

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1128/2022
PERMIT APPLICATION NO.TPA/53588

CATCHWORDS

Section 77 of the *Planning and Environment Act 1987* (Vic); Monash Planning Scheme; General Residential Zone (GRZ3); Multi-dwelling development; Neighbourhood character; Amenity Impacts and Clause 55.

JOINT APPLICANT	Nirmal Narayanmurthi & Supriya Venkatakrishnan
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	414 Huntingdale Road OAKLEIGH SOUTH VIC 3167
HEARING TYPE	Hearing
DATE OF HEARING	19 January and 1 May 2023
DATE OF ORDER	27 July 2023
CITATION	Narayanmurthi v Monash CC [2023] VCAT 856

ORDER

- 1 Pursuant to section 127 and clause 64 of Schedule 1 of the *Victorian Civil & 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: Mancini Design
 - Project number 0645.1, 0654.2, 0645.3, 0645.4, 0645.5, 0645.6, 0546.7, 0645.8, 0645.10, 0645.11 (all revision K)
 - Dated December 2021

Permit granted

- 2 In application P1128/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53588 a permit is granted and directed to be issued for the land at 414 Huntingdale Road Oakleigh South VIC 3167 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construct two or more dwellings on a lot.
 - Alter access to a road in a Transport Zone 2.



Shiran Wickramasinghe
Member

APPEARANCES

For Nirmal Narayanmurthi &
Supriya Venkatakrisnan

Mr A Clarke, town planner of Clarke Planning
Pty Ltd

For Monash City Council

Mr D De Giovanni, town planner of David
De Giovanni Town Planning



INFORMATION

Description of proposal	Construction of three, two-storey dwellings
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone, Schedule 3 (GRZ3) Abuttal to a road in Transport Zone 2 (TRZ2)
Permit requirements	Clause 32.08-6 - a permit is required for construction of two dwellings on a lot. Clause 52.29-2 – a permit is required to alter access to a road in a Transport Zone 2
Key scheme policies and provisions	Clauses 11, 15, 16, 21.04, 22.01, 32.08, 52.06, 52.29, 55 and 65.
Land description	<p>The site is located on the east side of Huntingdale Road and rectangular in shape. The site has frontage width of 15.32 meters, depth of 47.27 metres and area of 722 metres squared. A 1.83 metre wide drainage and sewerage easement is located proximate to the rear eastern boundary of the site.</p> <p>To the north at 412 Huntingdale Road are three, two-storey dwellings.</p> <p>To the south at 416 Huntingdale Road is a single-storey brick dwelling.</p> <p>To the east is the former Talbot Road quarry site.</p> <p>To the west o the opposite side of Huntingdale Road is the Huntingdale Golf Course.</p>
Tribunal inspection	An unaccompanied site inspection was conducted.



REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 This is an application to the Tribunal for review of the Monash City Council's (Council) refusal to grant a planning permit for the construction of three, two-storey dwellings.
- 2 Council refused the proposal on the following grounds:²
 - (1) The proposal is inconsistent with the Residential Development Policy at Clauses 21.04 and 22.01 of the Monash Planning Scheme as it fails to achieve architectural and urban design outcomes that positively contribute to the neighbourhood character having particular regard to the desired future character for the area.
 - (2) The proposal does not adequately satisfy the objectives and design standards of Clause 55 of the Monash Planning Scheme with regard to Clause 55.02-1 - Neighbourhood Character objectives; Clause 55.02-2 – Residential Policy objectives; Clause 55.03-2 – Building Height objective; Clause 55.03-8 – Landscaping objectives; Clause 55.04-1 – Side and Rear Setbacks objective; Clause 55.05-4 – Private Open Space objective; Clause 55.06-1 – Design Detail objective and Clause 55.06-2 – Front Fence objective.
 - (3) The design response fails to provide adequate room for the planting of canopy trees and any meaningful landscaping on the northern side of the development and there are no landscaping opportunities between any of the dwellings.
 - (4) The design response will result in a loss of amenity when viewed from the adjoining properties to the north and south by way of visual bulk and scale. The upper level of all 3 dwellings is extensive with only a 1.8m separation between Dwellings 1 & 2 and a continuous attachment at ground level and extensive upper level built form. The extend of upper-level built form, setback from the northern boundary will have a direct impact on the secluded open space areas of the adjoining properties particularly to the north.
 - (5) The proposed development is considered a poor design outcome and an overdevelopment of the site.

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.

² Council submission, paragraph 12, pages 3 and 4.



