

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P820/2023
PERMIT APPLICATION NO. TPA/54272

CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* (Vic) – Review the refusal to grant a permit – Monash Planning Scheme – General Residential Zone (Schedule 3) – Three dwellings – Neighbourhood character – Clause 55 – Car parking – Overdevelopment.

APPLICANT	George Tsoukras
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Rhys Waller & Louise Waller
SUBJECT LAND	1/98 Burlington Street OAKLEIGH VIC 3166
HEARING TYPE	Hearing
DATES OF HEARING	20 February 2024, 5 March 2024 & 16 April 2024
DATE OF ORDER	3 October 2024
CITATION	Tsoukras v Monash CC [2024] VCAT 948

ORDER

Permit granted

- 1 In application P820/2023 the decision of the responsible authority is set aside.
- 2 In planning permit application TPA/54272 a permit is granted and directed to be issued for the land at 1/98 Burlington Street, Oakleigh VIC 3166, in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - Construction of two or more dwellings on a lot in the General Residential Zone (Schedule 3).
 - Construction of buildings and works associated with a section 2 use ('shop') in the General Residential Zone (Schedule 3).
 - To reduce the number of car parking spaces required under clause 52.06-5.

Sarah McDonald
Member



APPEARANCES

For applicant	Nicholas Crawford, solicitor, TP Legal. He called the following witness: <ul style="list-style-type: none">• Damien Hancox, civil engineer, TTM Consulting (Vic) Pty Ltd.
For responsible authority	Adrianne Kellock, town planning consultant, Kellock Town Planning Pty Ltd.
For Respondent	Rhys Waller, in person.



INFORMATION

Description of proposal	<p>Development of three (3) dwellings, comprised of a first-floor addition to the existing shop building on the site and construction of two double-storey dwellings. Townhouse 1 is above the shop, townhouses 2 and 3 are to the eastern side of the shop building. Each townhouse has two bedrooms and one car parking space. Townhouse 1 is to be used as a ‘caretaker’s house’ in association with the shop. The proposal includes a reduction of the number of carparking spaces required to be provided for the shop. Vehicle access is from a shared driveway along the southern side of the site, accessed from John Street.</p> <p>The proposed site/ground floor layout of the development is shown at Figure 1. Perspectives of the street elevations are shown at Figures 2 and 3.</p>
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> (Vic) – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme (‘Scheme’).
Zone and overlays	General Residential Zone (Schedule 3 ‘Garden City Suburbs’) (‘GRZ3’).
Permit requirements	<p>Clause 32.08-7: To construct two or more dwellings on a lot in the GRZ3.</p> <p>Clause 32.08-10: To construct buildings and works associated with a section 2 use (‘shop’) in the GRZ3.</p> <p>Clause 52.06-3: To reduce the number of car parking spaces required under clause 52.06-5.</p>
Land description	The site is located on the south-eastern corner of the intersection of Burlington Street and John Street. It has a frontage to Burlington Street (to the north) of 21.03 metres, and a frontage to John Street (to the west) of 23.75 metres. The land area is 499 square metres.



Land description
(continued)

The site is developed with two attached single-storey buildings. The building directly abutting the street corner is occupied by a shop. A single-storey dwelling adjoins the eastern side of the shop building. Both buildings face Burlington Street. Vehicle access to a shared rear yard is from John Street.

The surrounding area to the south, east, north, and north-west is residential. The surrounding area to the west and south-west is industrial.

The site and surrounding context are shown at Figure 4.

Tribunal inspection

An unaccompanied inspection of the site and surrounding area was undertaken by the Tribunal before the hearing.

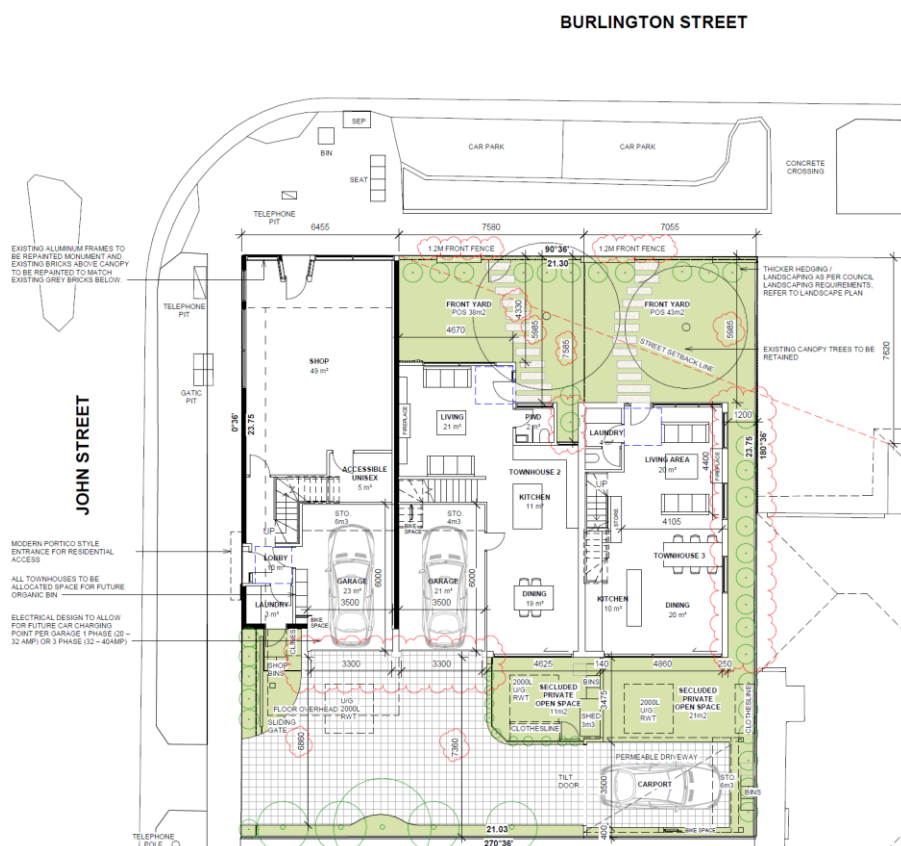


Figure 1: Proposed site/ground floor layout¹

¹ Source: Plans prepared by Graphos Architects, Drawing A02, Revision B, dated 8 September 2023.



Figure 2: Perspective of the Burlington Street (northern) elevation²



Figure 3: Perspective of the John Street (western) elevation³

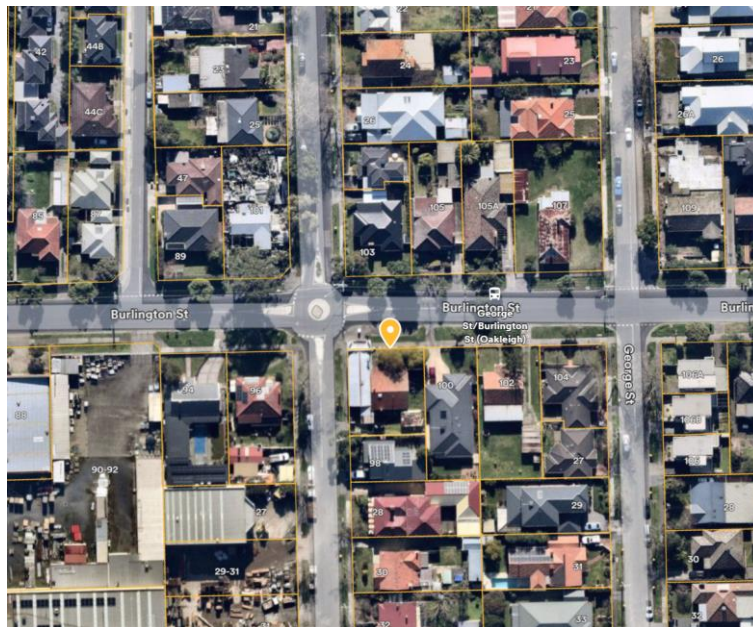


Figure 4: Site & surrounding context⁴

² Source: Plans prepared by Graphos Architects, Drawing A08, Revision B, dated 8 September 2023, 'Perspective from Burlington Street'.

