

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

PLANNING AND ENVIRONMENT LIST

VCAT REFERENCE NO. P1138/2022
PERMIT APPLICATION NO.TPA/53812

APPLICANT	GNL Holdings One Pty Ltd
RESPONSIBLE AUTHORITY	Monash City Council
RESPONDENT	Farah Drake
SUBJECT LAND	25 Cleveland Road ASHWOOD VIC 3147
HEARING TYPE	Hearing
DATE OF HEARING	13 February 2023
DATE OF INTERIM ORDER	13 February 2023
DATE OF ORDER	11 May 2023

ORDER

Permit granted

- 2 In application P1138/2022 the decision of the responsible authority is set aside.
- 3 In planning permit application TPA/53812 a permit is granted and directed to be issued for the land at 25 Cleveland Road Ashwood VIC 3147 in accordance with the endorsed plans and the conditions set out in Appendix A. The permit allows:
 - ◆ Construction of three dwellings in a General Residential Zone Schedule 3.

Alison Slattery
Member

APPEARANCES

For applicant	Mr Daniel Bowden of SongBowden
For responsible authority	Ms Michaela Harding of Responsible Authority
For respondent	Ms Drake in person



INFORMATION

Description of proposal	Construction of three dwellings
Nature of proceeding	Application under section 77 of the <i>Planning and Environment Act 1987</i> – to review the refusal to grant a permit.
Planning scheme	Monash Planning Scheme
Zone and overlays	General Residential Zone Schedule 3
Permit requirements	Clause 32.08-6 construction or extension of two or more dwellings on a lot

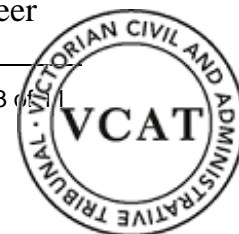


ORAL DECISION GIVEN

1. I decided to set aside the Council decision of 26 August 2022 and orally at the hearing of 13 February 2023 I directed the Responsible Authority to issue the planning permit. My decision and reasons were given orally at the hearing.
2. I issued a corrected order of 16 March 2023 requiring the following information:
 - ◆ The Responsible authority must serve to all parties and file with the Tribunal details of the basis upon which the requirements of conditions 8 and 9 are applied to the draft suite of conditions. This should include details of the Ashwood Reserve landfill buffer zone, including (inter alia) its location, status, history, details of remediation, distance from the review site, status in planning law, applicability to the review site, applicability to the development on the review site, and any other relevant details. Further, the Responsible Authority should include details of how the Monash Planning Scheme requires these conditions, and whether or not any planning scheme amendments are afoot in a manner that is relevant to conditions 8 or 9. This information is to be provided to all parties and filed with the Tribunal no later than close of business 6 March 2023.
 - ◆ Any response to the above information must be filed with the Tribunal and served on all parties no later than the close of business 17 March 2023.
 - ◆ Upon receipt of the above responses the Tribunal will advise if any further proceedings regarding conditions 8 and 9 are required.
3. As conditions 8 and 9 were in review, no planning permit issued. The information is now received, along with the responses of the review applicants that they agree with the Council's submissions.

REMARKS REGARDING CONDITIONS 8 AND 9

4. I have reviewed the information provided to the Tribunal in response to the order of 16 March 2023.
5. In line with other decisions of this Tribunal I find it reasonable to impose the two conditions in question, conditions 8 and 9.
6. The Council's representative drew my attention to several decisions, and in particular I have regard to *Pizzorno v Kingston CC* [2017] VCAT 2006, which included a very similar situation to the current application. Similarly, that hearing considered multi unit development in close proximity to a terminated landfill. Kingston Council suggested the imposition of conditions similar to conditions 8 and 9 regarding landfill gas risk assessment and peer



review. In the same vein as Pizzorno, I find the application of these two conditions is reasonable.

