

# VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

## PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P11208/2021  
PERMIT APPLICATION NO.TPA/52209

### CATCHWORDS

Application under section 77 of the *Planning and Environment Act 1987* to review refusal to grant a permit; Monash Planning Scheme; Neighbourhood Residential Zone 3 – *Creek Environs Area*; two double storey dwellings; neighbourhood and creek landscape character; restrictive covenant; land slope; visual and streetscape impacts; energy efficiency and overlooking

|                              |  |
|------------------------------|--|
| <b>APPLICANTS</b>            | Yao Tang & Shijun Chen                   |
| <b>RESPONSIBLE AUTHORITY</b> | Monash City Council                      |
| <b>RESPONDENTS</b>           | Jonathan Amies<br>Vicky Kassidas         |
| <b>SUBJECT LAND</b>          | 27 Aikman Crescent<br>CHADSTONE VIC 3148 |
| <b>HEARING TYPE</b>          | Hearing                                  |
| <b>DATE OF HEARING</b>       | 11 March 2022                            |
| <b>DATE OF ORDER</b>         | 5 May 2022                               |
| <b>CITATION</b>              | Tang v Monash CC [2022] VCAT 486         |

### ORDER

- 1 Pursuant to clause 64 of Schedule 1 of the *Victorian Civil & Administrative Tribunal Act 1998*, the permit application is amended by substituting for the permit application plans, the following plans filed with the Tribunal:

|                  |   |
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| Prepared by:     | Mushan Architects   |
| Drawing numbers: | TP00-00 Rev G dated 24/01/2022<br>TP10-01 Rev B dated 17/12/2021<br>TP10-02 Rev E dated 24/01/2022<br>TP10-03 Rev C dated 17/12/2021<br>TP20-01 Rev E dated 24/01/2022<br>TP20-02, TP20-03 and TP30-01 Rev G dated<br>24/01/2022<br>TP30-02 Rev E dated 24/01/2022<br>TP30-03 Rev G dated 24/01/2022<br>TP30-04 Rev D dated 24/01/2022<br>TP40-01 and TP40-02 Rev F dated<br>24/01/2022<br>TP50-01 Rev E dated 24/01/2022 |



- 2 In application P11208/2021 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/52209 a permit is granted and directed to be issued for the land at 27 Aikman Crescent CHADSTONE VIC 3148 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
  - Construction of two (2) double storey dwellings and construction of front fence exceeding 0.6 metres in height

**Christopher Harty**  
**Member**

#### **APPEARANCES**

- |                            |   |
|----------------------------|---|
| For Yao Tang & Shijun Chen | Mr Matthew Townsend, Counsel instructed by Moray and Agnew Lawyers. He called the following witnesses: <ul style="list-style-type: none"><li>• Mr Rob Milner, Town Planner from Kinetica</li><li>• Mr Darren Atkinson, Landscape Architect from Urbis Pty Ltd</li></ul> |
| For Monash City Council    | Mr David De Giovanni, Town Planner from David De Giovanni Town Planning   |
| For Jonathan Amies         | In person   |
| For Vicky Kassidas         | In person   |



## INFORMATION

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|---|--|
| Description of proposal                 | Construction of two double storey dwellings in a side-by-side typology and construction of a one metre high front fence that exceeds 0.6 metres in height. |
| Nature of proceeding                    | Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.                                    |
| Planning scheme                         | Monash Planning Scheme   |
| Zone and overlays                       | Neighbourhood Residential Zone Schedule 3 – <i>Creek Environs Area (NRZ3)</i><br>No overlays   |
| Permit requirements                     | Clause 32.09-6 to construct two or more dwellings on a lot and to construct a front fence within 3 metres of a street which exceeds 0.6 metres in height.  |
| Relevant scheme policies and provisions | Clauses 11, 15, 16, 18, 21.01, 21.04, 21.08, 21.13, 22.01, 22.04, 22.05, 22.13, 32.09, 52.06, 55, 65 and 71.02.  |



## Land description

The subject land is located on the western side of Aikman Crescent, Chadstone (**site**) and has an irregular shape due to the curved alignment of the street with a frontage width of 16.54 metres and a combined width at the rear of 21.08 metres and depths averaging 45.19 metres, all combining to an overall site area of 856.5 square metres. The site falls approximately 3.6 metres or 7.9% from front to rear and has a drainage and sewerage easement 3.05 metres wide across the rear boundary. The site contains a double fronted single storey post-war weatherboard dwelling with some garden plantings. The site is affected by a restrictive covenant that includes setback, building height and construction requirements.

The site is in a residential hinterland context with single storey brick veneer dwellings adjacent to the north, south and east and medium density residential development to the west behind the site. Scattered double storey residential development is also located within the street and neighbourhood. Due to the sloping topography of the neighbourhood, dwellings on the east side of Aikman Crescent are more elevated on higher ground compared to those located on the west side where the site is located.

## Tribunal inspection

26 April 2022 unaccompanied

## REASONS<sup>1</sup>

### WHAT IS THIS PROCEEDING ABOUT?

- 1 Yao Tang and Shijun Chen (**applicants**) seek to construct two double storey dwellings in a side-by-side configuration (refer to Figures 1, 2 and 3) and a front fence that exceeds 0.6 metres in height at 27 Aikman Crescent, Chadstone (**site**). Monash City Council (**Council**) determined on 31 May 2021 to refuse to grant a permit. The applicants have lodged a review of Council's decision.