³ Source: Ibid, 'Perspective from John Street'.

⁴ Source: NearMap; image dated 1 August 2024. The site is identified by a yellow balloon marker

REASONS⁵

WHAT IS THIS PROCEEDING ABOUT?

- 1 George Tsoukras ('applicant') is seeking a planning permit to develop three dwellings ('townhouses') and to reduce the number of car parking spaces required to be provided on the land ('proposal') at 1/98 Burlington Street, Oakleigh ('site').
- 2 Monash City Council ('Council') received five objections to the permit application. It decided to refuse to grant a permit for the proposal.
- 3 The Council's grounds of refusal relate to the neighbourhood and 'Garden City' character, various provisions at clause 55 of the Monash Planning Scheme ('Scheme'), car parking and vehicle access, failure to respond to the site and the mixed nature of its use, impacts on future development of the area, poor design outcomes, and overdevelopment.
- 4 The applicant has sought this review of the Council's decision.
- 5 The applicant relies on amended plans of the proposal that have been substituted for the permit application plans.⁶ The amended plans make changes to the setback of the building from the eastern side boundary and the layout of the townhouses from those considered by the Council. A description of the amended proposal, the amended site/ground floor layout, and elevation perspectives are provided in the 'Information' section in the preceding pages.
- 6 The Council has confirmed that the amended plans address its grounds of refusal relating to clause 55 standards regarding the front fence height and open spaces provisions. However, the Council maintains its position that the proposal fails to satisfy the relevant provisions of the Scheme, and that no permit should be granted.
- 7 Rhys Waller and Louise Waller ('respondents') objected to the permit application and are joint respondents in this case. They oppose the proposal on similar grounds to the Council as well as overshadowing of their rear yard, the detailed design and layout, and inconsistencies in the plans.
- 8 The applicant submits that the proposal is an appropriate planning outcome for the site and locality, will not result in adverse neighbourhood character or amenity impacts, and will not undermine the strategic directions of Council. In relation to traffic and parking impacts, the applicant relies on the evidence of Damien Hancox, a civil engineer with experience in traffic engineering and transport planning.

⁵ 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 this material will be cited or referred to in these reasons.

⁶ By Tribunal Order dated 20 February 2024.



- 9 The Tribunal must decide whether a permit should be granted and, if so, what conditions should be applied. In doing so I must consider whether the proposal will produce ‘acceptable outcomes’,⁷ in relation to the relevant provisions and policies of the Scheme.

WHAT ARE THE KEY ISSUES?

- 10 The key issues to be decided relate to:
- Does the proposal provide an acceptable response to the neighbourhood and ‘Garden City’ character?
 - Will any overshadowing impacts on the property to the south be acceptable?
 - Does the proposal provide an acceptable response to the objectives and standards of clause 55?
 - Is the reduction in the number of car parking spaces acceptable?
 - Is the proposal an overdevelopment of the site?
- 11 I find that the proposal provides an acceptable outcome in relation to these key issues. Therefore, I have decided to set aside the Council’s decision and direct that a planning permit be issued subject to conditions. My reasons follow.

PROCEDURAL ISSUES

Accuracy of plans and supporting information

- 12 At the first hearing day it became apparent that there was insufficient information or lack of certainty about the reliability of the calculations of the garden area, site coverage, permeability, and overshadowing impacts of the proposal.
- 13 The applicant was required to provide further plans and information regarding these matters prior to a second hearing day. At the second hearing day it emerged that the further plans and information that were provided included changes from the amended plans that had been substituted for the permit application plans at the first hearing day. Further plans regarding the garden area, site coverage, and permeability were provided during the second hearing day. Those plans also included anomalies and inaccuracies.
- 14 The applicant was required to provide further plans and information regarding these matters prior to a third hearing day. At the third hearing day it was confirmed that the further plans and information were based on the amended plans that had been substituted for the permit application plans. I am satisfied that those plans can be relied on as being accurate.

⁷ Having regard to the decision guidelines at clause 65 of the Scheme.



- 15 It should go without saying that it is incumbent on designers and permit applicants to ensure that the information provided in plans and supporting information is sufficient and accurate to enable an assessment against the Scheme. The failure to provide sufficient and accurate information has not only prolonged the time taken to complete the hearing, and complicated the submissions made in this case, it also risked the Tribunal being misled.

Amendment C166mona to the Scheme

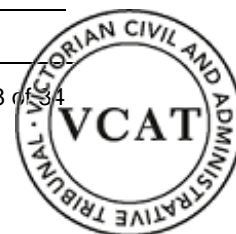
- 16 After the hearing concluded, Amendment C166mona to the Scheme was gazetted on 23 May 2024. Among other things, the amendment replaced the Local Planning Policy Framework of the Scheme with a new Municipal Planning Strategy ('MPS') at clause 02, a modified Planning Policy Framework ('PPF') at clauses 11-19, and a selected number of operational provisions of the Scheme.
- 17 The Tribunal⁸ required the Council to make a submission addressing the implications of this amendment for this proceeding. The respondents and the applicant were provided the opportunity to address any implications of this amendment for this proceeding and any reply to the submission of the responsible authority.
- 18 The Council's response includes that the changes to the policy are considered 'policy neutral' as relevant to the proposal. The applicant concurs with the Council. The respondents advised that they could not comment on the effect of the amendment on the proposal.
- 19 My findings are based on the Scheme as amended by Amendment C166mona and having regard to the further submissions from the parties regarding the implications of this amendment.

WHAT ARE THE TRIBUNAL'S FINDINGS?

Does the proposal provide an acceptable response to the neighbourhood and 'Garden City' character?

- 20 The Council's grounds of refusal and submissions take issue with how the proposal responds to the neighbourhood and 'Garden City' character.
- 21 Key character issues raised by Council relate to:
- excessive bulk/scale/mass of the building;
 - insufficient articulation;
 - minimal recession of townhouse 1 above the shop;
 - the side-by-side layout of the townhouses with insufficient building setbacks and separation;
 - the narrow townhouse style;

⁸ By Order dated 27 May 2024.



- the flat roof form; and
 - insufficient space for planting canopy trees.
- 22 The respondents support the Council's assessment of the proposal. They also take issue with parts of the first floor levels of the townhouses cantilevering over the ground floor level below.
- 23 Various policies and provisions of the Scheme seek to ensure development responds to its context and neighbourhood character. These include clauses 15 (Built environment and heritage),⁹ the purpose of the General Residential Zone (Schedule 3 'Garden City Suburbs') ('GRZ3') at clause 32.08, and the neighbourhood character objectives and Standard B1 at Clause 55.02-1.
- 24 The Council's submissions rely on the objectives and requirements of the GRZ3 schedule, the objectives and standards at clause 55, and the local planning policies that were at clause 21.04 'Residential Development' statement and 22.01 'Residential Development and Character Policy'. As a result of Amendment C166mona, the local planning policies have been relocated to the MPS at clause 02, and clauses 15 and 16 of the PPF.
- 25 I am not persuaded by the Council's or the respondent's submissions. Having regard to both the relevant provisions and policies of the Scheme and the existing and emerging physical context of the site, I find that the proposal does provide an acceptable response to the neighbourhood and Garden City character. I say this for the following reasons.

