

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1077/2023
PERMIT APPLICATION NO. TPA/54748

CATCHWORDS

Alterations and extension to existing building, impact on neighbourhood character, landscape contribution

APPLICANTS	Spiros Nikolakakis Pty Ltd and J & S Nikolakakis Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	96 Ferntree Gully Road OAKLEIGH EAST
HEARING TYPE	Hearing
DATE OF HEARING	4 December 2023
DATE OF ORDER	8 January 2024
CITATION	Spiros Nikolakakis Pty Ltd and J & S Nikolakakis Pty Ltd v Monash CC [2023] VCAT 1441

ORDER

- 1 In application P1077/2023 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/54748 a permit is granted and directed to be issued for the land at 96 Ferntree Gully Road, Oakleigh East in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Alterations and additions to the existing building comprising of four dwellings and construct a front fence within three metres of a street.

K Birtwistle
Member



APPEARANCES

For Spiros Nikolakakis Pty Ltd and J & S Nikolakakis Pty Ltd N Taylor of Devcon Planning Services Pty Ltd

For Monash City Council A Kellock of Kellock Town Planning Pty Ltd



INFORMATION

Description of proposal	Alterations and additions to the existing building which comprises four 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') Abuts land in the Transport Zone 2
Permit requirements	Clause 32.08-6 – Extend a dwelling if there are two or more dwellings on a lot and to construct a front fence within three metres of a street
Land description	The site is located on the south side of Ferntree Gully Road approximately 60 metres west of its intersection with Dublin Street, Oakleigh East. The site has a width of 18.29 metres, a length of 42.67 metres and an overall area of approximately 780 square metres. It has a fall of approximately 3 metres from the rear (south) towards the north (front), with much of the slope occurring towards the frontage of the land. It is currently developed with an unoccupied two storey building with hardstand areas.
Tribunal inspection	Unaccompanied subsequent to the hearing.



REASONS¹

- 1 Spiros Nikolakakis Pty Ltd and J & S Nikolakakis Pty Ltd (the ‘applicants’) propose to undertake alterations and additions to the existing two storey building (which contains four dwellings), at 96 Ferntree Gully Road, Oakleigh East. In August 2023, Monash City Council (the ‘council’) determined to refuse to grant a planning permit for the proposed development on the following grounds:
 - The proposal is inconsistent with the residential development policy outcomes sought at Clauses 21.01, 21.04 and 22.01 of the Monash Planning Scheme as it fails to respect the garden city and neighbourhood character and is an overdevelopment of the land.
 - The proposal fails to satisfy Clause 55 provisions of the planning scheme relating to neighbourhood character, integration with the street, site layout and building massing, building entries, secluded private open space provision, internal amenity, landscaping, and detailed design.
 - The proposal is a poor design response for the site.
- 2 The applicants have requested the Tribunal review the council’s decision.
- 3 The applicants say that this is an application to alter and extend an existing older unit development, which is in need of refurbishment and renovation in order to make the units liveable. They say that the test for assessing the application is whether the changes proposed result in an overall outcome which is an improvement upon existing conditions on the site and whether it will result in a net improvement which is acceptable in the context of policy provisions, the existing development on the site and the surrounding development.
- 4 The site is currently developed with four dwellings and the proposal does not alter the quantum of dwellings on the land. The issue in dispute is whether the particular design response adopted, which extends and refurbishes the existing dwellings, is appropriate based on the specific neighbourhood character and the policy framework that applies to the site.
- 5 I must decide whether a permit should be granted and, if so, what conditions should be applied. Having considered all submissions presented with regard to the applicable policies and provisions of the Monash Planning Scheme, I have decided to set aside the decision of the responsible authority and direct that a permit be granted.
- 6 My detailed reasons follow.

¹ The submissions of the parties, any supporting exhibits provided to 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.



WHAT IS THE EXISTING PHYSICAL CONTEXT?

- 7 The land is currently developed with a two storey building built in approximately 1971, that comprises four dwellings, two per level. A single storey communal laundry is sited at the rear of the building.



