VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

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| planning and environment LIST | vcat reference No. P913/2021  Permit Application no. TPA/52082 |
| CATCHWORDS | |
| Section 77 of the *Planning and Environment Act 1987*; Monash Planning Scheme; General Residential Zone Schedule 6; Site Layout; Visual Bulk; Upper Level Massing; Landscaping Opportunities; Internal Amenity; Car Parking Access; Street Tree; Interface to East; Design Detail. | |

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| **Applicant** | Quingwei Wu |

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| **Responsible Authority** | Monash City Council |

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| SUBJECT LAND | 42 Morton Crescent  CLAYTON VIC 3170 |
| DATE OF HEARING | 15 November 2021 |
| DATE OF ORDER | 4 March 2022 |
| CITATION | Wu v Monash CC [2022] VCAT 258 |

# Order

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:

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| * Prepared by: | Westurban |
| * Drawing numbers: | TP01 to TP12 Revision B |
| * Dated: | 27/08/2021 |

1. In application P913/2021 the decision of the responsible authority is affirmed.
2. In planning permit application TPA/52082 no permit is granted

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| Alison Slattery  **Member** |  |  |

# Appearances

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| For applicant | Mr Russell Hocking, town planner of City Shire Planning Pty Ltd |
| For responsible authority | David De Giovanni, town planner of David De Giovanni Town Planning |



# Information

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| Description of proposal | Construction of four dwellings, of which two are double storey (units 1 and 4) and two are triple storey (units 2 and 3). The dwellings extend down the length of the lot with a single driveway access point providing access to three units via the existing crossover which is sought to be widened. A new crossover to the east will service unit 1. The maximum height of the development is 9.6 metres. |
| Nature of proceeding | Application under section 77 of the *Planning and Environment Act 1987* – to review the refusal to grant a permit. |
| Planning scheme | Monash Planning Scheme |
| Zone and overlays | General Residential Zone Schedule 6 |
| Permit requirements | Clause 32.08-6 construction of two or more dwellings |
| Relevant scheme policies and provisions | Clauses 11.01-1R, 15.01-1S, 15.01-2S, 15.01-4R, 15.01-5S, 16.01-1S, 16.01-1R, 16.01-2S, 18.02-2S, 21.01-1, 21.04, 21.08, 22.01, 22.04, 22.05, 22.13, 32.08, 52.06, 55, 65 and 71.02. |
| Land description | The site is located on the southern side of Morton Street in Clayton around 35 metres to the west of the intersection with Blackburn Road. The site is currently developed with a single storey brick dwelling. The site is rectangular in shape and has a frontage of 16.76 metres and a depth of 45.11 metres for a total site area of 756 square metres.  The site includes a fall from the north to south of 0.7m and contains a crossover and driveway to its western elevation. A 1.83 metre wide drainage and sewage easement traverses the southern (rear) boundary. The site is not encumbered by a covenant. The site is sparsely vegetated with shrubs and trees.  Surrounding sites are residential in nature and generally include single and double storey dwellings of varied ages. Dwellings generally include carports or garages set behind the frontage of the dwellings. Multi unit development typology is evident as the emerging typology, usually with two to four dwellings on a lot. On the northern side of Morton Street is a small commercial centre of up to three storeys.  The site has excellent access to Monash University and is located within the Monash National Employment Cluster.  The site is well served with access to schools, parks and open spaces, and shopping facilities (corner Blackburn and Dandenong Roads to the SE within 250m). The site also has good access to community facilities. Public transport is available by way of buses on Wellington and Blackburn Roads with train access further afield. |
| Tribunal inspection | The Tribunal undertook an unaccompanied inspection of the site after the hearing |

# Reasons[[1]](#footnote-2)

## What is this proceeding about?

1. On 23 April 2021 Monash City Council issued a refusal to grant a planning permit for the construction of four dwellings, two double storey dwellings and two triple storey dwellings at 42 Morton Street Clayton.
2. The decision was based on Council’s view that the design is contrary to the character of the neighbourhood regarding mass, bulk and form and is an overdevelopment of the site, especially having regard to recession of the upper level, the cantilever elements in the driveway, the poor access to unimpeded open space, the number of vehicle crossings, visual impacts and side and rear setbacks. Council contends that this development also does not comply with the objectives of ResCode with regard to neighbourhood character, private open space, sense of address and design detail.
3. The review applicants, through Mr Hocking, applied to the Tribunal to review this decision. The applicants disagree with Council and assert that the design has taken into account the constraints of the site and is responsive. Mr Hocking argued that the areas of non-compliance with the standards of ResCode are justified and contends that the proposal meets the objectives of ResCode. It was his contention that the PPF and local policies lend support to the proposed development.

## What are the key issues?

1. The key issue for determination is:
   1. Does the development represent an appropriate response to the neighbourhood? Are the amenity impacts reasonable?
2. The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to affirm the Council’s decision and refuse the application for permit. My reasons follow.

