

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11944/2021
PERMIT APPLICATION NO.TPA/52759

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; Side-by-side double storey dwellings; General Residential Zone – Schedule 3; Garden City Suburbs (Southern); Dual crossovers and driveways; Building articulation; Landscaping; Garden character; Internal amenity.

APPLICANTS	Sarwat Hafeez and Noman Hussain
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	37 Riley Street OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATE OF HEARING	13 May 2022
DATE OF ORDER	19 May 2022
CITATION	Hafeez v Monash CC [2022] VCAT 544

ORDER

Permit application amended

- 1 Pursuant to clause 64 of schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended by substituting the following plans for the application plans:
 - Development plans entitled ‘Duplex by Noman Hussain’, ‘VCAT Submission’; Sheets A01, A02, A03, A05, A06, A08, A09, A010, A011 and A012; and all dated 24/03/22.
 - Landscape plan prepared by Habitat, ‘issue no. A, B’ dated March 2022.

No permit granted

- 2 In application P11944/2021 the decision of the responsible authority is affirmed.
- 3 In planning permit application TPA/52759 no permit is granted.

Margaret Baird
Senior Member



APPEARANCES

For applicants	Mr M Waldon, St-Wise. He called expert evidence from the following person: <ul style="list-style-type: none">• Mr R Thomson, landscape architect.
For responsible authority	Mr G Gale, Gareth Gale Town Planning and Advocacy.

INFORMATION

Description of proposal	Construction of two, double storey side-by-side dwellings. Each dwelling contains four bedrooms and is provided with a separate driveway and crossover.
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 (scheme).
Zone and overlays	General Residential Zone, Schedule 3 Garden City Suburbs (GRZ3) (shown below ¹).



Permit requirements	Clause 32.08-6 a permit is required to construct two or more dwellings on a lot. GRZ3 varies clause 55 Standards B6, B8, B9, B13, B17, B28 and B32.
Relevant scheme policies and provisions	Clauses 11, 15, 16, 21, 22.01, 22.05, 32.08, 52.06, 55, 65 and 71.
Subject land description	The subject land is on the south-west side of Riley Street. It is 703m ² in area, with a street frontage of 15.24 metres. The land falls by 1-1.25 metres to the rear. A 1.83 metre wide easement extends along the rear boundary. The land abuts dwellings to both side boundaries and to the rear. A primary school is opposite.
Tribunal inspection	14 May 2022 (unaccompanied).

¹ Extract from the planning property report.

REASONS²

INTRODUCTION

- 1 Sarwat Hafeez and Noman Hussain (**applicants**) applied to the Monash City Council (**Council**) to construct two dwellings on the subject land. The Council refused to grant a permit, leading the permit applicant to apply to the Tribunal for a review of that decision.
- 2 Subsequent to the application for review being lodged, the permit application has been amended, through the substitution of amended plans. No party or other person has objected to the amendment.
- 3 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the scheme. Clause 71.02-3 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.

OVERVIEW OF PARTIES' POSITIONS

- 4 The Council submits the permit application should be refused because:
 - The proposed design lacks articulation along its front and side elevations. As a result, the Council considers the proposal gives rise to excessive visual bulk in the round.
 - The lack of available soft landscaping within the front and side setbacks does not respond to the preferred character of the area, which is for generous landscaping.
- 5 The Council considers the proposal fails to meet the purpose of clause 32.08, objectives in GRZ3, the preferred character for Garden City Suburbs (Southern), and associated policies.
- 6 The Council raises additional concerns with respect to the lack of outlook given the extensive use of 1.7 metres screening to all first floor windows.
- 7 The applicants challenge all of the Council's grounds. Mr Waldon submits the proposal is an appropriate response to the scheme's provisions and policies. The design is a sound neighbourhood character response. The scale and form are appropriate in an area where two-storey form is increasingly common and where housing diversity is encouraged. The design is articulated including through fenestration and varied materials.
- 8 The applicants acknowledge the strong emphasis in Council's character policies for the creation of a garden character, including the preferred character for Garden City Suburbs (Southern) to establish a tree canopy and garden setting. Mr Waldon relies on Mr Thomson's evidence with respect to the ability to establish a tree canopy and enhance landscaping.
- 9 The applicants state all clause 55 objectives are met.