Figure 1: Existing streetscape. Source: Council submission

- 8 Vehicle access to the land is provided via a single width crossover located at the western side of the property. Car parking (four in total) is provided adjacent to the rear property boundary in an open air format. The majority of the rear setback is paved.
- 9 Pedestrian access to the two ground floor dwellings (Dwellings 1 and 2) is provided via entry doors located on the west side of the building, facing the common driveway.
- 10 A staircase at the rear of the building provides access to a walkway that runs along the western side of the upper floor, which provides access to the two first floor dwellings (Dwellings 3 and 4).
- 11 The front two dwellings (Dwelling 1 at ground level and Dwelling 3 at first floor level) have a similar internal layout. The rear two dwellings (Dwelling 2 at ground level and Dwelling 4 at first floor level) also have a similar internal layout, which is essentially a mirror image of the layout of the front two dwellings. Each dwelling contains living areas and two bedrooms.
- 12 A low rock retaining wall, which has a height of approximately 0.9 metres extends across the site frontage.

- 13 None of the existing dwellings are provided with secluded private open space. The area to the east of the building, which has a width of approximately 4.5 metres, comprises a communal service area that is largely paved and contains clothes lines. Direct access to this area is provided from Dwelling 1 only, via an east facing door within its kitchen.
- 14 Land to the east is developed with a single storey dwelling, while land to the west and to the rear is developed with a two storey residential aged care facility, with buildings set back 7 metres from the side boundary and approximately 5.5 metres from the rear boundary. Across its frontage is a high brush fence.

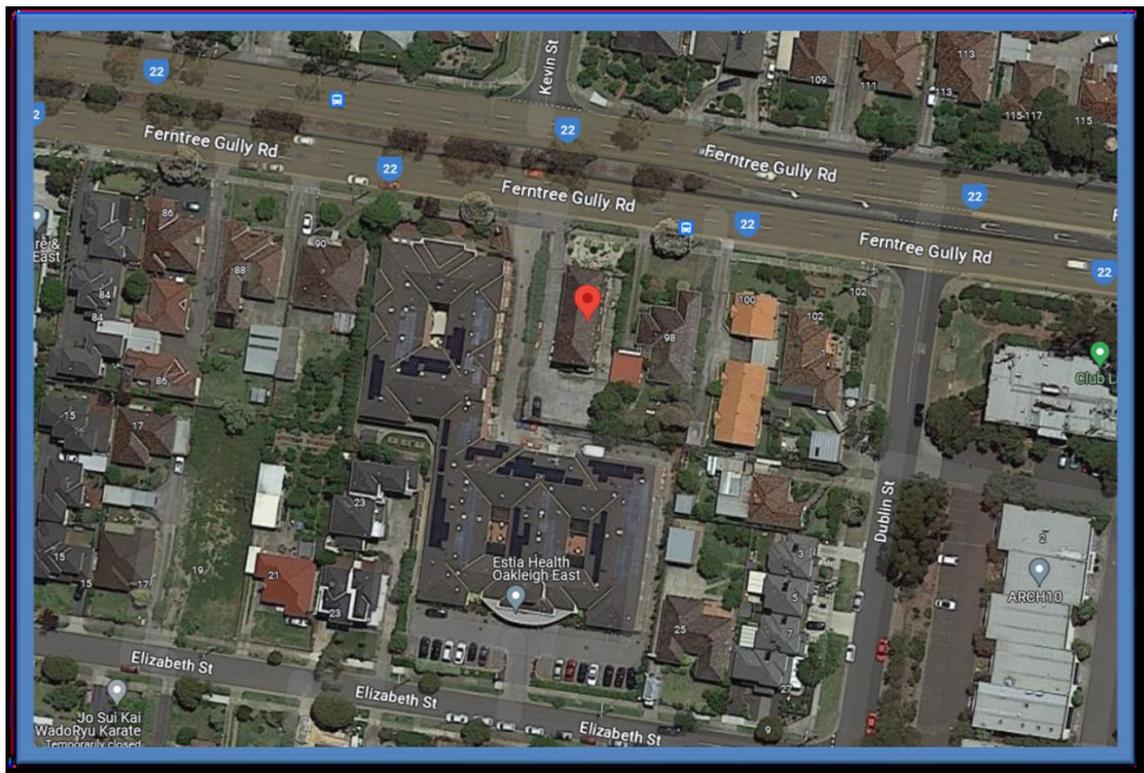


Figure 2: Aerial image with site annotated. Source: Applicants submission

PROPOSAL

- 15 The proposal involves alterations to the existing building and associated works including construction of two carports at the rear and rebuilding of existing retaining walls/boundary fencing to the same overall height.
- 16 At ground level it is proposed to extend the ground level units to the east, where there are currently communal clothes lines. The extension will provide a dining room and third bedroom with ensuite bathroom for Dwellings 1 and 2. Internal light courts are to be provided to each unit providing natural light to the ensuites and bedrooms.
- 17 Dwelling 1 will be provided with private open space located within the front setback together with a light court and service area to the east of the

dwelling. Total private open space will be approximately 105.1 square metres.

