

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11611/2021
PERMIT APPLICATION NO.TPA/52646

CATCHWORDS

Section 77 *Planning and Environment Act 1987*; General Residential Zone Schedule 3; Vegetation Protection Overlay Schedule 1; Neighbourhood character; Visual Bulk; Landscaping; Daylight to new windows.

APPLICANT	Anthea Karpathakis
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	123 View Mount Road, GLEN WAVERLEY VIC 3150
HEARING TYPE	Hearing
DATE OF HEARING	6 June 2022
DATE OF ORDER	6 July 2022
CITATION	Karpathakis v Monash CC [2022] VCAT 753

ORDER

Permit granted

- 1 In application P11611/2021 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/52646 a permit is granted and directed to be issued for the land at 123 View Mount Road, Glen Waverley VIC 3150 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two dwellings on a lot.
 - Removal of vegetation.

Joel Templar
Member

APPEARANCES

For Anthea Karpathakis
For Monash City Council

Ms Nicola McGowan, town planner
Mr Peter English, town planner of Peter English and associates.



INFORMATION

Description of proposal	Construction of two dwellings on a lot.
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 Vegetation Protection Overlay Schedule 1
Permit requirements	Clause 32.08-6 – to construct two or more dwellings on a lot.
Land description	<p>The site is located on the western side of View Mount Road between Bordeaux Avenue and the intersection with Maylands Crescent.</p> <p>It is rectangular in shape with a frontage of 16.76 metres and a length of 39.01 metres with an overall area of 652m².</p> <p>The land has a fall of 1.1 metres from the front down to the rear. There is a 2.44 metre wide easement along the rear boundary.</p> <p>The site is occupied by a single storey detached rendered brick dwelling with an existing single crossover located adjacent to the northern boundary.</p>
Tribunal inspection	27 May 2022 (prior to the hearing)



REASONS¹

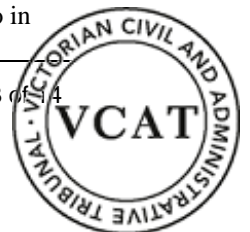
WHAT IS THIS PROCEEDING ABOUT?

- 1 This proceeding concerns the review by the applicant of the council's decision to refuse to grant a permit for the construction of two dwellings on a lot at 123 View Mount Road Glen Waverley.
- 2 As part of the planning permit application, the application was advertised but there were no objections received. However, the council still determined to refuse to grant a permit on grounds related to neighbourhood character including the built form presentation to the street and adjoining properties, the limited areas for landscaping particularly in the front setback and along the driveway, the impact of the built form to adjoining properties on either side and at the rear, and internal amenity for proposed unit two.
- 3 The submissions by the council at the hearing were consistent with these grounds.
- 4 The applicant's submissions effectively refuted those of the council but the applicant also said the proposal will provide a variety in housing form that does not currently exist in the surrounding area. In responses to some of my questions, the applicant also accepted some suggested changes could be accommodated without significant design consequences but were unnecessary.
- 5 In this case, I have found that the proposal will be acceptable if a number of changes are made to address some concerns I have with the proposal, largely related to the built form impact of the proposed first floors to both the streetscape and the property to the rear.
- 6 I have therefore decided to grant a permit but with conditions to include changes to the built form accordingly. My reasons to follow.

THE BUILT FORM WILL BE ACCEPTABLE WITH MODIFICATIONS

- 7 The council's key concerns with the built form were related to:
 - a. The sheer walls of the first floor facing the street;
 - b. Width of the first floor presentation to the street;
 - c. Minimal setback of the garage for unit 1;
 - d. Extent of hard paving resulting from two crossovers in combination with the lack of ability to provide landscaping;
 - e. Impact of first floor of unit 2 on the adjoining properties to the sides and rear.

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.



- 8 The applicant submitted that the aspects of the proposal the council took issue with were acceptable given the zoning of the land and policy that set an expectation for change. The applicant also submitted that the presentation of the first floor to the rear was acceptable partly due to the existence of other, existing built form in rear yards on nearby properties.

