

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P295/2023
PERMIT APPLICATION NO.TPA/53934

APPLICANT	Fotini Ganatsios
RESPONSIBLE AUTHORITY	Monash City Council
SUBJECT LAND	3 State Street OAKLEIGH EAST VIC 3166
HEARING TYPE	Hearing
DATE OF HEARING	25 August 2023
DATE OF ORDER	18 September 2023
DATE OF CORRECTION	4 October 2023
CITATION	Ganatsios v Monash CC (Corrected) [2023] VCAT 1065

ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil and Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:
 - Prepared by: Two Design
 - Drawing numbers: Project 2115 - TP101-TP116, TP201-TP207 and TP601-604
 - Dated 7 July 2023
- 2 In application P295/2023 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53934 a permit is granted and directed to be issued for the land at 3 State Street Oakleigh East VIC 3166 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:

Planning scheme clause number:	Description of what is allowed:
32.08-6	To construct two or more dwellings on a lot

Jane Tait
Member



APPEARANCES

For Fotini Ganatsios	Daniel Bowden, Song Bowden Planning
For Monash City Council	Adrienne Kellock, Kellock Town Planning Pty Ltd

INFORMATION

Description of proposal	To construct three double storey dwellings.
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
Zone and overlays	General Residential Zone Schedule 3 (GRZ3)
Permit requirements	Clause 32.08-6 A permit is required for construction of two dwellings on a lot
Land description	<p>The site is on the north side of State Street, approximately 50 metres west of Huntingdale Road, Oakleigh East. It has a frontage of 16.76 metres, depth of 50.03 metres and site area of 839 square metres.</p> <p>The site is occupied by a double storey brick dwelling with a double garage and high brick front fence. There is significant vegetation on the site and a slight fall of 1.2 metres from the north-east to south-west across the site.</p> <p>To the east is an older weatherboard dwelling at the front and a newer brick dwelling at the rear. To the north are the rear yards of two dwellings at 2 and 4 Oakleigh Street.</p> <p>Directly west is a single storey dwelling at 1 State Street and to the rear is a private car park with access to a laneway that abuts the west boundary.</p>
Tribunal inspection	An unaccompanied site inspection was conducted after the hearing.

REASONS¹

WHAT IS THIS PROCEEDING ABOUT?

- 1 Fotini Ganatsios (the ‘applicant’) applied for a planning permit to construct three double storey dwellings at 3 State Street, Oakleigh East. The dwellings are arranged in a tandem layout with the main driveway servicing Units B and C along the east boundary and a separate driveway servicing Unit A near the west boundary. Each dwelling has living areas at ground floor level and three bedrooms at first floor level. Dwelling A has an additional bedroom at ground floor level. All dwellings provide two car spaces in a double garage (Units B and C) and single garage with tandem car space (Unit A). The layout and some elevations are shown in Figures 1-3.

