

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P762/2023
PERMIT APPLICATION NO. TPA/54529

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash City Council; General Residential Zone Schedule 3; Neighbourhood character; Clause 55; Ten dwellings on a lot

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| APPLICANT | Pellicano Superannuation Pty Ltd |
| RESPONSIBLE AUTHORITY | Monash City Council |
| REFERRAL AUTHORITY | Head, Transport for Victoria |
| SUBJECT LAND | 101-105 Clayton Road OAKLEIGH EAST VIC 3166 |
| HEARING TYPE | Hearing |
| DATE OF HEARING | 27 & 28 November 2023 |
| DATE OF ORDER | 12 February 2024 |
| CITATION | Pellicano Superannuation Pty Ltd v Monash CC [2024] VCAT 116 |

ORDER

Amended plans

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 for the permit application plans the following plans filed with the Tribunal:

- Prepared by: RPC Architects
- Drawing numbers: TP-05, TP-07 to TP-26, TP-26.1 to TP-26.2, TP-27 to TP-28, all Revision C
- Dated: 13 October 2023

Amended application

2 Pursuant to clause 64 of schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic), the permit application is amended to include application for:

- Reduction in the number of visitor parking spaces to zero under clause 52.06-3



No permit granted

- 3 In application P762/2023 the decision of the responsible authority is affirmed.
- 4 In planning permit application TPA/54529 no permit is granted.

Nick Wimbush
Member

APPEARANCES

For applicant

Ms Jane Sharp of Counsel instructed by Colin Biggers & Paisley Lawyers. She called the following expert witnesses:

- Ms Amanda Ring, Town Planner, Urban Planning Collective
- Mr Valentine Gnanakone, Traffic Engineer, One Mile Grid
- Mr Stephen Schutt, Landscape Architect, Hansen Partnership Pty Ltd

The following expert witnesses provided expert statements but were not called to give evidence:

- Mr Rob Galbraith, Arboriculture, Galbraith & Associates
- Mr Ben Watson, Photomontages, Pointilism

For responsible authority

Mr Peter English, Town Planner, Peter English & Associates Pty Ltd

For referral authority

No appearance



INFORMATION

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| Description of proposal | The proposal is for the removal of nine existing single storey dwellings and the construction of ten, three storey dwellings in two east-west groupings on a corner allotment. The dwellings will have a mix of three and four bedrooms, some with a study and will be a mix of conventional and reverse living. Nine of the dwellings will have vehicle access to Clayton Road via a central common accessway. One dwelling will have direct access from a double garage via a crossover to the side street, Boyd Avenue. |
| Nature of proceeding | Application under section 77 of the <i>Planning and Environment Act 1987 (Vic)</i> – to review the refusal to grant a permit |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 3 ('GRZ3') |
| Permit requirements | Clause 32.08-7 (GRZ3) to construct two or more dwellings on a lot Clause 32.08-7 (GRZ3) to construct a front fence greater than 1.5 metres in height along Boyd Avenue Clause 52.06-3 (Car Parking) to reduce visitor parking to zero Clause 52.29-2 (Land Adjacent to the Principal Road Network) to alter access to a road in the Transport Zone 2 |
| Relevant scheme policies and provisions | Clause 11.01, 15, 16, 21.01, 21.04, 22.01, 22.04, 22.05, 32.08, 52.06, 52.29, 55, 65 |



Land description

The subject site is a nearly square, relatively flat site of 2,224.5 square metres on the corner of Clayton Road and Boyd Avenue with frontage to Clayton Road of 42.98 metres and to Boyd Avenue of 42.44 metres. A 1.8 metre easement runs along the western boundary. The site contains nine single storey dwellings in four blocks. There are existing trees and shrubs on the site which will be removed. Two larger trees on the corner of Boyd Avenue and Clayton Road are on Council land and will be retained. Six street trees are on the two road frontages, one of which is sought to be removed to create the vehicle access to Clayton Road. On the western boundary of the subject site are two single storey dwellings in the tandem format with access to Boyd Avenue. The northern boundary abuts a single, single storey dwelling apart from a small abuttal to the rear of 6 Dobson Avenue in the north-west corner. Monash University is approximately 700 metres to the east.