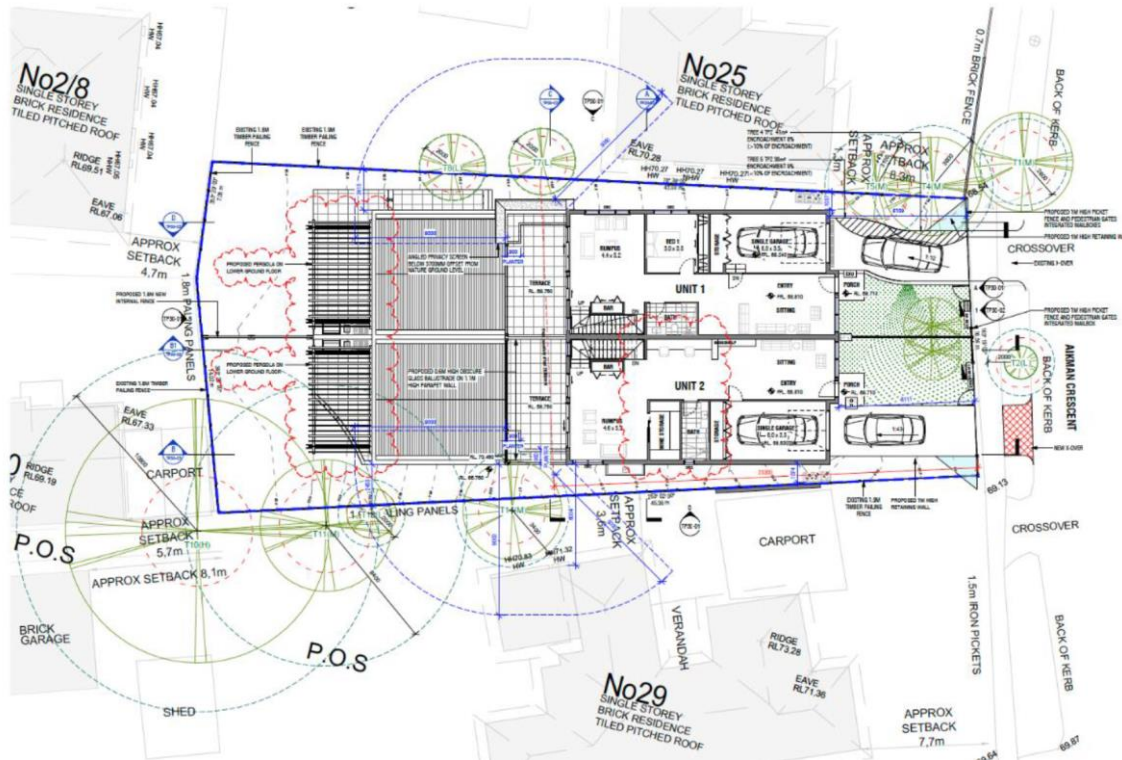


Figure 1: Ground floor layout of the proposal.

- 2 Council's grounds for refusing to grant a permit relate to the proposal failing to:
  - positively contribute to (and respect) the neighbourhood character of the area;
  - minimise building mass and visual bulk in the streetscape;
  - provide a vegetated garden setting;
  - be consistent with the Monash Housing Strategy; and

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<sup>1</sup> 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.

- adequately satisfy design responses relating to energy efficiency, overlooking and front fencing.



Figure 2: North and south elevations of the proposal.



Figure 3: Streetscape view of the proposal.

Despite the amendment of plans, Council continues to hold the view that their concerns have not been addressed and maintains its position of refusal.

- The respondents (**objectors**) support Council’s position.
- Mr Amies was concerned that a restrictive covenant that affects the site and from which he enjoys benefit, may be breached by the proposal. His property to the south at 29 Aikman Crescent has a sunroom which overlooks the rear of the site with long distance views towards the Chadstone Shopping Centre and Melbourne CBD skyline, which he considers may be impacted by a rear terrace and associated screening. He also has concerns with overlooking given the proximity of the proposal and the direction of outlook.
- Ms Kassidas whose property is to the north at 25 Aikman Crescent is concerned the proposal is too much for the site and an overdevelopment.

- 6 The applicant considers the proposal is a modest, respectful, and acceptable response to the policy directions of the Monash Planning Scheme (**planning scheme**) replacing the existing single storey dwelling with two new double storey side-by-side dwellings.

### **Restrictive covenant**

- 7 The site, at Lot 233 PS8883 is subject to a restrictive covenant contained in Instrument of Transfer G216342 (**Covenant**), which amongst other matters, prohibits the construction of a dwelling more than two storeys in height over the rear portion of the site.

- 8 The Covenant was originally established in 1976 and was varied in July 2020 by order of the Supreme Court of Victoria. The variation enables the development of two, double storey dwellings, provided the restrictions on the siting and height of buildings on the site were maintained to protect key view lines across the site, for the neighbouring beneficiary at 29 Aikman Crescent. The relevant excerpt from the modified Covenant is expressed as follows:

.... Any two storey component of the development hereby allowed shall not extend further back from the front boundary of the said Lot 233 more than 25.3 metres, and any structures which may be erected further back from the front boundary of the said Lot 233 than 25.3 metres shall not be constructed higher than 3.7 metres from ground level to the highest part of the roof structure...

- 9 The Court order also required that *in construction of the proposed development*:
- (a). the roof surface of the single storey component of the proposed building be finished in low-reflective paint or similar;
  - (b). no solar panels or other plant or equipment will be placed on the single storey component of the building; and
  - (c). any plantings that are located further than 25.3 metres from the front (street) boundary will be limited in height, adjacent to the common boundary between 27 Aikman Crescent and 29 Aikman Crescent to 3.7 metres, and within 5.0 metres of the western (rear) boundary to 3.7 metres.
- 10 I acknowledge that the Covenant has some influence over the design response of the proposal to which I have given consideration.