- 3 Council referred the application to the Department of Transport (DoT) under Section 55 of the *Planning and Environment Act 1987* (Vic) as a determining referral authority. DoT has no objection to the proposal and specified conditions it requires to be included on any permit that issues.
- 4 Since the lodgement of the application for review, the applicant circulated amended plans that I substituted for the planning permit application plans at the commencement of the hearing. The proposed changes amongst other things include:
- A reduction in the width of dwelling 1.
 - Deletion of the pergola element that was associated to dwelling 2.
 - Reconfiguration of the dwelling 2 at ground and first floor level to ensure compliance with the garden area requirement.
 - Consequential changes to the elevations and setbacks of dwelling 2.
 - Provision of screening to windows associated to dwelling 2 to limit overlooking.
- 5 In response to the amended plans Council's submission states the proposed modifications do not address their concerns. Council remains opposed to the proposal and continues to rely on its grounds of refusal.
- 6 The applicant submits:
- The site is located in a suitable area for more housing as three other lots in the immediate area have recently been developed with three dwelling developments. Therefore the proposed double storey forms are not problematic in the streetscape.
 - The proposal provides more landscaping than required by the local variation to Standard B13. Contextually the extent of landscaping is well above par when considered against other nearby residential lots. No significant vegetation is being removed.
 - There is no issue in relation to external amenity impacts.
 - Internal amenity is acceptable with reasonably dimensioned internal spaces, the northern aspect being maximised, screening minimised to allow outlook and surveillance and open space areas compliant with the Planning Scheme, bar for Unit 1 not being to the 'side or rear', which does not undermine its usability.

7 A number of Tribunal decisions were referred to by the parties in support of their positions. I have taken them into account.

WHAT IS THE RELEVANT PLANNING CONTEXT?

8 The site is zoned GRZ3, the relevant purposes of which are:³

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.

9 Relevant decision guidelines at clause 32.08-13 include:

Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:

General

- The Municipal Planning Strategy and the Planning Policy Framework.
- The purpose of this zone.
- The objectives set out in the schedule to this zone.
- Any other decision guidelines specified in a schedule to this zone.
- The impact of overshadowing on existing rooftop solar energy systems on dwellings on adjoining lots in a General Residential Zone, Mixed Use Zone, Neighbourhood Residential Zone, Residential Growth Zone or Township Zone.

Dwellings and residential buildings

- For the construction and extension of two or more dwellings on a lot, dwellings on common property and residential buildings, the objectives, standards and decision guidelines of Clause 55.

10 Clause 32.08-4 specifies a minimum garden area of 35% applies to the proposal and clause 32.08-10 specifies a maximum building height of 11 metres and three-storeys.

11 Clause 1.0 to schedule 3 to clause 32.08 provides 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.

³ Clause 32.08.



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.

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

- 12 At clause 4.0 to schedule 3 to clause 32.08, there are a number of varied clause 55 standards:
- a. Minimum street setback: Standard B6, walls of buildings should be set back at least 7.6 metres from the front street. Side street setbacks in accordance with standards A3 and B6 continue to apply.
 - b. Site coverage: Standard B8, 50% maximum site coverage (compared to the 60% maximum default provision at clause 55.03-3).
 - c. Permeability: Standard B9, 30% minimum (compared to the 20% minimum default provision at clause 55.03-4).
 - d. Landscaping: Standard B13, new development should provide or retain:
 - At least one canopy tree, plus at least one canopy tree per 5 metres of site width;
 - A mixture of vegetation including indigenous species;
 - Vegetation in the front, side and rear setbacks; and
 - Vegetation on both sides of accessways.

A canopy tree should reach a mature height at least equal to the maximum building height of the new development.
 - e. Side and rear setbacks: Standard B17, a new building not on or within 200 millimetres of a rear boundary should be set back at least 5 metres. Side setback requirements in accordance with standards A10 and B17 continue to apply.
 - f. Private open space: Standard B28, a dwelling or residential building should have private open space consisting of:
 - An area of 75 square metres, with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum dimension of 5 metres and convenient access from a living room; or



- A balcony or roof-top area of 10 square metres with a minimum width of 2 metres and convenient access from a living room.
 - g. Front fence height: Standard B32, A front fence within 3 metres of a street should not exceed 1.2 metres in height.
- 13 Clause 7.0 to schedule 3 to clause 32.08, provides the following additional relevant decision guidelines to those specified in clause 32.08:
- Whether the development provides an appropriate transition to built form on adjoining sites.
 - The robustness of proposed materials and finishes.
 - The impact of the shape and dimensions of the lot on the ability of the development to meet any requirements of this schedule.
 - The location and number of vehicle crossovers.
 - The impact of the development on nature strips and street trees.
 - The location, quantity and species of vegetation provided.
- 14 The Residential development framework map at clause 21.04-1, shows the site to be located in the ‘Category 8 – Garden City Suburbs’. The Category 8 – Garden City Suburbs areas are identified as areas suitable for ‘incremental change’.⁴
- 15 At Clause 22.01-4, Preferred future character statements, the Residential character types map shows the site to be in the Garden City Suburbs Southern character area. The preferred future character statement for the Garden City Suburbs Southern area is as follows:

Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes. On larger sites, low rise apartment development may be appropriate, provided the development is sited within generous open space, is well landscaped, retains the ‘open landscape character’ of the garden suburban setting and tapers down in scale closer to the boundaries of the site.