- 18 Dwelling 2 will be provided with private open space located to the side and rear together with clothes lines, store and bin storage. Total private open space will comprise an area of approximately 46.6 square metres.

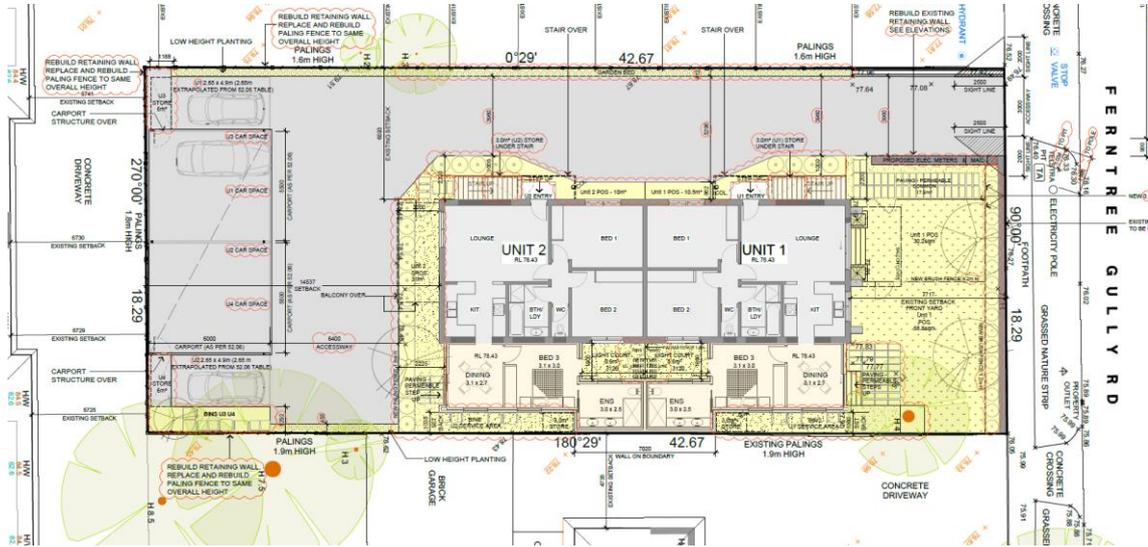


Figure 3: Ground level floor plan

- 19 At the upper level, Dwellings 3 and 4 will likewise be extended to the east with new dining rooms provided to each unit. Private open space in the form of balconies of 10 square metres will also be provided with access directly from the lounge rooms of these dwellings. No additional bedrooms are proposed for these dwellings.

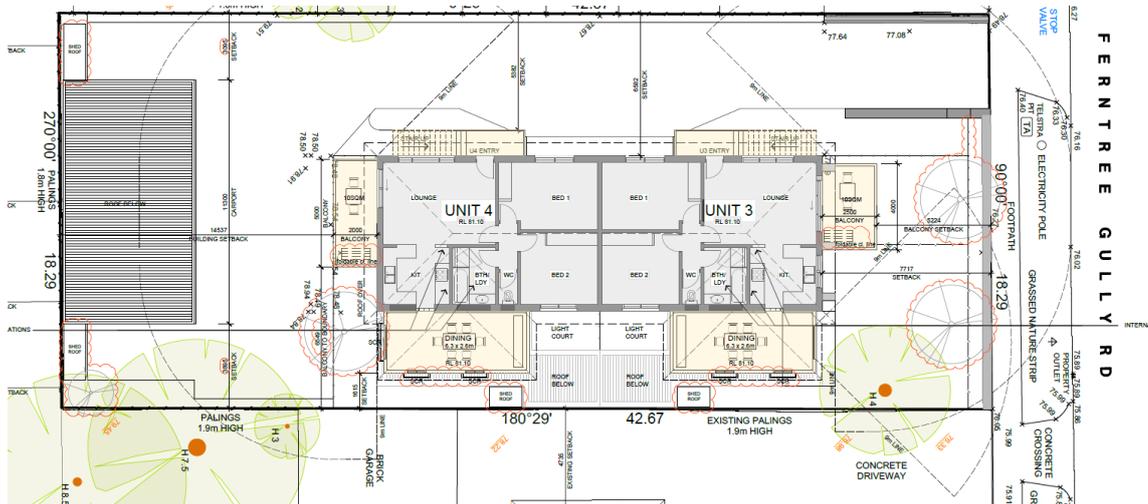


Figure 4: First floor plan

- 20 Existing open air car parking to the rear of the building is to be altered to include a carport structure over four spaces (for Dwellings 1 and 2) and two open car parking spaces for Dwellings 3 and 4. The cars will be able to turn on site so as to enter and exit the site in a forwards direction.