The planning provisions and policies anticipate a degree of housing change in this area

- 26 The purpose of the GRZ includes 'To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport'. The site's location in a Category 2 – Accessible area around the Huntingdale activity centre (to the south), under the 'Residential development plan' at clause 02.04-3, indicates the site offers good access to services and transport.
- 27 Under the 'Residential development plan' the site is also in a 'Category 8 – Garden city suburb'. The 'Category 2 – Accessible area' and 'Category 8 – Garden city suburb' areas are respectively identified for 'future development potential' and 'incremental change' under the Housing statement at clause 02.03-5. The site is also within the 'Monash National Employment & Innovation Cluster' in the Residential development plan.
- 28 It is clear from this strategic context that this area is expected to undergo change in housing development.

⁹ For example, clauses 15.01-1S (Urban design), 15.01-2S (Building design) and 15.01-5S (Neighbourhood character).



- 29 While the GRZ purpose also seeks ‘To encourage development that respects the neighbourhood character of the area’, this does not preclude the degree of change reflected by this proposal. Respecting character does not mean replicating what currently exists or preventing change. Rather, respect for the character of a neighbourhood means that the development should try to ‘fit in’.¹⁰
- 30 The site is in the ‘Garden City Suburbs Southern area’ character area under the ‘Monah preferred neighbourhood character policy at clause 15.01-5L (‘local character policy’). The strategies for the Garden City Suburbs southern area support dwellings that ‘present of comparable scale and form to older dwelling stock in the area’. They also support low rise apartment development on larger sites. While I do not consider the site to be a ‘larger site’, this character strategy indicates the scale of development in this area will experience a degree of change that includes apartments rather than only replicating the type and scale of existing housing stock.
- 31 The site is also in an area with a mix of housing, and at the interface with areas that have or are expected to have a different built form character as well as future growth and development potential. For example:
- i The existing housing in the area is an eclectic mix of dwelling styles. Although there is a predominance of single storey detached houses, there are numerous examples of multi-dwelling developments, many of which are two storeys high.
 - ii The site is opposite the Industrial 1 Zone (‘IN1Z’) on the western side of John Street. Although there are two houses in the IN1Z adjacent the corner of Burlington Street and John Street, the IN1Z otherwise includes a mix of industrial buildings of varying sizes.
- 32 This planning framework formed by the GRZ, and planning policies sets an expectation for a degree of change in this area that is at least incremental, including housing growth and a diversity of housing types.
- 33 It is within this context that I make the following findings regarding the proposal’s response to the neighbourhood and Garden City character.

The building bulk, scale and mass is acceptable in its context

- 34 The Neighbourhood character objectives of the GRZ3 schedule include
- 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.
- 35 The ‘Neighbourhood character objectives’ at clause 55.02-1 seek:

¹⁰ Planning Practice Note 43 ‘Understanding Neighbourhood Character’ Department of Environment, Land, Water and Planning, January 2018, 5-6.



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

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

- 36 While many of the 'Site layout and building massing' and 'Amenity impacts' objectives and standards at clauses 55.03 and 55.04 relate to character, there is no objective or standard for building bulk, scale and mass. I consider that building bulk, scale and mass, are typically products of a combination of building elements, such as heights, setbacks, articulation, and design detail.
- 37 I acknowledge that the local character strategies at clause 15.01-5L for the Garden City Suburbs Southern area support dwellings that 'Present of comparable scale and form to older dwelling stock in the area'. However, having regard to the planning policies and provisions that anticipate a degree of change in this area, including the development of apartments, it is obvious that new multi-dwelling developments will be more intensive than the older dwelling stock in the area.
- 38 Although the proposed townhouses are different from the older dwelling stock in the area, I find that the building mass and visual bulk of the proposed townhouses is minimised and acceptable. This is achieved through a combination of the building height, setbacks, articulation of the buildings, and landscaping. My findings on these design elements are set out below.

Building height

- 39 The proposed buildings are two storeys and have a maximum height of 6.38 metres. Even though the prevailing building height in the surrounding area is one storey, the proposed buildings are less than the potential height allowed under clause 32.08-11 of the zone. The proposed buildings are one storey and about 4.5 metres less than the three-storey and 11 metres maximum height allowed under clause 32.08-11.

Setbacks from Burlington Street

- 40 The 'Street setbacks objective' at clause 55.03-1 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.
- 41 The local variation under the GRZ3 schedule to the associated standard B6 requires that walls of buildings should be set back at least 7.6 metres from the front street. The setbacks of the front walls of townhouses 1, 2, and 3, from the Burlington Street frontage do not comply with this standard. They are set back 2.02 metres, 4.33 metres, and 5.98 metres respectively.

- 42 The decision guidelines at clause 55.03-1 require consideration of the following:
- Any relevant neighbourhood character objective, policy or statement set out in this scheme.
 - The design response.
 - Whether a different setback would be more appropriate taking into account the prevailing setbacks of existing buildings on nearby lots.
 - The visual impact of the building when viewed from the street and from adjoining properties.
 - The value of retaining vegetation within the front setback.
- 43 Although the setbacks of the proposed townhouses from Burlington Street do not comply with the local variation to the 'Street setback' standard B6, I am satisfied they provide an acceptable response to the neighbourhood character in the site's context.
- 44 In the site context, I am satisfied the building setbacks are more appropriate. The proposed setbacks will provide a degree of consistency with and transition between the front setbacks of the existing shop to be retained on the site and the front setback of the dwelling on the adjoining property to the east. The setbacks of the front walls of both the ground floor and first floor levels of townhouses 2 and 3 from Burlington Street are more than the average of the setbacks of the shop and the dwelling to the east. The setbacks of townhouses 2 and 3 will provide a transition between the front wall of the existing shop that is built along the Burlington Street boundary and the 7.62 metre setback of the dwelling to the east. This is evident in the proposed site/ground floor layout at Figure 1. I also note that the setbacks of townhouses 2 and 3 reflect or are more than the 4.49 metre setback of the existing dwelling on the site.
- 45 The front wall of townhouse 1 is set back over 2 metres from the front wall of the shop below, which is built along the Burlington Street boundary. It is also set back over 1 metre from the side wall of the shop below that is built along the John Street boundary. I am satisfied that townhouse 1 will present as a recessive element relative to the front wall of the existing shop.
- 46 Although the first floor level balcony of townhouse 2 protrudes forward of the front wall of the ground floor level below, this element adjoins the eastern side of the shop and townhouse 1 and is set back from the front walls of both the shop and townhouse 1. This context will minimise the visual impact this element will have on the bulk, scale and mass of the townhouses.
- 47 When viewed from the east along Burlington Street townhouses 2 and 3 will be viewed in the context of the shop and townhouse 1, which will form



a backdrop to those townhouses. This will minimise the visual impact of these townhouses in this view line.

- 48 Townhouses 2 and 3 will not be perceived within the Burlington Street streetscape when viewed from the west. The shop and townhouse 1 will block views of townhouses 2 and 3 when viewed from the west along Burlington Street. This negates any visual impact these townhouses will have from that view line.
- 49 The proposed setbacks of townhouses 2 and 3 enable the retention of the two existing jacaranda trees in the front setback. This is consistent with the local character strategies for the Garden City Suburbs Southern area, which seeks to 'Create a tree canopy by retaining existing trees and planting new trees, to provide a visual buffer between the building and street ...'. The retained jacaranda trees will provide a visual buffer and filter views of the proposed townhouses from Burlington Street.

