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| VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL  planning and environment division | |
| planning and environment LIST | vcat reference No. P2294/2019  Permit Application no. TPA/50316 |
| CATCHWORDS | |
| Section 77 *Planning and Environment Act 1987*; Monash Planning Scheme; Residential Growth Zone; Monash National Employment Cluster, Three dwellings. | |

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| APPLICANT | Terry Pechlivanidis |
| responsible authority | Monash City Council |
| Referral Authority | Department of Transport (Head, Transport for Victoria (formerly VicRoads)) |
| SUBJECT LAND | 1435 Centre Road, Clayton |
| WHERE HELD | Melbourne |
| BEFORE | Bill Sibonis, Senior Member |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 5 June, 2020 |
| DATE OF ORDER | 27 July, 2020 |
| CITATION | Pechlivanidis v Monash CC [2020] VCAT 753 |

# Order

1. In application P2294/2019 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/50316 no permit is granted.

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| Bill Sibonis  **Senior Member** |  |  |

# Appearances

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| For T Pechlivanidis | Ms M Cusdin, Town Planner of Plans In Motion |
| For Monash City Council | Mr J Turner, Town Planner |

# Information

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| Description of proposal | The construction of three, two-storey dwellings. |
| 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 (**Planning Scheme**) |
| Zone and overlays | Residential Growth Zone – Schedule 3, Clayton Major Activity Centre and Monash National Employment and Innovation Cluster (**RGZ3**)  Abuttal to a road in a Road Zone Category 1 (**RDZ1**) |
| Permit requirements | Cl. 32.07-5 (the construction of two or more dwellings on a lot in RGZ3)  Cl. 52.29 (alteration of access to a road in an RDZ1) |
| Key scheme policies and provisions | Cl. 11, 15, 16, 21, 22.01, 32.07, 52.06, 52.29, 55 and 65 |
| Land description | The review site is located on the north side of Centre Road in Clayton, between Collier Avenue and Pullyn Street. It is a regular lot with a 15.8 metre frontage, a depth of 44.12 metres and an area of 697.8 square metres. A single-storey dwelling occupies the land. The adjoining lots to the north and west similarly support single-storey dwellings. A medium density housing development comprising three, two-storey dwellings is under construction on the abutting site to the east.[[1]](#footnote-1) On the opposite side of Centre Road is a commercial/industrial area within the neighbouring City of Kingston. |
| Tribunal inspection | A site inspection was undertaken after the hearing. |

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

## What is this proceeding about?

1. In March 2019 the applicant made an application to the Monash City Council (**Council**) for a planning permit to construct three, two-storey dwellings on the review site and to alter access to Centre Road.[[3]](#footnote-3) Notice of the application was given, and no objections were received. The Council refused a permit on grounds relating to non-compliance with the RGZ3, inconsistency with policy, underdevelopment, a detrimental impact on the future development of the area, and a failure to comply with selected provisions of clause 55.
2. This is an application to the Tribunal for a review of the Council’s decision.
3. The key issue in this matter is whether the proposal is supported by policy.
4. Having considered the submissions of the parties, with regard to the relevant policies and provisions of the Planning Scheme, assisted by my inspection, I have determined to affirm the Council’s decision. My reasons follow.

## what is the relevant planning context?

1. The land is within the RGZ3. The purpose of this zone is:

To provide housing at increased densities in buildings up to and including four storey buildings.

To encourage a diversity of housing types in locations offering good access to services and transport including activity centres and town centres.

To encourage a scale of development that provides a transition between areas of more intensive use and development and other residential areas.

To ensure residential development achieves design objectives specified in a schedule to this zone.

1. Schedule 3 of the zone applies to the ‘Clayton Major Activity Centre and Monash National Employment and Innovation Cluster’. It provides the following design objectives:

To facilitate housing growth in the form of apartment developments of a high quality design and finish.

To ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.

To ensure that the height, scale and form of development respects any sensitive residential interfaces and minimises the appearance of visual bulk.