- 21 All dwellings will be provided with storage areas where none currently exists.
- 22 Additional landscaping is proposed to be provided around the site and will include the retention of the existing single tree within the front setback, the addition of two canopy trees within the front setback and one canopy tree to the rear of the site together with other shrubs and groundcovers.
- 23 No changes are proposed to the existing crossover, however it is proposed to re-build the existing retaining wall along the west boundary towards the front of the site which will be constructed to improve the ingress/egress conditions at the front of the site's driveway.
- 24 The garden area exemption applies as the existing building was in existence prior to the approval date of VC110.
- 25 On 14 March 2023, Planning Permit TPA/54349 was issued by the council for minor works to the existing dwellings. These works comprise the demolition of the rear communal laundry with laundry facilities to be provided within each of the units, demolition of the rear external stair access which was no longer safe to use and their replacement separate stair access to the upper level units from the western façade of the building. These works are currently underway.

PLANNING CONTEXT

- 26 Clause 22.01 Residential Development and Character Policy provides a number of objectives, including to:
 - Ensure development is consistent with the preferred future character statement identified in Clause 22.01-4 and respects the character of surrounding development, including the maintenance of consistent setbacks.
 - Preserve and enhance the treed character of Monash, including by providing spacious and well vegetated street setbacks capable of supporting canopy trees that soften the appearance of the built form and contribute to landscape character.
 - Minimise the impact of the scale and massing of development.
 - Set back buildings from street frontages consistent with surrounding buildings to visually unify the streetscape.
 - Recess walls on boundaries from the facade of the building to reflect spacings between dwellings in the neighbourhood and to ensure the appearance of new and existing buildings is not compromised.
 - Ensure the extent of site coverage and hard paving respects the neighbourhood character.



- Minimise hard paving throughout the site by limiting driveway widths and lengths, providing landscaping on both sides of driveways, and restricting the extent of paving within open space areas.
- Provide sufficient and well located private open space, primarily unencumbered by easements, to provide for vegetation and large trees to be retained or planted within front, side and rear setbacks and secluded open space areas.
- Retain or plant canopy trees, particularly within front setbacks to soften the appearance of the built form and contribute to the landscape character of the area.
- Retain or plant canopy trees in rear setbacks to screen built form from adjoining backyards and contribute to garden character.
- Provide trees and vegetation that improve the environmental sustainability of buildings.
- Ensure street trees are retained and protected.
- Provide side setbacks that maintain an open, spacious streetscape character and separation of dwellings.
- Design buildings to reflect the spacing and rhythm of existing streetscapes.
- Provide side and rear setbacks capable of supporting canopy trees.
- Provide rear setbacks that support a green corridor of open space created by backyards in the neighbourhood.
- Minimise the impact of visual bulk to neighbouring properties, through suitable setbacks from adjacent secluded private open space to enable the provision of screening trees, and scaling down of building form to the adjoining properties.
- Ensure walls on boundaries are consistent with neighbourhood character, including spacing between dwellings and the character of open vegetated backyards.
- Limit the length of walls on boundaries to ensure landscaping space is provided around buildings, and the amenity of adjoining properties is not adversely impacted.
- Provide private open space areas of sufficient size and width to enable the retention and provision of canopy trees and other vegetation that reflect landscape character.
- Limit hard surface paving and decks that occupy a large proportion of private open space areas.
- Exclude the provision of secluded private open space within the street setback.



- Ensure private open space areas are sufficient for the recreation needs of the likely future residents, including useable dimensions, direct access to living spaces and good access to sunlight whilst contributing to the preferred garden city character.
- Provide no front fence where more than 75% of properties in the immediate neighbourhood have no front fence (immediate neighbourhood is the five properties on either side of the proposed development on both sides of the street, or five properties on either side of the development on both sides of the street, including intersections and if the proposed development is on a corner lot with dwellings fronting the side street, five properties in the side street).
- Ensure front fences complement the architecture of buildings and the neighbourhood character in terms of height, style, materials and colour.
- Limit the height of front fences to:
 - Maintain the character of open streetscapes and low fencing patterns.
 - Retain views of the architecture of the building.
 - Ensure buildings address and connect to the street.
 - Facilitate passive surveillance and social interaction between the street, front yards and the dwelling.
- Design development to minimise parking, traffic and pedestrian impacts in adjacent residential areas including ensuring cars can exit the site in forward direction.