### **WHAT ARE THE KEY ISSUES?**

- 11 The issues raised within the context of this review relate generally to the proposal's design responsiveness to the site and policy context of the area and particularly the design response to preferred future neighbourhood and landscape character associated with the Scotchmans Creek setting. There are also issues around amenity with respect to visual bulk and overlooking



and with respect to energy efficiency and other detailed design aspects of the proposal. Finally, there is also the issue of how well the design responds to the requirements of the Covenant.

- 12 Having heard the submissions and evidence and inspected the site and locality, the key issues arising from this proposal are:
  - Does the proposal respect the preferred future neighbourhood and landscape character?
  - Are amenity impacts acceptable?
  - Is the design detail acceptable including energy efficiency?
- 13 I must decide whether the proposal will produce an acceptable outcome having regard to the relevant policies and provisions in the planning scheme. Net community benefit is central in reaching a conclusion. Clause 71.02 - *Integrated Decision Making* of the planning scheme 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 for the benefit of present and future generations.
- 14 With this proposed development I must decide whether a permit should be granted and, if so, what conditions should be applied.
- 15 Having considered all submissions and evidence presented with regards to the applicable policies and provisions of the planning scheme and from my inspection, I find the proposal represents an acceptable outcome, subject to changes that enhance the landscape response.
- 16 The proposal, subject to an ability to both support larger indigenous native canopy plantings whilst satisfying the requirements of the Covenant, is a reasonable response to the policy outcomes sought under the planning scheme and with respect to its setting.
- 17 The proposal, subject to the above caveats, is also compliant with the Covenant.
- 18 I have decided to set aside the decision of Council and that a permit is granted subject to conditions outlined in Appendix A. My reasons follow.

#### **DOES THE PROPOSAL RESPECT THE PREFERRED FUTURE NEIGHBOURHOOD AND LANDSCAPE CHARACTER?**

- 19 The site is subject to a range of physical, zoning, and policy influences, as well as the requirements of the Covenant. Some of which have presented a mix of challenges to which the design of the proposal has had to respond.

#### **Physical context**

- 20 The site is located within a residential hinterland area of Chadstone that has historically comprised single detached dwellings on generous lots with





spacious landscaped gardens. It is close to yet has cumbersome access to various community facilities and services. The site is 1.2 kilometres east of the Chadstone Shopping Centre (**Chadstone Major Activity Centre**), 1.5 kilometres north from the Oakleigh Train Station, 960 metres north-east of the Oakleigh Primary School and 430 metres north-east from Caloola Reserve and 300 metres north/north-east of Scotchmans Creek.

- 21 The site is located on land that rises from the Scotchmans Creek valley, with a sloping topography (refer to Figure 4) of around 3.6 metres or 7.9% from its frontage to Aikman Crescent to the rear of the site (west). This slope acts as both a design opportunity and a constraint with views afforded to the west towards the skyline of Chadstone Shopping Centre and to the north-west towards the Melbourne CBD skyline. It is these views that the Covenant seeks to protect for the benefit of the property to the south and which imposes limitations on both the siting and height of any redevelopment and in part, with landscaping on the rear of the site.

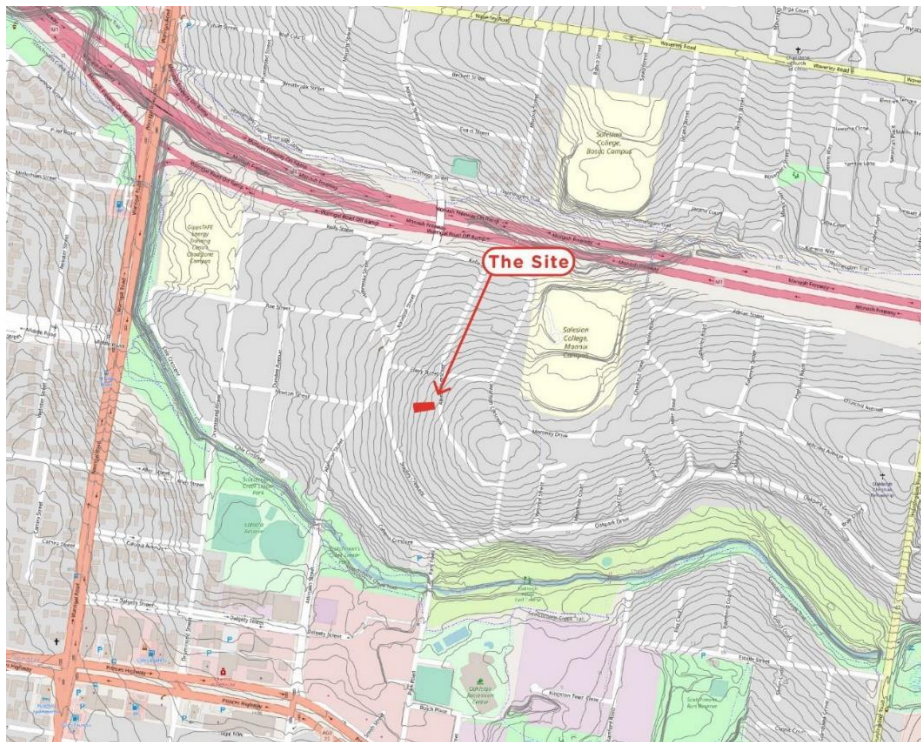


Figure 4: Surrounding topography of the site with Scotchmans Creek to the south.