Presentation to the street

- 9 The surrounding area is predominantly single storey dwellings on relatively large lots, setback from all boundaries and of modest scale and site coverage. Most properties have a single crossover with an associated driveway along one side. Crossovers are often double width but shared between two properties, giving the impression of a greater extent of hard surfaces on either side of a property.
- 10 There is little in the way of a new and emerging character, and so the existing, original housing stock, likely from the 1970s and 1980s, predominates and is generally quite modest. I also agree with the applicant's submission that there is existing built form to the rear of existing dwellings. However, this tends to be outbuildings that are modest in both area and height.
- 11 The GRZ expects that there will be change in built form. In this case, the GRZ3 schedule includes variations to some of the standards of clause 55. This is coupled with relatively recent policy seeking to guide future development.
- 12 Under clause 22.01, the residential areas of the municipality are divided into precincts that seek to identify the existing characteristics of those precincts as well as setting out a preferred character for future development.
- 13 The review site is identified in 'Garden City Suburbs Northern Areas'. The preferred character for this precinct is:

New development will complement the established buildings through consistent siting, articulated facades and use of materials.

Architecture, including new buildings and extensions, will usually be secondary in visual significance to the landscape of the area when viewed from the street.

Additional vehicle crossovers will be discouraged.

- 14 Relevant policy includes:
- Minimise the impact of the scale and massing of development.
 - Provide spacious and well vegetated street setbacks capable of supporting canopy trees that soften the appearance of the built form and contribute to landscape character.
 - Recess garages and carports from the facade of the building to ensure that they do not compromise the appearance of new and

existing buildings and are not a dominant element as seen from the street.

- Minimise hard paving throughout the site by limiting driveway widths and lengths, providing landscaping on both sides of driveways, and restricting the extent of paving within open space areas.
- Retain or plant canopy trees, particularly within front setbacks to soften the appearance of the built form and contribute to the landscape character of the area.
- Provide side and rear setbacks capable of supporting canopy trees.
- Minimise the impact of visual bulk to neighbouring properties, through suitable setbacks from adjacent secluded private open space to enable the provision of screening trees, and scaling down of building form to the adjoining properties.
- Locate and minimise vehicle crossovers to prevent traffic disruption, and preserve nature strips and street trees.
- Maximise landscaping in front setback areas by minimising the number of crossovers.
- Incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey.
- Ensure buildings respect the built form, rhythm and proportions of existing dwellings in the neighbourhood.

- 15 The planning scheme setting for the review site is one that I find creates an expectation that new built form will differ somewhat from that what presently exists. However, there are parameters on this.
- 16 I agree with the council that the presentation of the proposal to the street is not acceptable, but I find that only modest changes need to be made in order to make it acceptable. This is primarily at the first floor of unit 1, where the first floor is largely sheer above the ground floor at the façade, except for the eave between floors and the first floor balcony.
- 17 If the balcony were to be deleted, as well as the width of the front most elements facing the street were reduced, the proposal would be acceptable. The balcony element does not comply with Standard B6 of clause 55, as it is higher than 3.6 metres.
- 18 The reduction in the width of the first floor to the east elevation should also be reduced. At the hearing, I asked the applicant whether this could be in the form of the deletion of the ensuite and walk-in-robe of the master bedroom at first floor. The applicant responded that this would be possible but that it was unnecessary given the physical and policy context.