27 Clause 22.01-4 provides preferred future character statements for the municipality. The site is located within the Garden City Suburbs Southern Area, the preferred future character statement being:

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.

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.

28 Schedule 3 to the GRZ applies to ‘Garden City Suburbs’ and contains 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.
- To support new development that locates garages and carports behind the front walls of buildings.

29 Schedule 3 varies a number of Clause 55 Standards, including:

- Standard B6 Street setback objective at Clause 55.03-1;
- Standard B8 Site coverage objective at Clause 55.03-3;
- Standard B9 Permeability and stormwater management objectives at Clause 55.03-4;
- Standard B13 Landscaping objectives at Clause 55.03-8;



- Standard B17 Side and rear setbacks objective at Clause 55.04-1;
- Standard B28 Private open space objective at Clause 55.05-4; and
- Standard B32 Front fences objective at Clause 55.06-2.

IS THE PROPOSAL CONSISTENT WITH THE EXISTING AND PREFERRED NEIGHBOURHOOD CHARACTER?

30 The council acknowledges that the proposal will improve the existing conditions on the site by providing private open space where there is none currently and providing more bedrooms for the ground floor units and habitable space for all the dwellings.

31 The council's neighbourhood character concerns are:

- The proposed landscape response, which they say is insufficient particularly in the treatment to the rear and front setback. It says that while the car parking layout is acceptable, the extensive hard surface required to satisfy the car parking requirements limits the potential to provide meaningful landscaping to soften its appearance at the rear. The inability to provide meaningful planting along side and rear boundaries, due to minimal setbacks and the siting of the built form, results in a landscape outcome that fails to enhance the spacious landscaped character of the area and one that fails to provide suitable planting space to soften the built form.
- The eastern first floor walls of Dwellings 3 and 4 will present substantial mass to the neighbouring property to the east, as they are setback a relatively minimal distance from the side boundary and recessed only slightly behind the ground floor walls of the two dwellings below. Further, the one metre ground floor side setback of the extension means that there are no substantive opportunities to plant screen vegetation to filter views of these first floor walls.
- The provision of private open space within the front building setback which requires the use of screen fencing, is uncharacteristic of the area. This design response is not appropriate, as the provision of secluded open space within the front setback is not ideal, noting that it will be enclosed by a 1.2-metre-high brush fence.
- The introduction of the proposed front balcony which does not meet Standard B6. The new first floor balcony for Unit 3 is located well forward of the existing building façade, noting that it has a width of 2.5 metres and a front setback of only 5.2 metres. This structure will present as quite a dominant element in the streetscape due to its cantilevered design and minimal front setback.

32 In rebuttal, the applicants say the proposal responds positively to the preferred neighbourhood character. They say:



- The scale of the building remains at two storeys which responds to surrounding development and the building is well set back from the rear and west side boundaries with only a small amount of construction proposed along the eastern boundary.
- The existing stone retaining wall which is common to a number of other properties between Dublin Street and Huntingdale Road is to be retained with a 1.2-metre-high fence to be constructed behind this existing wall which, together with the proposed landscaping arrangement at the front, will provide a level of screening to the front private open space to be associated with Unit 1 whilst maintaining a visually open front setback.
- The proposed landscaping scheme will result in a considerable improvement upon the existing garden character of the site and will be more responsive to the surrounding garden character and the garden city character sought by the local policy than the existing conditions on the site.
- Whilst the ensuites of Dwellings 1 and 2 are to be constructed on the east boundary, this is only for a length of 7.02 metres whilst the remaining additions are to be set back 1.035 metres from the eastern boundary in compliance with Standard B17.
- The proposed balcony activates the street frontage at first floor level by providing an active space which is not to be heavily screened. It will provide passive surveillance of the streetscape and its lightweight construction will not dominate the streetscape. Further, it will not visually impose upon adjoining properties and will not result in the need to remove vegetation.