Tribunal inspection

An unaccompanied inspection of the subject site and surrounds was undertaken on 22 November 2023.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT

- 1 Pellicano Superannuation Pty Ltd ('applicant') seeks planning permission to construct ten three-storey dwellings on 101-105 Clayton Road in Oakleigh East.
- 2 Monash City Council ('Council') issued a Notice of Decision to Refuse to Grant a Permit on 1 June 2023. The grounds of refusal were, in summary:
 - Inconsistency with clause 21.04 Residential Development, clause 22.01 Residential Development and Character Policy and clause 55 of the Monash Planning Scheme ('planning scheme') having regard to building height and scale, neighbourhood character, landscape provision, private open space, front fencing and design detail.
 - Inconsistency with Clause 32.08, GRZ3.
 - Failure to meet the decision guidelines of the GRZ3.
 - Failure to meet the objectives and standards in a number of clause 55 provisions.
 - Failure to provide for sufficient landscaping opportunities for an open garden setting in accordance with the GRZ3, clause 21.04 and clause 22.01.
 - Locating secluded private open space ('SPOS') for Dwelling 1 within the front setback is not acceptable.
 - Retaining the existing fencing on the site is not practical or coherent with the design and will result in an unreasonable presentation to the street.
 - Unreasonable bulk impacts to adjoining properties to the west.
 - Waste management.
 - Visitor car parking.
 - Loss of a street tree.
 - The proposal is not site responsive and considered an overdevelopment of the site.
- 3 Statements of grounds were lodged by some neighbours objecting to the proposal. The grounds were, in summary:
 - Out of character with the area which is mostly single and double storey dwellings.

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.



- Privacy, overlooking and overshadowing.
- Inadequate carparking.

PROCEDURAL ISSUES

- 4 The applicant sought to substitute amended plans to respond to some of the grounds of refusal raised by Council. The amended plans seek to remove two visitor car parking spaces from the proposal which requires an application under clause 52.06-3. There were no objections to the substitution of plans or amended application and I have made orders accordingly.

THE PROPOSAL

- 5 The nine single level dwellings proposed for the site are to be replaced by 10 three-storey dwellings. The ground floor plan is shown in Figure 1. The Boyd Avenue and Clayton Road elevations are shown in Figures 2 and 3.

