

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1370/2024  
PERMIT APPLICATION NO. TPA/49650

<b>APPLICANT</b>	David Kang
<b>RESPONSIBLE AUTHORITY</b>	Monash City Council
<b>SUBJECT LAND</b>	35 Bogong Avenue GLEN WAVERLEY VIC 3150
<b>HEARING TYPE</b>	Hearing
<b>DATE OF HEARING</b>	6 March & 2 June 2025
<b>DATE OF ORAL DECISION</b>	12 June 2025
<b>DATE OF ORDER</b>	19 June 2025
<b>DATE OF WRITTEN DECISION</b>	17 July 2025
<b>CITATION</b>	Kang v Monash CC [2025] VCAT 627

### ORDER

- 1 In application P1370/2024 the decision of the responsible authority is affirmed.
- 2 The endorsed landscape plan that forms part of Planning Permit No. TPA/49650 are not amended.

Shiran Wickramasinghe  
**Member**

### APPEARANCES

For David Kang	E Tangelakis, town planner of ASK Planning Services Pty Ltd
For Monash City Council	A Kellock, town planner of Kellock Town Planning Pty Ltd



## INFORMATION

Description of proposal	Amend the endorsed landscape plan under secondary consent to include permeable artificial grass over a rock/sand/soil base within the Secluded Private Open Space ('SPOS') associated to dwellings 1 and 2, the provision of tuscan screening within the front setback and plant four Red Maple trees ( <i>Acer Palmatum</i> ), three of which are located in the front setback and one in the SPOS of dwelling 2.
Nature of proceeding	Application under section 149(1)(a) of the <i>Planning and Environment Act 1987</i> (Vic) – to review Monash City Council's decision to refuse to endorse an amended landscape plan for Planning Permit No. TPA/49650 under secondary consent.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone ('GRZ7')
Permit requirements	Clause 32.08-7 – Construction of two or more dwellings on a lot in a GRZ7
Land description	The site is located on the north side of Bogong Avenue, approximately 60 metres west of its intersection with Myrtle Street, Glen Waverley. The site is occupied by two, double storey dwellings that are located in a linear configuration with vehicle access from two separate driveways.
Tribunal inspection	An unaccompanied site inspection was conducted.



## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Oral reasons for this decision were given on 12 June 2025. The responsible authority subsequently requested written reasons. In accordance with that request, following are the oral reasons in written form, with minor editing.
- 2 This is an application to the Tribunal by David Kang under Section 149(1)(a) of the *Planning and Environment Act 1987* (Vic). It involves a review of Monash City Council's decision to refuse to endorse an amended landscape plan for Planning Permit No. TPA/49650.
- 3 The application seeks to amend the endorsed landscape plan under secondary consent. The amendments seek consent to:
  - Include permeable artificial grass over a rock/sand/soil base within the Secluded Private Open Space (SPOS) associated to dwellings 1 and 2 and the provision of tuscan screening with the front setback.
  - Plant 4 Red Maple trees (*Acer Palmatum* - 6m height at maturity). Three (3) of which are to be located in the front setback and one in the SPOS associated to dwelling 2.
- 4 Notably the plans that formed part of the original application for amendment to the landscape plan showed the provision of artificial grass within the front setback as well as the SPOS areas associated to each dwelling. Subsequently the applicant submitted an amended landscape plan that showed the provision of tuscan screenings within the front setback instead of artificial grass. As confirmed by the parties, these are the plans that are before the Tribunal.
- 5 By letter dated 5 December 2024, Council advised the permit applicant, that the landscape plan was not satisfactory and has been refused for the following reasons:
  - Pursuant to the decision guidelines of Clause 32.08-s7, environmental weeds and artificial grass should be avoided.
  - The proposal is not consistent with Clause 15.01-1L-02, which seeks to incorporate landscaping that reinforces the garden city character in all development.
- 6 The applicant submits:
  - Pursuant to the decision guidelines of Clause 32.08-7, the application for artificial grass in part, as shown on the plans is appropriate.

---

<sup>1</sup> 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.



- The proposal is generally consistent with Clause 15.01-1L-02, which seeks to incorporate landscaping that reinforces the garden city character in all development.
- 7 They also say the proposal is an appropriate outcome in an Activity Centre, satisfies condition 4 of the Planning Permit and is in keeping with the neighbourhood character of the area where there are numerous examples of artificial grass and hard paving.

#### Planning History

- 8 Council's submission includes a planning permit history that states Planning Permit No. TPA/49650 ("permit") was issued on 11 October 2019. The permit allowed the construction of two double storey dwellings. Conditions 1 and 4 of the permit required the submission of amended plans and a Landscape Plan respectively.
- 9 Subsequently Council:
- endorsed plans in accordance with conditions 1 and 4 of the permit on 26 November 2019.
  - approved amended development plans and an amended landscape plan under secondary consent on 2 June 2023
- 10 Planning Permit TPA/53791 was approved by Council on 2 May 2022. It allows the construction of a front fence.
- 11 The site is located in a General Residential Zone – Schedule 7 ('GRZ7').
- 12 The site is located on the north side of Bogong Avenue, approximately 60 metres west of its intersection with Myrtle Street, Glen Waverley. The site is located in a residential area that forms part of the Glen Waverley major activity centre.
- 13 The site is occupied by two double storey dwellings in a tandem configuration with vehicle access via two separate driveways.
- 14 Details of the site, its context, the relevant policies and provisions of the Planning Scheme and a description of the proposal were set out in the parties' submissions and I will not repeat them here, other than as relevant to my decision.