Setbacks from John Street

- 50 Under standard B6, a 2 metre setback is required for the wall of townhouse 1 from the John Street boundary. Townhouse 1 is set back 1.1 metres from the John Street boundary. Although the setback of proposed townhouse 1 does not comply with the 'Street setback' standard B6 at clause 55.03-1, I am satisfied it provides an acceptable response to the neighbourhood character in its context.
- 51 The existing shop that is to be retained on the site is built along the John Street boundary. The setback of the proposed townhouse 1 from John Street, will be viewed in this context. I am satisfied that the 1.1 metre setback of townhouse 1, combined with its setback from the Burlington Street frontage, provides sufficient recession relative to the ground floor wall of the existing shop.
- 52 The wall of townhouse 1 facing John Street is well articulated with large areas of windows. This is consistent with the local character strategies for the Garden City Suburbs Southern area, which seek to 'provide articulated upper levels to minimise the impression of building bulk'.
- 53 Even though the rear of townhouse 1 cantilevers over the rear of the shop below, I am satisfied this is acceptable. The cantilevered wall is set back from the John Street boundary, with landscaping to be provided within the setback area.

Setbacks from adjoining properties

- 54 The 'Side and rear setbacks objective' at clause 55.04-1 is:

To ensure that the height and setback of a building from a boundary respects the existing or preferred neighbourhood character and limits the impact on the amenity of existing dwellings or small second dwellings.

- 55 Requirements for setbacks of buildings from side and rear boundaries are set out in the associated standard B17 at clause 55.04-1.
- 56 The minimum 1.2 metre setback of proposed townhouse 3 from the eastern side boundary is more than the minimum 1.0 metres side setback required by standard B17. The upper level of townhouse 3 is recessed from the ground floor level below along its eastern side and complies with the setback required by standard B17.
- 57 The GRZ3 schedule varies the rear setback requirement under standard B17 to at least 5 metres. The rear walls of all three townhouses meet or are more than the 5 metres minimum setback required from the rear (southern) boundary, which is the side boundary of the respondent's property. The building setbacks from this boundary range from 5.0 metres to 7.5 metres, being the setbacks of upper levels of the proposed townhouses.
- 58 The local character strategies at clause 15.01-5L for all areas in Monash include:
- Minimise visual bulk to neighbouring properties, by setting back buildings from adjacent secluded private open space.
- 59 The local character strategies at clause 15.01-5L for the Garden City Suburbs Southern area include:
- Set buildings back from at least one boundary and from the rear of the site.
- 60 As already commented on, the proposed townhouses are set back from both the eastern side boundary and the rear boundary.
- 61 For these reasons I am satisfied the proposed building setbacks from both the eastern side and rear boundaries contribute to minimising the bulk, scale, and mass of the townhouses from the adjoining properties, and provide an acceptable response to the character.

Articulation, breaks and recesses in the built form

- 62 The local character strategies at clause 15.01-5L for all residential areas in Monash include, among others:
- Provide separation between dwellings constructed on the same site to break up built form and support additional landscaping.
- ...
- Design buildings and dwellings two storeys or greater to incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and the neighbourhood.
- Limit blank, or continuous walls.
- 63 The local character strategies for the Garden City Suburbs Southern area at clause 15.01-5L include, among others:

Support dwellings that provide:

...

- Articulated facades.

...

Support buildings that front the street and provide articulated upper levels to minimise the impression of building bulk.

- 64 I am not persuaded by the Council that the side by side layout of the townhouses is unacceptable. Rather, I am satisfied that the combination of staggered and variations in building setbacks, along with the articulation of the building facades, contributes to reducing the bulk, scale, and mass of the attached building form.
- 65 The design avoids expanses of blank or continuous walls. Although there is a sheer two-storey section in the front wall of townhouse 3, it is limited to a width of about 3.0 metres and is located towards the centre of the site. I am satisfied this limits the impact this has for the bulk, scale, and mass of this townhouse and the proposal overall.
- 66 The facades of all three townhouses are well articulated through staggered setbacks, windows, balconies, variations in materials and finishes, and design features. I am satisfied this articulation moderates and minimises the impression of the building bulk, scale and mass.

Summary

- 67 For the reasons I have outlined, I find that the combination of the height, setbacks, and articulation of the proposed townhouses, will ensure that they will not present an unacceptable visual bulk, scale, or mass.

The proposal will provide an acceptable landscape outcome

- 68 The Neighbourhood character objectives of the GRZ3 schedule include:

To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

- 69 The local variation under the GRZ3 schedule to the Landscaping standard B13 at clause 55.03-8 requires that new development should provide:

- 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.

- 70 The local character strategies at clause 15.01-5L for the Garden City Suburbs Southern area include:
- Create a tree canopy by retaining existing trees and planting new trees, to provide a visual buffer between the building and street, and at the rear of properties.
- 71 I am satisfied that the siting of the townhouses provides sufficient space for landscaping, including the retention and planting of canopy trees in compliance with the local variation to standard B13.
- 72 I am also satisfied the proposal provides for vegetation in the front, side and rear setbacks, and vegetation on both sides of the accessway/driveway, as sought by the local variation to standard B13.
- 73 I am satisfied that the front setback of townhouses 2 and 3 from Burlington Street provides a spacious garden setting, with a combined area of about 80 square metres. The setbacks of these townhouses also allow for tall canopy trees, through the retention of the two existing Jacaranda trees.
- 74 Based on a 21.3 metre wide site frontage to Burlington Street, the local variation to the standard B13 requires five canopy trees for this proposal. The proposal retains the two Jacaranda trees within the front setback and proposes a canopy tree in the landscaping strip along the southern boundary. I am satisfied that the combined 32 square metre area of the secluded private open spaces at the rear of townhouses 2 and 3 provides sufficient space for planting two additional canopy trees.
- 75 For these reasons, I find that the proposal will contribute to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

The flat roof form is acceptable

- 76 The local character strategies for the Garden City Suburbs Southern areas support dwellings that provide ‘simple, pitched rooflines’. The proposed townhouses are to have flat roofs.
- 77 The local character policy does not preclude flat roof forms of the proposed townhouses, rather it supports dwellings that have pitched roofs. Even though the flat roofs are different to the prevailing character of pitched roofs in the area I am satisfied that the flat roofs are acceptable in the site context. I am satisfied that the flat roof of the proposal responds to the parapet roof of the existing shop building on the site. I am also satisfied that the flat roofs will not be a jarring element in the streetscape given the site’s proximity to the industrial buildings to the west of John Street, which are typically flat roofed.

The site coverage is acceptable

- 78 The ‘Site coverage objective’ at clause 55.03-3 is:

To ensure that the site coverage respects the existing or preferred neighbourhood character and responds to the features of the site.

- 79 The local variation under the GRZ3 schedule to the site coverage standard B8 at clause 55.03-3 requires a maximum site coverage of 50%. The 59% site coverage of the proposal does not comply with the this.
- 80 For reasons I outline later, I will require that the proposed carport for townhouse 3 to be deleted. This will reduce the site coverage to about 54%.
- 81 I am satisfied this extent of site coverage provides an acceptable response to the neighbourhood character in the site's context.
- 82 The decision guidelines at clause 53.03-3 require consideration of:
- Any relevant neighbourhood character objective, policy or statement set out in this scheme.
 - The design response.
 - The existing site coverage and any constraints imposed by existing development or the features of the site.
 - The site coverage of adjacent properties.
 - The effect of the visual bulk of the building and whether this is acceptable in the neighbourhood.
- 83 The site coverage is due to the expanse of building across the centre of the site. The proposed layout is similar to the existing layout of the primary building form and site coverage of the existing shop and dwelling on the site.
- 84 As I have already explained, I am satisfied that the building bulk, scale, and mass is acceptable. The site coverage will not tip the visual bulk into the proposal being unacceptable.
- 85 Despite the site coverage, the siting of the buildings on the site leave substantial setbacks at the front and rear that provide opportunities for landscaping, including canopy trees, to provide the 'spacious garden setting' sought by the neighbourhood character objectives of the GRZ3 schedule.
- 86 For these reasons I find that the site coverage is acceptable.