While the housing mix within this area will continue to evolve to meet the changing needs of the community, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous spacious, open, landscaped character of the area.

This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.

⁴ Clause 21.04-1, Residential development framework.



Front fences will be low to enable vegetation to be visible from the street, allow clear views of buildings and give the street an open quality. Fencing will complement the architecture of the building in design, colour and materials.

Existing mature trees and shrubs within properties should be retained and additional tree planting proposed to gradually create a tree canopy in the private domain, including at the rear of properties. This will create a visually permeable buffer between the house and street. The soft quality of the street that is derived from the wide nature strips and street tree planting will be maintained by ensuring that there is only one crossover per lot frontage.

Expanses of blank, or continuous, walls will be avoided, particularly when adjacent to public parks or creating the appearance of a continuous building mass. The character of existing public open space within the area will be protected by ensuring that buildings directly adjacent are set back and buffered with planting that complements that within the public open space.

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

16 Clause 21.04-3, Objectives, strategies and implementation includes the following relevant Objectives and Strategies :

Objectives

- 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.
-
- To recognise and provide for housing needs of an ageing population in proximity to neighbourhood and activity centres.
-
- To encourage a high standard of architectural design in buildings and landscaping associated with residential development that takes into account environmentally sustainable development.



•

Strategies

- Ensure that new residential development enhances the character of the neighbourhood, having regard to the preferred future character statements contained within Clause 22.01.
- Ensure that development enhances the garden city and landscaped streetscape character of the neighbourhood, responds to the features of the site and surrounding area and promotes good streetscape design.
- Encourage vegetation retention and provision on development sites.
- Ensure that new residential development provides a high level of amenity including internal amenity, privacy for occupants and neighbours, access to sunlight, high quality private and public open space, canopy tree cover, and effective traffic management and parking.

.....

- Maintain the predominantly single detached dwelling character in suburban areas by promoting low rise development as the preferred character for the majority of the residential areas within the city.
- Direct more intensive, higher scale development to neighbourhood and activity centres that are well serviced by public transport, commercial, recreational, community and educational facilities.
- Support substantial residential growth within the Monash National Employment Cluster to provide housing closer to where people work and study.
- Allow some residential growth along those parts of the boulevards (Springvale Road and Princes Highway) that can support higher scale development in terms of neighbourhood character and accessibility.

.....

- Promote a variety of dwelling sizes and types to promote greater affordability of housing and choice in medium and large urban developments.

.....

- Use best practice environmentally sustainable design to maximise comfort and residential amenity, and minimise the environmental impact and running costs of residential development.

.....



- 17 Clause 22.01-3 includes Objectives, General policy as well as policy specific to Street setback, Site coverage and permeability, Landscaping, Side and rear setbacks, Walls on boundaries, Private open space, Fences, Vehicle crossings, Built form and scale of development, Car parking and Environment.
- 18 Relevant decision guidelines at clause 22.01-5 include:
- The applicable preferred future character statement.
 - Whether the development will have an adverse impact on neighbourhood character.
 - Whether the development will have an adverse impact on the amenity of adjoining properties.
 - Whether the development will have an adverse impact on the environment.

WHAT ARE THE KEY ISSUES?

- 19 Having regard to the submissions, the key issues for determination may be expressed as follows:
- Does the development acceptably respond to the preferred neighbourhood character ?
 - Does the development create unacceptable off-site amenity impacts?
- 20 Having considered the submissions, with regard to the relevant policies and provisions of the Planning Scheme, I have determined to set aside the Council's decision. My reasons follow.

DOES THE DEVELOPMENT ACCEPTABLY RESPOND TO THE NEIGHBOURHOOD CHARACTER?

- 21 The Council submits the proposal is not in-keeping with the existing and preferred character and is inconsistent with relevant purposes of the GRZ3 policy at clause 22.01 and the Garden City Suburbs (Southern) future character statement. More specifically Council submits:⁵
78. It is important to add that Council is not opposed to medium density housing in this location. This is evident in its decision to approve 3 dwelling developments to the north of the site at 412 and further south at 426 Huntingdale Road.
-
85. There is little recession between the ground and first floor footprint of dwelling 1 when viewed straight on, and also at the oblique. The limited separation between levels adds a level of hardness and dominance in built form that is not commensurate with recent approvals along this section of Huntingdale Road.

⁵ Council submission pages 19 and 21.