Tribunal findings with respect to neighbourhood character

- 33 Based on my inspection of the site and surrounds and the party's submissions, I find that the proposal appropriately addresses the preferred character statement for the area and is consistent with the existing and emerging character of the immediate area. I find the proposed built form alterations acceptable for the following reasons.
- 34 The proposed alterations will result in a varied footprint with greater building articulation through this varied footprint. The use of the upper level balcony and external stair access to the upper units and the introduction of render as a feature material will add articulation to an existing bland building when viewed from the street.
- 35 Varied Standard B6 requires that walls of buildings should be setback at least 7.6 metres from the front street. The proposal seeks to construct a new front facing balcony for the upper level dwelling, and this balcony will be setback 5.2 metres from the street. The objective to Standard B6 seeks to



ensure that the setbacks of buildings from a street respect the existing or preferred neighbourhood character and make efficient use of the site.

- 36 The front facing balcony, whilst less than the street setback preferred in Standard B6, will provide improved articulation across this elevation and provide a visual connection to the street.
- 37 Contextually, the site is surrounded on two sides by the Estia Aged Care Facility which has vehicular access abutting the site providing access from Elizabeth Street through to Ferntree Gully Road. As is evident from the aerial image in Figure 2 above, there is not an evident strong backyard landscape character in the immediate area. As confirmed during my site inspection, two storey dwellings are commonplace, and in many cases, sheer two storey walls are common.
- 38 I also agree with the applicants that the landscape character of the area is limited with most older dwellings having limited planting within the front setback.
- 39 A landscape plan accompanied the application and provides for additional landscaping around the site, which includes the retention of the existing single tree within the front setback, the addition of two canopy trees within the front setback and one canopy tree to the rear of Dwelling 2 and one at the rear of the site. The quantum of canopy tree planting satisfies the varied Standard B13.
- 40 I find the proposed landscaping achieves the objectives and preferred character statement. The preferred character statement seeks:
- “existing mature trees within properties 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”.
- 41 Varied Standard B13 requires new development 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.
- 42 Based on the indicative landscape plan, the proposal will introduce garden areas in front of the external stairs and to the rear and side of the building as well as along the west side of the driveway. The existing single tree within the front setback will be retained. It is proposed to provide two additional trees, capable of reach eight metres in height within the front setback together within lower level planting and lawn. Additional landscape planting will be provided along both sides of the driveway and another tree will be provided within the rear private open space of Dwelling 2. One more tree will be provided along the rear boundary adjacent to the boundary with 98 Ferntree Gully Road. Only one crossover is proposed to the site.



- 43 The number of trees and additional shrub planting will improve the existing landscape setting and as discussed during the hearing, I will require the removal of the common permeable paving area adjacent the mailboxes in the front setback, which will allow further opportunities for additional landscape planting.
- 44 On this basis, I am satisfied that the landscaping proposed will improve the existing landscaped setting of the site, be commensurate with landscaping evident in the immediate area, satisfy the varied Standard B28 objective and achieve the objectives of the preferred character statement of the planning scheme.
- 45 While council is concerned that the proposal would present excessive visual bulk to the neighbouring property to its east due to the minimal upper level setback and inadequate space for meaningful planting, I do not share these concerns.
- 46 The preferred character statement calls for the maintenance of setbacks from at least one boundary and from the rear of the site. I am satisfied that while the proposed building extension will be built to one side boundary, the neighbouring site at 98 Ferntree Gully Road is developed with a single storey brick dwelling with its driveway abutting the review site as well as a garage located towards the rear. There is no dispute that it satisfies Standard B18 walls on boundary objective and while there is a question about whether this elevation satisfies Standard B17 Side and rear setbacks objective, the applicants do not oppose a condition that requires confirmation that this setback requirement is satisfied. As the Standard is satisfied, the objective is therefore satisfied.
- 47 For the avoidance of doubt, I also have no concerns about this elevation from a visual bulk or neighbourhood character perspective. I have previously referred to the existence of two storey buildings with sheer form evident in the immediate area. The proposed two storey elements of the proposal are recessed from the side boundary and the built form below (albeit only marginally from the front of the existing building). The proposed two storey element, while being visible across the open front setback of the dwelling on the adjacent property, is not uncharacteristic of other two storey form evident the immediate area. The proposed extension will integrate with the surrounding neighbourhood character.
- 48 The property at 98 Ferntree Gully Road does not have a sensitive interface with respect to scale and bulk due to the positioning of its driveway adjacent the review site and the existence of a garage on this boundary. For these reasons, I find that the proposed two storey element of the development will not result in an unreasonable level of visual bulk when viewed from the adjoining property.
- 49 Finally, with respect to the front fencing treatment, Clause 55.02-5 Integration with the street objective, the standard states that high fencing in front of dwellings should be avoided if practicable.