Summary

- 87 For the reasons I have outlined, I find that the proposal provides an acceptable response to the neighbourhood and 'Garden City' character.

Will any overshadowing impacts on the property to the south be acceptable?

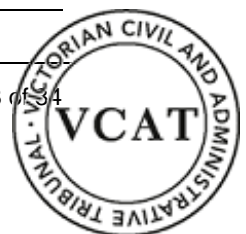
- 88 The respondents raise concerns that the proposal will overshadow their rear open space. They also submit that the overshadowing diagrams cannot be trusted.

- 89 The respondents' rear open space is a courtyard in the north-eastern corner of their property, along the southern boundary of the site. As their rear open space already receives less sunlight than the minimum specified in the 'Overshadowing' standard B21 at clause 55.04-5, the standard require that the amount of sunlight should not be further reduced.
- 90 The proposal will overshadow the rear open space of the respondents' property. As such, the proposal does not comply with standard B21.
- 91 As already commented on, there were inaccuracies in the overshadowing diagrams that formed part of the amended plans and further information provided through the course of the hearing. At the final hearing day, the applicants relied on revised shadow diagrams.¹¹ Based on those diagrams, the proposal will cast additional shadow on the respondents' rear open space at every hour between 9:00am and 3:00pm compared to the existing sunlight to that space. The amount of additional shadow varies throughout the day, ranging between a minimum of 1.9 square metres to a maximum of 2.9 square metres. This does not comply with standard B21.
- 92 Based on the revised shadow diagrams, it is evident that the additional overshadowing will be caused by the carport for townhouse 3.
- 93 I am satisfied that by deleting the carport for townhouse 3 and retaining the car parking space as an uncovered car space, the proposal will not result in additional overshadowing of the respondents' rear open space. This can be addressed by a permit condition requiring amendments to the plans. The applicant does not oppose this.
- 94 I note that the Council raised concern that deleting the carport will reduce amenity for future residents of townhouse 3 as they will not be provided with a covered car space. However, the design standards for car parking at clause 52.06-9 only requires a covered car parking space where two or more car parking spaces are provided for a dwelling. As townhouse 3 only has one car parking space, there is no requirement for this space to be covered.
- 95 In these circumstances, I find that an acceptable outcome will be achieved by deleting the carport for townhouse 3.

Does the proposal provide an acceptable response to the objectives and standards of clause 55?

- 96 The Council's grounds of refusal and submissions take issue with the proposal's response to the objectives and standards at clause 55 of the Scheme.
- 97 Many of the Council's concerns relate to neighbourhood character matters. I rely on my findings above regarding those matters. Other issues raised by Council and the respondents regarding clause 55 relate to the:

¹¹ Revised plan version dated 19 March 2024.



- entry to townhouse 1;
- daylight to the interior of townhouses 2 and 3;
- amenity of the ground level open space areas of townhouses 2 and 3 is acceptable; and
- space available for services.

The entry to townhouse 1 is acceptable

- 98 The ‘ Dwelling entry objective ’ at clause 55.05-2 seeks ‘ To provide each dwelling or residential building with its own sense of identity ’.
- 99 The entry to townhouse 1 is from the John Street frontage. The entry is to a lobby area that is shared with the shop. The Council acknowledges that the amended plans provide a more prominent entry element for the townhouse. However, the Council takes issue with the entry to townhouse 1 being combined with a side entry to the rear of the ground level shop. It says the shared entry/lobby is a poorly conceived arrangement.
- 100 At the commencement of the hearing, the applicant clarified that the shop and townhouse 1 are intended to be a ‘ combined use ’, with the townhouse being a caretaker’s house associated with the shop.
- 101 In these circumstances, I am satisfied that the entry to townhouse 1 is acceptable for the following reason:
- i The townhouse and the shop premises are to be used in conjunction with each other, with the townhouse to be a caretaker’s house.
 - ii The shared lobby space is to the rear of the shop premises and is not the primary entry to the shop. The shared lobby area provides access between the rear of the shop and the laundry/services area and garage.
- 102 In the context that my findings rely on townhouse 1 being a caretaker’s house it is appropriate to ensure this is reflected in the permit. I will include permit conditions to require the townhouse to be annotated as a ‘ caretaker’s house ’ in association with the shop, and that the townhouse must be used and occupied as a ‘ caretaker’s house ’.

The daylight to the interior of townhouses 2 and 3 is acceptable

- 103 The Council submits the daylight to the interior of townhouses 2 and 3 is limited. It says this is due to the elongated nature of the townhouses and lack of separation between them.
- 104 I am satisfied that the proposal meets the requirements of the ‘ Daylight to new windows ’ standard B27 at clause 55.05-3. All the habitable rooms of townhouses 2 and 3 have at least one window facing an outdoor space clear to the sky with a minimum area of 3 square metres and minimum dimension of 1 metre. The living rooms and dining areas have large expanses of



glazed windows and doors, which should provide ample daylight into these spaces.

The amenity of the open space areas of townhouses 2 and 3 is acceptable

- 105 The Council submits that the amenity of the ground level rear open spaces of townhouses 2 and 3 is constrained due to their location. The rear open spaces of these townhouses are to the south of the building. As such, they will not receive good sunlight access. The rear open space of townhouse 2 is also quite small, being only 11 square metres.
- 106 Despite these circumstances, I am satisfied that the amenity of the open space areas of townhouses 2 and 3 is acceptable.
- 107 I am satisfied the ground level rear open spaces of townhouses 2 and 3 are primarily service yards for these townhouses, rather than being their primary 'secluded private open spaces' for recreation purposes. The Council itself acknowledges that the ground level rear open spaces of townhouses 2 and 3 are not intended to function as the main secluded private open space areas for these townhouses. Both townhouses 2 and 3 have a generous ground level open space on the north side of the building, in the front setback from Burlington Street. They both also have north facing balconies at first floor levels. All of these spaces will receive excellent sunlight and have convenient access from living rooms.
- 108 I am satisfied this combination of open space areas will provide an acceptable amenity for these townhouses.

The external storage facilities for each townhouse will be adequate and acceptable

- 109 Council raised concerns with the original application plans that there were inadequate storage areas that failed to meet the requirements of the 'Storage' standard B30 at clause 55.05-6. Standard B30 requires a minimum of 6 cubic metres of externally accessible secure storage space for each townhouse.
- 110 The amended plans show a combination of storage units to be mounted above the ends of the car parking spaces in the garages and carport of all three townhouses, and a small shed in the secluded private open space ('SPOS') area of townhouse 3. The plans show that there will be at least 6 cubic metres of storage space for each townhouse.
- 111 The above bonnet storage units encroach into the car parking spaces by 1.05 metres. The storage units are shown to be 1.3 metres above the finished floor level. Under the 'Design standards for car parking' at clause 52.06-9, a clearance of at least 2.1 metres is required for structures projecting into clearance spaces. However, based on Mr Hancox's evidence, I am satisfied the proposed encroachment is acceptable. This is because the storage units

are at the end of the car spaces and will not impede access to the car spaces, or circulation either side of the car space.