Figure 1 – Ground Floor Plan²



Figure 2 - First Floor Plan³

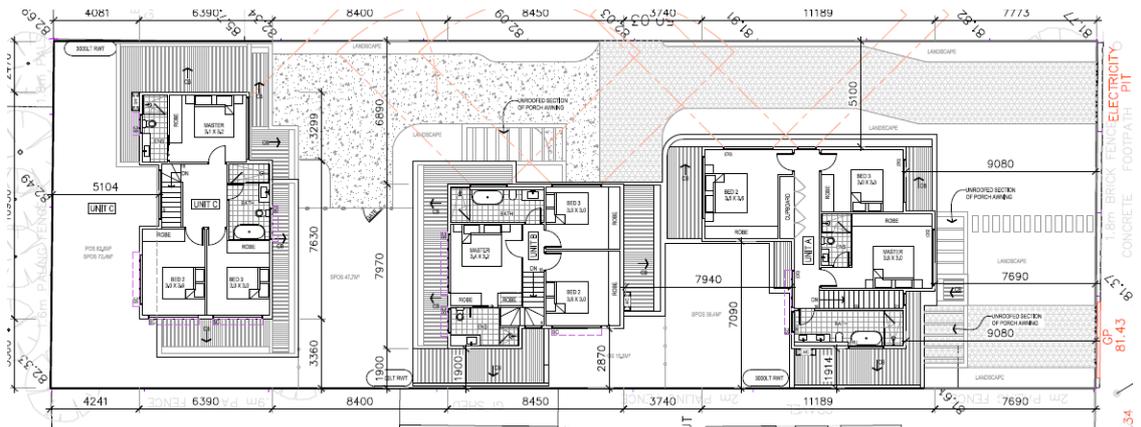
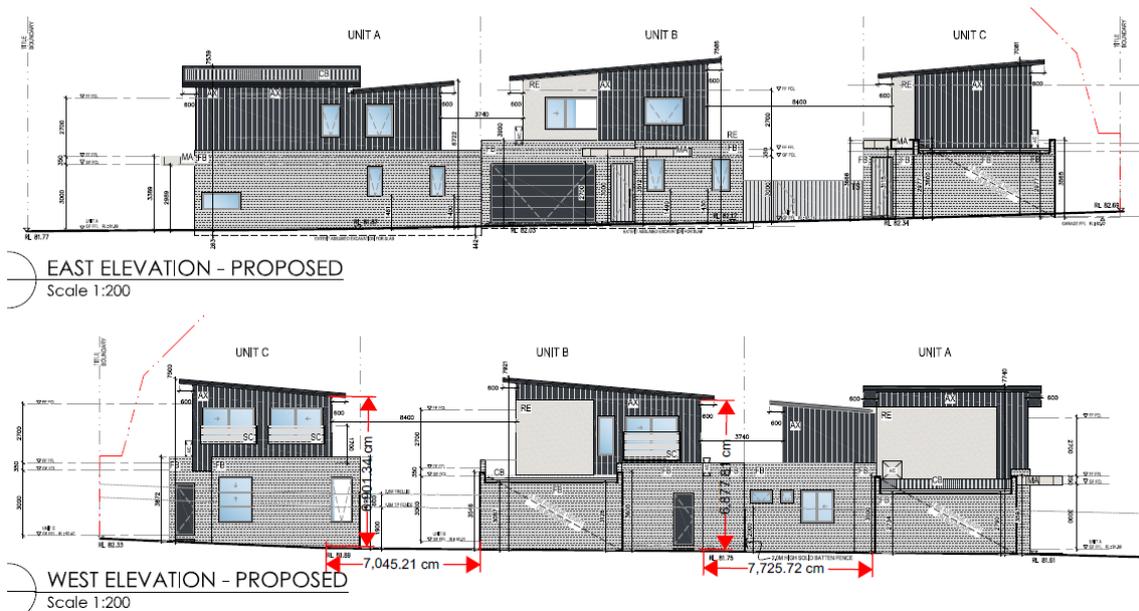


Figure 3 - Elevations⁴

- 1 The submissions and evidence of the parties, any supporting exhibits given at the hearing and the statements of grounds filed have all been considered in the determination of the proceeding. In accordance with the practice of the Tribunal, not all of this material will be cited or referred to in these reasons.
- 2 TP05.
- 3 TP06.
- 4 TP201.



- 2 Monash City Council (the ‘Council’) refused the application on five grounds. These include the proposal fails to positively contribute to the preferred neighbourhood character of the area. It states the proposal is inconsistent with the objectives of State and local neighbourhood character policies in terms of its scale, bulk, and massing. These grounds state the proposal fails to positively contribute to the desired future character and it will adversely affect the streetscape character.
- 3 Council also refused the application on grounds the proposal does not meet the objectives and standards of Clause 55 relating to neighbourhood character, landscaping, solar access to open space and design detail.
- 4 The applicant submits the proposal represents a good design outcome that achieves the overarching goal of urban consolidation while also providing an appropriate character response. It says the development is a site responsive design that provides a high level of amenity for future residents and will ensure the amenity of nearby properties is not unreasonably affected. It also submits the proposal has a high level of compliance with Clause 55 and Council’s local policies.
- 5 Planning decisions do not seek ideal outcomes, or outcomes which respond positively to every relevant policy. Rather, acceptable outcomes are the measure by which decisions are to be made. I must decide whether the proposed development will produce an acceptable outcome having regard to the relevant policies and provisions in the Planning Scheme. Clause 71.02-3 requires the decision-maker to integrate the range of policies relevant to the issues to be determined and balance conflicting objectives in favour of net community benefit and sustainable development.
- 6 I have decided to set aside Council’s decision and direct that a permit be issued. I am satisfied the development is an appropriate response to the preferred neighbourhood character and a reasonable level of internal

amenity for future occupants can be achieved by permit conditions. My reasons follow.

WHAT ARE THE KEY ISSUES?

- 7 Having undertaken an inspection of the subject site and wider area and taking into consideration the submissions and evidence regarding the applicable policies and provisions of the Monash Planning Scheme, the key issues arising in this matter are:
- Does the proposal respond to its zoning and policy context?
 - Is the development an acceptable response to the preferred neighbourhood character?
 - Does the proposal provide an acceptable response to the objective and standards of Clause 55?