86. The solid and 2.0m high front fence limits views to the front garden area and proposed vegetation. It serves in accentuating the bulk of the building mass, rather than landscaping as encouraged by policy.
87. Within the site itself, the layout proposes a level of building intensity that is again foreign in this stretch of Huntingdale Road.
88. The first floor footprint extends unbroken save for the 1.8m gap between dwellings 1 and 2. This narrow gap has little visual benefit unless standing directly opposite it.
89. As discussed earlier, the breadth of the two storey form and limited effect of the solitary 1.8m gap is at odds with the emerging character of recently approved/constructed medium density housing developments.
90. The consistency of first floor gaps between dwellings now represents the emerging character.
91. The abutting development to the north at 412 Huntingdale Road has just one first floor gap, however this gap is generous at 5.0m. Furthermore, its dwelling 3 has its first floor footprint that is setback a significant 13.4m from the rear boundary facing the review site.

22 The applicant in support of the proposal submits:⁶

The proposal has an adequate front setback at ground and first floor level, an articulated double fronted façade with around half its width setback over 10m and the other half a ‘compliant’ 7.6m. It is sufficiently setback from side boundaries so as to preserve a detached housing typology (as opposed to say the often on-boundary outcome under a side-by-side proposal). It would lastly just leave a consideration as to what degree of ‘breaks and recesses’ are needed for an acceptable ‘streetscape’ outcome. When one follows either ground, or perhaps more critically the first floor envelope it is considered that it contains sufficient ‘recesses’. The first floor not just a long monotonal box like shape. Pitched roofing with eaves lines that drape down below the ceiling line compact its verticality. No side wall is on a single plane for a length any more than 7m. The side walls of Unit 1, which have the most ‘streetscape’ influence have sufficient ‘recesses’.

23 I have been persuaded by the applicant and find the proposal is an acceptable response with respect to the existing neighbourhood character subject to some changes that can be address by modification.

⁶ Applicants submission paragraph 53.



- 24 The site is located within an established suburban area that historically comprised eight lots with frontage to Huntingdale Road as shown below:



Source: Nearmap (image captured 16 February 2023)

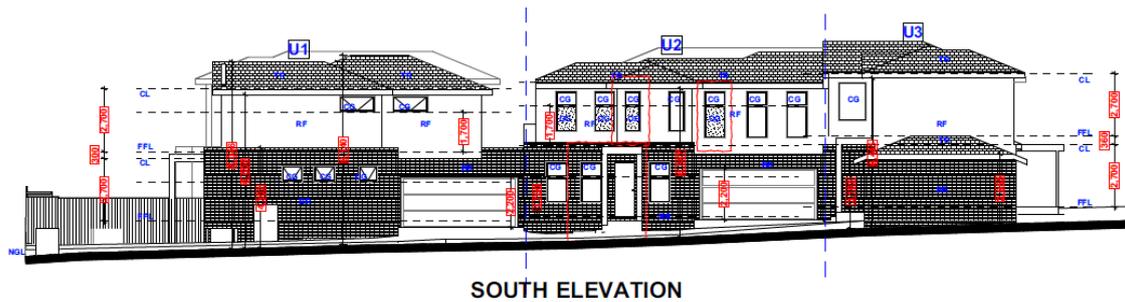
- 25 Three of these lots have been redeveloped with multi-dwelling development. More specifically 412, 420 and 426 Huntingdale Road are each occupied by multi dwelling developments that comprise three, two-storey dwellings on each site. The area has experienced change and the existing character is a mix of the older single-storey dwellings and newer two-storey multi-dwelling developments including the three dwelling development located on the adjoining site at 412 Huntingdale Road as show in the streetscape elevation drawing below.