- 112 As I have outlined above, I have found that the carport for townhouse 3 should be deleted. In the circumstance, I do not consider an above bonnet storage unit is appropriate in what will be an open air car space. I will include a permit condition that requires the external storage for townhouse 3 to be provided in a shed located elsewhere in the rear open space of this townhouse. I note that the Council does not want a storage shed located abutting the eastern side boundary. I will include a condition requiring the storage not to be located in the landscaped garden beds along the eastern and southern boundaries.

The space available for services will be acceptable

- 113 The 'Private open space objective' and standard B28 at clause 55.05-4, and the 'Site services objectives' and standard B34 at clause 55.06-4 seek to ensure space for and provision of site services.
- 114 The Council submits that insufficient areas have been provided for the suitable provision of site services such as clothes lines and waste/recycling bins. They also submit that provision for services for the shop are unclear and there is potential for conflict, with a lack of acceptable separation between the shop and townhouse 1.
- 115 I am satisfied that the rear open spaces for townhouses 2 and 3 provide sufficient space for services such as clotheslines, waste/recycling bins, and storage sheds. As I have already commented on, these open spaces are not the primary open spaces for recreational purposes. As such, the space that will be occupied by services will not unreasonably impact the usability of these spaces for recreational purposes.
- 116 I am not, however, satisfied that the service yard for townhouse 1 is of a sufficient size to accommodate the range of services that may reasonably be required for the townhouse as well as the shop.
- 117 Although the shop and townhouse 1 are to be a combined use, with the townhouse a caretaker's house associated with the shop, it is reasonable to expect they will independently generate various service needs. I am mindful that the land use of 'shop' includes a range of potential uses. These include beauty salon, convenience shop, hairdresser, among others. The service needs of these different uses will vary but might reasonably include space for waste/recycling bins, clotheslines for drying clothes and linen, hot water services, and heating/cooling equipment.
- 118 Although there is space for waste and recycling bins within the garage, the service yard space is very small. It is only about 1.7 metres long and 1.5 metres wide. I consider the spaces available within the garage and the service yard are unlikely to be sufficient for the reasonable service needs of townhouse 1 and the shop.

119 Despite this, I am satisfied that amendments to the plans could resolve this. Some opportunities for providing additional space for services for townhouse 1 and the shop include the following:

- extending the service yard area into the open space to the south;
- reallocating the laundry space at ground floor level to a service area, and relocating the laundry elsewhere within the building; and
- reconfiguring the internal layout of the shop to provide laundry and drying areas, with any consequential reduction in the shop floor area.

120 I am satisfied that this can be addressed by a permit condition requiring amendments to the plans.

Summary

121 For the reasons I have outlined, I find the proposal will provide an acceptable response to the objectives and standards of clause 55.

Is the reduction in the number of car parking spaces acceptable?

122 Under the 'Car parking' provisions at clause 52.06, the proposal requires four car parking spaces, one for each of the townhouses and one for the shop. Each of the townhouses is provided with one car parking space. However, there is no separate car parking space for the shop use. The proposal therefore requires a permit under clause 52.06-3 to reduce the number of car parking spaces required to be provided by one car space.

123 The Council's grounds of refusal include that the proposal fails to provide adequate car parking and vehicle access under clause 52.06. The Council does not support the reduction in the car parking.

124 The respondents also submit that the proposal does not comply with the car parking requirements; they say the shop requires three car parking spaces. They also take issue with the functionality of the car parking spaces and say this will encourage people to park on the street.

125 Both the Council and the respondents submit that there are four car parking spaces currently on the site.

126 The applicant relies on the evidence of Mr Hancox as to the appropriateness of both the parking provided and its access. Mr Hancox's evidence includes, among other things, a survey of on-street parking availability, a car parking demand assessment, and assessment of the appropriateness of reducing the number of car parking spaces against the decision guidelines at clause 52.06-6.

127 Based on the Council's and applicant's submissions, and Mr Hancox's evidence, I am satisfied that the proposal requires only one car parking space for the proposed shop use.

- 128 I am persuaded by the applicant's submissions and Mr Hancox's evidence that the proposed reduction in this one car parking space is acceptable. This is because I am persuaded by Mr Hancox's evidence that:
- i The results of the on-street parking surveys indicate there were in excess of 25 spaces vacant within 120 metres of the site at any given time.
 - ii The short-stay and long-stay parking demand of customers and staff travelling to the shop by car can be readily accommodated on the streets around the site.
 - iii The site location allows for convenient access by public transport, including buses and trains, and suitably accommodates pedestrians and cyclists.
 - iv Pedestrians and cyclists can access the site by the local road network.
- 129 I am also persuaded by Mr Hancox's evidence¹² that he had taken a conservative view that the shop and townhouse 1 were separate uses, and that if they are combined the car parking demand from the shop would most likely be accommodated on the site where the employee owner is living upstairs.
- 130 I am not persuaded by the Council's submissions that there are currently four car parking spaces provided on the site. The Council relies on its traffic engineering department's assessment, which is based on aerial photographs that show cars parked in the rear area of the site. It is evident from the various aerial photographs that cars have been parked on grassed areas in the rear open space of the shop and townhouse. These are not formal car parking spaces.
- 131 For the reasons I have outlined, I find the reduction in the number of car parking spaces acceptable.

Is the proposal an overdevelopment of the site?

- 132 Both the Council and the respondents submit that the proposal comprises an overdevelopment of the site. The Council submits that the proposal fails to provide an acceptable and appropriate response to the site context, the Car parking requirements at clause 52.06, and the planning policies in relation to the preferred built form and landscape character of the neighbourhood.
- 133 The issue of overdevelopment is often raised in relation to proposals for multi-dwelling developments. In the Tribunal decision *Knights v Greater Geelong CC* [2004]¹³ Senior Member Marsden commented that:

In applications involving site overdevelopment, the symptoms are always obvious. There will be excessive site coverage, minimal

¹² Oral evidence in response to a question from the Council.

¹³ VCAT 263 (19 February 2004).



setbacks, the overshadowing or overlooking of nearby properties, minimal areas of private open space and the like.

- 134 Given my findings that the proposal's response to the neighbourhood and Garden City character, overshadowing, and reduction in the car parking are acceptable I am satisfied that the proposal presents none of these symptoms. I therefore find that the proposal does not represent an overdevelopment.

Are there any other issues?

- 135 Other issues were raised by the Council and the respondent that I have not responded to above. Other than the matter of a fence height that I discuss below, I regard those issues to be peripheral and to carry no weight in my exercise of discretion, are not relevant to the matters to be considered under the Scheme or are able to be addressed by permit conditions.

Is the height of the fencing and gate along the John Street frontage acceptable?

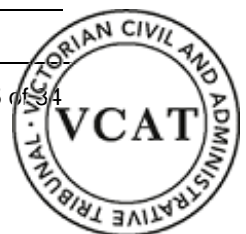
- 136 The Council is concerned about the high fencing and gate adjacent to the vehicle access from John Street, which it says restricts visibility for vehicle exiting the site.
- 137 The Council says that if a permit is to be granted, a permit condition should be imposed to reduce the height of the fence and gate to 1.2 metres.
- 138 The design standards for car parking at clause 52.06-9 require a corner splay or area at least 50 per cent clear of visual obstructions extending at least 2 metres along the frontage road from the edge of an exit lane and 2.5 metres along the exit lane from the frontage, to provide a clear view of pedestrians on the footpath of the frontage road. Along the northern side of the vehicle accessway, the fence that extends between the rear of the shop and the northern edge of the vehicle accessway is to be about 1.8 metres high. It is set back about 0.6 metre from the street boundary. Along the southern side of the vehicle accessway, there is a 1.9 metres high fence along the southern boundary with the respondents' property. Therefore, the proposal does not comply with the design standard.
- 139 I am satisfied that the height of the gate can be reduced to 1.2 metres. Although the gate encloses the vehicle accessway at the rear of the buildings, it is not necessary to secure the garages and open spaces areas at the rear of the buildings. They will be secured by roller doors, or high fences or gates.
- 140 However, I am not persuaded by the Council's submission that the fence should be reduced to 1.2 metres high. The fence encloses and screens the view of the service yard at the rear of the shop. Lowering the fence height to 1.2 metres would result in the service yard being visible from John Street. This would not be an acceptable urban design outcome.

