

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P182/2022
PERMIT APPLICATION NO.TPA/53000

CATCHWORDS

Section 77 *Planning and Environment Act 1987* – four dwellings and alteration of access to a road zone category 1 - General Residential Zone Schedule 6 - Clause 22.01 - garden suburban character

APPLICANTS	Anastasia Kefalonitis, Evanthia Kefalonitis & Others
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	854 Blackburn Road CLAYTON VIC 3168
HEARING TYPE	Hearing
DATE OF HEARING	9 September 2022
DATE OF ORDER	10 October 2022
CITATION	Kefalonitis v Monash CC [2022] VCAT 1159

ORDER

Amend permit application

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: West Urban
- Drawing numbers: TP5 – TP10 Revision C
- Dated: 20 July 2022

Permit granted

- 2 The decision of the Responsible Authority is set aside.
- 3 In permit application TPA/53000 a permit is granted and directed to be issued for the land at 854 Blackburn Road, Clayton VIC 3168 in accordance with the endorsed plans and on the conditions set out in Appendix A. The permit allows:
 - Construction of four (4) dwellings on a lot in a General Residential Zone Schedule 6; and
 - Construct a fence under clause 32.08-6;



- Create or alter access to a road in a Transport Zone 2.

**Jeanette G Rickards,
Senior Member**

APPEARANCES

For applicant	Mr A Clarke, Town Planner, Clarke Planning
For responsible authority	Mr G Gilfedder, Town Planner, Currie & Brown

INFORMATION

Description of proposal	Construction of four attached two and three storey dwellings, construction of a front fence and alteration to access in a road zone category 2.
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash
Zone and overlays	General Residential Zone Schedule 6 – Monash National Employment and Innovation Cluster and Clayton Activity Centre Transport Zone Category 2 – Principal Road Network
Permit requirements	Clause 32.08 – construct two or more dwellings on a lot and a fence associated with the dwellings Clause 52.29 – create or alter access to a road
Relevant scheme policies and provisions	Clauses 11, 15, 16, 18, 21, 22, 52.06, 52.29, 65 and 71.02
Land description	The subject land is located on the east side of Blackburn Road not far north from where it terminates at its Dandenong Road Intersection. The subject land comprises a single lot of 16.76 metres in width and 40.7 metres in length. The subject land has a total area of 682 square metres.



A 3.048 metre wide drainage and sewerage easement adjoins the rear eastern boundary of the subject land.

To the north of the subject land is a double storey multi-unit development in two rows of three units.

To the south of the subject land is a single dwelling in a dilapidated state.

To the east (rear) is a dual occupancy with a rear unit containing a double storey built form.

To the west (opposite) the subject land are several double storey multi- unit developments.

Approximately 50 metres to the south of the subject land is M-City development which consists of several 12 storey tower forms with shops and other facilities.

Tribunal inspection

29 September 2022

REASONS¹

- 1 The applicants are seeking review of the decision of Monash City Council (the Council) to refuse to grant a permit for the construction of four two and three storey attached dwellings at 824 Blackburn Road, Clayton.
- 2 The Council's grounds of refusal relate to neighbourhood character, design and built form outcomes, over development, loss of amenity to adjoining residents and landscaping.
- 3 The Tribunal will consider the application under these issues.

Proposal

- 4 It is proposed to construct four attached two and three storey dwellings, construction of a 1.7 metre high front fence and alteration of access to Blackburn Road.
- 5 The maximum building height is 9.053 metres and the proposed building materials, and finishes consist of face brick; render and timber look cladding.
- 6 The proposed building site coverage is 47.9%, the area of permeability is 38% and the garden area is 35.2% (240.4 square metres).
- 7 Dwelling 1 is two storey and has a pedestrian entry fronting Blackburn Road. Dwellings 2 and 3 are three storey with access from the internal driveway. Dwelling 4 to the rear is two storey and has access from the internal driveway.
- 8 Dwellings 1 and 4 are provided with a double garage and dwellings 2 and 3 are provided with a single garage with a tandem car space.
- 9 Each dwelling is provided with ground level secluded private open space as well as balconies (Dwellings 2 and 3) and a roof terrace (Dwelling 1).

Planning scheme provisions

- 10 The subject land is located within the General Residential Zone Schedule 6 – Monash National Employment and Innovation Cluster and Clayton Activity Centre (**GRZ6**).
- 11 One of the purposes of the GRZ6 is 'to encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport'.
- 12 The subject site is located within the Monash National Employment and Innovation Cluster as defined by Plan Melbourne:

The cluster has leading education, health, research and commercialisation facilities. Monash is Melbourne's largest

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.



established national employment and innovation cluster, with a mix of education, research and industry organisations. It has approximately 75,000 jobs and is the largest concentration of employment outside the central city.