STREET SCAPE ELEVATION

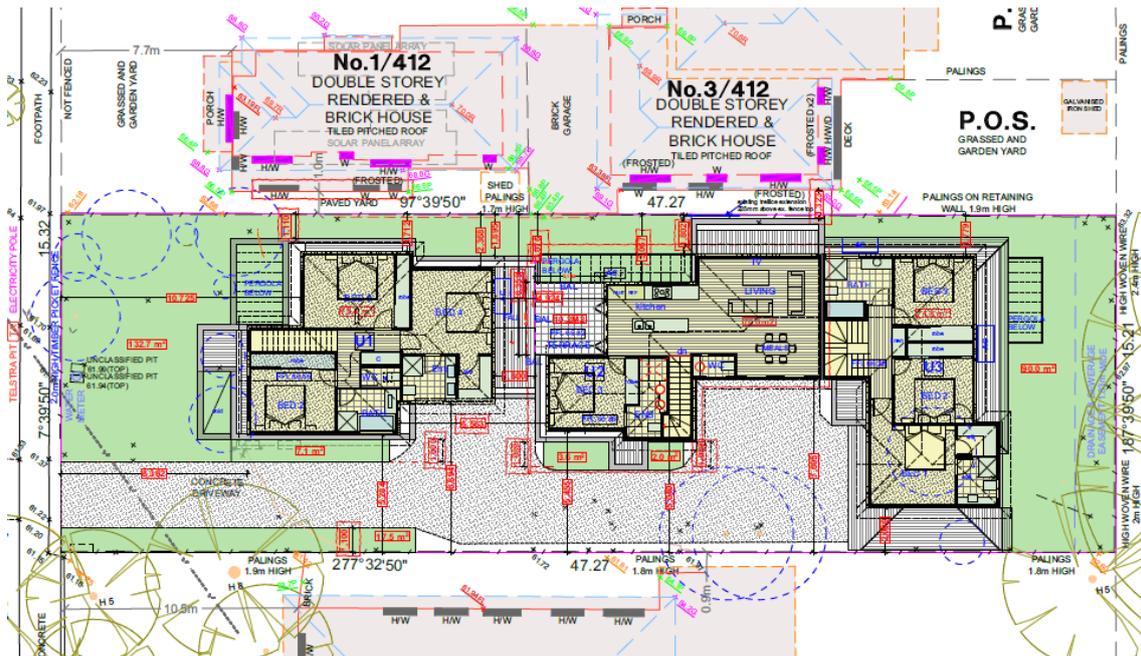
Source: Applicant

- 26 The approximate 7.1 metre maximum height of dwelling 1 combined with the articulated façade as shown above is an acceptable design response that will not have an unacceptable impact on the streetscape. The ground and first floor areas are proposed to be setback approximately 7.6 metres and 8.3 metres respectively from the front boundary. Further the first floor area is setback a minimum 1.1 metres and 5.2 metres respectively from the north and south boundaries ensures there is space around the dwelling when viewed from the streetscape. The design response combined with the proposed setbacks will enable the proposal to blend with the existing streetscape.
- 27 The design represents a contemporary response to the existing character with respect to the appearance of the proposed dwellings. The construction materials include face brickwork, render and a tiled roofing. These materials are consistent with those that have been used in the area. The mix of materials will acceptably contribute to the existing neighbourhood character.
- 28 Council is critical of the limited recession between the ground and first floor footprint of dwelling 1 when viewed from the street. I have not been persuaded and find the design response to be acceptable. The first floor area of dwelling 1 has a setback varying from 8.3 metres to 10.7 meters from the street frontage and is recessive to the ground floor walls and associated porch structure. Whilst the south elevation first floor wall of dwelling 1 has limited recession from the ground floor wall below, I find the design response to be acceptable having regard to limited length of this wall of approximately 6.7 metres and break in form created by the variation in materials that comprise face brick work at ground level and render at the first floor level as shown below:



Source: Applicant

- 29 The dwellings are two-storey, with dwellings 1 and 2 having an approximate maximum height of 7.1 metres and dwelling 3 having a maximum height of approximately 7.4 metres. The scale and height of the dwellings complies with the maximum 11.0 metre height and 3 storeys specified at clause 32.08-10 of the Planning Scheme and in-keeping with the emerging character.
- 30 The layout of the development is an acceptable response to the neighbourhood character in the context of a multi-dwelling development. The 7.6 metre setback of dwelling 1 from the frontage is generally consistent with the 7.7 metre setback of the abutting multi-dwelling development and meets the requirements of the varied Standard B6 at clause 4.0 to schedule 3 to clause 32.08. Dwellings 2 and 3 are sited behind dwelling 1 and also setback from the boundaries with the exception of their garage that are located on the north and south boundary respectively. The siting of the dwellings provides space around the dwellings.
- 31 The first floor areas of the dwellings have varying setbacks from the north, east and south boundary as shown below. Having regard to the context of the site that includes the siting of the multi-dwelling development located at 412 Huntingdale Road proximate to the common boundary with the subject site and the varying setback from the south boundary the proposal will not have an unacceptable impact on the existing pattern of development.



Source: Applicant

- 32 Whilst the proposal is consistent with the existing pattern of development with respect to setbacks, I share Council’s concern regarding the limited separation in built form at the first floor level. The length of built form at the first floor level is approximately 31.0 metres with a 1.8 metre separation between dwellings 1 and 2. The built form of existing nearby multi dwelling developments at 412, 420 and 426 Huntingdale Road generally provides a greater separation at first floor level. In this context the proposed length of built form at first floor level is not in keeping with the existing neighbourhood character.
- 33 Therefore a greater separation between dwellings 1 and 2 should be provided. A separation of approximately 4.5 metres between dwellings 1 and 2 would generally align with the separation between the first floor levels of the abutting dwellings located to the north. The separation will provide greater space between the first floor built form that is consistent with the existing character. Accordingly a condition requiring a minimum 4.5 metres separation will be imposed.
- 34 Council is critical of the proposed 2.0 metres high timber picket front fence and say that it will limit views to the front garden area and proposed vegetation. The plans show the provision of front fencing across the site frontage. The fencing will enclose the front setback and the secluded private open space (SPOS) associated to dwelling 1 that is located within the front setback. The site currently has 2.0 meter high timber front fence.