- 141 Mr Hancox's evidence¹⁴ includes that the fence is a slatted type of fence. He recommends requiring it to be only 50% opaque to enable it to be seen through to any activity on the footpath. Mr Hancox recommended the spacing between the slats to be greater than the slat width. Mr Hancox explained that if there was a 50% clear view then the fence height was no longer an issue. His evidence also includes that vehicles can enter and exit the site in a forward direction.
- 142 For these reasons I am satisfied that adopting the spacing of the slats recommended by Mr Hancox, along with reducing the height of the gate, will provide a safe environment for vehicles entering and exiting the site. I therefore find that the height of the fencing and gate along the John Street frontage will be acceptable subject to permit conditions requiring the changes to the fence and gate.

What conditions are appropriate?

- 143 The draft conditions circulated by Council were discussed at the hearing. I have generally adopted these conditions subject to changes to reflect the findings in this decision, additional matters that were discussed at the hearing, and my further consideration of the submissions and detailed design of the proposal.
- 144 It is not necessary for me to detail the changes to the draft permit conditions, other than to make the following comments on specific matters:
- i I have included a condition that requires that townhouse 1 must be used and occupied as a caretaker's house in conjunction with the shop. While this may be considered a 'use' related condition, which are not usually included on permits for development, I am satisfied it is appropriate in the circumstances of the proposal. This is because the applicant relies on townhouse 1 being a caretaker's house associated with the shop in support of the proposed reduction in the car parking provided.
 - ii I have included an alternative condition to the draft condition that proposed the deletion of bicycle spaces/racks in the garages of townhouses 1 and 2. I see no reason why bicycles could not be stored in the garages if they do not encroach within the 'clearance to car parking spaces' in accordance with diagram 1 of Design standard 2 – Car parking spaces at clause 52.06-9 (Design standards for car parking) of the Scheme.
 - iii I have included a condition that requires an updated plan showing the calculations of the 'garden area' to show the minimum garden area. This condition is not seeking amendments to the plans to ensure compliance with the minimum garden area. I am satisfied on the information provided by the applicant, and confirmed by the Council,

¹⁴ Oral evidence at the hearing.



that the proposal in the amended plans that have been substituted for the application plans complies with the minimum garden area requirement in accordance with 32.08-4 of the Scheme. Rather, given the amendments that I am requiring to the plans regarding the deletion of the carport of townhouse 3 and change in dimensions of the resultant car parking space, and layout of service areas, it is appropriate for an updated garden area plan to be provided.

CONCLUSION

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

Sarah McDonald
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/54272
LAND	1/98 Burlington Street OAKLEIGH VIC 3166

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two or more dwellings on a lot in the General Residential Zone (Schedule 3).
- Construction of buildings and works associated with a section 2 use ('shop') in the General Residential Zone (Schedule 3).
- To reduce the number of car parking spaces required under clause 52.06-5.

CONDITIONS

Amended plans

- 1 Before the development starts, three copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the Responsible Authority. The submitted plans must clearly delineate and highlight any changes. When approved the plans will be endorsed and will then form part of the permit. The plans must be generally in accordance with the plans prepared by Graphos Architects, project number 21-1285 drawing A01 (dated 15/08/2022), A02-A04, A06-A07B and A08 (Revision B, dated 08/09/2023), and A05 (Revision C, dated 08/09/2023), but modified to show:
 - (a) townhouse 1 annotated as a 'caretaker's house associated with the shop';
 - (b) the dimensions and area of service yard for the shop and townhouse 1 at the rear of the shop of sufficient size to accommodate all waste/recycling bins that will be required for both the shop and townhouse 1 (to the satisfaction of the responsible authority) that are not accommodated within the adjacent garage, and the location of the services/facilities within the service yard; any waste/recycling bins must be located clear of any clothesline and the area required for any access doors/gates; the area of the service yard may extend into the open space to the south, to the north of the vehicle accessway;
 - (c) the roof over the balcony of townhouse 2 changed to fixed or openable louvres, or clear glazing, to allow for solar access to the north facing



windows of the living room at the first floor level during the winter months;

- (d) the carport of townhouse 3, including the support posts/structure, tilt-door, and the above-bonnet storage unit deleted;
- (e) a car parking space for townhouse 3 in the location of the carport that is to be deleted; the dimensions of the car parking space must in accordance with the 'Design standard 2 – Car parking spaces' at clause 52.06-9 of the Planning Scheme, and the car parking space annotated to be 'uncovered';
- (f) a landscaped garden bed, with a minimum width of 1.0 metre, along the eastern site boundary, to the north and south of the garage wall on the boundary of the adjoining property to the east;
- (g) a landscaped garden bed, with a minimum width of 0.5 metres, between the southern boundary and the southern side of the car parking space of townhouse 3;
- (h) the location of services and facilities in the rear Secluded Private Open Spaces ('SPOS') of townhouse 3, including an externally accessible and secure storage space with a minimum storage area of 6 cubic metres, clothesline, and any underground rainwater tank; the services/facilities must be located outside of the landscaped garden beds required by Conditions 1(f) and 1(g), and clear of any area in which a canopy tree is to be planted in accordance with the landscape plan required by Condition 5.
- (i) a sliding gate provided at the western end of the car parking space of townhouse 3; the gate should retract to the north, along the line of the dividing fence between the SPOS of townhouses 2 and 3, and the gate and any supporting structures should not exceed the height of that dividing fence or the fence along the southern boundary of the land;
- (j) the vehicle access gate along the John Street frontage reduced to a maximum height of 1.2 metres;
- (k) the design detail of the fence along the John Street frontage, on the northern side of the vehicle access/driveway, to include the width of the slats and the spacing between the slats, with the space between the slats to be greater than the width of the slats so that the fence is at least 50% transparent;
- (l) bicycle spaces/racks in the garages of townhouses 1 and 2 to be positioned so that a bicycle stored in that location will not encroach into the 'clearance to car parking spaces' required in accordance with diagram 1 of 'Design standard 2 – Car parking spaces' at clause 52.06-9 of the Planning Scheme; or otherwise deleted;