Neighbourhood character

- 13 The neighbourhood character objectives for GRZ6 are:
- To facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish.
 - To provide an interface between the Clayton Activity Centre, the Monash Employment and Innovation Cluster, the housing growth area and the lower scale surrounding garden city suburban areas.
 - To encourage development that respects sensitive residential interfaces and minimises building mass and visual bulk in the streetscape through landscaping in the front setback and breaks and recesses in the built form.
 - 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 ensure developments are constructed within an open garden setting through the retention and planting of vegetation, including canopy trees.
- 14 The subject site is also included in the Category 8 – Garden City Suburbs on Map 3 in the Residential development framework plan at clause 21.04.
- 15 One objection was received that suggested the proposal is an overdevelopment due to it being the only lot containing four dwellings two of which being three storeys. Whilst this may be, the subject land is located approximately 50 metres from the M-City development to the south which contains 12 storeys in several tower forms on the corner of Blackburn Road and Dandenong Road. This is clearly an activity centre with apartments, shops and other facilities described as:
- Located in the heart of Clayton, M-City is the largest mixed use development in Melbourne. With 3 residential towers, a PARKROYAL Hotel, a retail precinct and office space this miniature city is a vibrant community, with a diverse offering attracting people from near and far.
- M-City Shopping Centre offers a brand new K-Mart, Woolworths, Village Cinema, a dining hall, as well as a range of specialty stores such as health, beauty, home and wellness providers.
- 16 The first three objectives of Clause 21.04 Residential Development state:
- 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.

To encourage the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.

To recognise the need to conserve treed environments and revegetate new residential developments to maintain and enhance the garden city character of the municipality.

- 17 Clause 22.01 Residential Development and Character Policy indicates that the Clayton Activity Centre and the cluster more broadly are expected to experience major redevelopment, as one of the key areas for employment growth within Melbourne. As such, the core of the activity centre and the cluster are anticipated to accommodate growth and more diverse housing needs. This area also forms an interface to the surrounding garden city suburbs. New development is expected to provide a transition between these areas.
- 18 It is expected that new housing will generally comprise multi dwelling developments such as units and, where appropriate, low rise apartments. Front and rear setbacks will be less than those preferred in the garden city areas, however, they are still expected to provide the opportunity for landscaping.
- 19 Landscaping and open space within developments is to remain an important feature for this character area. It is expected that Canopy trees within developments and separation between buildings will provide visual and environmental amenity for occupants and the residents of existing dwellings. New developments are encouraged to be designed and constructed to a high standard, ensuring they provide a positive architectural impact.

Design and built form

- 20 The Council submits the continuous built form of the four dwellings across an excessive portion of the site with no separation between the two three-storey dwellings, a lack of articulation and no areas for landscaping for dwellings 2 & 3 will contribute to the bulk and mass of the development and will cause unreasonable visual impact to the adjoining properties.
- 21 To the north, the proposed development abuts three double storey dwellings. Dwellings 1 and 4 are setback from the common boundary to the north with private open space to 6/850 and 4/850 Blackburn Road abutting the areas of private open space of dwellings 1 and 4. Dwelling 5/850 Blackburn Road has a small area of private open space to the south that abuts the garage of dwelling 2. However, it is noted this dwelling also has a balcony facing north with its outlook directed to the north. Dwellings 1 and 4 are both two storey and not considered to have any visual impact on the dwellings to the north. Dwelling 5/850 Blackburn Road is located close to the common boundary and although abutting the two proposed three storey



dwellings 2 and 3 on the subject land, it is not considered these dwellings will have a visual impact on this dwelling to the north. The interface of the dwellings to the north is of their service areas with their main orientation to the north.