PROCEDURAL ISSUES

- 8 After the application for review being lodged, the permit application was amended, through the substitution of amended plans. The amended proposal includes wider gaps between the first floors of the dwellings, increased depth to the turning bay for Unit C and additional secluded open space for Unit C.
- 9 Council also identified various changes that were not specified by the applicant including change in materials, window locations and configurations and roof forms. Council does not take issue with the consequential changes but submits additional external privacy screens are required on select windows to mitigate impacts on neighbouring properties.
- 10 No other party or other person objected to the amendments.
- 11 Council acknowledges the amended plans contain improvements from the original plans but maintains its refusal subject to the deletion of Ground 5. It says the amended plans have ensured vehicle access to Unit C is satisfactory and conditions can be included on the permit to improve access to Unit B.

WHAT IS THE PHYSICAL CONTEXT OF THE SITE?

- 12 The subject site is in an established residential area comprising single and double storey dwellings and multi-dwelling developments. The street is two-way at western end but becomes one-way at the eastern end adjacent to Amsleigh Primary School.

Figure 4- Aerial photograph⁵

⁵ Attachment 4 – Council submission.



Source: Nearmap (24 April 2023)

SUBJECT SITE

- 13 There is a local shopping strip that abuts the east side of Huntingdale Road that is proximate to the subject site. This centre contains local convenience shops and a small supermarket. There is a laneway at the rear of these shops that connects to State Street and abuts the west side of 1 State Street. To the north-west of the laneway is a five storey apartment building in Huntingdale Road that is currently under construction.
- 14 The applicant argues the surrounding built form is influenced by the abuttal to the Commercial 1 Zone ('C1Z') to the west. It says this contrasts with the residential areas removed from this context which is a more traditional residential setting.
- 15 Council notes the area historically contained single storey detached houses on larger lots with a single crossover. It says that there has been a high degree of redevelopment on the north side of State Street as all lots, except for 1 State Street and the subject site, contain two or more dwellings.
- 16 The applicant submits the newer multi-dwelling development in this area is generally large double storey dwellings, including at the rear of sites. It says this redevelopment has resulted in a varied character from a range of periods, in addition to the existing housing stock.
- 17 Recent multi-dwelling developments include three double storey dwellings at 9A State Street and four dwellings at 13 State Street. There are also older unit developments containing a new dwelling at the rear of the existing dwelling at 5, 7, 9, 11 and 24 State Street.
- 18 The applicant says a key feature of the area is the varied subdivision pattern which is relevant to consideration of the backyard character.
- 19 The site is located 950 metres west of Oakleigh Major Activity Centre ('MAC') and 950 metres north of Huntingdale Neighbourhood Activity Centre ('NAC').

DOES THE PROPOSAL RESPOND TO ITS ZONING AND POLICY CONTEXT?

- 20 The site is within a GRZ3 - Garden City Suburbs, which has purposes including encouraging development that respects the neighbourhood character of the area and encouraging a diversity of housing types and housing growth particularly in locations offering good access to services and transport.
- 21 GRZ3 contains seven variations to Clause 55 including Standard B6 that specifies a minimum frontage setback of 7.6 metres, Standard B8 that recommends a minimum site coverage of 50% and Standard B9 that states permeability should be at least 30%. Standard B13 requires indigenous canopy tree planting and Standard B17 recommends 5 metre rear setbacks. Standard B28 varies the private open space requirements to consist of an area of 75 square metres, with one part of the private open space at the side or the rear of the dwelling with a minimum area of 35 square metres, a minimum width of 5 metres and convenient access from a living room. Standard B32 is varied to specify a maximum front fence height of 1.2 metres.
- 22 The proposal satisfies or exceeds the seven variations to the Clause 55 standards except for the setback of the garage of Unit C from the rear boundary. The development also achieves a minimum 35.6% Garden Area and therefore satisfies Clause 32.08-4 and has a maximum height of 7.9 metres which is below the maximum height specified in Clause 32.08-10.
- 23 The subject site is within an area identified by Council as a buffer of a post closure landfill (Reg Harris Reserve). The draft conditions include a requirement for the preparation of a Landfill Gas Risk Assessment Report. This condition has not been contested by the applicant.
- 24 Council outlined the relevant objectives and strategies of the Planning Policy Framework ('PPF') at Clauses 11⁶, 15⁷ and 16⁸, that provide guidance about the type, location, and anticipated density of new housing in the municipality.
- 25 There are also various clauses in the Local Planning Policy Framework ('LPPF') relevant to this application. This includes Clause 21.04 (Residential Development) that identifies the site is in Category 8: Garden City Suburbs ('GCS') on the Residential Development Framework Map. The site is also within an area identified as the National Employment Cluster Boundary Investigation Area. Relevant strategies include to locate residential growth in the Monash National Employment Cluster to increase proximity to employment, public transport, and services and to encourage a

⁶ At Clause 11.03-1S (Activity Centres).