### Policy context

- 22 In addition, the planning scheme has a well-established policy direction to maintain a garden city character supported by its leafy character and the desire to retain and enhance that leafy character of the suburbs within the City of Monash. It is recognised by the parties and in the landscape evidence of Mr Atkinson on behalf of the applicants that, apart from a Coast Banksia (*Banksia integrifolia*), which has medium retention value, and which is proposed to be removed, the site itself does not have

significant vegetation that warrants protection. There are no overlays affecting the site to support specific tree protection. However, there are two street trees that have a relatively long and useful lifespan (greater than 20 years) that contribute to the leafy character of the streetscape, one of which (6 metres in height) is proposed to be removed to accommodate a new second crossover for Dwelling 2 on the southern side of the site's frontage.

- 23 Coupled with the constraints of topography, Covenant and street trees is the somewhat contradictory juxtaposition between the zoning of the site in the Neighbourhood Residential Zone Schedule 3 – *Creek Environs Area* (**NRZ3**) and the policy framework under the planning scheme relevant to the site.
- 24 Under Clause 21.04-1 the site is identified in *Map 3 – Residential Development Framework Map* within an area of incremental change under *Category 8 – Garden City Suburbs* and under Clause 22.01-4 in *Map 1 – Residential Character Types* the site is identified within an area of limited development potential in the *Creek Environs Areas*. It was generally accepted by the parties and in the town planning evidence of Mr Milner on behalf of the applicants that the emphasis of the NRZ3 takes precedence and that the reference in consideration is the *Creek Environs Area* categorisation. I accept this position regarding zoning and policy.
- 25 However, it highlights that the site is in an area of transition between not only policy regarding development potential and the extent of change, but also on the edge of zoning between the NRZ3 and the General Residential Zone Schedule 3 – *Garden City Suburbs* (**GRZ3**), where Aikman Crescent itself forms the zoning boundary. In addition, there is reflection of this zoning and policy interface in a physical context with the location of the site some distance from Scotchmans Creek and the extent of residential development between the site and Scotchmans Creek itself. All of this culminates in a varied mix of emphasis of the zoning and policy direction in the planning scheme for how new residential development is required to respond.
- 26 The NRZ3 seeks to recognise areas of predominantly single and double storey residential development and to manage and ensure that development respects the identified neighbourhood and landscape character. Schedule 3 to the zone includes more specific objectives relating to neighbourhood character which relate to ensuring new development transitions down in scale towards the creek, respecting and reinforcing the natural topography and ensuring development is defined by spacious and generous garden settings, tall canopy trees and consistent built form and setbacks.
- 27 The schedule also includes variations to several Clause 55 requirements relating to setbacks, site coverage, permeability, landscaping, private open space, and front fence height. I note that, apart from front fence height and partly of landscaping, the proposal satisfies these variations as well as most



of the numerical requirements under Clause 55. This is something, the applicants, and the evidence of Mr Milner highlight as demonstrating the appropriateness of the proposal.

- 28 Despite the level of numerical compliance of the proposal, Council says the location of the site is in a sensitive area portraying a special character and an area with limited development potential. Development is to achieve a preferred outcome for this area and contributing to this preferred character is made challenging by the constraints that I have alluded to earlier.
- 29 Generally, the preferred character for the *Creek Environs Area* aims to maintain and enhance the landscape attributes of Scotchmans Creek and surrounding residential character. It seeks modest and diverse housing growth within spacious garden settings and tall canopy trees and consistent front setbacks where landscaping dominates built form.

### **Built form response**

- 30 Council says the location, zoning and policy framework raises the bar for any design response and that a more tempered outcome is required. Council considers the influence of the slope, and the Covenant pushes the bulk of the two-storey built form closer to the street and imposes upon the low-rise character of the streetscape. The combination of height, setbacks, two crossovers and associated driveways and garages and pedestrian pathways due to the side-by-side configuration creates excessive hard stand areas and limits the available area for landscaping with large canopy trees. The resulting loss of one of the two street trees exemplifies the limited ability to achieve a landscape presence that dominates the streetscape and a failure to contribute to the leafy garden city character of the area.
- 31 I note the applicants describe the proposal as taking advantage of the existing slope of the site, appearing as two double storey dwellings in a side-by-side dual occupancy form at the front, but lowering to a single storey lower ground floor level at the rear with an overall height around 9.3 metres. I acknowledge that this height satisfies the requirements of Clause 32.09-10 for sloping sites. Ms Kassidas was concerned that the rear-most two-storey portion of the dwellings may be considered three storeys in height and in breach of Clause 32.09-10. However, the applicants suggest that this form of the building height relates to the internal stairwell that services access between the lower ground floor at the rear and ground floor and first floor levels of the dwellings. I am satisfied this is the case and that the Tribunal has in the past considered that stairwells do not constitute a floor level given their service role. I note Council did initially query this aspect of the proposal and were satisfied through the request for further information process.
- 32 The height of the proposal, as it faces the street, is also tempered by the effect of slope across Aikman Crescent with properties on the east side of



the street much more elevated and presenting to the street as visually more prominent, while properties on the west side of the street are at lower levels, thus making the double storey form of the proposal less visually imposing.