- 19 The first floor includes another separate bathroom that could be accessed from a common area and there is a separate master bedroom at ground floor level that has an associated ensuite and walk-in-robe. So from a functionality perspective, the deletion of the ensuite and walk-in-robe from the first floor master bedroom would not have any unacceptable functionality consequences.
- 20 This change would reduce the width of the upper floor of unit 1 as it presents to the street. Whilst this would still include a sheer wall at first floor level to the master bedroom at first floor level, it would be a relatively narrow element, with the other parts of the first floor further setback. Windows and a mixture of colours and materials will also be evident, helping to break up the expanse and appearance of the built form in the streetscape.
- 21 This outcome is one that I find will be an acceptable response to the predominantly single storey scale within the streetscape, but whilst also providing for new housing. The upper floor would then read as a much more recessive, narrower and less dominant element.
- 22 Whilst the council was concerned with the presentation of the garage, as part of the overall streetscape response, it is not something that I find is unacceptable. It is setback from the façade of the dwelling, albeit not substantially, but when unit 1 is read as a whole form the street, the garage will not, in my view, be a dominating element.
- 23 With respect to the extent of hard paving and opportunities for landscaping in the front section of the site, I find that what is proposed will not unacceptably impact the streetscape rhythm or be an unacceptable response to the existing or preferred character.
- 24 Standard B13 of clause 55.03-8, Landscaping objectives, is varied within the GRZ3. It states:
- New development should provide or retain:
- At least one canopy tree, plus at least one canopy tree per 5 metres of site width;
 - A mixture of vegetation including indigenous species;
 - Vegetation in the front, side and rear setbacks; and
 - Vegetation on both sides of accessways.
- A canopy tree should reach a mature height at least equal to the maximum building height of the new development.
- 25 Under the varied Standard B13, 4 canopy trees should be able to be accommodated on the site. This will be able to be achieved on this site with various locations such trees could be located.
- 26 There will still be ample space within which landscaping can be incorporated in the frontage setback. Further, the existing character does not

currently support substantial vegetation along driveways, which are typically close to and even in some cases, hard up against side boundaries, with modest or even no vegetation planted.

- 27 Whilst the preferred character seeks landscaping on both sides of driveways, it does not otherwise dictate how this should occur and what type of vegetation should be planted or the width of these spaces. Based on this, I defer to the existing character, which as I have set out above, is not significant and in some cases, completely absent on the boundary side of driveways of some properties.
- 28 The spaces on the outer sides of each driveway are to be 500mm wide, with the space between the inner side of the driveway for dwelling 2 and the southern wall of dwelling 1 to be 600mm wide.
- 29 In my view, these spaces will provide adequate area for landscaping, albeit the potential for canopy trees would be limited. However, higher shrubs or screening plants as well as lower storey and ground cover plantings could easily be accommodated. This will complement and in some cases, be in excess of what is currently found along driveways in the surrounding area.
- 30 The front setback area, whilst including two driveways, will still provide approximately 100 square metres of landscaping area. This would be ample to accommodate more than one canopy tree, as well as other lower storey planting that will be an acceptable fit with the existing and preferred character.
- 31 With the changes proposed and appropriate landscaping which can be a condition of permit also, I find the proposal as modified in accordance with my findings will be an acceptable outcome to the street.

Amenity impacts to adjoining properties

- 32 The council submitted that the adjoining properties to the north, south and west all have areas of secluded private open space (SPOS) adjoining the review site and that, despite there being outbuildings adjoining the north and south boundaries, the proposed unit 2 would have an unacceptable visual impact on those SPOS areas.
- 33 In making these submissions, the council said that varied Standard B17 of clause 55.04-1 was met to the north and south but that the proposal did not meet this varied standard at both ground and first floor levels to the west. Even with the compliance being achieved to the north and south, the council said that a character assessment was still required as to whether the impact of the proposed upper floor of unit 2 would still be acceptable.
- 34 The council further submitted that the limited setbacks would also not enable landscaping to be incorporated that would provide appropriate screening.

- 35 The 'offending' elements of the proposed unit 2 are the rear/west wall of the garage and west wall of the upper floor bedroom 3. The garage wall is 3 metres from the rear boundary and the upper floor bedroom 3 is 4.39 metres from the west boundary. The northern ground floor wall is also setback 1 metre from the northern boundary.
- 36 The garage and bedroom 3 are both adjacent to Tree 13 which is to be retained and is a large Willow Myrtle with a height of around 9 metres and a canopy spread of around 6 metres and with a useful life expectancy of around 15-30 years.²
- 37 Although these elements of the proposal do not comply with the varied Standard B13, they are relatively small elements and will be screened by the existing adjoining Tree 13. There is also ample room at ground level within which to plant some screening vegetation if this is considered achievable given the existing Tree 13.
- 38 Further, development at the rear of properties, including parts of dwellings, are not unprecedented in the surrounding area.
- 39 With the policy setting for this site expecting change, I am satisfied that the proposal will not result in any unacceptable amenity impacts to adjoining properties by way of visual bulk associated with the proposal, particularly given the existence of outbuildings on both of the adjoining properties abutting the rear of the review site, the existing large tree to the west and the existence of other built form at the rear of nearby properties.