⁷ At Clauses 15.01-1S (Urban Design), 15.01-2S (Urban Design) and 15.01-5S (Neighbourhood Character).

⁸ At Clauses 16.01-1S (Housing Supply), 16.01-1R (Housing Supply - Metropolitan Melbourne) and 16.01-2S (Housing Affordability).

variety of housing types and sizes to accommodate a diversity of future housing needs and enhance the garden city character of the city.

- 26 The Residential Development and Character Policy at Clause 22.01 is applicable for all residential development in a GRZ3. The site is within the Garden City Suburbs Southern Area that includes a preferred future character statement that is discussed further below.

Policy arguments

- 27 Council acknowledges the development satisfies urban consolidation and housing choice objectives as the site is reasonably well located. However, it argues the development fails to provide an acceptable design response to the preferred neighbourhood character. It submits the appropriate balance of the competing policy objectives has not been struck.
- 28 The applicant agrees that redevelopment of the site for medium density housing enjoys policy support. It submits that Clause 22.01 anticipates further evolution of the housing mix that complements the scale and siting of original dwellings that enhances the landscape character of the area.

Tribunal findings

- 29 I find the construction of three dwellings on this site is in accordance with the objectives and strategies of the PPF and LPPF which encourage an increase in housing densities in Oakleigh East. The proposal is consistent with the purposes of the GRZ3 as it will increase the diversity of housing and housing growth in a well serviced area that is located near the Oakleigh MAC and within walking distance of public transport, schools, and public open space.
- 30 The main issue is whether the amended plans have addressed the neighbourhood character objectives of the GRZ3 and the preferred character statement for the GCS in Clause 22.01.
- 31 I find the development is an appropriate response to the preferred neighbourhood character in terms of its scale, layout, and design. I also consider there is sufficient space in the frontage setback to accommodate two crossovers as there is space for landscaping which will enhance the landscape character of the area.
- 32 However, I have some concern about the internal amenity of the secluded private open space of the dwellings from overshadowing that can be addressed by permit condition. My reasons follow.

IS THE DEVELOPMENT AN ACCEPTABLE RESPONSE TO THE PREFERRED NEIGHBOURHOOD CHARACTER?

What is the preferred Neighbourhood Character?

- 33 The preferred neighbourhood character statement for the GCS in Clause 22.01-4 notes in part:

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.

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.

- 34 The clause contains design principles for street setbacks, site coverage and permeability, landscaping, side and rear setbacks, walls on boundaries, private open space, vehicle crossings, built form and scale of development and environment.
- 35 Council argues the proposal fails to respect the preferred neighbourhood character whereas the applicant submits the proposal responds well to the guidance provided by the Planning Scheme provided in Clause 22.01 and meets the varied Res Code standards.
- 36 The applicant submits that Council is seeking the ideal outcome but fails to acknowledge the site is at an interface with a C1Z.
- 37 My findings will concentrate on design principles highlighted by Council in their grounds of refusal.

Building Scale

- 38 The following neighbourhood character objective in Clause 1.0 of the GRZ3 is relevant:

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.



- 39 This is reiterated in Clause 22.01-3 as it is policy that development:
- Respect the height, scale and massing of existing dwellings in the neighbourhood. Ensure taller buildings incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and the neighbourhood.
 - Preserve backyard character by ensuring multi-storey development at the rear of properties incorporates generous articulation and setbacks including ground floor setbacks sufficient in width to support screening trees.
 - Ensure taller buildings incorporate sufficient articulation, including recessed upper levels, to respect the prevailing scale of the adjoining dwellings and the neighbourhood.
 - Incorporate higher degrees of articulation for double storey development in streetscapes where the prevailing built form is single storey.
- 40 Council acknowledges the amended plans have attempted to address these concerns, but they fail to ameliorate the overall visual mass of the built form. It submits the overall scale/mass of the development is out of keeping with the surrounding and nearby development. It says the preferred neighbourhood character encourages modest dwellings with simple pitched roofs and articulated facades. It says there is inadequate break between the upper levels to break up the overall bulk and insufficient articulation that include sheer walls. It says the dwellings will present as ‘block like’ structures.
- 41 The applicant refutes this proposition and submits this is not a location where dwellings are consistently low scale or where there is no built form intrusion in rear yards. It says outlooks from rear yards are often onto buildings and walls on boundaries. It argues the siting of the dwellings is site responsive and a comfortable fit with the neighbourhood that includes commercial buildings and an apartment block to the north-west.