² The submissions and evidence of the parties, supporting exhibits and statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the Tribunal's practice, not all of this material will be cited or referred to in these reasons.



AGREED MATTERS

- 10 The parties agree on a range of matters. These include:
- The physical description of the subject land and the applicable policies and provisions of the scheme. However, it is relevant to refer to a distinction between the parties with respect to the site's physical context. Mr Gale highlights the existing character of this part of Riley Street as displaying a character of detached, single dwellings whereas Mr Waldon emphasises that two storey houses and townhouses are increasingly common.
 - The development of two dwellings on the land is acceptable, in principle, having regard to the land's strategic and physical contexts.
 - Clause 55 standards and objectives are met, except for the disputed matters of neighbourhood character and internal amenity. This includes varied standards.
 - The landscape proposed in the landscape plan can be delivered (notwithstanding that the Council has concerns about the extent of landscaping, to which I refer below).
- 11 The agreed matters are relevant and carry weight in my decision. This includes that the varied clause 55 standards are met, which is relevant to the proposal's response to clause 32.08, GRZ3, preferred character policy and clause 55.02-1.

STRATEGIC CONTEXT

- 12 The strategic context is relevant to the assessment of this permit application, key elements of which are summarised below.
- 13 The subject land and surrounding area are within GRZ3. This area is identified as part of the Garden City Suburbs³ and for incremental change. There is a strong policy emphasis on retention and enhancement of the Garden City character. GRZ3 is applied to achieve preferred development outcomes. GRZ3 differs from other schedules such as GRZ2 that applies west of Bakers Road. The neighbourhood character objectives in GRZ3 are:
- 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.

³ Map 3 at clause 21.04-1. The land is in Category 8.



- To support new development that locates garages and carports behind the front walls of buildings.
- 14 The decision guidelines at clause 7.0 of GRZ3 include:
- Whether the development provides an appropriate transition to built form on adjoining sites.
 - The robustness of proposed materials and finishes.
 - The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
 - The location and number of vehicle crossovers.
 - The impact of the development on nature strips and street trees.
 - The location, quantity and species of vegetation provided.
- 15 Clause 32.08 includes a purpose that ties development to respecting neighbourhood character. The neighbourhood character objectives in GRZ3 and varied clause 55 standards are part of the local implementation of state and local policies.
- 16 Clause 22.01-2 has overall neighbourhood character objectives including:
- To build upon the important contribution that landscaping makes to the garden city character of Monash.
 - To encourage new development to achieve architectural and urban design outcomes that positively contribute to neighbourhood character having particular regard to the applicable preferred future character statement for the area.
 - To encourage the provision of a variety of housing types to accommodate future housing needs and preferences.
- 17 Among relevant policies in clause 22.01-3 are general policies that include to ‘Preserve and enhance treed character of Monash’ and ‘Minimise the impact of the scale and massing of development’. Policies relating to landscaping, vehicle crossings and built form include the following:

Landscaping

Site buildings to minimise the need to remove significant trees, and protect significant trees on the site and adjoining properties.

Ensure development is adequately set back from existing and proposed trees to ensure their protection and longevity.

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.

Ensure street trees are retained and protected.

Vehicle crossings

- 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.



Built form and scale of development

- Respect the height, scale and massing of existing dwellings in the neighbourhood.
- 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.
- Respect the roof forms and pitches of existing dwellings in the neighbourhood

18 The preferred future character statement for Garden City Suburbs (Southern) is:⁴

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.

⁴

Clause 22.01-4.



Sympathetically designed architecture is encouraged in preference to imitations of historic styles.

(Emphasis added)

19 I have considered the decision guidelines at clause 22.01-5.

TRIBUNAL FINDINGS

Neighbourhood character

20 Having considered all submissions, and the expert evidence, I find the purpose of clause 32.08, the objectives in GRZ3, the preferred character and associated policies, and objective of clause 55.02-1 are not met by this permit application.

21 Notwithstanding that numerical compliance with clause 55 standards is achieved, the key reasons for my conclusion are:

- the use of two crossovers and driveways, together with paving and the building's streetscape presentation, do not complement the original housing, do not facilitate a spacious garden setting, and negatively impact on the soft quality of the street.
- even if I accepted two single crossovers could be accepted (which is not the case for this permit application), I find the building is not sufficiently articulated to minimise the impression of building scale. Its front and side elevations are most problematic, by presenting a substantial continuous building mass in the site's context.