- 33 Regarding the neighbourhood character objectives of Schedule 3 to the NRZ, I find the setbacks are generally consistent with those either side of the site to the north and south. The proposal has a front setback of 8.1 metres compared to setbacks to the north of 8.3 metres and to the south of 7.7 metres. However, there are landscape character issues that require attention.
- 34 There is no boundary-to-boundary development that sometimes occurs with side-by-side development. Access is available around the development. It also provides scope for some landscaping to be provided and avoids excessive built form across the site frontage. Garages are in single form, thus reducing the extent of hard paving usually associated with double garages.
- 35 Generally, regarding the built form response to neighbourhood character, I find that, at 300 metres distant from Scotchmans Creek, the site and its neighbourhood is on higher land and does not contain the extent of bushy landscape evident closer to the creek. A two-storey step up from the adjacent single storey dwellings is an appropriate and modest form of change that is contemplated by the *Creek Environs Area* residential character type and preferred character sought for the area.
- 36 The materials and form of the development proposes a contemporary design with pitched roofing and eaves, a sweeping common porch element in a gabled form, a mix of gabled and hipped roof form, white weatherboard cladding, white and light grey rendering, and dark blue grey roof tiles. Having regard to these matters, I am not persuaded by Council that, in a built form sense, the proposal represents a significant departure from policy direction.

### **Landscape response**

- 37 Regarding landscaping, it is proposed to plant two Euky Dwarf (*Eucalyptus leucoxylon* 'Euky Dwarf') canopy trees which are a cultivar of the Yellow Gum. It reaches a height at maturity of 6 to 10 metres and is useful for planting in areas with height restrictions or in tight spaces. They are proposed to be supported by five (5) Capital Pear trees (*Pyrus calleryana* 'Capital Pear') which will achieve heights at maturity of around 11 to 12 metres within the front setback. The landscape evidence suggests around 34 trees and shrub plantings are proposed including a variety of native and exotic plants that will contribute to the garden city character.

- 38 I note that all trees on neighbouring properties will be retained and protected. This includes two trees<sup>2</sup> near the front of the adjacent property to the north and a large tree<sup>3</sup> to the south-west of the site.
- 39 However, there are issues with the proposed landscaping relating to the scope to fully satisfy the variation for landscaping under Standard B13 in the NRZ3 and in relation to limitations on planting heights required under the Covenant.
- 40 The NRZ3 variation for landscaping requires the provision for at least four (4) canopy trees with a preference for the species of canopy trees to be native and indigenous that will reach a minimum mature height equal to the height of the roof. With a building height of 9.3 metres, the Euky Dwarf trees may be close to that minimum and may not, depending on growing conditions, achieve the taller heights.
- 41 I also note that the species selection shown in the landscape concept plan in Mr Atkinson's evidence may need to be reviewed to avoid conflict with the planting height limits in the Covenant for the rear area of the site, which require heights no greater than 3.7 metres within 5 metres of the rear of the boundary and adjacent to the common southern boundary with 29 Aikman Crescent.
- 42 Together, these constraints, in my view, reduce the ability of the landscape concept plan to achieve an outcome that is respectful of the leafy canopy treed landscape response that is sought under the planning scheme.
- 43 There is insufficient space within the front setback to achieve canopy tree planting with native indigenous species that will achieve a minimum height at maturity of 9.5 metres. Nor is there sufficient space at the rear of the site for planting of any large canopy trees due to the limitations between the Covenant and the setback of the rear pergola areas for each dwelling of between 6 and 6.5 metres from the rear boundary.
- 44 I consider it appropriate that additional native indigenous canopy trees be planted within the front setback to better achieve an outcome that will make a more respectful contribution to the preferred neighbourhood and landscape character for the area.
- 45 There will need to be some give with the proposal to satisfy these constraints and still achieve, in my view, an acceptable landscaping outcome that achieves the planting of larger canopy trees in accordance with the NRZ3 variation for landscaping. This will require both an increase in the front and rear setbacks to achieve more space for the planting of at least two large native indigenous canopy trees. These plantings should be in addition to the two Euky Dwarf trees proposed in the front setback area and at least two other large native indigenous canopy trees to be planted at

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<sup>2</sup> A Coast Banksia (*Banksia integrifolia*) and a Western Red Cedar (*Thuja plicata*).

<sup>3</sup> A Southern Mahogany (*Eucalyptus botryoides*).



the rear of the site that can avoid breaching the requirements of the Covenant.

- 46 To achieve more space at the rear of the site will be a matter of design that I will leave to the applicants and Council to consider.
- 47 Accordingly, I have included conditions requiring an increase in the front setback to enable appropriate and adequate space for the planting of at least two native indigenous canopy trees in addition to the two Euky Dwarf trees.
- 48 Similarly for the rear setback, I have included a condition requiring an increase to allow space for the planting of at least two native indigenous canopy trees that can avoid breaching the Covenant and ensure improved compliance with the landscape requirements of NRZ3.
- 49 In this regard, I am satisfied that the landscaping will lead to an improvement in the leafy garden city character of the area and provide an appropriate offset for the loss of two trees on the site and the one street tree.
- 50 Regarding the Covenant, I note Council is satisfied the proposal is compliant. Despite the concerns of Mr Amies, the design has not pushed the double storey component of the development further than 25.3 metres and has kept built form beyond that distance to under 3.7 metres in height above natural ground level. The proposal makes use of the slope to accommodate the rear single level component of the dwellings.
- 51 Overall, I find the proposal, subject to improved landscaping supported by adjustment to front and rear setbacks is respectful of neighbourhood character and makes an acceptable contribution to the preferred character of the area.