Tribunal findings

- 42 Having inspected the subject site and surrounding locality, I am satisfied the scale and massing of the development is an appropriate response to the preferred neighbourhood character for the following reasons:
- Unit C is a separate, detached house at the rear which is set back 5.5 metres from Unit B at ground floor level and 8.4 metres at first floor level. These setbacks provide a large visual break in built form towards the rear of the site;
 - Unit C is set back 3-5 metres from the rear boundary. This setback provides a landscaped interface with the adjoining open rear yard to the north;

- There is a 3.74-8.03 metre gap between the upper levels of Units A and B which will provides visibility through the centre of the site when viewed from the adjoining properties;
- Whilst there is a sheer wall in the east elevation of Unit B, most of the other walls are either recessed or cantilevered over the ground floor and provide articulation of the built form;
- The façade of Unit A is set back 7.6-9.08 metres from the frontage. These setbacks provide visual interest and reduce the scale of the building in the streetscape;
- The dwellings propose an overall height of 7.9 metres which is consistent with other double storey dwellings nearby; and
- There is a five storey apartment building on Huntingdale Road, to the north-west of the subject site. This building is visible from the subject site and is part of the broader, diverse built form character of the site which has an interface with a C1Z.

Site Layout/Two Crossovers

- 43 Clause 1.0 of GRZ3 includes the following neighbourhood character:
- 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.
- 44 The neighbourhood character objectives of the GRZ3 support new development that locates garages and carports behind the front walls of building. Standard B13 is varied to require vegetation on both sides of driveways.
- 45 Council argues the provision of two crossovers is inconsistent with the established and preferred neighbourhood character. It says the original housing comprises a detached house with single crossover and newer multi-dwelling developments are in a tandem layout with a single crossover in this street. It cited examples of recently developed three dwellings at 9A State Street that includes one crossover. Council submits this recent development demonstrates that such a design response is feasible for the subject site.
- 46 Council acknowledges that there is space available within the frontage for canopy tree planting, but the additional crossover reduces the width of the front yard and the resulting landscape area is narrower than the prevailing width of nearby front yards.
- 47 The applicant submits the additional crossover is supportable given the context found here contains car parking and crossovers dominate. It says the proposal will remove the high front fence and provide a landscape response with a single garage for Unit A. It submits this will be a positive response in the streetscape.

Tribunal findings

- 48 I find the site layout, that includes two crossovers in the frontage, is acceptable in this neighbourhood for the following reasons:
- The site layout maintains the existing dwelling spacing with one detached house facing the street. Existing multi dwelling developments nearby also adopt this layout;
 - The context of the site includes extensive paving in the streetscape as the site is located at the interface with a C1Z. The western end of the street includes indented on-street parking (on both sides) which results in limited space for landscaping in the nature-strip;
 - The eastern end of the street also contains extensive hard surfaces in the streetscape due to the provision of indented parking bays adjacent to the primary school;
 - Immediately south are dwellings with double width crossovers which increase the extent of hard paving in the street;
 - The existing street tree can be retained between the crossovers, which will retain consistency in landscaping in the streetscape;
 - The width of the crossovers meets Clause 55.03-9 (Standard B14 – Access);
 - Unit A is set back a minimum of 7.6 metres from the frontage and this provides enough space for the planting of three canopy trees which complies with the requirements of the varied Standard B13;
 - There is space either side of the driveways along the boundaries (i.e. one metre) for landscaping to soften the extent of paving in the frontage. This meets the requirements of varied Standard B13;
 - The front garden will be clearly visible in the streetscape due to the provision of a low front fence;
- 49 Whilst there are no other dual crossover multi-dwelling developments in this street, the wider area contains newer unit developments with a similar layout to this proposal. This includes 7, 15 and 33 Elizabeth Street which is two streets further north of the site. I consider these developments have not negatively impacted the garden city character of the streetscape.
- 50 I acknowledge that one on-street car space will be lost but I note that this was not one of Council's grounds of refusal. I observed this section of the street contains unrestricted parking and there is existing indented car parking provided adjacent to the shops.

Design Detail

- 51 Clause 22.01-3 has a policy to respect the roof forms and pitches of existing dwellings in the neighbourhood.

- 52 Council argues the design detail, that includes the use of flat and skillion roof forms, is not in keeping with the prevailing design detail evident in the existing housing. It says the pitched roofs with eaves has not been reflected in the design.
- 53 The applicant disagrees and says the neighbourhood character is sufficiently varied to accommodate a contemporary medium density development. It says the design will have a modern appearance that contains modern windows and doors that will provide their own identity in the street.