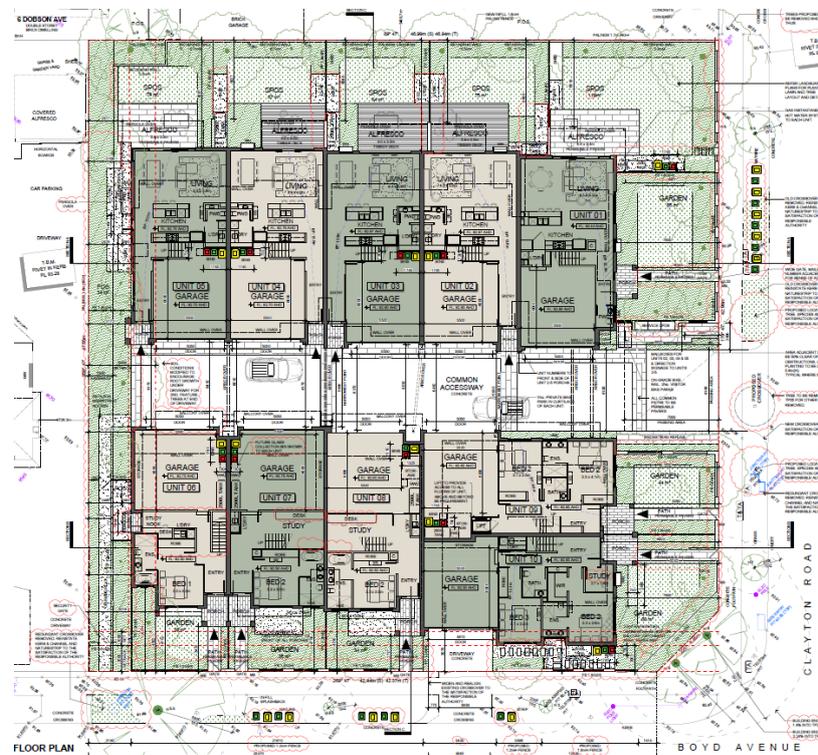


Figure 1 Ground floor plan



Figure 2 Boyd Avenue elevation

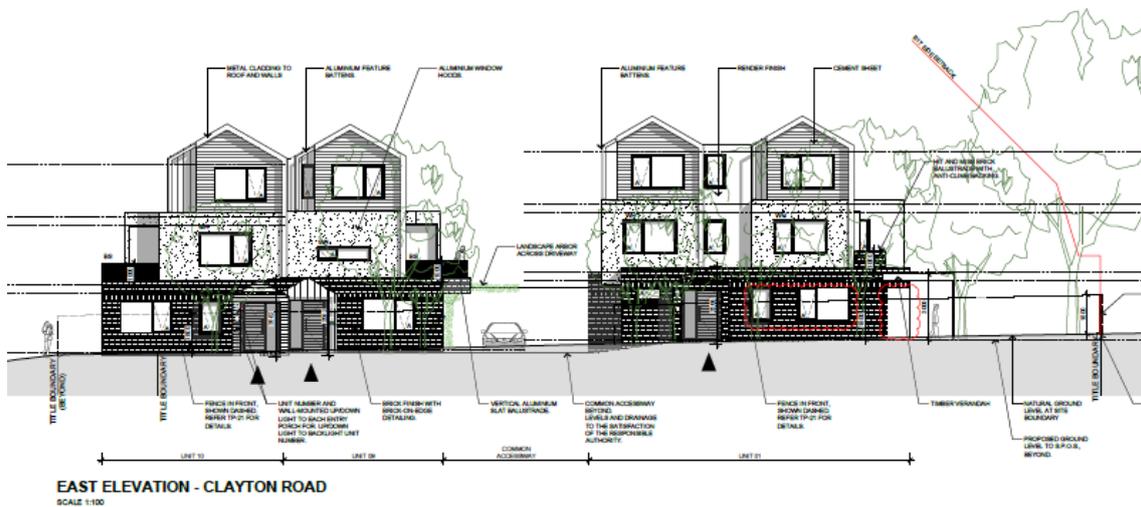


Figure 3 Clayton Road elevation

- 6 Mr Watson from Pointilism prepared a series of photomontages for the applicant. Photomontage V2 taken from opposite the corner of Boyd Avenue and Clayton Road is shown in Figure 4. This image shows the development in a 'reduced vegetation' state, that is without mature landscaping.
- 7 A central driveway will provide access from double garages in Units 1-9 via single crossover to Clayton Road. Unit 10 will have direct driveway access to Boyd Avenue.



Figure 4 Photomontage V2

THE STRATEGIC PLANNING CONTEXT

- 8 To the east of the subject site, across Clayton Road, is land in schedule 6 to the General Residential Zone ('GRZ6'). This schedule is the 'Monash National Employment and Innovation Cluster ('NEIC') and Clayton Activity Centre'.
- 9 The GRZ6 encourages more intense residential development with the objectives in the schedule including:
 - To facilitate housing diversity in the form of units, townhouses and apartment developments of high quality design and finish.
- 10 Other objectives in the GRZ6 schedule still seek to protect the desired garden city character and manage sensitive residential interfaces.
- 11 There was some discussion in the hearing around the placement of the site within the planning scheme in terms of residential policy. Ms Ring in her evidence for the applicant identified that the 'Residential development framework map' (Map 3 in Clause 21.04) in the planning scheme which shows the site is located within 'Category 3 – Residential Land in the Monash National Employment Cluster' (see Figure 5).