22 The following explains the basis for these findings.

23 Riley Street has seen limited redevelopment. A double storey dwelling abuts the north-west site boundary at 35 Riley Street while a single storey dwelling is at 39 Riley Street. Six older single storey units are located at 41-43 Riley Street with a central single crossover. The immediate area is predominantly single storey in scale. Several two storey dwellings are west of Farm Road, for example, near Murumba Drive.

24 Unit developments, where they have occurred in this locale, generally adopt a tandem format. A notable exception east of the Stan Riley Reserve⁵ is 18 Riley Road, to which I refer later.

25 In this part of Riley Street, around the subject land, the public realm is influenced by nature strips and varied street tree planting on the residential side of the road, and the continuous nature strip and open character associated with the school. Nature strips are not broken by two crossovers per lot. The area is accessible to two schools⁶ and public open spaces, although is to over one kilometre from commercial uses around the intersection of Centre Road and Warrigal Road, that include a supermarket.

⁵ This reserve is east of a commercial area and separates it from residential land

⁶ Oakleigh South Primary School, opposite, and South Oakleigh College.



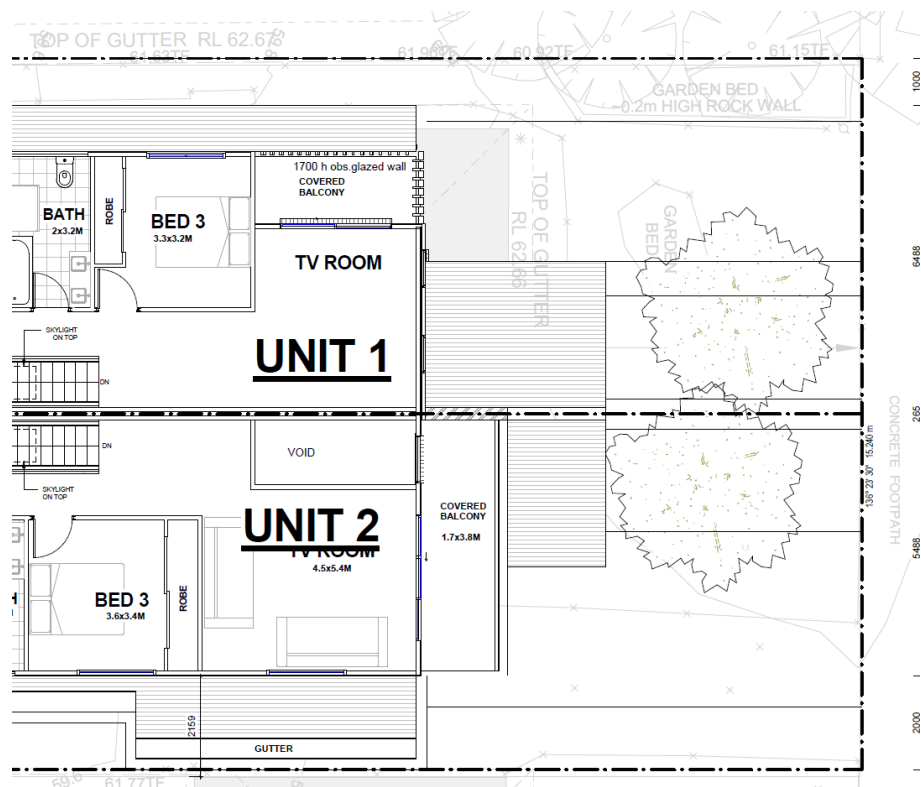
- 26 Diversity is expected in new housing development in this location. The area is identified for incremental change, guided by the preferred character for Garden City Suburbs (Southern) and associated policies and provisions.
- 27 I agree with Mr Waldon that being the first, or one of the first, multi-unit developments in this area does not mean the proposal is wrong. There will be evolution in built form, as the preferred character statement indicates. The question is how the proposed development responds to the policy guidance for new dwellings in this location being given effect through clause 32.08 and GRZ3.
- 28 The disputed aspects of the permit application focus on the implications of the side-by-side dwelling format, including the use of two driveways/crossovers; on the achievement of the preferred character for this location; street activation; as well as the overall building form and massing.
- 29 Design responses involving side-by-side dwellings for sites in Monash have been the subject of many Tribunal decisions, several of which the parties have cited. Access and parking arrangements are often one of the disputed matters for narrow sites, with decisions both allowing and refusing this format. Side-by-side dwellings are often argued as having advantages, notably with respect to limiting two storey development in a rear yard context⁷, giving each dwelling a street frontage, and avoiding common property. That may assist to explain a proponent's approach and these are some of the points raised by Mr Waldon in this case. However, the Garden City character is sought to be given effect by limiting crossovers and hard surfacing, and at the same time encouraging landscaping. Achieving these outcomes can be challenging in side-by-side development on relatively narrow lots, while also considering other outcomes, such as activating the street at ground level.⁸
- 30 Each case is assessed on its merits. There may be contextual factors about a site (eg. its width and/or depth), the location it is in (eg. what the pattern of development is and whether there is a preferred character and associated policy that are articulated in the scheme), and potentially competing policy outcomes that must be weighed. Having said that, and as the Tribunal often states, it is usually the case that the implications of a particular proposal in the context of a broad area are not substantial, on an individual basis. However, planning policy and the planning system generally consider the management of incremental change. It is important that a decision-maker gives effect to planning policy in a way which avoids adverse incremental outcomes.
- 31 In the current case, the subject land is 15.24 metres wide and is located in a streetscape where the soft landscape qualities associated with the public realm are evident.