Internal amenity to unit 2

- 40 The council raised concerns with respect to the kitchen window of unit 2 not meeting the requirements of Standard B27 of clause 55.05-3 for daylight access. It said:

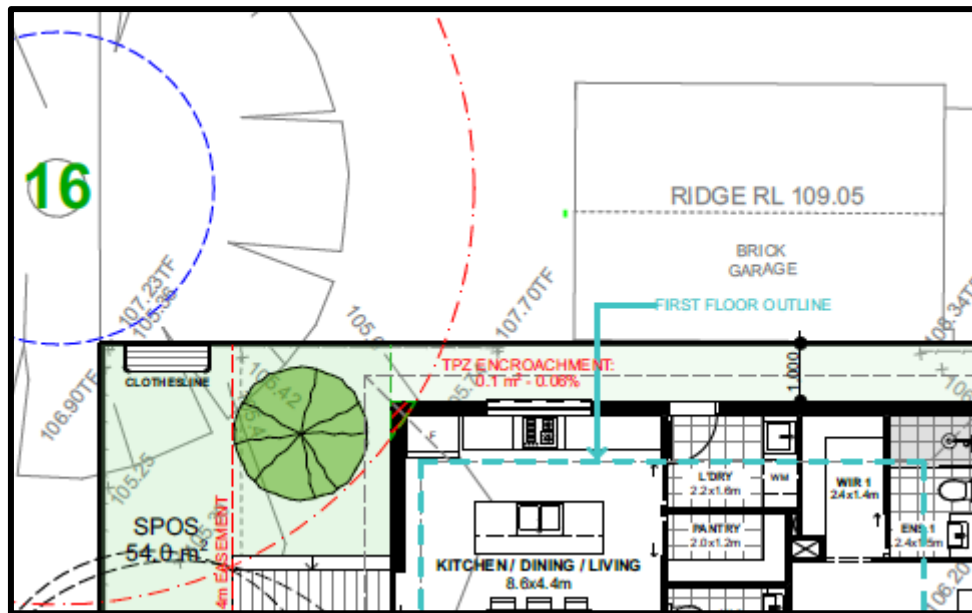
The proposed north facing kitchen window associated with dwelling two does not provide one metre clear to the sky, or a light court of 3m² as required under standard B27.

Given the proposal is effectively starting with a clean site which does not have any significant constraints, it is not considered an acceptable outcome for a habitable room window to be provided with compromised daylight access. The building should be set back further or modified some way in order to satisfy the standard.

- 41 The council did not say that this aspect should warrant a refusal of the application and said that it could be addressed via condition. This was, in part, due to an eave being proposed above the kitchen window.
- 42 In response, the applicant said that the proposed eave would actually provide a better outcome from a thermal perspective, providing shade in summer.

² Applicant's arborist report by Melbourne Arborist Reports, dated 1 July 2021.





Extract of ground floor plan showing kitchen window of unit 2.

- 43 Part of the reason for the non compliance is the eave and the other is the setback of the eave and window from the northern boundary. Although the kitchen window is set back from the boundary by 1 metre, the eave is set back approximately 500mm from the boundary.
- 44 The council suggested that the eave could be removed above the window in order to achieve compliance.
- 45 I agree with both parties with their respective arguments. I accept that the proposal does not meet Standard B27 but that the eave would also provide appropriate solar protection during the summer months.
- 46 In this case, I will not require compliance with Standard B27 but require either an additional window to the western elevation adjacent the kitchen or a skylight centrally located above the kitchen area as a condition. I find that either of these solutions will ensure adequate daylight to the kitchen area.

CONCLUSION

- 47 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Joel Templar
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/52646
LAND	123 View Mount Road, GLEN WAVERLEY VIC 3150

WHAT THE PERMIT ALLOWS

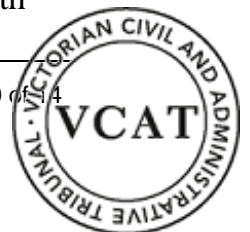
In accordance with the endorsed plans:

- Construction of two dwellings on a lot.
- Removal of vegetation.