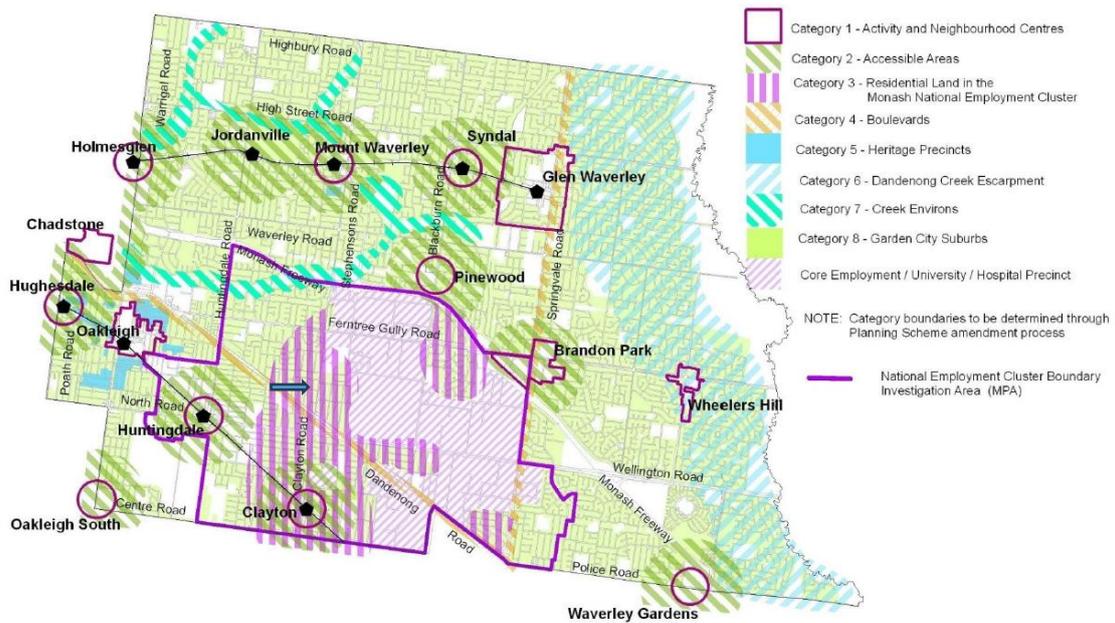


Figure 5 Residential development framework map (blue arrow shows approx. site location)

12 Council’s view was that this is a legacy issue based on the Monash Housing Strategy (2014), and later amendments to the planning scheme zoned the land west of Clayton Road GRZ3;² a zone associated with ‘Garden City Suburbs’ rather than the NEIC. It noted that this is consistent with policy in clause 22.01 (and Map 1 in that clause) which identifies the site as being within the ‘Garden City Suburbs Southern Areas’ (see Figure 6).

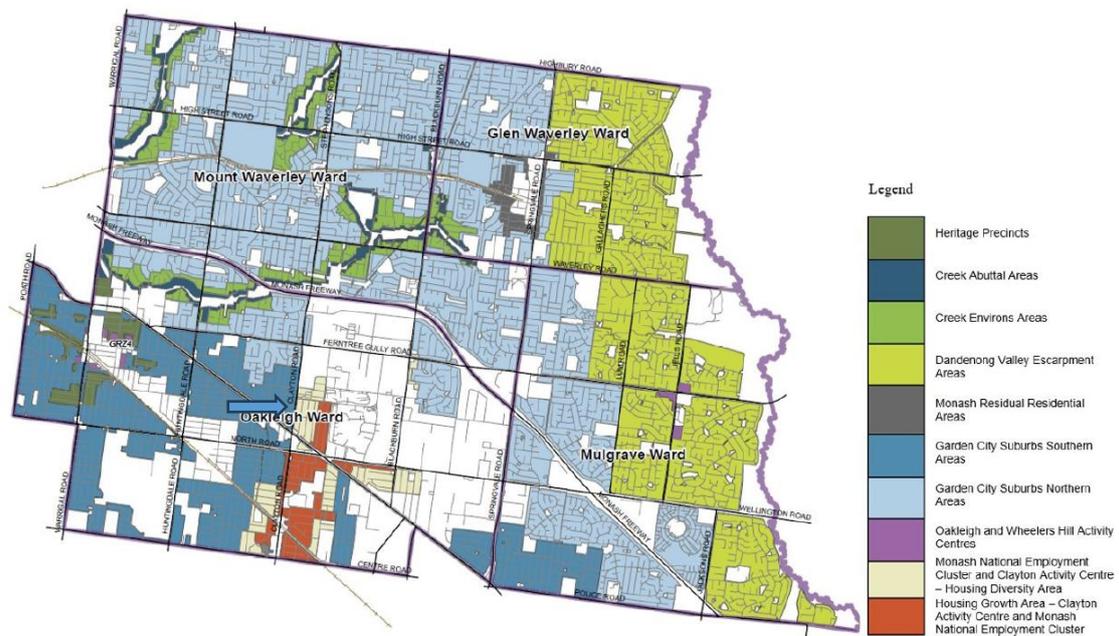


Figure 6 Residential character types (blue arrow shows approx. site location)

² Monash C125Pt2mona gazetted in late 2019.