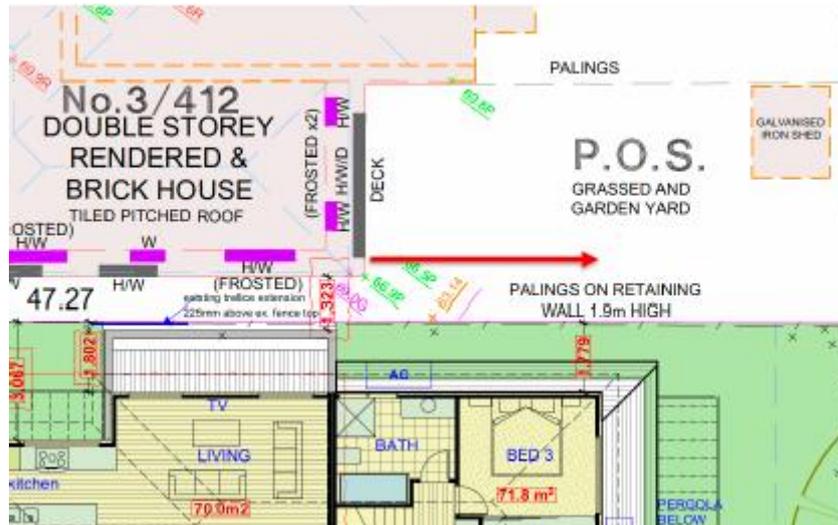
- 35 The varied Standard B32 at clause 4.0 of schedule 3 to clause 32.08 seeks a front fences within 3 metres of a street to not exceed 1.2 metres in height. Further the future character statement⁷ seeks front fences to be low to enable vegetation to be visible from the street, allow clear views of buildings and give the street an open quality.
- 36 The site currently has a tall front fence. However, having regard to the provisions of the varied Standard B32 and relevant decision guidelines at clause 55.06-2, Front fence objective, I find the front fence as proposed is not an acceptable response. The nearby sites comprise a mix of unfenced and fenced frontages. Notably the abutting multi dwelling development at 412 Huntingdale Road does not have a front fence whilst the older abutting site to the south has a low brick fence. In this context I find the location and extent of fencing within the front setback to be unacceptable and not in-keeping with the existing or preferred character of the area.
- 37 There is opportunity to relocate the fence and limit the extent of front setback that is enclosed and meet the provisions of varied Standard B32 at clause 4.0 of schedule 3 to clause 32.08. This can be achieved by requiring the fence to be set back 3.0 metres from the front boundary and limiting the extent of fencing to solely enclose the SPOS located with the front setback. A condition requiring this outcome will be imposed.
- 38 Having regard to the above, subject to some modification the proposal is an acceptable response to the existing and preferred neighbourhood character.

DOES THE DEVELOPMENT CREATE UNACCEPTABLE OFF-SITE AMENITY IMPACTS?

- 39 The Council raised concerns regarding unacceptable impacts with respect to visual bulk, overlooking and noise. Council submits the design response shows insufficient regard to the siting of location of the abutting courtyard associated to the dwelling at 3/412 Huntingdale Road as shown below:

⁷ Clause 22.01-4, Future character statements, Garden City Suburbs (Southern) Character Area.





Source: Council submission⁸

- 40 I have not been persuaded by Council as the courtyard is located to the north of the subject site and the proposed dwelling is set back a minimum 1.7 metres from the common boundary. This siting ensures there will be no shadow impacts on the court yard from the proposed dwelling. Further the existing northern and eastern outlook from the courtyard is not impacted by the proposal.
- 41 Councils raised concerns about the potential impact of noise from the use of the balcony associated to dwelling 2. The noise generated on the balcony will be associated to a residential use and in this context I have not been persuaded that noise impact will be unacceptable. Further I note the location of the balcony is generally opposite the garages associated to the dwellings at 412 Huntingdale Road and is therefore not proximate to a noise sensitive location.
- 42 Council is also concerned with potential overlooking into a ground floor habitable room window associated to dwelling 3 at 412 Huntingdale Road from the balcony associated to dwelling 2. They say an oblique view will be possible from the balcony as shown below:

⁸ Council submission page 25.



Source: Council⁹

- 43 The applicant submits the balcony associated to dwelling 2 does not require screening as it does not gain views into the ground floor kitchen window (that is presumed to be part of a habitable room). They further submit the balcony does not overlook into first floor habitable room windows associated to the dwellings located at 412 Huntingdale Road as these are already screened themselves and is approximately 1.0 metre higher as well.
- 44 There is a lack of clarity shown on the plans with respect to overlooking from the balcony. Accordingly a condition has been imposed requiring compliance with Standard B22 of clause 55.04-6, Overlooking objective.