⁷ I note, however, that a rear dwelling in a tandem layout is not required to be two storey, and could be single storey.

⁸ This being a relevant matter in clause 55.02-5 'Integration with the street objective'.

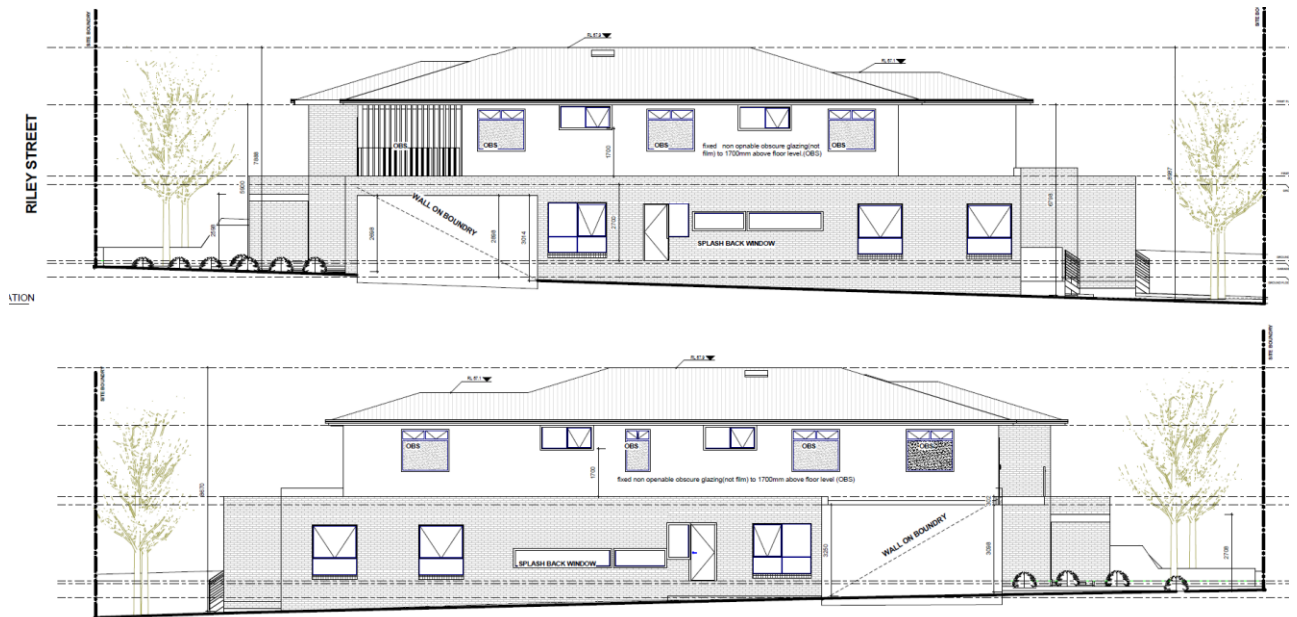


- 32 There is variable landscaping in the private realm – for example, comparing the property at 35 Riley Street with other less vegetated sites such as the subject land and the lot at 39 Riley Street. This can be contrasted with Riley Street north-west of Farm Road, where crossovers and indented concrete on-street parking have a ‘harder’ streetscape quality.
- 33 The design adopts a side setback for the garage to Unit 1, consistent with the preferred character statement and avoiding boundary-to-boundary development. The proposed dwellings have deep rear setbacks with good space available for canopy trees (outside of the easement). There is scope for landscaping between the driveways, with additional landscaping to the side of Unit 1’s driveway, based on the landscape plan and evidence. No front fencing is proposed, and the applicants also offer to plant a street tree. There is less scope for tree planting along side setbacks, as the Council’s submission stresses.
- 34 I am less concerned about the lack of trees along the side setbacks, *per se*. Rather, I find the issue is the single wall planes associated with ground and first floor levels of both dwellings, including associated with the front façade, as well as the implications of the proposed access arrangements.
- 35 The proposed dwellings address the street, although there is limited ground level activation. I am particularly concerned about the streetscape presentation, and overall massing and bulk. This is not only because of the extent of hard surfacing associated with the ground level treatment and associated loss of nature strip. It is also because of the expanse of singular wall planes. This is evident in the floor planes and elevations. Several plan extracts are below.



Extract of first floor plan, addressing Riley Street.





Extract of side elevations.

- 36 Mr Waldon refers to changing approaches to the use of building indentations in setbacks, that add to building costs. He refers to this being discussed in Darebin. While that municipality may be considering its position with respect to new dwelling development, I must apply the Monash Planning Scheme as I find it. The character policies and preferred character statement are clear in seeking to avoid continuous walls and seeking to incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey, as is the case here.
- 37 It is relevant to refer to the development at 18 Riley Street that was approved by another division of the Tribunal in 2011.⁹ This is the only unit development in the environs that adopts aside-by-side format.¹⁰