- 13 Council identified that this issue was addressed in the Tribunal decision of *LH Group Enterprises Pty Ltd v Monash CC* [2021] VCAT 1046. In that case, Senior Member Baird noted the inconsistency in the planning scheme but attached weight to the zone controls and preferred character rather than the hatched plan. She identified that in the plan (Figure 5), the legend states that boundaries are to be determined through a planning scheme amendment process.³
- 14 I agree. It seems clear that the identification of the subject site within Map 3 relates to strategic planning that has been superseded by Amendment C125Pt2; that would have been the opportunity to confirm the area as being in Category 3 on that map. I have placed limited weight on the subject site's designation within the Monash National Employment Cluster and focus my assessment on the zone controls, which themselves bring up the preferred character of the area.

IS THE PROPOSAL AN ACCEPTABLE RESPONSE TO RELEVANT PLANNING CONTROLS AND POLICY INCLUDING THE REQUIREMENTS OF CLAUSE 55?

- 15 Ms Ring's evidence statement provided a comprehensive overview of the planning controls and relevant planning policy affecting the site. I do not propose to restate all those elements of her evidence but note some of the key controls and policy below.
- 16 The subject site is located in the General Residential Zone under clause 32.08 which includes the following relevant purposes:
- To implement the Municipal Planning Strategy and the Planning Policy Framework.
 - To encourage development that respects the neighbourhood character of the area.
 - To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- 17 Schedule 3 identifies the subject site as being in the 'Garden City Suburbs' area. The schedule has the following Neighbourhood character objectives:
- 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 At [10]-[11].



To support new development that locates garages and carports behind the front walls of buildings.

18 There is significant state planning policy encouraging residential development and consolidation in metropolitan Melbourne. Ms Ring in her evidence gave the following summary of relevant policy directions:

- the continuing demand for a range of housing which meets the many and different needs of the community, and which is affordable
- the desirability of consolidating residential development in established urban areas, including higher density housing in locations with good access to activity centres and which can benefit from proximity to fixed public transport
- encouragement for well-designed housing offering high levels of internal and external amenity and which minimises impacts on neighbouring properties, the public realm and the natural environment
- encouragement for area sensitive and appropriate building design and landscape outcomes including recognition of landscape character and vegetation
- the need to find the balance between natural features and built form while taking account of and having respect for neighbourhood character
- the desirability of more sustainable development and personal transport
- the desire to minimise waste, manage urban stormwater, and increase energy efficiencies.

19 Relevant local policy in the planning scheme was identified by Ms Ring and in Council's submission including the desired 'garden city character' sought for Monash in clause 21.01-1 with its leafy nature, low rise development, well vegetated private gardens and wide streets with street trees being key elements.

20 Clause 22.01 (Residential Development and Character Policy) identifies preferred future character statements for different areas. The subject site is in the 'Garden City Suburbs Southern Areas' character area on Map 1 in clause 22.01-4 (shown in these reasons as Figure 6).

21 The preferred future character is, in summary:

- Retention of the existing modest built form with new development on larger sites being low rise and retaining the open landscape character and generous open space provision. New development is expected to complement the existing built form and open landscape character.
- Spacious garden settings including retention and planting of shrubs and tall canopy trees to create a visually permeable buffer to dwellings and maintenance of streetscapes by allowing only one crossover.