- 50 Before deciding on an application, the responsible authority must consider any relevant neighbourhood character objective, policy or statement set out in this scheme and the design response.
- 51 With respect to the front fence treatment proposed, this is a mix of 0.6 metre high steel picket fencing and a 1.2 metres high brush fence, set back behind the existing stone fence which acts as a retaining wall along the front boundary. The stone retaining wall has a height above pavement level of approximately 0.9 metres. The area between the stone retaining wall and the proposed new fencing will be landscaped with Correa shrubs (height of 0.6 metres at maturity) and Banksias (height of 0.5 metres at maturity).
- 52 Where the preferred future character statement seeks front fences that are low to enable vegetation to be visible from the street, and allow clear views of buildings and give the street an open quality, I am satisfied that as the land rises from street level, the 1.2 metre high brush fence will not obscure the ground level unit from view of the street but, together with landscaping will afford some level of privacy to the private open space ('POS') proposed within the front setback.
- 53 The proposed brush fencing is also consistent with that evident on the neighbouring property and will complement the architecture of the building.

IS THE PROVISION OF OPEN SPACE ACCEPTABLE?

- 54 The council says that Dwellings 1 and 2 at ground level are not provided with sufficient POS to satisfy the varied standard which requires 35 square metres of secluded private open space ('SPOS') at a 5 metre dimension to the side/rear and a total of 75 square metres of POS.
- 55 It says that while Dwelling 1 is provided with POS of over 75 square metres within the front setback, this is not at the side or rear as sought by the standard.
- 56 Further, that Dwelling 2 is not provided with 35 square metres of SPOS at a 5 metre dimensions, nor is it provided with a total area of 75 square metres of POS, as its SPOS area comprises a narrow 'L' shaped area of 31 square metres, which runs along the southern and eastern sides of the building. The southern portion has a width of 2 metres, a large part of which is overhung by the Unit 4 balcony and the east portion has a width of only one metre.
- 57 The council considers that the proposal is inappropriate as it fails to take advantage of the location of existing ground level open space, which provides an opportunity to introduce reasonable sized areas of private open space or common open space, even taking into account the existing site constraints. The provision of ground level SPOS is a predominant feature of the neighbourhood and one that is consistently provided to other dwellings in the area.
- 58 In rebuttal, the applicants say:



- Dwellings 3 and 4 are provided with balconies of 10 square metres or more with a minimum dimension of 2 metres and they therefore comply with the standard and are deemed to comply with the objective.
- While the ground floor units do not comply with the standard, at present, none of the units have any private open space with all external areas being communal.
- Dwelling 1's POS will be within the front setback and comprise a total of 105.1 square metres. Landscaping and the low front fence will contribute to a level of screening to this space and access to this north facing space will be provided from both the lounge room and the new dining room.
- Dwelling 2 will have its POS located in large part to the rear of the dwelling on the south side of the building but given the width of the site and the setbacks to adjoining buildings will have access to sunlight from both east and west. While the minimum dimension will only be 2 metres, it will have access from the dining room.
- This is a significant improvement upon the existing conditions on the site and will provide future dwelling occupants with a level of amenity which was not available to previous dwelling occupants.

Tribunal findings on open space provision

- 59 Varied Standard B28 Private open space objective requires that a dwelling or residential building should have POS consisting of:
- An area of 75 square metres, with one part of the POS to consist of SPOS at the side or the rear of the dwelling 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.
- 60 The decision guidelines to Clause 55.05-4 state that the responsible authority must consider:
- The design response.
 - The useability of the private open space, including its size and accessibility.
 - The availability of and access to public or communal open space.
 - The orientation of the lot to the street and the sun.
- 61 I am satisfied that the provision of balcony level POS for the upper level dwellings is acceptable and satisfies varied Standard B28. The design provides for a north facing balcony for Dwelling 3 and south facing balcony



for Dwelling 4, accessed from the living areas, which will provide a good level of internal amenity for those units.