7. I concur with the Tribunal in Pizzorno when it stated the following:
 - ◆ The ... Planning Scheme includes a number of State planning policies aimed at avoiding incompatible land uses, adopting best practice environment management approaches to avoid or minimise environmental hazards, provide separation distances and protect landfill operations from encroachment from sensitive land uses.
 - ◆ The site is within an existing developed residential area, already within the landfill buffers. The proposal seeks to effectively increase the number of dwellings on the site by two with demolition of the existing dwelling and construction of three new dwellings. It is not an infill development per se, but rather, an increase in the intensity of an existing residential development.
 - ◆ Having regard to the physical context and location of the site within the buffer to a closed landfill and the nature of the past landfilling activity (solid inert waste), I find the responses from the Council and the applicant acceptable. The guidance offered by the BPEM and the Buffer Assessment Guideline reassures me that the proposal is acceptable and that imposing a condition requiring a landfill gas risk assessment prior to any commencement of works is appropriate.
 - ◆ I note that this issue has been addressed in previous Tribunal decisions where landfill gas risks have been addressed via permit conditions and accepted as being appropriately managed through secondary consent processes. In this regard, I agree with the observation of Member Cimino in *Rojin Investments v Brimbank CC* at paragraph 70 that, similar to this instance: The condition suggested by the Council does not impose a requirement for a full audit to be undertaken. Rather, it requires an assessment to be made of the likely hazard and to make recommendations as to what follow up process should be embarked on. This is not unreasonable.
8. I see no reason to depart from this position as the contextual circumstances of the review site and the site in Pizzorno are quite similar.
9. Conditions 8 and 9 are included in the suite of conditions.

Alison Slattery
Member



APPENDIX A – PERMIT CONDITIONS

PERMIT APPLICATION NO	TPA/53812
LAND	25 Cleveland Road ASHWOOD VIC 3147

WHAT THE PERMIT ALLOWS

In accordance with the endorsed plans:

- ♦ Construction of three dwellings in a General Residential Zone Schedule 3.

CONDITIONS

Amended Plans Required

1. Before the development commences, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. The plans must be drawn to scale and dimensioned. When the plans are endorsed they will form part of the Permit. They must be generally in accordance with plans prepared by Bello Design Group, dated 1 April 2022, but modified to show:
 - a) 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.
 - b) A Landscape Plan in accordance with Condition 3 of this permit.
 - c) An amended Sustainable Design Assessment in accordance with Condition 7 of this permit.

Layout not to be Altered

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

Landscape

3. Concurrent with the endorsement of any plans requested pursuant to Condition 1, a landscape plan prepared by a Landscape Architect or a suitably qualified or experienced landscape designer, generally in accordance with the Landscape Plan prepared by CX Landscape, drawn to scale and dimensioned must be submitted to and approved by the Responsible Authority. The Landscape Plan must show:



- a) A survey and location of all existing trees, using botanical names to be retained and of those to be removed. The intended status of the trees shown on the landscape plan must be consistent with that depicted on the development layout plan;
- b) A planting schedule of all proposed trees (canopy tree to be Australian native species), 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;
- c) A minimum of four (4) canopy trees (minimum 1.5 metres tall when planted). The canopy trees must have a minimum height of 7 metres and must have a spreading crown with a minimum width of 4 metres at maturity, or as otherwise agreed by the Responsible Authority;
- d) Canopy trees to be of indigenous or Australian native species;
- e) the location of any boundary and internal fencing to the site;
- f) provision of canopy trees with spreading crowns located throughout the site including the major open space areas of the development;
- g) planting to soften the appearance of hard surface areas such as driveways and other paved areas;
- h) Canopy Trees / Significant Planting on adjoining properties within 3 metres of the site;
- i) the location of any retaining walls associated with the landscape treatment of the site;
- j) details of all proposed surface finishes including pathways, accessways, patio or decked areas;
- k) 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;
- l) Landscaping and planting within all open areas of the site.