- 38 The Tribunal's decision was made in a different planning scheme context than exists today, however, there are commonalities with respect to some of the landscape and character outcomes sought by the current scheme.

⁹ *Kobatsiari v Monash CC & Ors* [2011] VCAT 154.

¹⁰ Photograph from the applicant's submission, figure 10.

- 39 The Tribunal's decision refers to the inclusion of two crossovers as a concern raised in submissions with respect to a loss of on-street parking, more so than with respect to the landscape outcome, which was found to be acceptable. In addition to the relevant matter of the 18 metre width of the property, and notwithstanding the boundary-to-boundary form associated with garages, the streetscape presentation is strongly articulated, with the sense of a central break in built form. The presentation is quite different to that before me in this proceeding, on a wider lot.

Overlooking

- 40 The design response has sought to limit overlooking opportunities from first floor windows to neighbouring properties by the use of screening treatments. Additional screening may be required to limit internal views. This could be addressed by permit conditions.
- 41 At the hearing, I queried whether ground floor windows would require screening given the extent to which the dwellings are elevated at the rear. This may be less of an issue for Unit 2, whose windows face, in part, a garage on the adjacent site. The interpretation of Standard B22 was raised in response by Mr Waldon. I do not address the interpretation of the standard with respect to ground floor windows, given my overall conclusions.

Extent of screening

- 42 Consequences from the extensive use of screening devices is one reason for Council's opposition to the permit application. I agree with it. I do not consider outlook through the higher windows panes, to which Mr Waldon refers, offers adequate internal amenity. Any need for screening to ground level windows would further exacerbate this internal amenity impact.

Plan details

- 43 The Council's submission records the difficulty in scaling plans, and notes only some dimensions are provided. A number of detailed matters were referred to in the hearing, such as the depth of the front porches (which could be reduced), the lack of detail about stairs to side elevations (this potentially affecting proposed landscaping), and the need for the landscape and development plans to be consistent such as with respect to window locations. Any new application should resolve details such as these.

CONCLUSION

- 44 For the above reasons, the responsible authority's decision is affirmed. No permit is granted.

Margaret Baird
Senior Member