#### PLANNING CONSIDERATIONS

- 15 Council submits the proposal is inappropriate having regard to the relevant provisions of the Monash Planning Scheme. In particular, it submits the changes are not satisfactory on the basis that:
- Pursuant to the decision guidelines of Clause 32.08-s7, environmental weeds and artificial grass should be avoided.
  - The proposal is not consistent with Clause 15.01-1L-02, which seeks to incorporate landscaping that reinforces the garden city character in all development.



16 They say:<sup>2</sup>

The extensive use of artificial turf is a poor landscape outcome. Council submits that the use of artificial turf is inappropriate having regard to the relevant decision guidelines of Schedule 7 to the General Residential Zone, which requires consideration of whether the development contributes to the “garden city character” and which clearly states that “environmental weeds and artificial grass should be avoided.

17 Council is also concerned that the proposed changes decrease the mature height of canopy vegetation. They say:<sup>3</sup>

The current endorsed plans show 4 canopy trees, comprising 3 x Illawarra Flame trees (mature height and width of 10 x 5 metres) and one (1) Water Gum (mature height and width of 8 x 2 metres). These trees are to be replaced with four (4) Acer palmatum (Red Maple) that have a mature height of 6 metres (no width details provided). This change is inappropriate and inconsistent with the landscape outcome sought under Schedule 7, which specifically requires 2 x 10 metre tall trees under ‘varied’ Standard B13.

18 They further submit that the extensive use of tuscan screenings within the front setback is inappropriate. However, they acknowledge the tuscan screenings are an improvement on the previously proposed artificial grass within the front setback.

19 The applicant in support of the proposal submits:<sup>4</sup>

11. Condition 4 did not limit the use of groundcovers to natural grass or natural turf, rather it referred to the use of any coverings such as grass, lawn, mulch or other surface material (Condition 4d). We submit that the use of permeable synthetic grass satisfies this condition. The landscape plan is equally non-specific and correct as endorsed.

12. The landscape plan also refers to drought tolerant lawn (buffalo or similar). This is shown in areas where decking is not provided and in the frontage as a soft landscape, permeable method of ground cover. The current conditions comply with this plan.

13. The word “similar” confirms that it is not just buffalo grass that should be provided but anything similar that is drought tolerant. Permeable synthetic grass is obviously drought tolerant.

.....

15. As it is unknown if Council takes issue with the Maple trees, it is therefore assumed that Clause 15.01-1L-02 has

---

<sup>2</sup> Council submission page 13.

<sup>3</sup> Ibid.

<sup>4</sup> Applicant’s submission, pages 5, 6 and 7.

been included as a ground of refusal that includes both the permeable synthetic grass and the Maple trees.

16. The original endorsed landscape plan included three Illawarra Flame Trees, which would grow to 10m in height at maturity. All three of these trees were shown to be planted in the front setback. Instead, 4 red Maple trees have been planted – three in the front setback and one in the rear setback.
17. Illawarra Flame Trees are described as feature trees for larger gardens. Flame trees are deciduous, losing their leaves during winter followed by clusters of red bell-shaped flowers spring-summer. Image below:



18. Red Maple trees are described as medium to large trees with narrow or rounded, compact crown and red flowers and autumn foliage. Male trees have notable pinkish red flowers in early spring, and females display decorative red samaras soon after. Image below:



19. To a passer-by or lay person, the trees look similar. They have similar shaped leaves and similar red flowers/bloom. There is a difference in the height at maturity, with the red Maple tree described as medium to large, while the Illawarra Flame tree described as large. In an urban environment within an Activity Centre and within a unit development, the 6m height of the Maple trees is far more suitable, and commensurate to the size of the spaces in which they are planted.
20. Maple trees are a good option for an urban environment as they are tolerant of urban conditions, including compacted soil and can also tolerate dry conditions. They are also fast growers and have a rounded crown. As shown on the



landscape plan, they will grow to a height of 6m at maturity, providing ample shade, which can help cool the yards. They are a common option for unit developments given they need little maintenance, grow well and are attractive. As such, we submit that the Maple trees as planted will reinforce the “garden city character”, albeit an Activity Centre location, in line with Policy.