- (m) the bicycle space along the southern side of the car parking space for townhouse 3 deleted;
- (n) the 1.7 metre high slatted screens provided to the south facing first floor bedroom windows of townhouses 2 and 3 clearly notated on both the first floor plan and the southern elevation;
- (o) the design details of the 1.7 metre high slatted screens shown in the screening detail plan on plan sheet A06 to specify the width of the slats, the spacing between the slats, any angle of the slats, sufficient to demonstrate that the screens achieve compliance with standard B22 at clause 55.04-6 of the Planning Scheme;
- (p) the design detail of the 1.7 metre high slatted screens provided on the first floor level windows, as shown in the elevation plans, to be consistent with the screening detail plan as amended by Condition 1(o);
- (q) all materials/finishes annotated on all elements of all building elevation plans;
- (r) all areas of permeable paving and surfaces;
- (s) the location and design of any proposed electricity supply meter boxes; any meter boxes must be located at or behind the setback alignment of buildings on the site, or in compliance with Council's "Guide to Electricity Supply Meter Boxes in Monash";
- (t) updated plans showing the calculations of the following:
 - i the 'garden area' to show the 'minimum garden area' (as defined by clause 73.01–General Terms, of the Planning Scheme);
 - ii the 'site coverage' (as defined by clause 73.01–General Terms, of the Planning Scheme);
 - iii the permeability, in accordance with standard B9 at clause 55.03-4, as varied by the Schedule 3 to the General Residential Zone at clause 32.08 of the Planning Scheme;
- (u) a Landscape Plan in accordance with Condition 5;
- (v) a Tree Management Plan in accordance with Condition 7;
- (w) any changes as required by the Tree Management Plan prepared in accordance with Condition 7;
- (x) Tree Protection Zones and Structural Root Zones of the two Jacaranda trees to be retained in the front setback area along Burlington Street, in accordance with the Tree Management Plan prepared in accordance with Condition 7;
- (y) an amended Sustainable Design Assessment in accordance with Condition 11;



all to the satisfaction of the Responsible Authority.

Shop and townhouse 1/caretaker's house

- 2 Unless with the prior written consent of the Responsible Authority, townhouse 1 must be used and occupied as a 'caretaker's house' in conjunction with the shop, to the satisfaction of the Responsible Authority.
- 3 Unless with the prior written consent of the Responsible Authority, the layout, occupation, and use of the shop and townhouse 1 as shown on the endorsed plans must be maintained as a shop and associated caretakers' house, to the satisfaction of the Responsible Authority.

Layout not to be Altered

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

Landscaping

- 5 Concurrent with the submission of amended plans in accordance with Condition 1, a landscape plan prepared by a landscape architect or a suitably qualified or experienced landscape designer, must be submitted to and approved by the Responsible Authority. When approved the plans will be endorsed and will then form part of the permit. The landscape plan must be generally in accordance with the Landscape Plan prepared by Keystone Alliance Pty Ltd, Revision C dated 25/08/2022, drawn to scale and dimensioned, but modified to show:
 - (a) any changes as required by or as a result of amendments to the plans under Condition 1;
 - (b) one (1) small canopy tree within each rear secluded private open space area of townhouses 2 and 3; the trees should have a minimum height of 5 metres and a minimum crown width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
 - (c) one narrow canopy tree with minimum height of 5 metres at maturity, in the landscaping strip along the southern boundary;
 - (d) landscaping on either side of the vehicle access/driveway within 2.5 metres of the John Street boundary and 2 metres along the driveway edge (within the site) to have a maximum height of 0.9 metres;to the satisfaction of the Responsible Authority.
- 6 Before the buildings allowed by this permit are occupied, landscaping works as shown on the endorsed Landscape Plan must be completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.



Tree Management Plan

- 7 Concurrent with the submission of amended plans in accordance with Condition 1, and prior to any demolition or site works (including any excavation or levelling), a Tree Management Plan ('TMP'), prepared by a suitably qualified and experienced arborist, must be submitted to the Responsible Authority for approval and endorsement. When approved the TMP will be endorsed and will then form part of the permit. The TMP must set out recommendations and requirements in relation to the protection, management, and maintenance of the two Jacaranda trees to be retained within the front setback area along the Burlington Street frontage to ensure these trees remain healthy and viable during construction and for their useful life expectancy.

The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 – Protection of Trees on Development Sites (or any subsequent version as relevant) and detail the following, to the satisfaction of the Responsible Authority:

- (a) Tree Protection Zones ('TPZ') and Structural Root Zones ('SRZ') of the trees to be retained;
- (b) the type and details of footings for buildings and works within any tree protection zones;
- (c) details for the provision of any services to be located within the TPZ and SRZ;
- (d) details of any landscaping within the TPZ and SRZ;
- (e) any changes required to the plans of the proposal to be provided in accordance with condition 1, to implement any tree protection or management measures;
- (f) details of how the root system of the trees to be retained will be managed; including detailing any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist;
- (g) any pruning works required to be performed on the trees to be retained; these must refer to Australian Standard 4373:2007 – Pruning of Amenity Trees (or any subsequent version as relevant);
- (h) details for the supervision, timetable, and certification of tree management activities required by the Project Arborist;
- (i) nomination of the Project Arborist to be responsible for managing the implementation of the TMP; and
- (j) a Tree Protection Plan drawn to scale that shows:
 - i tree protection zones ('TPZ') and structural root zones ('SRZ') of the trees to be retained;



- ii all tree protection fenced off areas and areas where ground protection systems will be used;
- iii any conditions or requirements for buildings and works within the TPZ and SRZ of the trees to be retained;

to the satisfaction of the Responsible Authority.

- 8 The recommendations and requirements of the endorsed TMP must be implemented, to the satisfaction of the Responsible Authority.

Vegetation Retention

- 9 All existing vegetation shown on the endorsed plans must be suitably marked before any development starts on the site and that vegetation must not be removed, destroyed or lopped without the written consent of the Responsible Authority.

Privacy screens

- 10 Before the buildings allowed by this permit are occupied, all screening and other measures (as relevant) to prevent overlooking as shown on the plans endorsed plans in accordance with condition 1, must be installed to the satisfaction of the Responsible Authority. Once installed, the screening and other measures (as relevant) must be maintained to the satisfaction of the Responsible Authority.

Sustainable Design Assessment

- 11 Concurrent with the submission of amended plans in accordance with Condition 1, an amended Sustainable Design Assessment ('SDA') must be submitted to the Responsible Authority for approval and endorsement. When approved, the SDA will be endorsed and will form part of this permit. The amended SDA must be generally in accordance with the SDA prepared by Keystone Alliance and dated August 2022 but modified to include or show the following:
- (a) any changes in the amended plans submitted for approval in accordance with Condition 1.
- 12 Before the buildings allowed by this permit are occupied, all measures as detailed in the endorsed SDA must be implemented and completed to the satisfaction of the Responsible Authority and then maintained to the satisfaction of the Responsible Authority.

Car parking and Driveways to be constructed

- 13 Areas set aside for parked vehicles and access lanes as shown on the endorsed plans must be:
- (a) constructed;

- (b) properly formed to such levels that they can be used in accordance with the plans;
 - (c) surfaced with an all-weather sealcoat; and
 - (d) drained, maintained and not used for any other purpose;
- to the satisfaction of the Responsible Authority.

Parking areas and access lanes must always be kept available for these purposes.

Plant / Equipment or features on roof

- 14 No equipment, services, architectural features, or structures of any kind, including telecommunication facilities, other than those shown on the endorsed plans shall be permitted above the roof level of the building unless otherwise agreed to in writing by the Responsible Authority.
- 15 No air-conditioning or cooling units, condensers and the like are to be located on roofs, external walls or on balconies without the prior written consent of the Responsible Authority.

Engineering

- 16 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.
- 17 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 Monash City Council's Engineering Department prior to any stormwater drainage works commencing.
- 18 No polluted and/or sediment laden stormwater runoff is to be discharged directly or indirectly into Monash City Council's drains or watercourses during and after development, to the satisfaction of the Responsible Authority.
- 19 A plan detailing the stormwater drainage and civil works must be submitted to and approved by the Monash City Council's 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.

Completion of Buildings and Works

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

Expiry of permit for development

21 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* (Vic), an application may be submitted to the Responsible Authority for an extension of the periods referred to in this condition.