- Front setbacks that are consistent with side and rear setbacks maintained and new dwellings addressing the street and being recessed/articulated at upper levels to minimise the sense of scale.
 - Low front fences to enable transparency to buildings and gardens.
 - Avoidance of blank or continuous walls to prevent the appearance of a continuous building mass.
 - Sympathetic architecture with the avoidance of historical mimicry.
- 22 Mr Schutt’s landscape evidence for the applicant was that the landscape plan⁴ is an appropriate response to policy by providing 29 new canopy trees (replacing 10 smaller trees), extensive areas of permeable surfaces, gardens of a suitable size for external living and canopy trees and vegetated visibly permeable setbacks.
- 23 The zone head clause calls up clause 55 (Two or more dwellings on a lot and residential buildings). The schedule amends a number of requirements in clause 55 including B6 (Street setback), B8 (Site coverage), B9 (Permeability), B13 (Landscaping), B17 (Side and rear setbacks), B28 (Private Open Space) and B32 (Front fence height).
- 24 There was common ground that many of the numerical standards in clause 55 are met for the proposal, including those varied in GRZ3. The applicant submitted, and this was confirmed by Ms Ring in her evidence, that the following standards are met:⁵
- Standard B6 Minimum street setback
 - Standard B7 Building height
 - Standard B8 Site coverage
 - Standard B18 Walls on boundary
 - Standard B19 Daylight to existing windows
 - Standard B20 North-facing windows
 - Standard B21 Overshadowing open space
 - Standard B22 Overlooking
 - Standard B27 Daylight to new windows
 - Standard B30 Storage.
- 25 Variations to a number of standards are needed in the application identified by Ms Ring as follows:

⁴ Prepared by John Patrick Landscape Architects Pty Ltd.

⁵ These standards in clause 55 were part of the set changed in Amendment VC243. Where these numerical standards are complied with, they are ‘deemed to comply’ and the objectives for the standard are met and the decision guidelines do not apply. The full list of standards affected by VC243 is B6, B7, B8, B17, B18, B19, B20, B21, B22, B27, B28, B30 and B32.



- Standard B3 – there is not a dwelling containing a kitchen, bath or shower and a toilet and wash basin at ground level.
 - Standard B10 – Dwelling 10 is not oriented to take advantage of northern light due to site constraints.
 - Standard B15 – inadequate distance between internal access and a habitable room.⁶
 - Standard B17 – western boundary ground floor setback not in compliance; should be minimum 5 metres whereas 3.16 metres is proposed.
 - Standard B28 – Dwellings 3 and 4 do not meet the open space requirement of 75 square metres.
 - Standard B29 – the SPOS of Dwelling 10 is south facing.
 - Standard B32 – a front fence of 1.8 metres height is proposed exceeding the specific height of 1.2 metres.
- 26 The applicant’s view, supported by Ms Ring’s evidence, was that these variations are relatively minor and acceptable in the context of the site and proposal.
- 27 Ms Ring’s evidence overall was that the proposal provides a net community benefit as required by the planning scheme. Her conclusion included:
- Ultimately, I am satisfied that there are no impacts, either individually, or together, which would warrant refusal of the application in circumstances where there is sufficient policy support for greater diversity of housing in locations along main roads, within the Monash National Employment and Innovation Cluster and which has convenient access to public transport and connections with the higher order activity centres.

Tribunal findings

- 28 I have concluded earlier in these reasons that I give limited weight to the designation of the area containing the subject site in the residential area for the NEIC.
- 29 That there is a need for increased housing supply is not in dispute, and increased density and diversity is sought in policy in the planning scheme. The subject site has a number of attributes that make it attractive for redevelopment, being:
- It is a relatively large corner site.
 - It is on a main road location.

⁶ Ms Ring recommended this could be addressed via condition.



- While in a precinct earmarked for less intensity of development, it is on the edge of that precinct and abuts the area with higher development intensity potential in the GRZ6 across Clayton Road.
- 30 The proposal is only to increase the dwelling yield by one dwelling, while providing much larger dwellings overall, so it is not a significant contributor to increased dwelling numbers. The dwellings will provide a mix of three and four bedrooms, some with a study, which will provide a level of diversity.
- 31 I consider at a general level there is support for increased housing density and diversity in this area. Within that general support I must assess the application against the specific controls in the planning scheme, informed as relevant by planning policy. I give significant weight to the approach taken by Council in this area and its application of zones and schedules to achieve particular neighbourhood character outcomes.
- 32 The planning controls in the zone and schedule call up the preferred neighbour character for the area containing the subject site. A greater intensity of development relative to the GRZ3 in my view is intended in the GRZ6 east of Clayton Road associated with the NEIC, and the zones have been applied in this area through Amendment C125Pt 2 to achieve that desired differentiated result.
- 33 I note two of the specific Neighbourhood objectives in the schedule to the GRZ3:
- To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.
- ...
- 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.
- ...
- 34 For this area the preferred character seeks retention of modest built form with low rise development that complements the existing built form, an open landscape character and generous open space including spacious gardens. Retention and enhancement of vegetation and canopy trees is also sought.
- 35 I accept that within the space available the landscaping will introduce a significant number of canopy trees. However, I note these are almost all proposed on the boundary and are ‘fitted in’ around the built form. While this is often a result in contemporary development, I do not consider the outcome with the current design meets the character objective of ‘well landscaped and spacious gardens that include canopy trees’.