- 20 Having considered the submissions and the materials presented by the parties and the provisions of the planning scheme, I have been persuaded by Council that the proposed amended landscape plan is unacceptable.
- 21 The subject site is located in GRZ7. The GRZ7 does not include Neighbourhood character objectives, however amongst other things relevant decision guidelines at clause 6.0 of the GRZ7 require consideration of the following:

Whether development contributes to ‘garden city’ character.  
Specifically, whether the proposal:

- Provides sufficient and well located open space, primarily unencumbered by easements, to provide for large trees to be retained or planted within front, side and rear setbacks, and secluded open space areas. Environmental weeds and artificial grass should be avoided.
  - Provides vegetation in the front setback that softens the appearance of built form and contributes to the public realm.
- 22 The relevant decision guidelines seek development to contribute to the garden city character of the area. The subject site and development in the area includes a mix of development that comprises both newer and older dwellings that have varying landscape treatments including landscaped and paved front setbacks with some also including artificial grass surfaces.
- 23 With respect to the sites that have artificial grass identified by the applicant, I was advised by Council that the use of artificial grass on these sites has not been approved by Council. They further submitted that the use of artificial grass is not common in comparison to the majority of dwellings that have grass and landscaping within the SPOS and front setbacks of the dwellings albeit with some paving.
- 24 The proposal seeks to surface the majority of the SPOS associated to dwellings 1 and 2 that comprise areas of approximately 43.7 and 88.68 metres squared respectively with artificial grass. Other than for the proposed artificial grass, each SPOS area is also occupied by a deck.
- 25 Notably, relevant decision guidelines seek consideration of whether artificial grass should be avoided.
- 26 Whilst there is variation in landscaping responses in the locality, the majority of landscaped areas as shown on the photographs provided by the parties comprise vegetation, grass and impervious paths including



driveways. In this context I am not persuaded by the applicant the provision of artificial grass for the majority of the SPOS areas is in keeping with the garden city character sought by the Planning Scheme.

- 27 Further, I am persuaded by Council's submission that artificial grass is fabricated using synthetic fibres like nylon or polyethylene, therefore it is not considered to be grass, and cannot be considered to be lawn. In this context I find the notation on landscape plan that refers to drought tolerant lawn (buffalo or similar) does not mean that artificial grass must be acceptable as it is green and does not require watering as submitted by the applicant.
- 28 Therefore, having regard to the relevant decision guidelines that requires consideration of whether artificial grass should be avoided, I find it should be. The proposal is inconsistent with the garden city character sought by the relevant provisions of the planning scheme.
- 29 The proposal seeks to replace the grass area shown on the endorsed landscape plan within the front setback with tuscan screening. As detailed previously, the majority of the front setback shown on the photographs provided by the parties are comprised of vegetation, grass and impervious paths including driveways.
- 30 Relevant decision guidelines seek consideration of whether a proposal provides vegetation in the front setback that softens the appearance of built form and contributes to the public realm.<sup>5</sup>
- 31 The updated landscape plan shows provision of three trees and perimeter planting within the front setback area. Whilst in principle the use of materials such as tuscan screenings in landscaping is acceptable, I find the proposed extent/area of tuscan screening that will 'cover' the front setback to be unacceptable. I find the extent/area of tuscan screening will be an unacceptable dominant feature of the front setback that will present a 'hard' interface to the public realm. Further the extent of the proposed tuscan screening combined with the hard paving associated to the two driveways and proposed paved path across the frontage of the site will exacerbate the unacceptable 'hard' interface presentation to the streetscape and public realm. In this context, I find the proposed extent/area of tuscan screening will not acceptably contribute to the garden city character sought by the relevant provisions of the planning scheme.
- 32 Further, I have not been persuaded that substitution of the four canopy trees, comprising three Illawarra Flame trees (mature height and width of 10 x 5 metres) and one Water Gum (mature height and width of 8 x 2 metres) is acceptable. These trees are to be replaced with four Acer Palmatum (Red Maple) that have a mature height of 6.0 metres (no width details provided).

---

<sup>5</sup> Clause 6.0 of DDO7.





- 33 Relevant decision guidelines at clause 6.0 of DDO7 seek consideration of whether a proposal provides for large trees to be planted within front, side and rear setbacks and secluded open space areas. The plans show limited proposed landscaping. Other than of a change in preference there was no reason provided to support the change in species. The approved trees have a mature height of 10.0 metres whilst the proposed trees have a height of 6.0 metres.
- 34 Having regard to the relevant decision guidelines that seek to provide vegetation in the front setback that softens the appearance of built form and contributes to the public realm I find that the proposed smaller trees to be unacceptable. The existing dwellings have an approximate height of 7.4 metres. The proposed trees will be of a lesser height which will limit their ability to soften the appearance of built form and contributes to the public realm. Therefore, in the absence of an acceptable reason to support the proposed change, the three Illawarra Flame trees (mature height and width of 10 x 5 metres) and one Water Gum (mature height and width of 8 x 2 metres) should be planted in accordance with the endorsed landscape plan.

## **CONCLUSION**

- 35 For the reasons given above, the decision of the responsible authority is affirmed. The endorsed landscape plan that forms part of Planning Permit No. TPA/49650 are not amended.

Shiran Wickramasinghe  
**Member**