#### **ARE AMENITY IMPACTS ACCEPTABLE?**

- 52 Amenity impacts relate to visual bulk when viewed from the street and adjoining properties and their respective open space areas and with respect to overlooking, primarily associated with the sunroom at the rear of the dwelling to the south at 29 Aikman Crescent.
- 53 Regarding visual bulk, Ms Kassidas was concerned the proposal would be too large and bulky given the height and proximity to the common side boundary with her property to the north at 25 Aikman Crescent. She was also concerned with visual impacts of the proposal when viewed from her rear private open space area. Overall, she felt the proposal would 'box her in'.
- 54 The proposal has no walls on boundaries with a recessed upper floor level. Side boundary setbacks at ground floor level in the north are between 1.037 metres and 2.4 metres and in the south between 1.074 metres and 2.4 metres. At first floor level these setbacks increase in the north between 3 metres and 3.3 metres and in the south between 3.1 metres and 3.8 metres. These generally assist in reducing the visual bulk of the proposal.



- 55 There is a two-storey form which for the most part will run alongside the adjacent dwelling to the north. The southern side of the dwelling at 25 Aikman Crescent is generally a service area with two of the three windows associated with non-habitable rooms. I note that they are relatively modest in size and close to the side boundary with the site.
- 56 Regarding side boundary setbacks, the proposal has a small non-compliance relating to the edge of roof gutters. I consider that due to the height of the side boundary fence and position of the neighbouring windows the extent of encroachment is acceptable and unlikely to result in significant visual bulk impact. I am also not concerned regarding visual impacts from the rear private open space of 25 Aikman Crescent given the low-rise single storey level and open area at the rear of the proposal.
- 57 I have similar views regarding visual impacts from the property to the north.
- 58 Regarding overlooking, the objectors were concerned the proposal for terraces at the rear of the double storey portion and over part of the single level rear area of the dwellings would overlook their private open space areas and habitable room windows.
- 59 I note from the materials presented during the hearing and my inspection, that there is a reverse overlooking issue with views from the sunroom at 29 Aikman Crescent currently overlooking the backyard of the site. This will change due to the proposed extent of single level development, which will effectively replace views over the backyard of the site with roofed areas whilst not upsetting longer range views over the site.
- 60 The proposal includes screening of upper floor windows to 1.7 metres in height.
- 61 To reduce the potential for overlooking, the depth of the terraces has been reduced. Regarding the terrace for Dwelling 1, it is 6 metres from the sunroom windows of the adjacent dwelling to the south at 29 Aikman Crescent. A 0.6 metres high planter is proposed together with an angled privacy screen on the north and north-west edge.
- 62 Regarding the terrace for Dwelling 2, a 0.6m high planter has been provided together with a 1.1 metres high obscure glass balustrade on the south and south-west edge (adding to 1.7 metres in height overall).
- 63 The Covenant states that, any structure which may be erected further back from the front boundary than 25.3 metres shall not be constructed higher than 3.7 metres from ground level to the highest part of the roof structure. Due to the cross-slope of the site, the height of the planter and obscure glass screen proposed for Dwelling 2 should both appropriately mitigate unreasonable overlooking whilst also avoiding a breach of the Covenant. However, for Dwelling 1 to avoid any breach, an angled privacy screen 'lip' is proposed to achieve the same purpose.



- 64 I find the combination of levels between the terrace for Dwelling 2 and those of the sunroom windows, combined with the planter and obscure glass screen proposed for Dwelling 2, appropriately mitigate unreasonable overlooking to 29 Aikman Crescent. I am similarly satisfied that downward overlooking into the rear backyard of 25 Aikman Crescent can also be appropriately minimised.
- 65 Generally, I am satisfied the screening treatments proposed will achieve an acceptable and compliant outcome to prevent unreasonable overlooking.

#### **IS THE DESIGN DETAIL ACCEPTABLE INCLUDING ENERGY EFFICIENCY?**

- 66 Regarding energy efficiency, it is difficult on east-west oriented lots for the southern dwelling associated with a side-by-side typology to achieve good energy efficiency given the poorer orientation. However, I note that the solar access will be provided to the east and that for the west an open, transparent pergola structure is proposed which will allow for afternoon sunlight penetration into the rear living areas of both dwellings.
- 67 I note Mr Townsend suggested an acceptance for including a condition requiring skylights to be provided to further improve solar and daylight access to Dwelling 2, which I accept and will include.
- 68 Regarding crossovers, I am generally satisfied the two crossovers are acceptable. They represent a total coverage of 6.2 metres out of a frontage width of 16.54 metres or 37% of the frontage of the site. This is less than the maximum of 40% coverage permitted under Standard B14 of Clause 55.03-9. I am satisfied that the two crossovers are respectful of neighbourhood character of the area.
- 69 Regarding the proposed front fence, a Hamptons style white picket fence one metre in height is proposed. The NRZ3 varies the 1.5 metres high front fence requirement under Standard B32 in Clause 55.06-2 a height of 0.6 metres to achieve the *Creek Environs Area* character area objectives. Detailed character objectives in Clause 22.01 prefers no front fences.
- 70 However, as outlined in the evidence of Mr Milner and from my inspection of the area, there are a wide variety of front fence conditions within the Aikman Crescent streetscape.
- 71 I agree with Mr Milner's evidence that the proposed fence would provide definition of the boundary, without obscuring the presentation of the landscaping and dwellings to the public realm.
- 72 I find the proposal a well-mannered and acceptable response given the broader context of fencing, noting the proposed fence would be lower than that on the adjacent property to the south at 29 Aikman Crescent.