## Does the development represent an appropriate response to the neighbourhood? Are the amenity impacts reasonable?

### Urban Consolidation

1. The site enjoys strategic policy direction towards a greater level of development and density than currently exists. This is on the basis that the site is well located as it is:

* Near the junction of two main roads within the PPTN being Wellington and Blackburn Roads;
* Opposite a small commercial centre with three storey form
* Near a commercial centre to the south east.

1. As such policy reasonably directs the accommodation of a greater density for the site than it currently does-an increase of three further dwellings on the lot is reasonably described as medium density development.
2. However, development must be contextual and of a design that provides reasonable amenity for its future residence. In this regard I am not satisfied that this proposed development has achieved design outcomes that are respectful of neighbourhood character. I also find the development does not facilitate appropriate levels of external and internal amenity.

### Neighbourhood Character

1. Within the Monash Planning Scheme, local policy has imperatives that seek the protection of existing neighbourhood character through the promotion of the Garden City Character theme. This Garden City Character element of the Monash Planning Scheme is iterated throughout its local policy, and is reflective of the desires within the Monash community. Any new development needs to be respectful of these character considerations.[[2]](#footnote-3)
2. This Garden City emphasis is reiterated within the Residential Development and Character Policy[[3]](#footnote-4) which states:

*New development should be carefully designed and sited to satisfy the intent of the preferred future character statements for each residential character type as identified. Garden city character within all residential areas should be maintained and enhanced.*

And

The retention of neighbourhood character and enhancement of garden city character is very important to the Monash community and redevelopment needs to be respectful of these character considerations.