- 22 To the east, dwelling 4 is visible from the rear dwelling at 2/31 Murdo Street. Dwelling 4 is setback approximately 5 metres from the common boundary. As dwelling 4 is only two storey it is not considered this will have a visual impact on the property to the east. Two storey dwellings are common within the area and the set back from the common boundary provides a visual separation.
- 23 To the south, the proposed driveway for the four dwellings separates the abutting dwelling and its rear private open space. The dwelling to the south at 856 Blackburn Road is single storey and is in a state that suggests the potential for future redevelopment. Whilst the dwellings, particularly the two proposed three storey dwellings will be visible from the private open space of 856 Blackburn Road. There is, however, considerable separation due to the driveway. It is not considered that the view of dwellings 2, 3 and 4 from the private open space of this dwelling will have a visual impact. Multi-storey development is common within the area.
- 24 GRZ6 specifies a front street setback of at least 4 metres. Dwelling 1 is setback 4.988 metres at ground level and 4.937 metres at first floor level. When viewed from Blackburn Road, the proposal is of one double storey dwelling with the remaining three dwellings extending to the rear of the site. The three storey elements of dwellings 2 and 3 are setback 11 metres behind the two storey façade of dwelling 1 and 15 metres from the rear boundary ensuring the additional height of these dwellings will not be visible from Blackburn Road and 2/31 Murdo Street.
- 25 The proposed development meets the standards for height, building coverage and permeability. It satisfies Standard B17 for side setbacks as well as the rear setback with a minimum of 5.004 metres. The total length of the garage walls for dwellings 2 and 3 is 7 metres and the maximum average height is 3.2 metres and are within 200mm of the northern boundary.
- 26 The Council considered the entries for dwellings 2 and 3 are poorly designed, being located behind the tandem car space. The entries of each of the dwellings fronting the driveway will be clearly visible to any pedestrian walking along the driveway. The driveway is not an excessive length. It is evident there are three dwellings extending to the rear of the site. I take no issue with the visibility of the entries for dwellings 2, 3 and 4.
- 27 Dwelling 1 has a cantilever of 1.6 metres in width, with dwellings 2, 3 and 4 also having cantilever elements. All cantilever elements are located over the driveway. These elements do not extend over the whole width of the driveway.

- 28 Dwellings 2 and 3 are provided with 10.6 square metres of open space on a balcony, as well as being provided with 35.6 square metres and 28.3 square metres respectively of ground level open space. Council was critical of the access of the ground level private open space via an external stairway from the balconies.
- 29 Access directly to the balconies is via the living area. The access via the stairs to the ground level provides additional access.
- 30 A front fence of 1.7 metres in height is proposed along 50% of the frontage to provide private open space for dwelling 1. Currently a high front fence is located on the subject site. I take no issue with the height of the front fence. Such higher fencing is common along the busier roads such as Blackburn Road which provide some relief to dwellings from the ceaseless noise of passing traffic.
- 31 In accordance with clause 52.06-5 the required two car parking spaces are provided for each dwelling.

Loss of amenity

- 32 The objection received expressed concern that the residents of the rear dwelling will have direct views into the rear yard and kitchen window of the dwelling at 2/31 Murdo Street.
- 33 The upper level windows of the rear dwelling are to be screened to a height of 1.7 metres. This will ensure that there is no overlooking to the rear yard and windows of 2/31 Murdo Street.
- 34 Shadow diagrams indicate that there will be no overshadowing of the rear private open space of 2/31 Murdo Street until 3pm. Whilst this overshadowing extends into a section of the rear of 2/31 Murdo Street the shadow falls within the shadow already created by the fence. The larger area of private open space is located to the north of the dwelling and is not shadowed at all by the proposed development. It is not considered that this small section of shadowing is unacceptable, meeting Standard B21 to retain five hours of sunlight to over 40 square metres of private open space.
- 35 The Council considered the external stairs providing access to the ground level open space areas for dwellings 2 and 3 should be screened. Given the stairs are providing access only, I do not consider they are required to be screened. Unlike the expectation that a person would remain on a balcony stairs are only there to provide access.

Landscaping

- 36 Under clause 21.04 the site is included in Category 8 – Garden City Suburbs. The Council submits there are insufficient areas for landscaping along the southern side of the development and the rear secluded open space areas given the easement, bin and services and the proposed stairs for dwellings 2 and 3. The front area is compromised given the proposed fencing and enclosure of the open space for dwelling 1.



- 37 Whilst the site is included within Category 8 it is also located within the Monash National Employment Cluster which aims to increase housing and allow for a transition to the garden areas of the rest of the municipality.
- 38 This is an unusual pocket of general residential land which is surrounded by industrial and commercial land, as well as Monash University. It does not have a real relationship with the wider garden city area of the municipality. This does not mean that landscaping is not considered, however it does mean that landscaping in some form is moderated to allow for the increase in housing. Landscaping is not an overriding consideration above the provision of dwellings.
- 39 Landscape evidence was provided by Tony Aravidis. Mr Aravidis stated there is no significant vegetation near the subject site and the existing vegetation on the subject site is not remnant or botanically significant.
- 40 Mr Aravidis prepared a landscape plan which shows the provision of vegetation in all setbacks including the side setbacks. Canopy trees are also proposed. His plan shows Coastal Banksia in the front setback. These trees have an expected height at maturity of 12 metres, a Blueberry Ash with an expected height of 8 metres in the side private open space of dwellings 2 and 3 and a Coastal Banksia and two Blueberry Ash along the rear boundary. Along sections of the driveway, and in front of the entry to dwelling 4 he proposes Capital Ornamental Pears with an expected height of 7 metres. Shrubs and grasses are also proposed, as well as climbing plants along the driveway fence. When viewed from Blackburn Road the proposal will show a green edge to the development.
- 41 I take no issue with the planting of vegetation within the easement. If access to the easement is required the plants can be removed and reinstated.
- 42 Given the existing extent of vegetation on the subject site and the abutting two sites it is considered that Mr Aravidis' landscape plan will provide a considerable contribution to landscaping within the area that will contribute to the Garden City Character sought in Category 8.