- 36 In this case, the design does not evidently derive from or satisfy the character objectives in GRZ3 nor achieve the relevant purposes in clause 32.08. It is challenging to reconcile the proposed built form with the preferred character statement. The three-storey height and mass will be a significantly different and discordant built form in the neighbourhood setting and will present as significant bulk to the surrounding residential areas and particularly to the west. There appears to be no similar built form of such scale or mass on this side of Clayton Road in the area.⁷ Change can be expected in the GRZ3, but in a different manner to the GRZ6.
- 37 I accept that the applicant has attempted to design the proposal to minimise bulk through the use of articulation and setbacks, the separation of dwellings at upper levels and through the materials palette. I also accept that there is a relatively high level of compliance with the numerical standards in clause 55. Apart from the western boundary at ground level, the setbacks comply with clause 55. For completeness if I were to grant a permit, I do not consider the variation to the western setback to be an acceptable planning outcome due to the scale of the proposal adjacent to the two dwellings to the west.
- 38 These compliances carry weight. However, when viewing the elevations or the photomontage, the built form dominates the streetscape in a way that is inconsistent with the preferred character. Similarly, the landscape response is insufficient to contribute to the preferred garden city character outcome. Having considered the decision guidelines, I find the objectives in clause 55.02-1 are not met.
- 39 Since the introduction of Amendment VC243 there have been a number of Tribunal decisions regarding how to approach the codification of certain standards in clause 55.⁸ In particular I was taken to *Costa v Banyule CC* [2023] VCAT 1273 (*'Costa'*) and *D'Andrea v Boroondara CC* [2023] VCAT 1148 (*'D'Andrea'*), with the applicant suggesting that the two decisions take a different approach to the issue. The applicant preferred the approach in *D'Andrea* while the Council preferred the approach in *Costa*.
- 40 Having reviewed the decisions I am not convinced that the two decisions are that far apart on the spectrum when viewed in detail, but either way I do not intend to make a forensic assessment of these cases as I do not think it assists my task. I note the words of Senior Member Bennett in *Oechsle v Frankston CC* [2023] VCAT 1356 in another recent decision relating to the approach to clause 55 and the codified compared to non-codified standards:

⁷ The applicant took me to an approved but not constructed development at 115-119 Clayton Road for 15 dwellings (6 x 2 storey and 9 x 3 storey). The permit was issued at the direction of the Tribunal in *Clayton Gardens Pty Ltd v Monash CC* [2019] VCAT 1607. I note the application was considered under the previous zoning and according to the Tribunal in that matter the three storey component of the development is set back centrally within the site.

⁸ Noting Amendment VC243 includes a significant number of other changes not relevant to this application.



However, I acknowledge that even if all the requirements in clause 55 relating to standards B6, B7, B8, B17, B18, B19, B20, B21, B22, B27, B28, B30 or B32 [Tribunal note: the codified standards] are met, an application could still be refused on neighbourhood character grounds. That is because clause 55 contains qualitative standards that require a judgement call as to whether the related objective is met.⁹

- 41 The other qualitative standards include B1 in clause 55.02-1 which has the following objectives:

To ensure that the design respects the existing neighbourhood character or contributes to a preferred neighbourhood character.

To ensure that development responds to the features of the site and the surrounding area.

- 42 The explanatory report for Amendment VC243 includes the following:

The amendment is required to ‘codify’ specified residential development standards at clauses 54 and 55 of the VPP and all planning schemes, to facilitate assessment of these standards. The operation of the provisions is modified to state that where the standard is met, the objective is deemed to have been met, and the associated decision guidelines for the standard are not required to be considered. Two standards in clause 54 and 55, Building height objective (A4/B7) and Front fences objective (A20/B32), are also modified by deleting requirements that involve a discretionary assessment, to codify these standards. Codifying residential development requirements will create a more certain planning permit process and reduce permit approval timeframes. Removing the requirement to consider decision guidelines for a standard where the requirements are clearly met will make assessment against these standards clearer and faster. Codification increases certainty and clarity for applicants and the community about acceptable siting and design requirements for residential development. The changes support proportional assessment requirements that reduce the administrative cost and resources for the responsible authority. Reduced approval timeframes and improved certainty and clarity around assessment supports the provision of housing in established areas. [Tribunal emphasis]