ARE THERE ANY OTHER ISSUES?

- 45 Council raised concerns with respect to the landscape response and submitted that there is inadequate space within the front setback to plant the three Ornamental Pear trees as proposed. They also submit there is inadequate canopy tree planting along the driveway and to the front of dwellings 2 and 3.
- 46 The applicant submits the five trees proposed are reasonably spread out through the site and their mature height of approximately 10.0 metres will have a lasting impact.

⁹ Council submission, page 27.

47 The provision of 5 canopy trees as proposed meets the provisions of varied Standard B13, Landscaping at clause 4 to Schedule 3 to clause 32.08. However I agree with Council the landscape plan provides limited canopy tree planting in the middle section of the site, in particular the SPOS associated to dwelling 2. The provision of additional planting throughout the site will enable the proposal to make a greater contribution to the landscape character of the area. Accordingly a conditions requiring the provision of additional planting will be imposed.

WHAT CONDITIONS ARE APPROPRIATE?

48 The draft conditions circulated by Council included conditions requiring the conduct a Landfill Gas Assessment in the context of the site's abuttal to the former Talbot Road quarry site. The parties advised the Tribunal the relevant conditions were standard and not unusual in the circumstances of the subject site. The applicant did not oppose the conditions. In this context I have included the relevant conditions.

CONCLUSION

49 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

Shiran Wickramasinghe
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53588
LAND	414 Huntingdale Road OAKLEIGH SOUTH VIC 3167

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construct two or more dwellings on a lot.
- Alter access to a road in a Transport Zone 2.

CONDITIONS

- 1 Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the plans prepared by Mancini Design, Revision K and dated Dec 21, but modified to show:
 - (a) A minimum 4.5 metre separation between dwellings 1 and 2 at first floor level with no reduction in other setbacks.
 - (b) Details of gradient changes along the driveway and entry points to the respective garages, demonstrating compliance with design standard 1 of Clause 52.06-9 of the Monash Planning Scheme.
 - (c) The driveway to have a minimum width of 3.0 metres in accordance with design standard 1 of Clause 52.06-9 of the Monash Planning Scheme.
 - (d) A 4.0m internal radius provided to each garage in accordance with design standard 1 of Clause 52.06-9 of the Monash Planning Scheme.
 - (e) The northern wall of dwelling 2 designed to achieve compliance with Standard B19 (daylight to windows objective).
 - (f) Overlooking from the first floor terrace of dwelling 2 limited to meet the requirements of clause 55.04-6, Standard B22, Overlooking objective of the Monash Planning Scheme.
 - (g) The front fence setback a minimum 3.0 metres from the west (front) boundary and 10.0 metres south (side) boundary of the site. The extent of fencing within the front setback is to be limited to solely enclose the SPOS associated to dwelling 1 as shown on the plans.
 - (h) An updated Landscaping Plan in accordance with Condition 3.



- 2 The development as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.

Landscape Plan

- 3 Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. When endorsed, the plan will form part of the Permit. The Landscape Plan must be generally in accordance with the Landscape Concept Plan prepared by Land Concepts, 31 January 2023 except that the plan must be modified to show:
 - (a) The tussock grass to the common driveway replaced with a plant/shrub that will grow at least 1.0 metre in height.
 - (b) Details of the pavers extending from dwelling 1 to the front boundary and the material they will be set within.
 - (c) The provision of additional planting including shrubs within the landscape areas located along both sides of the driveway.
 - (d) The provision of a canopy tree in the private secluded open space of dwelling 2 and vegetation that will grow above the boundary fence height to the north of dwelling 3.
 - (e) The legend to detail all surface treatments.

Conditions 4 to 6 – Department of Transport Conditions

- 4 Prior to the occupation of the development, the crossover and driveway must be constructed to the satisfaction of the Responsible Authority; and at no cost to the Head, Transport for Victoria.
- 5 If applicable, any security boom, barrier, gate or similar device controlling vehicular access to the premises must be setback a minimum of 6m inside the property boundary to allow vehicles to store clear of the Huntingdale Road pavement and footpath.
- 6 Vehicles must enter and exit the site in a forward direction at all times.