Conclusion

- 43 The proposal is encouraged under GRZ6. The proposal includes a balance between an increase in dwellings sought in GRZ6 and a contribution to the garden character sought in Category 8.
- 44 For these reasons, the decision of the Council is set aside, and a permit is determined to be granted subject to condition.
- 45 I have considered the draft conditions provided by the Council as well as the comments provided by the applicants and have either deleted, amended or added to the suggested conditions.

**Jeanette G Rickards,
Senior Member**



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	TPA/53000
LAND:	854 Blackburn Road, Clayton Vic 3168

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of four (4) dwellings on a lot in a General Residential Zone Schedule 6; and
- Construct a fence under clause 32.08-6; and
- Create or alter access to a road in a Transport Zone 2.

CONDITIONS:

Amended Plans

- 1 Before the development starts, plans drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans are to be generally in accordance with Drawing Nos. TP 5 of 10 to TP 10 OF 10 Issue C dated 20/07/2022 by WestUrban but modified to show:
 - (a) The front fence constructed of timber.
 - (b) The water tank to Dwelling 1 and bin area located in an enclosure that is 1.2m tall.
 - (c) Relocation of the clothesline from the front setback area of Dwelling 1 and relocation to north side of the dwelling.
 - (d) Minimisation of paving area in the front setback area.
 - (e) All letter boxes no greater than 900mm in height.
 - (f) Gas/water meter locations in unobtrusive locations.
 - (g) The location and design of any proposed electricity supply meter boxes. The electricity supply meter boxes and any associated infrastructure must be located at a distance from the street which is at or behind the setback alignment of buildings on the site. Alternatively, it must be setback a minimum of 3 metres from the front title boundary, be no greater than 1.4 metres in height and must be adjacent a side boundary fence where the most minimal level of visual impact arises.
 - (h) A Landscape Plan in accordance with Condition 6.



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

Landscaping

- 4 Concurrent with the endorsement of any plans requested pursuant to Condition 1 modified to reflect any changes under that condition, a Landscape Plan drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must be generally in accordance with the Landscape Plan prepared by Species Sheet L1 dated August 2022 but modified to 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;
 - (i) A planting schedule of all proposed trees, 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;
 - (ii) Provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
 - (iii) The location of any fencing internal to the site;
 - (iv) Planting to soften the appearance of hard surface areas such as driveways and other paved areas;
 - (v) Canopy trees / significant plantings on adjoining properties within 3 metres of the site;
 - (vi) The location of any retaining walls associated with the landscape treatment of the site;
 - (vii) Details of all proposed surface finishes including pathways, accessways, patio or decked areas;
 - (viii) 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;

- (ix) The location of external lighting (if any);
- (x) Planting required by any other condition of this permit; and
- (xi) Landscaping and planting within all open areas of the site.

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

Landscaping Prior to Occupation

- 5 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.

Stormwater Drainage

- 6 Drainage of the site is to be to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in a Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.

On-site Detention of Stormwater

- 7 Stormwater 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 any stormwater drainage works commencing.
- 8 The design parameters for the internal detention system are to be obtained from Council's Engineering Department (mail@monash.vic.gov.au). In some circumstances a drainage contribution may be accepted in lieu of a detention system. This drainage contribution is based on the proposed hard surfaced areas and is calculated at the time of the drainage plan approval.
- 9 No polluted and/or sediment laden stormwater runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 10 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit. Refer to 'Engineering Plan Checking' on www.monash.vic.gov.au



Engineering

- 11 Engineering permits must be obtained for new or altered or removal of vehicle crossings, works within the Road Reserve and for stormwater connections and these works are to be inspected by Council.
- 12 No work must be commenced in, on, under or over the road reserve without having first obtaining all necessary approval under the *Road Management Act 2004*, the *Road Safety Act 1986*, and any other relevant acts or regulations created under those Acts.
- 13 The full cost of reinstatement of any Council assets affected by the demolition, building or construction works, must be met by the permit applicant or any other person responsible for such works, to the satisfaction of the Responsible Authority.

Head, Transport for Victoria

- 14 Prior to the occupation of the development, the crossover and driveway are to be constructed to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 15 Prior to the occupation of the development hereby approved, the disused/redundant vehicle crossing must be removed, and the area reinstated to kerb and channel, to the satisfaction of the Responsible Authority and at no cost to the Head, Transport for Victoria.
- 16 Vehicles must enter and exit the land in a forward direction at all times.

Completion of Buildings and Works

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

Permit Expiry

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

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

- End of conditions -