1. A series of decision guidelines is provided at clause 5.0 of the schedule to the RGZ3. These address such considerations as landscaping, vehicle crossovers, building massing and amenity impacts.
2. Clause 21.04 of the Municipal Strategic Statement (**MSS**) sets out the objectives and strategies for residential development. It details a residential development framework that is derived from the Council-adopted *Monash Housing Strategy 2014* (**Housing Strategy**)*.* The residential framework plan that forms part of the Housing Strategy and which is included in clause 21.04 comprises eight categories, classified according to their development potential:

* Areas with future development potential:
* Category 1: Activity and neighbourhood centres
* Category 2: Accessible areas
* Category 3: Monash national employment cluster
* Category 4: Boulevards
* Areas with limited development potential:
* Category 5: Heritage areas
* Category 6: Dandenong Creek escarpment
* Category 7: Creek environs
* Areas suitable for incremental change
* Category 8: Garden city suburbs

1. There is a dispute between the parties in respect of which area/s the site falls within. The Council says that the site is within Category 1 (part of the Clayton Activity Centre) and Category 3. The applicant does not agree, submitting that the land is included in Categories 2 and 3.
2. It is common ground that the land is within the Monash National Employment Cluster. An objective of clause 21.04-3 is:

To locate residential growth within neighbourhood and activity centres, the Monash national employment cluster and the boulevards (Springvale Road and Princes Highway) to increase proximity to employment, public transport, shops and services. This will assist to preserve and enhance garden city character and special character in the balance of the municipality.

1. A related strategy is to support substantial residential growth within the Monash National Employment Cluster to provide housing closer to where people work and study.
2. According to the ‘Map 3 – Residential framework map’, the site is shown as being within Category 2 and Category 3. The boundary of the Clayton Activity Centre is shown as a circle whose centre is the railway station. The Council submitted this is a schematic representation and should not be taken to define the activity centre boundary with any degree of precision.
3. In support of its submission that the site is within the activity centre, the Council referred to its adopted *Clayton Activity Centre Precinct Plan* (**CACPP**), dated January 2020.[[4]](#footnote-4) In section 1.2, it is referred to as a ‘Draft Precinct Plan’ although it is not its title.
4. Section 1.3 CACPP details the project process. Stage 4 is ‘Final Precinct Plan’ and reads:

The Draft Precinct Plan was finalised following community feedback. A planning scheme amendment will be prepared to support its implementation.

1. The Council confirmed that, at this point in time, the Planning Scheme amendment process has not been initiated.
2. The CACPP shows the site as being within the residential precincts of the activity centre. According to the ‘Clayton Activity Centre Activities and Land Use Plan’ the land is within an area of residential intensification. The objective for housing is to provide a range of housing types within the activity centre that caters to the needs of existing and future residents and meets the expected population growth. A strategy is to encourage the consolidation of allotments within the commercial and residential areas of the activity centre to provide for greater efficiency and higher amenity in new housing developments.
3. The CACPP divides the activity centre into three precincts:
   * Precinct 1: Central Retail which encompasses the commercial land and railway station
   * Precinct 2: Health and Medical which focusses around the Monash Medical Centre and neighbouring medical and allied health uses
   * Precinct 3: the surrounding residential areas
4. The review site is within Precinct 3. The precinct overview refers to housing diversity catering for varying household types. In terms of built form it details dwellings comprising low-scale apartment buildings and townhouses with landscaped front gardens sitting comfortably next to detached dwellings and defining a high quality and contemporary character for the precinct. The ‘built form and interface diagram’ identifies a preferred building height of 6 storeys/19-22 metres for those sites extending along Centre Road, including the review site.
5. The applicant submitted that the CACPP is in draft and should be given limited weight, as it has not been through a formal process, which would include consideration by an independent panel.
6. Clause 21.04 does not articulate the specific vision for each category. Rather, this is provided in the Housing Strategy. For Category 1, Activity and Neighbourhood Centres, the description refers to:

Non-residential (usually Commercial) zoned land forming an Activity Centre or a Neighbourhood Centre.

Residential land identified within a Structure Plan as forming part of an Activity Centre or a Neighbourhood Centre.

1. The centres with a Structure Plan are identified as being Brandon Park Activity Centre, Oakleigh Activity Centre and Wheelers Hill Neighbourhood Centre.[[5]](#footnote-5) The description of the future character for Category 1 refers to development supporting housing growth and diversification, and high quality contemporary design. The ‘residential outcomes’ include:
   * mixed use and apartment development at a density appropriate to the context of the activity centre
   * higher density mixed use and apartment developments where identified by a Structure Plan or location-specific development controls
   * on larger sites, in suitable locations, increased density may be appropriate, subject to careful design.
2. The Housing Strategy identifies the future character of the Monash National Employment Cluster as follows:

Development within the Cluster will respect the changing built form within the commercial areas. The scale of new residential development will generally comprise larger footprint apartment development of a high quality design and finish. Some infill development, town house and unit development, will also occur.