- 62 Clause 55.05-4 includes, as its objective, to provide adequate POS for the reasonable recreation and service needs of residents.
- 63 I do not share council's concerns about the provision of POS within the front setback of the building rather than at its side or rear. I consider that the provision of a large front yard for Dwelling 1 accessed from a living area, which can be used for recreational purposes, is a preferred outcome to retaining the front garden as common property. I consider that this front garden treatment provides a suitable garden character for the streetscape, as well as providing an attractive and useful space for passive recreation with good northern exposure for the residents of this dwelling.
- 64 While the POS for Dwelling 2 at the rear does not meet the quantum of the varied Standard, it is located at the side or rear and is of a sufficient size (31 square metres approximate area) to allow for the placement of tables and chairs, noting that there is a separate service area also proposed. While part of this area is covered by the balcony above, I consider that this will provide some undercover protection for seating if required.
- 65 I am satisfied the varied SPOS provided to the respective ground floor dwellings in this design is appropriate and provides an adequate amount of open space for the reasonable recreation and service needs of the anticipated residents.

CONDITIONS

- 66 Conditions were discussed at the hearing and any changes to the permit conditions contained in Appendix A of this order reflect those discussions plus further consideration by the Tribunal.

CONCLUSION

- 67 In conclusion and having regard to the requirements of Clauses 65 and 71.02, I consider that the proposal is an acceptable outcome, and that a permit should issue.

K Birtwistle
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO:	TPA/54748
LAND:	96 Ferntree Gully Road OAKLEIGH EAST

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Alterations and additions to the existing building comprising of four dwellings and construct a front fence within three metres of a street.

CONDITIONS:

Amended Plans

- 1 Before the development starts, amended plans drawn to scale and correctly dimensioned must be submitted to the satisfaction of and approved by the Responsible Authority. When approved, the plans will be endorsed and then form part of the Permit. The plans must be generally in accordance with the plans submitted to Council, but modified to show:
 - (a) removal of the common permeable paving area adjacent the mail boxes in the front setback, and replacement with additional landscape planting.
 - (b) a corner splay or area at least 50% clear of visual obstruction (or with a height of less than 1.2m) extending at least 2.0 metres long x 2.5 metres deep (within the property) on the eastern side of the vehicle crossing to provide a clear view of pedestrian on the footpath of the frontage road.
 - (c) the eastern side setback of Unit 3 to demonstrate it satisfies the minimum requirements of Standard B17 of Clause 55.
 - (d) the car parking spaces line-marked to the satisfaction of the Responsible Authority.
 - (e) the location and design of any proposed electricity supply meter boxes.
 - (f) a Landscape Plan in accordance with condition 4 of this Permit.to the satisfaction of the Responsible Authority.

Layout not to be altered

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



Compliance with documents approved under this permit

- 3 At all times what the permit allows must be carried out in accordance with the requirements of any document approved under this permit to the satisfaction of the responsible authority.

Landscape Plan

- 4 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 Zenith Concepts dated 13 February 2023, except that the plan must be modified to show:

- (a) Any changes as required in Condition 1.

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

- 5 Before the occupation of any 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 thereafter maintained to the satisfaction of the Responsible Authority

Car parking and Driveways to be constructed

- 6 Areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed to the satisfaction of the Responsible Authority;
 - (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather sealcoat to the satisfaction of the Responsible Authority;
 - (d) drained, maintained and not used for any other purpose to the satisfaction of the Responsible Authority;
 - (e) line-marked to indicate each car space and all access lanes to the satisfaction of the Responsible Authority.
- 7 Parking areas and access lanes must be kept available for these purposes at all times.
- 8 The site must be drained to the satisfaction of the Responsible Authority. Stormwater must be directed to the Point of Connection as detailed in the Legal Point of Discharge report. Stormwater must not be allowed to flow into adjoining properties including the road reserve.



- 9 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 10 Stormwater is to be detained on site to the predevelopment level of peak stormwater discharge. The design of any internal detention system is to be approved by Council's Engineering Department prior to any stormwater drainage works commencing.
- 11 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Engineering Department prior to the commencement of any works. The plans are to show sufficient information to determine that the drainage and civil works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on www.monash.vic.gov.au.

Urban Design

- 12 The walls on the boundary of adjoining properties shall be cleaned and finished in a manner to the satisfaction of the Responsible Authority.

Completion of Buildings and Works

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

Permit Expiry

- 14 This permit will expire in accordance with section 68 of the *Planning and Environment Act 1987*, if one of the following circumstances applies:
 - (a) The development has not started before two (2) years from the date of issue.
 - (b) The development is not completed before four (4) years from the date of issue.
- 15 In accordance with section 69 of the *Planning and Environment Act 1987*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or within six months of the permit expiry date, where the development allowed by the permit has not yet started; or within 12 months of the permit expiry date, where the development has lawfully started before the permit expires.

- End of conditions -