Tribunal findings

- 54 I note the site is not within a Heritage Overlay or Neighbourhood Character Overlay which can prescribe certain roof forms. I am satisfied the use of skillion and flat roofing will contribute to the diversity of building styles found nearby.
- 55 I find the design of the dwellings an acceptable response in this neighbourhood given the varied nature of building styles that have evolved over time. This development represents the latest trends and incorporates materials and finishes found in the surrounding area.

Landscaping

- 56 Clause 1.0 of GRZ3 includes 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.
- 57 Standard B13 is varied to require at least one canopy tree, plus at least one canopy tree per 5 metres of site width, a mixture of vegetation including indigenous species and the planting of vegetation in the front, side, and rear setbacks.
- 58 Council recognises the front setback of Unit A and rear yards of each dwelling are sufficient in size to accommodate the planting of a canopy tree that will contribute to the Garden City character. However, it is concerned there is minimal space either side of the driveway which limits the ability to provide screen landscaping to buffer the built form.
- 59 The applicant refutes this proposition and says the driveway provides additional opportunity for planting that will make a positive contribution to the future landscape character.

Tribunal findings

- 60 I agree with the applicant the site presently does not contribute to the garden character of the streetscape due to the high front fence. The proposal meets the varied requirements of Standard B13 and provides enough space in the frontage for the planting of canopy trees and other vegetation. This will enhance the streetscape character and is in accordance with the objectives of the preferred neighbourhood character of GCS.

DOES THE PROPOSAL RESPOND ACCEPTABLY TO THE OBJECTIVES OF CLAUSE 55?

- 61 Objectives of Clause 55 relating to neighbourhood character, landscaping and design detail have been addressed in my previous findings. Council has also refused the application on grounds the proposal fails to meet the following standard.

Clause 55.05-5 (Standard B29- Solar Access to open space)

- 62 Council argues whilst the amended plans have increased the gaps between the upper levels of the dwellings, the changes are insufficient to resolve its concerns with non-compliance with Standard B29. The standard recommends the first floor of Unit B should be set back 8.38 metres from Unit A but it is set back 7.954 metres. The first floor of Unit C should be set back 8.12 metres but it is set back 6.8 metres.
- 63 Council submits the amended plans are inappropriate as the development fails to respond to the orientation of the land. It says non-compliance indicates the amenity of the secluded open space of Units A and B will have constrained access to sunlight throughout the day.
- 64 The applicant acknowledges the proposal falls short of meeting the requirements of Standard B29. It says the dwellings are designed to provide north facing living areas, as opposed to west facing open space given the site abuts land zoned C1Z. It says the inclusion of the significant building break between Units B and C also has built form and neighbourhood character benefits.
- 65 The applicant submits the open space is useable and an acceptable amenity outcome for occupants. It says the size of the rear yards can accommodate an outdoor setting which will receive solar access at midday. It says shadows will fall on the ground and not over the north facing windows and after midday, solar access is available to the open space.

Tribunal findings

- 66 Whilst the amended plans have attempted to address this concern, they do not meet the recommended setbacks in Standard B29. This standard contains relevant decision guidelines:
- The design response.

- The useability and amenity of the secluded private open space based on the sunlight it will receive.
- 67 Due to the orientation of the site (i.e. north/south), shadow diagrams for the Equinox (22 September) show the rear yards of Units A and B will be substantially overshadowed in the morning but will receive some sunlight in the afternoon.
- 68 I accept the applicant's argument that the dwellings have been designed to have north facing open space instead of a western orientation given the site abuts a C1Z. When questioned by the Tribunal the applicant acknowledged the setbacks of the first floor Unit B could be further amended to meet the requirements of the standard, but it would be difficult to achieve for Unit C.
- 69 I am satisfied that as Unit B has northern open space and north facing windows, the dwelling will receive some sunlight in the courtyard during the day. This will provide a reasonable level of amenity for future occupants. I will, however, require the plans to be amended to improve access to sunlight for Unit A by increasing setbacks of Unit B. This can be dealt with by permit condition.

WHAT CONDITIONS ARE APPROPRIATE?