Improved building density and quality will be encouraged, to maximise the comfort of future residents (and neighbours) as well as minimising running and maintenance costs.

The Cluster will develop to create a ‘campus feel’, through developments set in open garden settings, as well as less intense development that presents a uniform presentation to the street (often attached).

Provision of more affordable accommodation will be important, and a diversity of dwelling sizes will be encouraged, especially within the vicinity of the university or public transport.

Landscaping treatments to the streetscape will be important, as the native canopy tree setting is a major element of the attractiveness of the area.

1. The following ‘residential outcomes’ are specified for the Monash national employment cluster:

Higher density apartment development at the interface with the technology precinct.

Lower density unit and townhouse style development at the interface with surrounding residential land areas.

Potential for lower to medium density apartment development in predominantly residential streets subject to careful design.

On larger sites in suitable locations, increased density may be appropriate, subject to careful design and the provision of appropriate landscaped setbacks.

1. Category 2, Accessible Areas are described in the Housing Strategy as residential zoned land generally defined as being within reasonable walking distance from an activity centre, neighbourhood centre, railway station, public transport interchange or medium to large scale supermarkets. The future character is identified as:

The areas surrounding the centres will form a transition between the activity centres, which are intended to be areas of higher density development (residential and commercial), and the Garden City Suburbs (Category 7) which will continue to be occupied by more traditional forms of residential development.

These areas will provide for a diverse range of housing types while retaining key aspects of the existing built form and landscape character of the area. Improved building design and quality will be encouraged to maximise the comfort for future residents (and neighbours) as well as minimising running and maintenance costs.

1. The ‘residential outcomes’ for Accessible Areas are specified as:

Transition in residential density from the interface with surrounding residential areas to the boundary of the Activity Centre.

Lower density unit and townhouse developments, at the interface with surrounding residential areas.

Potential for apartment development in context with the scale of development of the Activity Centre, at the interface with the Activity Centre subject to careful design.

On larger sites, in suitable locations, increased density may be appropriate, subject to careful design and the provision of appropriate landscaped setbacks.

1. Lastly, clause 22.01, the Planning Scheme’s Residential Development and Character Policy, is also relevant as it applies to all residential land. An objective is to direct residential growth to neighbourhood and activity centres, the Monash National Employment Cluster and the boulevards of Springvale Road and Princes Highway. Further objectives address architectural and urban design outcomes that contribute positively to neighbourhood character, and providing a variety of housing types.
2. The ‘preferred character statements’ are at clause 22.01-4. Map 1 shows the location of the residential character types across the municipality. The review site is in the ‘Housing Growth Area – Clayton Activity Centre and Monash National Employment Cluster’. The ‘preferred future character statement’ for this area is:

The scale of new residential development will generally comprise larger footprint apartment development of high-quality design and finish. Some infill town house and unit development will also occur.

Where possible on larger sites, developments will be multi-level, and set in open gardens. Although setbacks from all boundaries will be less than is common in other parts of Monash, the developments will ensure the incorporation of well-maintained landscaping to address the garden city character, albeit in a more urban form.