1. Local Policy at 21.04-3 seeks to ensure that development growth is located within activity centres and the Monash National Employment Cluster (MNEC) in order to preserve the Garden City character of the remainder of the municipality. As the review site is located within the MNEC, there is exoneration within policy for both greater density and flexibility having regard to traditional Garden City values.
2. That said, this does not equate to a ‘blank cheque’. Context is still key in assessing the appropriateness of the development. In this instance, in addition to those elements iterated above, the following contextual elements are of relevance:
   * + - 1. The site is adjacent to residential properties on its south, east and west;
         2. The site is adjacent to multi-unit development where the opportunities to develop are limited (without the agreement of all owners);
         3. The multi-unit development to the east includes small private pen spaces that abut the review site;
         4. The site is not large in size at 756 square metres;
         5. The north south orientation of the site makes dense development difficult insofar as solar access to open spaces;
         6. Council have raised concerns with the street tree to the frontage close to the crossover (745mm)
         7. Three storey form in residential properties is not yet evident, but an expectation within zoning and policy;
         8. Housing diversity is already present, by way of typology, form and structure, and is further sought within policy;
         9. Landscaping in the area is sparse, relying heavily on street tree planting;
         10. Dwellings are generally older and coming to the end of their usefulness;
         11. Where newer dwellings have been constructed, these are generally multi-unit with upper levels set back from the ground level;
         12. Front setbacks are reasonably consistent;
         13. There are several lots with no front fencing;
         14. Rooves are pitched;
         15. Side setbacks of around 3 metres are provided to one elevation in older dwellings with newer multi-unit development being built close to or on side boundaries;
         16. Crossovers vary with newer development often including several crossovers.
3. Mr English submitted that the proposed development did not appropriately respond to the General Residential Zone 6 (GRZ6) in that the four dwellings proposed were large with three five bedroom dwellings and one four bedroom dwelling. He suggested too much accommodation was sought for the site. This, he suggested gives rise to concerns with massing and visual bulk of built form, particularly to dwelling 1 as it fronts the street. Specifically Mr English suggested that the ground level frontage lacked articulation with a garage including little setbacks from the dwelling frontage. He suggested this was exacerbated by the first floor element that was not set further back from the ground level element and cantilevered over the driveway to the western elevation.
4. I agree with this understanding of the development as it faces on to the street, but would go further. I find that the presentation of the cantilever form is poor in that it exacerbates the appearance of the upper levels, particularly to the western elevation. Not only does dwelling one cantilever to the western elevation over the driveway, but also dwellings two, three and four cantilever to this driveway. Indeed the cantilever to dwellings two and three is significant and extends to the two upper levels. The setback to the western elevation of dwellings two and three at ground level is 5.75 metres, with the setback of the level immediately above that 2.78 metres. This equates to a cantilever of just under 3 metres, which serves to overtly highlight the first floor of these two dwellings and bring a sense of enclosure to the driveway. Such enclosure is further emphasised with the three supporting structures to dwellings two and three further extending all the way to the western boundary. This design lacks response to character, limits opportunities for meaningful planting to the western side of the driveway, and results in a cavernous pedestrian entrance to dwellings two and three at ground level. This is not a design that is of a high standard as sought within policy for the MNEC, indeed it is in my opinion flawed and thoughtless due to the emphasis on upper level form, and upper level form that for dwellings two and three is constructed without articulation.
5. I agree that the site context and the PPF and local policy points to this area as being able to sustain a more intense level of change to accommodate future increases in dwelling stock. I also agree that the GRZ6 seeks *‘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’.* I agree with the submissions of Council and find that the proposed development offends against the objectives in the schedule to the zone having regard to the massing of the upper level cantilevered elements such that they appear as too close to the western side boundary, and offers little opportunity for landscaping.
6. I accept that the proposed dwellings satisfy the policy at Clause 22.01 with regard to minimising the scale and massing of the development by way of a reasonable maximum height of 9.6 metres. I am satisfied that this height responds well to the scale of the buildings on the immediately adjoining properties to the east where dwellings are constructed to a double and single storey scale. I noted during my site visit that the streetscape is clearly experiencing change by way of multi unit developments of up to two storeys replacing older dwellings. I am satisfied that the height of the building will not dominate the streetscape as the two storey scale to the frontage, with triple storey centrally located, responds well to the inconsistent built form scale in the streetscape, with dwellings ranging from one to two storeys.
7. I share Council’s concerns regarding the dual crossovers. These leave limited space for planting in the front setback and to the fence side of the driveways. I am otherwise satisfied that there is enough space for planting within the inner portion of the front setback. The lack of planting opportunities near the fence lines reduces opportunities for planting that might otherwise serve to screen and soften the appearance of the dominant upper level forms. The consideration of the number and location of crossovers is a decision guideline of the schedule to the GRZ3, whereas previously this matter has been ventilated only within policy. It is trite to say that the primacy of this aspect of the development has, as a result of this zone consideration, been raised above mere policy consideration. That said, the decision guideline is rather a blunt tool, with limited precision. I use this guideline as a tool of guidance in decision making. It is no more a prescription than other guidelines or objectives of the schedule to the GRZ6. It requires the consideration of the number and location of the crossovers, and the appropriateness therein. To that end, I have not been persuaded that the number of crossovers is unreasonable, only that their location serves to limit the opportunity to screen what is in itself built form that is inappropriate. What drives my concern here is, therefore, the built form, which is exacerbated by the location of the crossovers, that necessarily limit opportunities for appropriate screening in line with the expectation of the schedule to the zone. In addition to this I agree with Mr English that the location of the two three storey elements of dwellings two and three cannot be adequately screened to the east as the spaces provided in the courtyards are limited in area.
8. In any development that is pushed close towards the boundaries, there always comes fear of amenity impacts. In this case bulk and shading were hovering as concerns, but I am satisfied that the minor non-compliance with Standard B17 limits unreasonable impacts. Whilst I agree with Mr Hocking that the amenity impacts to the east are not unreasonable in this instance, it may well be that with the further setting back of the development from both side boundaries, a reduction in visual bulk will occur.
9. I also agree with Mr English that the open spaces of dwellings two and three are inadequate for the following reasons:
   1. They are overhung by 1.5 metre by the third floor above;
   2. Adjoining living areas that will have poor access to light due to the 1.5 metres overhang;
   3. They have an overreliance on screening due to being ‘reverse living’;
   4. Are small in size at 10 square metres and will need to accommodate utilitarian purposes that cannot be accommodated in the ground level courtyard or garage; and
   5. Face east with a wall directly to their north (party wall in the case of dwelling 3).
10. In coming to my conclusion to refuse this application for review I considered the option of setting the development off the side boundaries further and setting the upper level further back from the ground floor level. This involves too many unknown consequential changes that were not only not readily apparent (thus requiring an interim order to require plans to be provided), but also amounted to what I consider would be transformational changes. Changes would be required to the layout at ground level, the frontage presentation and the roof and wing wall presentation in order to ameliorate my concerns. .

## Other matters

1. In addition to the above concerns, the following considerations in any new design should be considered:
   1. Any new development should consider the retention of the existing street tree as the street tree makes a contribution to the streetscape where there is little private contribution to a landscape feel.
   2. In any new application vehicle access ought also be made reasonable and safe.
   3. Any new development would need to assess the usability of dwellings as outlines in Mr English’s submission as it related to dwelling four.
   4. Open space to dwelling one should be more useable by way of solar access. The current non-compliance of up to 3.12 metres is not appropriate for a dwelling with five bedrooms where it could reasonably be expected to accommodate at least 5 people.

## Conclusion

1. For the reasons given above, the decision of the responsible authority is affirmed. No permit is granted.

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| Alison Slattery  **Member** |  |  |

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. [↑](#footnote-ref-2)
2. Clause 21.04 [↑](#footnote-ref-3)
3. Clause 22.01-1 [↑](#footnote-ref-4)