- 70 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

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

Jane Tait
Member

APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53934
LAND	3 State Street OAKLEIGH EAST VIC 3166

Planning scheme clause number:	Description of what is allowed:
32.08-6	To construct two or more dwellings on a lot

CONDITIONS

Amended Plans

- 1 Before the development / use 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 prepared by Two Design, dated July 2023 (PNPE9 revision), but modified to show:
 - (a) The location and design of any proposed electricity supply meter boxes. The electricity supply 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”.
 - (b) The location of the gas and water meters.
 - (c) Extension of the eastern vehicle crossing to become a double crossing with No. 5 State Street (with the 1 metre wide landscape strip to the east of the driveway at the front of the site to be retained).
 - (d) A reduction in the width of the 1m wide section of garden bed located abutting the eastern side of the driveway opposite the Unit B entry porch/ garage, to match the width of the existing narrower garden bed to the immediate north. The garden area plan must be modified accordingly and consequential changes made (if required) to satisfy the mandatory 35% minimum.
 - (e) The secluded private open space area of Unit A set back a sufficient distance from walls to the north to satisfy the requirements of Standard B29 of Clause 55. Any changes required to Unit B to achieve this must not reduce the setbacks of the dwellings from side/rear boundaries.
 - (f) South elevation of Unit A to accord with the first-floor plan (stairwell window).



- (g) The location of the street tree within the front nature strip and its minimum setback from the eastern vehicle crossover.
- (h) West elevation of Unit A to accord with floor plan (highlight window to first floor bathroom to be shown).
- (i) Provision of an external privacy screen to the new east facing window serving Bedroom 2 of Dwelling A.
- (j) Provision of an external privacy screen to the west facing stairwell window of Unit B.
- (k) The large north facing first floor stairwell window of Unit C modified to highlight window that has a minimum sill height of 1.7m above the FFL of the first floor.
- (l) The north facing ensuite window of Unit C notated as being constructed of opaque glass.
- (m) A notation that all external privacy screens must have a minimum height of 1.7m above FFL and be no more than 25% transparent.
- (n) A reduction in the maximum height of the unroofed awning provided to Unit A to less than 3.6m.
- (o) Provision of a 6m³ storage shed for Unit C within the rear yard
- (p) Correction/s to the garden area plan, if required, to satisfy the definition in the Monash Planning Scheme (e.g. noting that Unit C contains a first floor element that cantilevers partly over the rear yard to the north). The garden area plan must be modified accordingly and consequential changes made (if required) to satisfy the mandatory 35% minimum.
- (q) 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. The area clear of visual obstructions may include an adjacent entry or exit lane where more than one lane is provided, or adjacent landscaped areas, provided the landscaping in those areas is less than 900mm in height.
- (r) A Landscape Plan in accordance with Condition 6 of this Permit.
- (s) A Waste Management Plan in accordance with Condition 11 of this permit.
- (t) An amended Sustainable Management Plan in accordance with Condition 3 of this permit.
- (u) Any changes recommended in the ESD report required by Condition 3 of this Permit



all to the satisfaction of the Responsible Authority.

Layout not to be Altered

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

Environmentally Sustainable Design (ESD)

- 3 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Management Plan must be submitted to and approved by the Responsible Authority. The plan must be generally in accordance with the Sustainability Management Plan prepared by Frater Consulting Services Dated 19 September 2022, except that the plan must be modified to show:
 - (a) Any changes included in amended plans under PNPE9 (July 2023);
 - (b) Any changes required by Condition 1 of this planning permit;
 - (c) Bicycle parking for Unit C.

Upon approval the Sustainable Management Plan will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the SMP to the satisfaction of the Responsible Authority.

Landfill Gas Assessment

- 4 Prior to the commencement of the development authorised under this permit (excluding works reasonably required to conduct the landfill gas assessment), the permit holder must to the satisfaction of the Responsible Authority:
 - (a) Engage an appropriately qualified site assessor with demonstrated experience in the assessment of landfill gas in the subsurface environment, to conduct an assessment of any methane within the land, subsurface services and buildings and structures on the land adopting the methane gas action levels prescribed at items 6 and 7 of schedule 3 of the Environment Protection Regulations 2021 (Vic) as set out below.

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

- (b) Upon approval of the scope of the risk assessment by the responsible authority, have the consultant conduct the risk assessment and prepare a report to be submitted to the responsible authority which contains the consultant’s opinion as to any potential risk associated with landfill gas beneath the land and any recommendations for the management or monitoring of the gas. The consultant must provide an opinion on whether an audit is required under section 53V of the *Environment Protection Act 1970 (Vic)*.
- (c) Implement any recommendations of the risk assessment report.
- (d) If the risk assessment report recommends an audit under section 53V of the *Environment Protection Act 1970 (Vic)*:
 - (1) engage an environmental auditor appointed under section 53S of the *Environment Protection Act 1970 (Vic)* to prepare and submit to the satisfaction of the responsible authority a scope of the proposed audit which includes consideration of both landfill gas and odour risk
 - (2) have the environmental auditor conduct an audit under section 53V of the *Environment Protection Act 1970 (Vic)* in accordance with the agreed scope
 - (3) implement any recommendations of the audit report.
- (e) if the risk assessment report or audit report requires ongoing management or monitoring, the owner must enter into an agreement under section 173 of the *Planning and Environment Act 1987 (Vic)* with the responsible authority requiring the implementation of any ongoing requirements.