## WHAT CONDITIONS ARE APPROPRIATE?

- 73 I have had the benefit of a 'without prejudice' discussion of draft permit conditions circulated by Council.
- 74 There is some discussion between parties as to what conditions should be imposed. I have discussed some of them within my reasons.
- 75 I have included conditions as I consider appropriate for the proposal and the issues regarding the proposed development.

## CONCLUSION

- 76 Generally, the proposal does not reflect the characteristics of an overdevelopment. It satisfies the garden area, site coverage and site permeability requirements of the NRZ3.<sup>4</sup>
- 77 This level of compliance demonstrates an acceptable design response and outcome sought by the planning scheme.
- 78 For the reasons given above, the decision of the responsible authority is set aside. A permit is granted subject to conditions.

**Christopher Harty**  
**Member**

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<sup>4</sup> Garden area is 44% (requirement is 35%), site coverage is 50% (requirement is 50%) and site permeability is 34% (requirement is 30%).



## APPENDIX A – PERMIT CONDITIONS

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|------------------------------|--|
| <b>PERMIT APPLICATION NO</b> | TPA/52209                                |
| <b>LAND</b>                  | 27 Aikman Crescent<br>CHADSTONE VIC 3148 |

### WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- Construction of two (2) double storey dwellings and construction of front fence exceeding 0.6 metres in height.

## CONDITIONS

### Amended plans

- 1 Before the development starts, two copies of amended plans drawn to scale and dimensioned, must be submitted to and approved by the responsible authority. When approved the plans will then form part of the permit. The plans must be generally in accordance with the plans prepared by Mushan Architects, labelled Revision B, C, D, E, F and G and dated 17/12/2021 and 24.01.2022 but modified to show:
  - (a) An increase in the front setback with maintenance of other commensurate setbacks and no other decreases in setbacks or increases in building heights, sufficient to allow appropriate and adequate additional space within the front garden areas for the planting of 2 large native indigenous canopy trees and as required by Condition 10(d) in addition to the proposed 2 Euky Dwarf canopy trees.
  - (b) An increase in the rear setback with maintenance of other commensurate setbacks and no other decreases in setbacks or increases in building heights, sufficient to allow appropriate and adequate space within the rear garden areas beyond the rear 5 metres setback and in accordance with the requirements of the Restrictive Covenant G216342, for the planting of 2 large native indigenous canopy trees and as required by Condition 10(d).
  - (c) Pedestrian access to the dwelling entries directly off the respective driveways with removal of the parallel footpath/pavers and replacement with landscaping area.
  - (d) Tree protection fencing in accordance with AS4970-2009 for the retained nature strip tree at the front of the review site, and the nature



strip tree to the front of 25 Aikman Crescent as detailed in Condition 4.

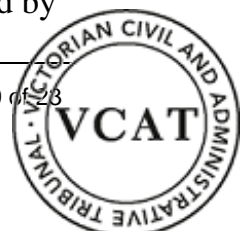
- (e) The stairs of garage 1 not extending into the garage space.
  - (f) Garage dimensions confirming the storage is excluded from the 6.0m length of the garage.
  - (g) The location of retaining walls on all elevation plans.
  - (h) The paved area at the rear of Dwelling 1 limited to the pergola area with the area north of the dining/lounge area also deleted.
  - (i) A notation that the southern Pyrus tree (Tree 3) in the nature strip proximate to the southern crossover is to be removed by Council and replaced at the full cost of the developer prior to commencement of the development including works.
  - (j) A Tree Management Plan in accordance with Condition 5 including reference to the plan along with any aspects relevant to tree protection required during the construction phase.
  - (k) An updated Landscape Plan in accordance with Condition 10.
  - (l) A Sustainable Design Assessment (SDA) as detailed in Condition 13.
  - (m) Skylights or celestial windows to Dwelling 2 to improve solar and daylight access to living room areas.
- 2 The development as shown on the endorsed plans must not be altered without the written consent of the responsible authority.

### **Street Tree Removal**

- 3 No works are to commence until the southern Pyrus tree (Tree 3) in the nature strip of the review site is to be removed by Council and replaced at the full cost of the developer prior to the commencement of the development including works.
- 4 The retained Council street tree at the front of the site (Tree 2) and the street tree to the front of 25 Aikman Crescent must be protected by temporary rectangular wire fencing accordance with AS4970-2009 for a distance of at least 3.2 metres from the base of the tree.

### **Tree Management Plan**

- 5 Concurrent with the submission of amended plans required by Condition 1 and prior to any demolition or site works, a Tree Management Plan (TMP) must be submitted to and approved by the responsible authority. The TMP must be prepared by a suitably qualified and experienced Arborist and must set out recommendations and requirements in relation to the management and maintenance of Tree Nos. 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 12 and 14 (as identified in the Arborist Report submitted with the application, prepared by Urban Forestry Victoria dated 29 March 2021).