Drainage

- 7 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
- 8 The private on-site drainage system must prevent stormwater discharge from the/each driveway over the footpath and into the road reserve. The internal drainage system may include either:
 - A trench grate (minimum internal width of 150mm) located within the property boundary and not the back of the footpath; and/or



- Shaping the internal driveway so that the stormwater is collected in grated pits within the property; and/or
 - Another Council approved equivalent.
- 9 All stormwater collected on the site 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 drainage works commencing.
 - 10 The nominated point of stormwater connection for the site is to the south-west corner of the property where the entire site's stormwater must be collected and free drained via a pipe to the kerb and channel in the naturestrip via a Council approved kerb adaptor to be constructed to Council standards. Note. If the point of connection cannot be located then notify Council's Engineering Department immediately.
 - 11 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
 - 12 All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
 - 13 Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
 - 14 Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.
 - 15 Engineering permits must be obtained for new or altered vehicle crossings and new connections to kerb and channel and these works are to be inspected by Council's Engineering Department. A refundable security deposit of \$1000 is to be paid prior to the drainage works commencing.
 - 16 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.
 - 17 The retained Council street tree at the front of the site must be protected by temporary rectangular wire fencing accordance with AS4970-2009 for a distance of at least 3.0 metres from the base of the tree.



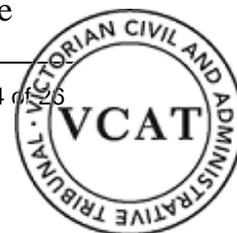
Landfill Gas Assessment

18 Prior to the commencement of the development authorised under this permit (excluding works reasonably required to conduct the landfill gas assessment), the permit holder must to the satisfaction of the Responsible Authority:

- (a) Engage an appropriately qualified site assessor with demonstrated experience in the assessment of landfill gas in the subsurface environment, to conduct an assessment of any methane within the land, subsurface services and buildings and structures on the land adopting the methane gas action levels prescribed at items 6 and 7 of schedule 3 of the Environment Protection Regulations 2021 (Vic) as set out below.

<i>Item</i>	<i>Location for assessing methane gas concentration action levels</i>	<i>Methane gas concentration action level</i>
6	Subsurface services on, and adjacent to, the waste	10,000 parts per million
7	Buildings and structures on, and adjacent to, the waste	5000 parts per million

- (b) Ensure that the site assessor prepares a report to be submitted to the Responsible Authority. The landfill gas risk assessment (LGRA) should be based on guidance prepared by the Environment Protection Authority from time to time and / or made under the Environment Protection Act 2017 (Vic) and subordinate legislation. As at the issue date of this permit, such ‘guidance’ includes EPA Publication 788.3 (Landfill Best Practice Environmental Management or Landfill BPEM) and EPA Publication 1684 (Landfill gas fugitive emissions monitoring guideline).
- (c) If the landfill gas assessment identifies methane at concentrations exceeding the methane gas concentration action levels, the permit holder must engage the services of an EPA-appointed environmental auditor to complete an environmental audit with a scope limited to:
- i assessment of the nature and extent of the risk of harm to human health from waste;
 - ii recommending measures to manage the risk of harm to human health from waste;
 - iii making recommendations to manage any waste, where the landfill extends onto or beneath the land.
- (d) The permit holder must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the



Environment Protection Act 2017 (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the Environment Protection Act 2017 (Vic).

LGA - PEER REVIEW

- 19 Prior to the commencement of the development authorised under this permit, the permit holder must:
- (a) provide to Council a copy of the LGRA undertaken in accordance with condition 18 within 14 days of receiving the LGRA;
 - (b) pay Council's costs and expenses associated with a Council-arranged peer review of the LGRA. The peer review will be undertaken by an independent and suitably qualified environmental consultant nominated by Council; and
 - (c) obtain a copy of the peer review obtained by Council.

The recommendations of the LGRA including any requirements arising from the peer review are to be implemented by the permit holder.

LGA - Environmental Audit (Section 53V)

- 20 Prior to the commencement of works (excluding works reasonably required to conduct the environmental audit), the owner of the land must to the satisfaction of the responsible authority:
- (a) engage an environmental auditor to complete an environmental audit with a scope limited to:
 - (b) assessment of the nature and extent of the risk of harm to human health from waste;
 - (c) recommending measures to manage the risk of harm to human health from waste;
 - (d) making recommendations to manage any waste, where the waste extends onto or beneath the land. The land owner must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the Environment Protection Act 2017 (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the Environment Protection Act 2017 (Vic).

Sustainable Design Assessment

- 21 Concurrent with the endorsement of plans pursuant to Condition 1, a Sustainable Design Assessment (in accordance with Clause 22.13 of the Monash Planning Scheme) must be submitted to and approved by the Responsible Authority. Upon approval the Sustainable Design Assessment



will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the Sustainable Design Assessment to the satisfaction of the Responsible Authority.

Expiry

- 22 This permit as it relates to development (buildings and works) will expire if one of the following circumstances applies:
- (a) The development is not started within two (2) years of the issue date of this permit.
 - (b) The development is not completed within four (4) years of the issue date of this permit.

In accordance with section 69 of the *Planning and Environment Act 1987*, an application may be submitted to the responsible authority for an extension of the periods referred to in this condition.