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

Tree Protection

- 4. 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.
- 5. No crossover should be within 2.5 metres of the street tree base. The tree must be protected by temporary rectangular wire fencing as per Australian Standards, erected prior to commencement of works until completion. Fence must extend out to at least distances given.

Landscaping Prior to Occupation

- 6. 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.

SUSTAINABLE DESIGN ASSESSMENT

7. Concurrent with the endorsement of plans requested pursuant to Condition 1, an amended Sustainable Design Assessment to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the amended Sustainable Design Assessment will be endorsed and will form part of this permit. The amended Sustainable Design Assessment must be generally in accordance with the Sustainable Design Assessment prepared by Roger Rao (Starating) and dated 16 June 2022 but modified to include or show:
- a) Updated to coincide with amended development plans.

LANDFILL GAS ASSESSMENT

8. 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
6	Subsurface services on, and adjacent to, the waste	10,000 parts per million
7	Buildings and structures on, and adjacent to, the waste	5000 parts per million

- b) Ensure that the site assessor prepares a report to be submitted to the Responsible Authority. The landfill gas risk assessment (LGRA) should be based on guidance prepared by the Environment Protection

Authority from time to time and / or made under the Environment Protection Act 2017 (Vic) and subordinate legislation. As at the issue date of this permit, such 'guidance' includes EPA Publication 788.3 (Landfill Best Practice Environmental Management or Landfill BPEM) and EPA Publication 1684 (Landfill gas fugitive emissions monitoring guideline).

- c) If the landfill gas assessment identifies methane at concentrations exceeding the methane gas concentration action levels, the permit holder must engage the services of an EPA-appointed environmental auditor to complete an environmental audit with a scope limited to:
 - (i) assessment of the nature and extent of the risk of harm to human health from waste;
 - (ii) recommending measures to manage the risk of harm to human health from waste;
 - (iii) making recommendations to manage any waste, where the landfill extends onto or beneath the land.
- d) The permit holder must provide the Responsible Authority with a scope and supporting documents endorsed or determined by the Environment Protection Authority pursuant to section 208(5) of the Environment Protection Act 2017 (Vic) and a copy of the environmental audit statement and environmental audit report issued pursuant to sections 210(1) of the Environment Protection Act 2017 (Vic).

Peer Review

- 9. 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.

Drainage

- 10. The site must be drained to the satisfaction of the Responsible Authority.
 - 11. A plan detailing the drainage works must be submitted to the Engineering Division prior to the commencement of works for approval. The plans are
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to show sufficient information to determine that the drainage works will meet all drainage requirements of this permit.

12. 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.
13. 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.
14. The full cost of reinstatement of any Council assets damaged as a result of 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 Crossover

15. All new vehicle crossings must be a minimum of 3.0 metres in width and constructed in accordance with Council standards.
16. All vehicle crossings within 1.50 metres of an adjoining crossing shall be converted to a double crossing in accordance with Council standards.
17. All new vehicle crossings are to be no closer than 1.0 metre, measured at the kerb, to the edge of any power pole, drainage or service pit, or other services. Approval from affected service authorities is required as part of the vehicle crossing application process.
18. Any works within the road reserve must ensure the footpath and naturestrip are to be reinstated to Council standards.
19. Provide a corner splay or area at least 50% clear of visual obstructions (or with a height of less than 1.2 metres), which may include adjacent landscaping areas with a height of less than 0.9 metres, extending at least 2.0 metres long x 2.5 metres deep (within the property) both sides or from the edge of the exit lane of each vehicle crossing to provide a clear view of pedestrians on the footpath of the frontage road.

Urban Design

20. 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

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

Permit Expiry

22. This permit will expire in accordance with section 68 of the Planning and Environment Act 1987, if one of the following circumstances applies:
 - The development has not started before 2 years from the date of issue.
 - 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, the responsible authority may extend the periods referred to if 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 Administrative Tribunal are unable to approve requests outside of the relevant time frame.

– End of conditions –