- 43 I read this as an attempt to ‘streamline’ the technical assessments around the numerical standards in clause 55. However, clause 55.02-1 is not codified. While other clause 55 compliances are relevant and carry weight, a judgment is still required.
- 44 I have found that the scale and mass of the proposal, and landscape response, are not acceptable.

⁹ At [30]. This general point was also made in *Costa* at [30]-[31].



OTHER MATTERS

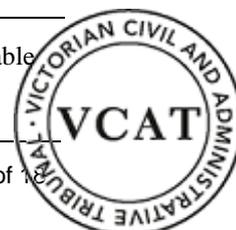
Reduction in visitor car parking

- 45 Two parking spaces for each dwelling are required under clause 52.06 and it was common ground that the required parking for dwellings has been provided.
- 46 As the proposal is over five dwellings, clause 52.06-5 (Column A¹⁰) requires a visitor park for every five dwellings; two car spaces for visitors are required. The requirement can be reduced, including to zero, via an application under clause 52.06-3.
- 47 Two visitor spaces were included in the original application plans. The amended plans have removed the visitor spaces to improve accessibility and landscaping outcomes, and permission is thus sought for their removal.
- 48 The applicant relies on the evidence of Mr Gnanakone. His opinion, based on his experience, is that visitor parking demand will be greatest in the evenings and on weekends, being two spaces at those times and one space at other times.
- 49 Mr Gnanakone assessed the on-street car parking availability on Dobson Avenue and Boyd Avenue on a Thursday and a Saturday between noon and 8.00pm. His results showed that on the Saturday within his survey area there were 61 on-street car spaces with utilisation between 23% and 34% of capacity. On the Thursday the same survey area parking utilisation ranged between 20% and 30% of capacity.
- 50 I note Mr Gnanakone's overall findings that there appears to be ample on-street parking in the vicinity, whether considering his entire survey area of 61 spaces or the more confined, and closer to the proposal, 'Area A' which on his results had at least 12 on-street spaces available at the busiest time on a Saturday evening.
- 51 I note that in the area there appears to be significant provision of on-site parking and the availability of on-street parking would seem to bear this out. Based on the evidence I am satisfied that the removal of the two visitor car spaces from the proposal is an acceptable planning outcome and will not have any significant impact on parking in the broader area. This matter would not be an impediment to a permit being issued.

Access to a road in the Transport Zone 2

- 52 The Head, Transport for Victoria (part of the Department of Transport and Planning) is a determining referral authority. It did not object to the issuing of the permit but requested conditions related to the design and operation of the crossover to Clayton Road.

¹⁰ The site is not within the identified Principal Public Transport Network area which would enable the use of Column B in Clause 52.06-5.



- 53 Mr Gnanakone's evidence was that the intensity of development proposed is not significantly different to that existing and the increase in traffic will be a minor increase. He noted that the existing two crossovers to Clayton Road will be reduced to one, and coupled with the good sight lines on this part of Clayton Road he was satisfied that the proposal will comply with clause 52.29.
- 54 If a permit were issued, I am satisfied that the access to Clayton Road could be designed and managed to an acceptable level.

Other grounds of refusal

- 55 Council's grounds of refusal included a number of other items which I have not addressed in detail including the SPOS to Unit 1, fence height to Clayton Road and waste management. I am satisfied that these matters could be addressed via permit conditions or variations to the clause 55 standards if a permit were to issue.

CONCLUSION

- 56 Overall, in accordance with clause 71.02-3 (Integrated Decision Making) I am required to balance the competing policy objectives and decide the application in the interests of net community benefit and sustainable development.
- 57 Various aspects of the proposal are acceptable, as are the proposed parking and access arrangements. However, for the reasons given above, I find the proposed development fails to achieve an acceptable neighbourhood character outcome when assessed under clause 55.02-1.
- 58 The decision of the responsible authority is affirmed. No permit is granted.

Nick Wimbush
Member