The owner/operator under this permit must pay the reasonable costs of the preparation, execution and registration of the section 173 agreement.

Peer Review

- 5 Prior to the commencement of the development authorised under this permit, the permit holder must:



- (a) provide to Council a copy of the LGRA undertaken in accordance with condition 1 within 14 days of receiving the LGRA;
- (b) pay Council's costs and expenses associated with a Council-arranged peer review of the LGRA. The peer review will be undertaken by an independent and suitably qualified environmental consultant nominated by Council; and
- (c) obtain a copy of the peer review obtained by Council.

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

Landscape Plan

- 6 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 Frater consulting services, dated 29.9.2022 except that the plan must be modified to show:
- (a) Any changes included in amended plans under PNPE9 (July 2023).
 - (b) Any changes required by Condition 1 of this planning permit.
 - (c) Any changes required by the Waste Management Plan.

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

- 7 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

Tree Protection

- 8 Before any development (including demolition) starts on the land, a tree protection fence must be erected around all trees that are to be retained, or are located within or adjacent to any works area (including trees on adjacent land). The tree protection fence must remain in place until all construction is completed on the land, except with the prior written consent of the Responsible Authority.



- 9 No building material, demolition material, excavation or earthworks shall be stored or stockpiled within the Tree Protection Zone (TPZ) of any tree to be retained during the demolition, excavation and construction period of the development hereby permitted without the prior written consent of the Responsible Authority.

Landscaping Prior to Occupation

- 10 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.

Waste Management Plan

- 11 Concurrent with the endorsement of plans required pursuant to Condition 1, a Waste Management Plan must be submitted and approved by the Responsible Authority. The plan must provide details of a regular Council waste (including recyclables) collection service for the subject land and be prepared in accordance with the Multi-Unit and Commercial Developments Waste Management Plan Guide for Applicants. The plan must include the following:
 - (a) The method and location of collection of all waste from the land;
 - (b) Waste volume calculation and total waste generated per waste stream;
 - (c) Frequency of Waste collection and permitted collection times;
 - (d) Plans showing the location of bin storage areas, required bin storage equipment and features, number of bins and location of temporary bin storage at collection point(s);
 - (e) Provision of bin cleaning equipment, washing facilities and sewer disposal within the waste storage area;
 - (f) Details of who will be responsible for taking out and returning bins to kerb (only use if collection is proposed from street)

Drainage

- 12 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.

- 13 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit. Refer to Engineering Plan Checking on www.monash.vic.gov.au.
- 14 Stormwater discharge is to be detained on site to the predevelopment level of peak stormwater discharge. Approval of any detention system is required by the City of Monash prior to works commencing; or any alternate system.
- 15 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.
- 16 The full cost of reinstatement of any Council assets affected by the demolition, building or construction works, must be met by the permit applicant or any other person responsible for such damage, to the satisfaction of the Responsible Authority.

Vehicle Crossovers

- 17 All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.
- 18 Any new vehicle crossover or modification to an existing vehicle crossover must be constructed to the satisfaction of the Responsible Authority.
- 19 Car spaces, access lanes and driveways shown on the endorsed plans must not be used for any other purpose, to the satisfaction of the Responsible Authority. All disused or redundant vehicle crossovers must be removed and the area reinstated with footpath, naturestrip, kerb and channel to the satisfaction of the Responsible Authority.

Privacy Screens

- 20 Prior to the occupancy of the development, all screening and other measures to prevent overlooking as shown on the endorsed plans must be installed to the satisfaction of the Responsible Authority. Once installed the screening and other measures must be maintained ongoing to the satisfaction of the Responsible Authority. The use of obscure film fixed to

transparent glass or windows is not considered to be 'obscure glazing' or an appropriate response to screen overlooking.

Boundary Walls

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

Satisfactory Continuation and Completion

- 22 Once the development and/or use has started it must be continued and completed to the satisfaction of the Responsible Authority.

Time for Starting and Completion

- 23 In accordance with section 68 of the *Planning and Environment Act 1987 (Vic)*, this permit will expire if one of the following circumstances applies:
- (a) The development is not started before 2 years from the date of issue.
 - (b) The development is not completed before 4 years from the date of issue.

In accordance with section 69 of the *Planning and Environment Act 1987 (Vic)*, the responsible authority may extend the periods referred to if a request is made in writing before the permit expires, or

- (i) within six (6) months afterwards if the development has not commenced; or
- (ii) within twelve (12) months afterwards if the development has not been completed.

Council and the Victorian Civil and Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –