a design response that is at odds with neighbourhood character and are difficult to overcome with conditions. All-together, the proposal requires a re-design.
- 17 The site is located within an area identified in the planning scheme as a residential area in the Monash National Employment Cluster. Policy under Clause 21.04 recognises this area as one where opportunity exists to increase residential densities to provide housing close to jobs. It is also an area where the planning scheme recognises that incremental change is encouraged subject to achieving a preferred development outcome.
- 18 I find that, although the site is within the Monash National Employment Cluster, it is a location that is within the residential hinterland of that area which is reflected by the GRZ3 and the Garden City Suburbs policy.
- 19 Areas closer to the core of the Monash National Employment Cluster to the east of Clayton Road are within the General Residential Zone Schedule 6 which more specifically relates to the *Monash National Employment and Innovation Cluster and Clayton Activity Centre (GRZ6)* and which expressly supports higher density housing.
- 20 There is a subtle difference in this regard with application of the GRZ3 and the *Garden City Suburbs Southern Area* character designation placing emphasis on neighbourhood character outcomes, which is not reflected by the built form elements portrayed in the design such as a lack of recessed upper floor levels, evident articulation, and cantilevered elements.
- 21 I agree with Council that the design of the proposal overpowers the streetscape and dominates the surrounding dwellings and fails to complement them. The attached nature of Dwellings 1 and 2 with height and lack of first floor recession portrays a ‘big house’ appearance with built form bulk and massing.
- 22 The first floor shows minimal recession with sheer walls between the ground floor level front setback of 7.6 metres and the first-floor setbacks of 7.6 metres and 7.7 metres. Dwelling 2 presents a 2-storey sheer wall to the street and at the oblique, with the mid-level canopy break modest and insufficient in breaking up this continuous sheer 2 storey wall. The sections of cantilever add a further layer of intensity.
- 23 I support Council’s position that it would like to see greater articulation and setbacks between floor levels.
- 24 The proposal, at ground floor level presents to the street as a reasonable form with setbacks that closely align with abutting dwellings. However, the

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<sup>4</sup> Including site coverage at 43.6%, site permeability at 48.1% and garden area at 35%.





upper levels of Dwellings 1 and 2 lack a sufficient degree of recession to limit the strength of built form facing the street frontage and the proposed southern driveway. They could be moderated through suggested conditions to increase the upper-level setbacks from the street for both Dwellings 1 and 2 (at 1.5 metres) and from the southern boundary for Dwelling 2 (at 1 metre). However, it is uncertain how the proposal would appear, particularly given the narrow width of Dwelling 2 as it appears to be a more squeezed floor layout and somewhat of a poor cousin to Dwelling 1.

- 25 Similarly, with respect to Dwelling 3, it proposes a cantilevered design over part of the garage and presents limited recession of the upper floor levels from the north and east, which Council says contributes to the overwhelming built form presentation of the proposal.
- 26 I agree and consider it difficult to envisage a design outcome from moderating the presence of the first-floor cantilevered walk-in-robe through conditions.
- 27 I have similar findings regarding imposing conditions requiring increased setbacks of the first floor of Dwelling 3 from the northern and eastern boundaries with internal floor layout adjustments to reduce its built form presence.
- 28 I find the proposal fails to minimise building mass and visual bulk in the streetscape with limited upper floor recession. It offers little sense of transition to the adjoining residential forms. The combination of the extent and type of changes to improve the design outcome of the upper floor levels of the proposal are too significant to anticipate and, in my view, requires a re-design.
- 29 The proposal for two separate crossovers and driveways contributes, in Council's view, to the dominance of the streetscape.
- 30 Council says the site is located in the southern end of Calista Avenue which exhibits a strong single storey built form presence and single crossover character even with the presence of dual occupancy residential development.
- 31 Council refers to policy under Clause 22.01 to promote garden city character by minimising hard paving including the length and width of accessways and ensuring only one crossover per lot frontage. Council says the proposal for two accessways adds a further layer of hardness that accentuates the dominance of built form.
- 32 The two accessways and associated crossovers risk losing on-street parking capacity, limits space for landscaping including space for canopy tree planting and reduces the extent of nature strip across the site frontage. The nature strip in front of 34 and 36 Calista Avenue presents as a long, unbroken length which would be disrupted by the proposed second crossover to the street.



- 33 I note there is a mix in the street of properties with crossovers and accessways with single crossovers predominating and only a few that have double crossovers and associated accessways. I also acknowledge that the concern with having more than one crossover is the effect it may have on the extent of hard paving and the limit this places on space for landscaping and canopy tree planting to respectfully respond to Council's Garden City policy.
- 34 In this case, I do not consider the proposed two separate crossovers will reduce the nature strip to an extent that jeopardises the retention of the existing street trees that are present. Nor do I consider the driveways to constitute an inability to undertake landscaping that includes canopy tree planting within the front setback areas of proposed Dwellings 1 and 2.
- 35 There is only one single width garage presenting to the street, which is setback behind the façade line of Dwelling 1. The other garages are located to the rear. Whilst there are two crossovers, this would not be the first in the street and I am satisfied that there is adequate space at the front of the property within which to plant vegetation, including canopy trees.
- 36 Whilst Council was critical of the lack of space for planting and lack of side setbacks, I am not persuaded that the overall landscaping outcome will be unacceptable.
- 37 The surrounding area does not display an abundance of vegetation and canopy trees in private property. Much of the landscape character is contributed by street trees, of which the street tree in front of the site can be retained.
- 38 I find the proposal will provide a greater landscaping contribution to the surrounding area, once mature, than what is presently on the site. Under the variations to landscaping in Schedule 3 to the zone, the proposal would be required to provide for 4 canopy trees. The landscaping plan provided by the applicant shows 5 canopy trees. I consider this a step in the right direction.
- 39 However, I consider that the species selection needs to include canopy trees that will at least exceed the height of the proposed buildings. This would satisfy the purpose of planting canopy trees to contribute to the garden city character.
- 40 This may have implications regarding where such canopy trees may be planted, noting Council's concerns regarding shadowing that may affect the private open space areas of Dwellings 1 and 2.
- 41 I also have reservations concerning the relationship between the proposal for a canopy tree in the private open space area of Dwelling 3 which includes a swimming pool that reduces space for other open space purposes.

- 42 There needs to be further consideration to how these private open space areas are designed particularly given the aim of planting larger canopy trees than what has been proposed within them including space and how they will otherwise function as open space areas for the proposed dwellings.
- 43 Finally, with respect to the driveway for Dwelling 1, I note Council is concerned that it is 2.7 metres in width which is less than the requirement under Clause 52.06-9 for 3 metres. To achieve the increase in width may result in the required garden area being undermined. I note the driveway is utilising the existing driveway form which is not in accordance with the planning scheme requirement. I consider this is difficult to remedy through conditions and together with other changes, requires a more integrated design review to satisfy the requirements of the planning scheme.
- 44 Regarding the driveway for Dwellings 2 and 3, I note Council was concerned that vehicles would need to reverse around 36 metres to exit the site. I also note that vehicle access for Dwelling 2 can manoeuvre to exit in a forward direction. Vehicles associated with Dwelling 3 may not.
- 45 Clause 52.06-9 does not require vehicles to exit in a forward direction where driveways provide for access for less than 4 vehicles. However, policy under Clause 22.01-3 does refer to designing development to minimise parking, traffic and pedestrian impacts in adjacent residential areas including ensuring cars can exit the site in a forward direction.
- 46 Council refers to two vehicles associated with Dwelling 3 reversing down a long driveway that also acts as a pedestrian thoroughfare. I do not consider this to be a problem and the planning scheme at Clause 52.06-9 contemplates such an arrangement for two vehicles to conduct a reverse manoeuvre to be an acceptable outcome.
- 47 Overall, I find the proposal is at odds with a good design outcome, which appears to be driven by the owner's requirements for Dwelling 3 and which places constraints on the design outcome for the remainder of the proposal.
- 48 The built form for 3 dwellings appears to be too big and requires a re-design to ensure adequate space for canopy tree planting with trees that can reach a mature height above the proposed building height of at least around 10 metres, greater upper-level setbacks and improved driveway design.
- 49 For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

**Christopher Harty**  
**Member**