- 6 The TMP must be approved by the responsible authority prior to the commencement of any works, including demolition and/or levelling of the site. The TMP must make specific recommendations in accordance with the Australian Standard AS4970: 2009 - *Protection of Trees on Development Sites* and detail the following to the satisfaction of the responsible authority ensuring the trees to be retained remain healthy and viable during construction:
- (a) A Tree Protection Plan drawn to scale that shows:
    - i Tree protection zones and structural root zones of all trees to be retained,
    - ii All tree protection fenced off areas and areas where ground protection systems will be used;
    - iii The type of footings within any tree protection zones;
    - iv Any services to be located within the tree protection zone and a notation stating all services will either be located outside of the tree protection zone, bored under the tree protection zone, or installed using hydro excavation under the supervision of the Project Arborist; and
    - v A notation to refer to the Tree Management Plan for specific detail on what actions are required within the tree protection zones.
    - vi For Trees 4 and 5 that are located on the adjoining property at 25 Aikman Crescent provision of battered slopes on the site with no excavation or retaining walls on the north side of the driveway for Dwelling 1 to avoid root disturbance.
  - (b) Details of how the root system of any tree to be retained will be managed. This must detail any initial non-destructive trenching and pruning of any roots required to be undertaken by the Project Arborist.
  - (c) Any remedial pruning works required to be performed on tree canopies located within subject site. The pruning comments must reference Australian Standards 4373:2007, *Pruning of Amenity Trees* and a detailed photographic diagram specifying what pruning will occur. Pruning (if any at all) is to be to the minimum amount required only for clearances associated with construction.
  - (d) Supervision timetable and certification of tree management activities required by the Project Arborist to the satisfaction of the responsible authority.
  - (e) Any ongoing restrictions that on-site including landscaping/paving treatments within the tree protection zones.



- 7 All tree protection measures and all development works on the land must be undertaken in accordance with the Tree Management Plan, to the satisfaction of the responsible authority.
- 8 The owner and occupier of the site must ensure that, prior to the commencement of buildings and works, all contractors and tradespersons operating on the site are advised of the status of trees to be retained as detailed in the endorsed Tree Management Plan and are advised of any obligations in relation to the protection of those trees.
- 9 Prior to occupation of the buildings the project Arborist must provide written confirmation to the responsible authority that all requirements of the Tree Management Plan were implemented.

### **Landscape Plan**

- 10 Concurrent with the endorsement of any plans pursuant to Condition 1, a landscape plan 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 prepared by Urbis dated 23 February 2022, except that the plan must be modified to show:
  - (a) The provision of shrubs and other low-level plantings in the front setback area forward of the dwelling to create a densely planted presentation to the street.
  - (b) The location of any retaining walls associated with the landscape treatment of the site.
  - (c) A planting schedule of all proposed trees, shrubs and ground cover, which will include the size of all plants (at planting and at maturity), pot / planting size, location, botanical names and quantities. Trees must have a height of at least 1.5 metres when planted;
  - (d) Indigenous native canopy trees with a minimum height of growth of 9.5 metres in the front setback and rear private secluded open space areas of the site, as required under Conditions 1(a) and 1(b) and except for the areas as outlined in Condition 10(e). The species selected must have a minimum height of 1.5 metres when planted and will have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the responsible authority.
  - (e) The heights and species of trees and shrubs within 5 metres of the west (rear) boundary and adjacent to the common side boundary (south) between 27 and 29 Aikman Crescent to be limited in height to 3.7 metres in accordance with the requirements of the Restrictive Covenant G216342.



- (f) Any requirements or restrictions on landscaping site preparation in accordance with the Tree Management Plan required under Condition 5.
  - (g) An in-ground, automatic watering system linked to rainwater tanks on the land must be installed and maintained to the common garden areas to the satisfaction of the Responsible Authority.
  - (h) The location of external lighting (if any).
- 11 Before the occupation of the buildings allowed by this permit, landscaping works as shown on the endorsed plans must be completed to the satisfaction of the responsible authority and then be maintained to the satisfaction of the responsible authority.
- 12 All landscaping works shown on the endorsed landscape plan(s) must be maintained and any dead, diseased or damaged plants replaced, all to the satisfaction of the responsible authority.

### **Sustainable Design Assessment**

- 13 Concurrent with the endorsement of plans requested pursuant to Condition 1, a Sustainable Design Assessment (in accordance with Clause 22.13) to the satisfaction of the responsible authority must be submitted to and approved by the responsible authority. Upon approval the Sustainable Design Assessment will be endorsed as part of the planning permit and the development must incorporate the sustainable design initiatives outlined in the Sustainable Design Assessment to the satisfaction of the responsible authority.

### **Drainage**

- 14 The site must be drained to the satisfaction of the responsible authority.
- 15 All stormwater collected on the site from all hard surface areas must not be allowed to flow uncontrolled into adjoining properties or the road reserve.
- 16 All stormwater collected on the site is to be detained on site to the predevelopment level of peak stormwater discharge. 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.
- 17 The design of any internal detention system is to be approved by Council's Engineering Department prior to drainage works commencing.
- 18 The nominated point of stormwater connection for the site is to the west of the property where the entire site's stormwater must be collected and free drained via a pipe to the Council pit in the rear easement to be constructed to Council standards. (A new pit is to be constructed to Council standards if a pit does not exist, is in poor condition or is not a Council standard pit).



Note: If the point of connection cannot be located then notify Council's Engineering Department immediately.

- 19 No polluted and/or sediment laden runoff is to be discharged directly or indirectly into Council drains or water courses during and after development, to the satisfaction of the responsible authority.
- 20 A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works. The plans are to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.

### **Roadworks**

- 21 All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
- 22 Any works within the road reserve must ensure the footpath and naturestrip are reinstated to Council standards.
- 23 Engineering permits must be obtained for new or altered vehicle crossings and new connections to Council pits and these works are to be inspected by Council's Engineering Department. A refundable security deposit of \$1,500 is to be paid prior to the drainage works commencing.

### **Starting and Completion**

- 24 Once the development has started it must be continued, completed and then be maintained to the satisfaction of the responsible authority.

### **Expiry of permit for development**

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

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

– **End of conditions** –