1. When read in a holistic and integrated manner, the Planning Scheme articulates a vision for housing growth in that part of the municipality in which the review site is located.
2. I acknowledge the dispute between the parties in relation to which category of housing change applies to the review site and its surrounds. The schematic ‘residential development framework plan’ at clause 21.04-1 supports the applicant’s submission that the land is within an Accessible Area and within the Monash National Employment Cluster. The framework plan does not show the site as being within the boundary of the activity centre. This is perhaps not surprising given the schematic nature of the plan and the fact that the precise delineation of activity centre boundaries is undertaken as part of a Structure Planning exercise, which the Council has embarked on with the preparation of the CACPP.
3. Notwithstanding, the site’s proximity to the activity centre, being within 400 metres, is a relevant and influential consideration. While the CACPP has not undergone a formal process and has not been subject to independent review, it broadly aligns with the zoning and the policy context of the Planning Scheme which identify the activity centre and its surrounds as an area of housing growth and future development potential. It represents the Council’s latest strategic work and provides some understanding of the Council’s current expectations of development in this locality. In combination, the zoning of the land, the relevant policies, the Housing Strategy and the CACPP envisage more intensive development than three, two-storey dwellings in this location. The proposed development represents an outcome more appropriate in parts of the municipality where incremental growth is envisaged and provided for.
4. A development comprising three, two-storey dwellings is one which can occur throughout many of the residential areas within the municipality that are classified as ‘garden city suburbs’ in clause 21.04. The Housing Strategy describes these as being the majority of the municipality’s residential areas. In these hinterland locations, such a development can represent the incremental change detailed in the Housing Strategy and provided for by the Planning Scheme through the zones, zone schedules and policy.
5. The applicant submitted that the development respects the existing and preferred neighbourhood character. Reference was made to the development respecting the built form, materials and finishes of existing and new development in the area, and also to the incorporation of pitched roof forms and recessed upper floor footprints. However, given the planning context outlined in these reasons, what is sought in this location is not development which fits in with the existing character. A change to more intensive built form outcomes, which by their nature will manifest as a departure from the existing character, is what is being pursued through the zoning and policies. The existing character does not reflect the current directions embodied in the Planning Scheme or the strategic work undertaken by the Council in the Housing Strategy and CACPP. In the circumstances, the development’s ‘fit’ with the existing character, as argued by the applicant, is not of itself a reason to support the proposal.
6. I have not been persuaded that this is the type of development which is sought in this location. I say this having regard to the following:
   * the Residential Growth zoning, which includes a purpose that specifically addresses development at increased densities in buildings up to and including four storeys
   * the schedule to the RGZ3, which has an objective to facilitate housing growth in the form of apartment developments
   * the residential framework map at clause 21.04 that places the site in a category of area that has future development potential, being the Monash National Employment Cluster and the Accessible Area
   * the Residential Development and Character Policy at clause 22.01 which identifies the site as being within a housing growth area
   * the CACPP which, while in draft, has been adopted by the Council and articulates a vision for higher density residential development for land along Centre Road and includes the site within the boundary of the activity centre.
7. As correctly stated by the applicant, clause 21.04, clause 22.01 and the Housing Strategy contemplate the development of infill town houses and units. The applicant also submitted that, at 697.8 square metres, the land is not of sufficient size to accommodate a multi-level apartment development. This, however, does not mean that three dwellings on the land represents an acceptable response to the planning context and the strategic directions for this part of the municipality. I note that, while the adjoining lot to the east is being redeveloped in the form of three dwellings, the lots to the west are occupied by single dwellings. This potentially provides the opportunity for site consolidation to create a parcel that could support an apartment building.
8. The weight of policy does not support the development of the review site in the manner proposed by the applicant. It is an area identified for housing growth, as detailed earlier. Development must demonstrate some meaningful distinction from what has occurred to date in this area and continues to occur in the hinterland residential areas. The proposal perpetuates what has occurred in the past, before the introduction of the current planning framework that explicitly seeks greater residential densities in this part of the municipality. It is not an acceptable response to the site’s strategic and policy context.

## CONClusion

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

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| Bill Sibonis  **Senior Member** |  |  |

1. The planning permit authorising this development was issued in January 2017, and an extension of time was granted by the Council in September 2019. The grant of the permit and the extension of time pre-date the gazettal of Amendment C125 Part 2 to the Monash Planning Scheme on 14 November 2019 which, amongst others, amended clauses 21.04 and 22.01. [↑](#footnote-ref-1)
2. The submissions and supporting documents/material 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)
3. Centre Road is within the RDZ1. [↑](#footnote-ref-3)
4. Pursuant to section 60(1A)(g) of the *Planning and Environment Act 1987*, before deciding on an application the responsible authority (and, upon review, this Tribunal), if the circumstances appear to require, may consider a strategic plan which has been adopted by the municipal council. [↑](#footnote-ref-4)
5. The applicant submitted that the residential land around the Clayton Activity Centre does not form part of the Activity Centre as that centre does not have a Structure Plan. [↑](#footnote-ref-5)