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 must be generally in accordance with the plans prepared by J Richard Designs Issue I, dated 29 June 2021, but modified to show:
 - (a) The deletion of the upper floor master bedroom 2 ensuite and walk-in-robe of unit 1 with consequential modifications and no reduction to setbacks.
 - (b) The deletion of the upper floor balcony to the master bedroom 2 of unit 1.
 - (c) The addition of a skylight centrally located over the kitchen of unit 2 or a window on the ground floor west elevation wall of unit 2 adjacent to the kitchen.
 - (d) Gas/water meter locations in unobtrusive locations.
 - (e) Letter boxes no greater than 900mm in height convenient to the dwellings.
 - (f) 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.
 - (g) 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.

- (h) The requirements applying to the site detailed in the Tree Management Plan prepared in accordance with Conditions 4, 5, 6 and 7.
- (i) The Landscape Plan required in Condition 10 including any changes required.

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 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. Fencing required to meet driver site lines may be lower as required.

Tree Management Plan

- 4 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the Responsible Authority. The TMP must be prepared by a suitably qualified and experienced Arborist in accordance with the recommendations of the *'Arboricultural Report Development Impact Assessment'* prepared by *'Melbourne Arborist Reports'*, dated 1 July 2021. The TMP must include specific recommendations in accordance with the Australian Standard AS4970: 2009 - Protection of Trees on Development Sites and be to the satisfaction of the Responsible Authority ensuring the trees to be retained remain healthy and viable during construction.
- 5 The recommendations contained in the approved tree management plan must be implemented to the satisfaction of the Responsible Authority.
- 6 Prior to occupation of buildings, written confirmation by the project arborist that the recommendations of the TMP were met must be provided to Council.
- 7 The Council street tree must be protected by temporary rectangular wire fencing accordance with AS4970-2009.
- 8 No building material, demolition material or earthworks shall be stored or stockpiled under the canopy line of any tree to be retained on the site or adjoining land, including road reserve, during the construction period of the development hereby permitted.



Contractors to be advised of trees to be protected

- 9 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works on any part of the site, all contractors and tradespersons dealing with land within the Tree Protection Zones are advised of the status of the trees and any obligations in relation to the protection of the trees required to be implemented.

Landscaping

- 10 Concurrent with the endorsement of any plans requested pursuant to Condition 1 and generally in accordance with the plan prepared by 'J Richard Designs', modified to reflect any Condition 1 changes, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:
- (a) a survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
 - (b) a planting schedule of all proposed trees (quantities must be show for each area), shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities;
 - (c) two trees, that will grow at least the height of the dwellings, provided in the front setback area.
 - (d) the provision of additional landscaping beds in the front setback area including shrubs to create a more densely planted appearance to the site;
 - (e) the two *Melia azarerach* trees in the private secluded open spaces replaced with trees of similar height with a more moderate canopy spread;
 - (f) landscaping behind the retaining walls to include creepers that will cascade over those structures.
 - (g) the retaining walls constructed of naturalistic materials;
 - (h) shrubs that will grow to at least the height of the fence in the landscaping bed along the driveway;
 - (i) the provision of a widened section of landscaping opposite the on-site turning area;
 - (j) all trees with a minimum height of 1.5 metres at the time of planting;
 - (k) plan notations of trees proposed and retained on adjoin land including tree protection and structural root zones;
 - (l) the location of any fencing internal to the site;



- (m) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- (n) the location of any retaining walls associated with the landscape treatment of the site;
- (o) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- (p) an in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority;
- (q) the location of external lighting (if any);
- (r) planting required by any other condition of this permit; and

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

Landscaping Prior to Occupation

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

Drainage

- 12 Drainage of the site is to be to the satisfaction of the Responsible Authority.
- 13 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.
- 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 private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve.
- 16 The nominated point of stormwater connection for the site is to the north-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the 150 mm Council drain in the rear easement via a 900 mm x 600 mm junction pit to be constructed to Council standards. Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

Road Infrastructure

- 17 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.

- 18 All vehicle crossings within 1.5 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
- 19 Any works within the road reserve must ensure the footpath and naturesteip 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 and be to Council's approval. A refundable security deposit will be required 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.

Expiry of permit for development

- 22 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
 - (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

– End of conditions –